

# VICTIMS' RIGHTS IN THE CRIMES AGAINST HUMANITY CONVENTION

Policy brief

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A woman walks past posters of missing people during Armed Conflict Victims Dignification Day on February 25, 2014 in Guatemala City. Armed Conflict Victims Dignification Day is held on the anniversary of the publication of the Truth Commission's report in 1999, which stated that more than 200,000 people died or disappeared during the 36-year civil war (1960-1996) in Guatemala, and held Guatemala's Army responsible for 93 percent of the crimes. AFP PHOTO/Johan ORDONEZ

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# Background

Unlike for genocide, war crimes, torture, enforced disappearance, and apartheid, there is currently no international treaty dedicated to the prevention and punishment of crimes against humanity (CAH). CAH were included in the Charter of the Nuremberg International Military Tribunal<sup>1</sup> and applied alongside the Tribunal's other two offences (crimes against peace and war crimes) against the Nazi leaders in Germany. The same set of crimes were part of the Nuremberg Principles,<sup>2</sup> and the Rome Statute of the International Criminal Court (Rome Statute), ratified by 125 States. While some states have incorporated CAH into national legislation, no further effort was made to codify these acts in a separate international convention.

Over the last decade, the United Nations (UN) International Law Commission (ILC) - the entity charged with the progressive development and codification of international law - and the General Assembly have made progress towards establishing a Convention on CAH. CAH are typically defined as certain acts committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.<sup>3</sup> In 2019, the ILC published a set of Draft Articles on the Prevention and Punishment of Crimes against Humanity<sup>4</sup> (Draft Articles) and recommended that the UN General Assembly develop a Convention on their basis. The Draft Articles have been the subject of debates in the UN General Assembly's Sixth Committee (legal affairs) as part of which states had the opportunity to submit written comments<sup>5</sup> by December 2023. The debates culminated in a historic development in November 2024, with the Sixth Committee approving by consensus a resolution to advance to formal negotiations for an international convention on the prevention and punishment of CAH. This consensus text<sup>6</sup> resulted from extensive state negotiations, strongly supported by civil society.<sup>7</sup>

Formal negotiations are expected to begin in January 2026. [General Assembly Resolution 79/122](#),<sup>8</sup> adopted in December 2024, mandates a Conference of Plenipotentiaries on Prevention and Punishment of Crimes against Humanity to meet for a three-week negotiation session in early 2028, followed by another three-week session in 2029. Their goal is to finalise and open an international convention to prevent and punish CAH for state signature and ratification.

To that end, Resolution 79/122 also establishes a Working Group of the Diplomatic Conference and a Preparatory Committee. The Working Group will begin its work in January 2026 to facilitate consultations on the Draft Articles, and gather states' formal amendment proposals for consideration by the Diplomatic Conference. Finalised amendment proposals must be submitted to the UN Secretariat by 30 April 2026. The [Preparatory Committee](#) will also meet on 19-30 January 2026 in New York to discuss the organisation and methods of work of the Diplomatic Conference. Civil society organisations with ECOSOC consultative status will be able to participate, and the Committee will decide whether those without ECOSOC consultative status may also participate. A second Committee session in 2027 will focus on rules of procedure for the Conference.

The amendments proposed in 2026, the written submissions made by states to the UN Secretariat in December 2023, and the Sixth Committee Chair's Summary of the resumed sessions and the Draft Articles, will form the basis for the substantive negotiations of the Diplomatic Conference.

<sup>1</sup> [Charter of the Nuremberg International Military Tribunal](#), 1945, art. 6, p. 5.

<sup>2</sup> [Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal](#), 1950, Principle VI (c).

<sup>3</sup> [Rome Statute of the International Criminal Court](#) (ICC), 1998, art.7.

<sup>4</sup> UN International Law Commission, Draft Articles on the Prevention and Punishment of Crimes against Humanity, 2019 (Draft Articles).

<sup>5</sup> Full texts of submissions available at: <https://www.un.org/en/ga/sixth/78/cah.shtml>.

<sup>6</sup> UN, ["Sixth Committee Upholding Tradition of Consensus in Historic Meeting, Approves Text to Begin Elaborating International Convention on Crimes Against Humanity"](#), 22 November 2024.

<sup>7</sup> [CAH Treaty Now](#).

<sup>8</sup> UN General Assembly, [Resolution 79/122](#), A/RES/79/122, 12 December 2024.

Ahead of the upcoming first session of the Preparatory Committee in January 2026, this brief was prepared by the REDRESS and the International Federation for Human Rights (FIDH) teams, as part of the Global Initiative Against Impunity: Making Justice Work<sup>9</sup> (GIAI). It is supported by the European Center for Constitutional and Human Rights (ECCHR), the Global Survivors Fund (GSF), TRIAL International, and Women's Initiatives for Gender Justice (WIGJ). The brief provides recommendations on how to strengthen the rights of victims of CAH and key related issues in the CAH Convention. For the purpose of this brief, we use both the terms "victim" and "survivor". In discussing the legal standards, we use the term "victim" for consistency with the language used by international instruments and bodies. In providing commentary, we sometimes use the term "survivor" to refer to both individuals who have survived CAH as well as their families and communities, and to the families of those who died as a result of violations. Our use of the word "survivor" rather than "victim" is in no way intended to diminish the legal status of persons as victims of crimes and violations under domestic and international law, either individually or collectively. Where we use the term "survivor" we do so to reinforce the self-determination, dignity, and strength of individual victims and emphasise the possibility of healing and rehabilitation.

