



Toolkit | August 2023

# Advancing Gender Justice in the Draft International Crimes Against Humanity Treaty



**Global  
Justice Center**

Human Rights Through Rule of Law



## A NEW INTERNATIONAL TREATY ON CRIMES AGAINST HUMANITY

A new treaty on crimes against humanity (CAH) is being considered at the United Nations (UN). The proposed treaty has significant potential to advance justice for gender-based crimes. But in order to achieve a strong gender-just and survivor-centered treaty, diverse civil society organizations around the world must engage in the treaty development process.

While genocide and war crimes are codified in standalone conventions, there is no analogous individual international treaty that codifies and establishes duties on states to prevent and punish crimes against humanity. To address this gap, the UN's [International Law Commission \(ILC\)](#) prepared the [Draft Articles on the Prevention and Punishment of Crimes against Humanity](#), which provide a starting point for the discussion and negotiation of a new international treaty on crimes against humanity.

### Where is the Treaty Now?

The draft treaty is currently being considered by the UN General Assembly's (UNGA) [Sixth Committee](#), its legal committee. In April 2023, states convened a week-long [special resumed session](#) of the Sixth Committee dedicated solely to exchanging views on the substance of the draft treaty. A second, similar Sixth Committee session to discuss the draft treaty will take place in April 2024, and states will make a formal decision on next steps in October 2024.



### Further Reading

For more information on crimes against humanity, the need for this new treaty, a high-level summary of the draft treaty, the procedural history of the draft, its relationship to the International Criminal Court (ICC) and the International Court of Justice, and other background information, please refer to GJC's Fact Sheet [Moving Towards a Treaty on Crimes Against Humanity](#).

PHOTO: States discussing the draft crimes against humanity treaty at the Sixth Committee resumed session in April 2023

## OPPORTUNITIES TO ADVANCE GENDER JUSTICE

The current draft of the treaty includes relatively robust codification of a range of sexual and gender-based crimes. If adopted, the treaty would be an [essential tool](#) in the fight against impunity for sexual and gender-based crimes around the world. For example, the proposed text would impose clear legal obligations on states to prevent and punish crimes against humanity, to criminalize these acts (including sexual and gender-based violence) in their domestic laws, protect victims and witnesses, and ensure reparations.

### Building on the Rome Statute

The current draft treaty is based largely on the [Rome Statute](#) of the ICC, which was an important step forward in the codification of atrocity crimes, including its explicit recognition of a range of sexual and gender-based crimes beyond rape. However, in the 25 years since the Rome Statute's adoption, the world has seen significant progress in our understanding of sexual and gender-based crimes and notions of gender. For example, the first final conviction for sexual and gender-based crimes came in [Ntaganda](#) at the ICC in 2019; the Colombian Truth Commission's [finding](#) in 2022 that forced contraception and abortion constitute reproductive violence in the Colombian conflict; and the first conviction of forced pregnancy as an international crime before a national court handed down in the Democratic Republic of Congo in the [Ndarumanga case](#) in 2023. These and other important achievements provide essential lessons in the investigation and prosecution of sexual and gender-based crimes, which must be reflected in a new crimes against humanity treaty.

#### Making the Treaty More Gender-Competent

- Revising the definition of **sexual violence** to include **reproductive violence**
- Eliminating the unnecessary caveat in the definition of **forced pregnancy** that provides an [exception for national abortion laws](#), and using gender-inclusive language in the definition
- Revising and appropriately codifying the definitions of **enslavement**, the **slave trade**, and **trafficking**
- Codifying **gender apartheid** for the first time as an international crime
- Including **forced marriage** as a specifically enumerated crime against humanity
- Revising the definition of **persecution** so that it can be prosecuted as a standalone crime
- Ensuring that the [regressive definition of 'gender'](#) from the Rome Statute remains excluded from the treaty
- Ensuring provisions on **victim/survivor participation and rights** are robust and reflect input from affected communities
- Adding provisions for the creation of a **monitoring mechanism** to promote implementation of the treaty and advance progressive interpretations of the text

This is by no means an exhaustive list and civil society organizations can and should review the draft treaty to determine additional opportunities to advance gender justice. There are currently expert briefs being drafted on many of the topics noted above, which will likely be published and distributed to states in early Fall 2023.