This brief builds directly on past contributions in relation to victims' rights in the Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes Against Humanity, War Crimes and other International Crimes (LHC).<sup>10</sup> It also draws from REDRESS' 2018 comments to the ILC regarding the CAH Convention<sup>11</sup> as well as a joint submission<sup>12</sup> in 2024 prepared by REDRESS, FIDH, GSF, and TRIAL International, which provided concrete recommendations for states to ensure that the future Convention reflects established international standards on victims' rights, including access to justice, participation, protection, and reparation. This brief also draws from a joint policy paper on justice for children in the future Convention prepared in 2025 by the Global Survivors Fund, Human Rights Watch, Amnesty International, and Save the Children.<sup>13</sup> This brief integrates updated analysis, presents some of the debates held within the ILC and among states, and highlights where state comments warrant support and where they raise concerns inconsistent with established international law and practice. It also offers textual recommendations aimed at strengthening the Draft Articles so that the Convention provides a coherent, survivor-centred framework for addressing CAH. Notably, we recommend expanding the provisions on victims' rights by covering through three distinct Articles: the definition of "victims", the protection of victims, witnesses, and others, victims' rights, including the right to reparation. We also recommend changes to the preamble, as well as to the provisions on mutual legal assistance, and statutes of limitations.

9 The [Global Initiative Against Impunity: Making Justice Work](https://makingjusticework.org/en/) is a civil society-led programme co-founded by the European Union to advance inclusive, integrated and comprehensive justice for serious human rights violations worldwide. It is implemented by a Consortium of nine organisations, with two associate partners. For more details, see also <https://makingjusticework.org/en/>.

10 FIDH, ECCHR and REDRESS, [Enhancing Victims' Rights in Mutual Legal Assistance Frameworks. Recommendations for the Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity and War Crimes](#), 1 May 2020.

11 REDRESS, [Fostering Victims' Rights in the Proposed Crimes Against Humanity Convention. Comments to the International Law Commission](#), March 2018.

12 FIDH, GSF, REDRESS and TRIAL, [Victims and Survivors' Rights in a Convention on the Prevention and Punishment of Crimes against Humanity](#), March 2024 (Victims' Rights CAHC Brief).

13 Children and Crimes Against Humanity Coalition, [Justice for Children in the Future Convention on the Prevention and Punishment of Crimes Against Humanity](#), 2025.



# Submissions

## DEFINITION OF VICTIMS

The Draft Articles currently do not contain a definition of the term “victim” leaving its interpretation to the discretion of states. Several states have expressed views on this approach. Argentina, Brazil, Colombia, and Liechtenstein have supported the inclusion of a definition of victims, with Liechtenstein emphasising the importance of such a definition for determining eligibility for reparation,<sup>14</sup> among other victims’ rights. By contrast, Australia has justified the absence of a definition on the basis that this approach follows standard treaty practice, and that existing treaties and customary international law already provide sufficient guidance.<sup>15</sup> Turkey and China have also raised concerns about imposing legal definitions from instruments that do not enjoy universal acceptance.<sup>16</sup>

The absence of a definition risks inconsistent or restrictive domestic interpretations, potentially resulting in discriminatory outcomes and the exclusion of certain victims from protection. This, in turn, would undermine the Convention’s purpose. Existing instruments such as the International Criminal Court’s (ICC) Rules of Procedure and Evidence<sup>17</sup> and the LHC<sup>18</sup> already provide guidance in defining “victim”.<sup>19</sup>

The imperative to deliver justice to victims is frequently cited as a core justification for international criminal justice,<sup>20</sup> alongside objectives such as prevention or deterrence. International criminal justice must also produce meaningful outcomes for victims and their communities.<sup>21</sup> International criminal jurisdictions have also recognised victims’ capacity to bring a “unique and necessary” perspective to international criminal justice.<sup>22</sup> The participation of victims and witnesses is crucial to the effective investigation and prosecution of international crimes.<sup>23</sup>

In recognition of the unique and crucial role that victims hold in international criminal justice, various instruments guarantee the rights of victims, as well as states’ obligation to recognise these rights. Those rights include: the right to complain to competent authorities,<sup>24</sup> the right to participation,<sup>25</sup>

14 UN General Assembly, [Crimes against humanity, Report of the Secretary General](#) (Report of the Secretary General), A/78/717, 12 January 2024, p. 36, para. 200.

15 Ibid, p. 36, para. 200.

16 Ibid, para. 6, p. 11.

17 [ICC Rules of Procedure and Evidence](#), Rule 85.