## POTENTIAL STATE ALLIES

Certain states already appear ready to support progressive gender provisions in the draft treaty. At the Sixth Committee session on the draft treaty in April 2023, many states [indicated support](#) for progressive provisions on gender-related elements of the draft treaty, though other states indicated their opposition.

Topic	Indicating <i>strong support</i> of gender justice position	Indicating <i>some support</i> of specific gender issue or ambivalence	Indicating <i>strong opposition</i> to gender justice position
Gender audit/ sensitivity	<a href="#">Australia</a> <a href="#">Canada</a> <a href="#">Mexico</a> <a href="#">Peru</a>	<a href="#">El Salvador</a>	
Definition of gender	<a href="#">Australia</a> <a href="#">Belgium</a> <a href="#">Brazil</a> <a href="#">Canada</a> <a href="#">Colombia</a> <a href="#">EU</a> <a href="#">Malta</a> <a href="#">Mexico</a> <a href="#">New Zealand</a> <a href="#">Netherlands</a> <a href="#">Portugal</a> <a href="#">Romania</a> <a href="#">Sweden</a> (on behalf of Nordic States) <a href="#">United States</a> <a href="#">U.K.</a>	<a href="#">El Salvador</a> <a href="#">Sierra Leone</a>	<a href="#">Cameroon</a> <a href="#">Gambia</a> <a href="#">Nigeria</a> <a href="#">Poland</a> <a href="#">Qatar</a>
SGBV generally	<a href="#">Canada</a> <a href="#">El Salvador</a> <a href="#">United States</a> <a href="#">UK</a>		<a href="#">Russian Federation</a>
Forced pregnancy	<a href="#">Canada</a> <a href="#">Cuba</a> <a href="#">UK</a>		



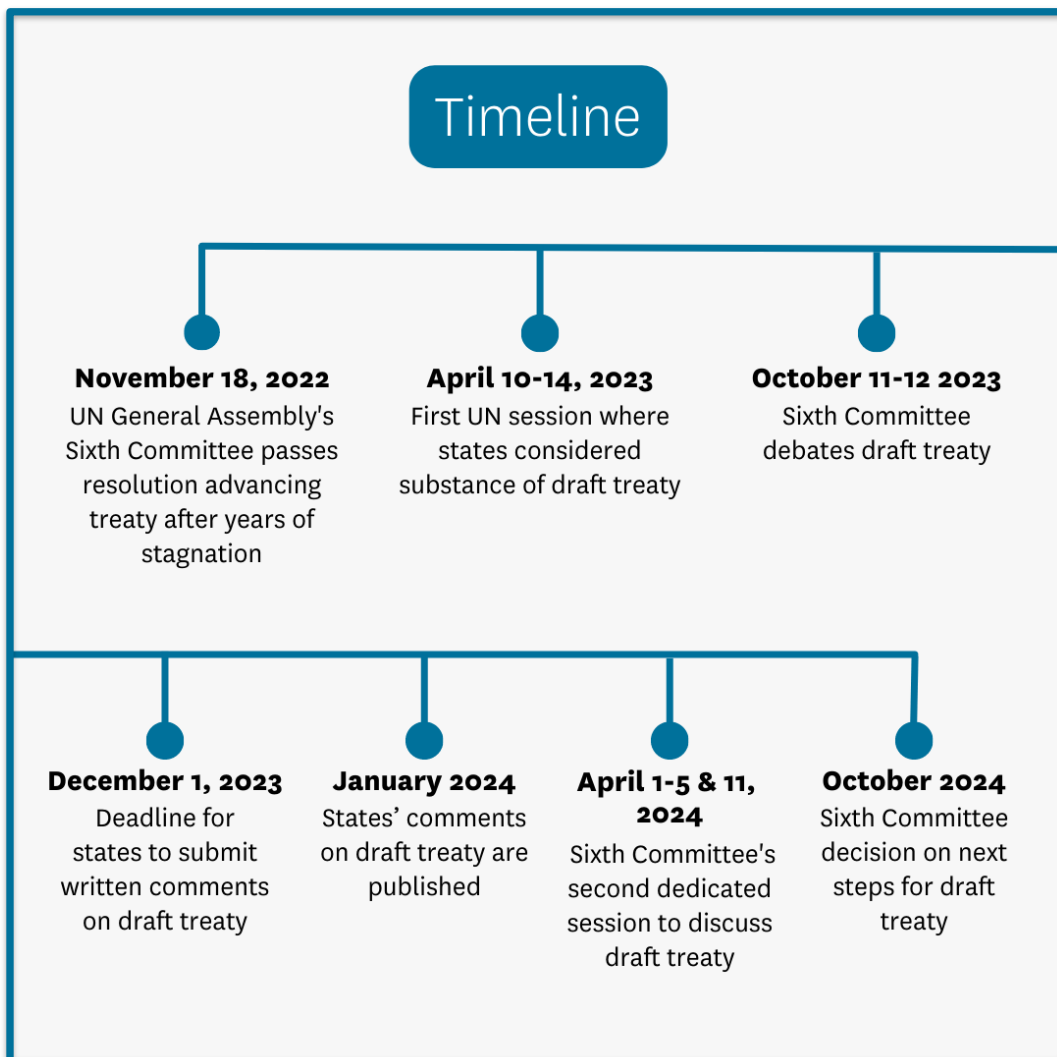
Topic	Indicating <i>strong support</i> of gender justice position	Indicating <i>some support</i> of specific gender issue or ambivalence	Indicating <i>strong opposition</i> to gender justice position
<b>Slavery/slave trade/enslavement</b>	<a href="#">Sierra Leone</a> (see also <a href="#">here</a> )		<a href="#">Qatar</a> (cursory reference to consistency in definitions)
<b>Persecution</b>	<a href="#">Philippines</a> <a href="#">UK</a>		
<b>Forced marriage</b>	<a href="#">Canada</a> <a href="#">Sierra Leone</a> <a href="#">UK</a>		
<b>LGBTQI+ Issues</b>	<a href="#">Belgium</a> <a href="#">Philippines</a>		
<b>Treaty Monitoring Body</b>	<a href="#">Sierra Leone</a>	<a href="#">Canada</a> <a href="#">EU</a> <a href="#">Slovakia</a> <a href="#">U.K.</a>	
<b>Victims' rights</b>	<a href="#">Canada</a> <a href="#">El Salvador</a> <a href="#">EU</a> <a href="#">Poland</a> <a href="#">Sierra Leone</a> <a href="#">UK</a>		

## WHAT'S NEXT FOR THE TREATY?

Crimes against humanity and the draft treaty will be debated at the UN General Assembly as part of its normal practice on October 11 and 12, 2023. A second session of the Sixth Committee solely dedicated to discussing the draft treaty will be held next April 2024. States also have the opportunity to submit written comments on the draft treaty by December 1, 2023, which will be published in January 2024 and will help to inform the structure and substance of the April 2024 Sixth Committee session. Significantly, in October 2024 the Sixth Committee will take a formal decision on whether to move forward with the draft articles toward actual negotiation of a treaty.

There will also likely be side events or briefings related to the crimes against humanity treaty during other international forums, which may provide additional opportunities for engagement to advance gender justice in the draft treaty, such as:

- International Law Weekend (October 19-21, 2023)
- The ICC's Assembly of States Parties' annual meeting in New York (December 4-14, 2023)
- Commission on the Status of Women (March 11-22, 2024)





## HOW YOU CAN GET INVOLVED

### Make a Submission

States need practical and legal expertise from civil society on key open questions, from expanding definitions to advancing victims' rights.

You can write your own submission on a particular issue for states to consider. Submissions should be sent to states' legal advisors in New York City or in capitals. States will submit their written comments on the draft articles by December 1, 2023, but states can be engaged at any point in this process about priority issues.

### Advocate

Engage with states to advocate for specific provisions that advance or protect gender justice.

If your organization has ECOSOC accreditation, you can attend the Sixth Committee crimes against humanity debate in October 2023 or the April 2024 Sixth Committee resumed session in person. You can also watch the sessions remotely on [UN Web TV](#).

### Raise Awareness

Global civil society involvement is crucial to build momentum toward a widely-adopted and gender-inclusive treaty. You can help by sharing this toolkit and encouraging others to engage in the process and make their voices heard.

### Stay Informed

For more information about the CAH treaty, refer to GJC's Fact Sheet [Moving Towards a Treaty on Crimes Against Humanity](#).

To join GJC's mailing list for advancing gender justice in the CAH treaty, fill out this [form](#).

If you would like any additional information or have any questions, please email: [CAHtreaty@globaljusticecenter.net](mailto:CAHtreaty@globaljusticecenter.net)