18 Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes Against Humanity, War Crimes and other International Crimes (LHC), art. 81.

19 Victims’ Rights CAHC Brief, p. 6-7. See also, Amnesty International, [A Convention on Prevention and Punishment of Crimes against Humanity: Further Recommendations](#), p. 8; and Human Rights Watch, [Recommendations for the International Convention on Prevention and Punishment of Crimes Against Humanity](#); UN General Assembly, [Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law](#) (Basic Principles and Guidelines, A/RES/60/147, 16 December 2005, Principle 5; UN Committee Against Torture, [General Comment 3: Implementation of Article 14 by States Parties](#), 13 December 2012, CAT/C/ GC/3, para. 3; African Commission on Human and Peoples’ Rights (ACHPR), [General Comment No. 4: The Rights to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment \(Article 5\)](#), 2017, paras. 16-20, and 50; [Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime](#) (EU Victims’ Directive), art. 2; ACHPR, [Guidelines on the Protection of All Persons from Enforced Disappearances in Africa](#), 2022, para. 2.3.

20 Natalie Hodgson, ‘[Victims as Agents of Accountability: Strengthening Victims’ Right to Review at the International Criminal Court](#)’, 2023, Criminal Law Forum, vol. 34, 19 May 2023, p. 273.

21 Carsten Stahn, ‘[How Can We Justify International Criminal Justice?](#)’ in *Furthering the Frontiers of International Law: Sovereignty, Human Rights, Sustainable Development*, pp. 377-413.

22 ICC, [Policy Paper on Victims’ Participation](#), April 2010, pp. 1-2.

23 Eurojust, [Key factors for successful investigations and prosecutions of core international crimes](#), p. 7.

24 Compare e.g. UNGA, International Convention for the Protection of All Persons from Enforced Disappearance, 20 December 2006 (ICPPED), art. 12; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), art. 13. See also: EU Victims’ Directive, art. 5; LHC, art. 12.

25 Compare e.g. ICPPED, art. 24(2); Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OPCRSC), art. 8(1)(c); Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (PPSPT), art. 6(2)(b); Rome Statute, art. 68. See also EU Victims’ Directive, art. 10.

the right to receive information,<sup>26</sup> the right to be heard,<sup>27</sup> the right to access support services,<sup>28</sup> the right to protection,<sup>29</sup> and the right to obtain reparation.<sup>30</sup> For these rights to be meaningful, both the rights and the right holders must be clearly identified.

It is therefore essential that the CAH Convention adopt a broad and inclusive definition of “victims” that accurately reflects the realities of CAH. Adopting such a definition would not create new rights or obligations. It would simply clarify who is entitled to invoke the rights already guaranteed under the Convention, promote legal certainty, and prevent arbitrary or politicised exclusions, while ensuring meaningful access to justice.

The definition of “victims” should encompass all persons who have suffered harm directly or indirectly, as a result of a CAH, as well as those harmed while assisting affected individuals, attempting to prevent a violation, or otherwise impacted by the commission of the crime. For example, adopting a broad and unambiguous definition of victims would ensure that children that are individually targeted, children born of rape and other forms of sexual violence and those who have suffered indirect harm - for instance as a result of the enforced disappearance of caregivers or other family members or the witnessing of crimes against loved ones, or have been separated from family members who have been deported or forcibly transferred in violation of international law - are all identified as victims.<sup>31</sup> Consistent with international jurisprudence, the definition should also recognise that CAH can devastate entire communities, affect persons belonging to the same group as the direct victims, and generate harm that carries across generations. Victim status should be determined solely by the harm suffered and should not depend on the filing of a formal complaint or be limited by barriers to accessing justice.<sup>32</sup>

26 Compare e.g. ICCPED, art. 24(2); OPCRCSC, art. 8(1)(b); PPSPT, art. 6(2)(a). See also EU Victims' Directive, art. 4 and 6.

27 Compare e.g. PPSPT, art. 6(2)(b); OPCRCSC, art. 8(1)(c). See also: EU Victims' Directive, art. 1; LHC, art. 83(2).

28 Compare e.g. OPCRCSC, art. 8(1)(d); PPSPT, art. 6(3); ICCPED, art. 15; UNCAT, art. 14. See also EU Victims' Directive, art. 8 and 9; LHC, art. 82.

29 Compare e.g. UNCAT, art. 13; ICCPED, art. 12; PPSPT, art. 6(1) and (5); OPCRCSC, art. 8(1)(f). See also: Council of the European Union, *Guidelines on EU Policy Towards Third Countries on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment – 2019 Revision of the Guidelines* (EU Torture Guidelines), p. 29; EU Victims' Directive, art. 18-24; LHC, art. 82.

30 Compare e.g. ICCPED, art. 24(4)-(5); PPSPT, art. 6(6); OPCRCSC, art. 9; UNCAT, art. 14; LHC, art. 83.

31 Children and Crimes Against Humanity Coalition, [Justice for Children in the Future Convention on the Prevention and Punishment of Crimes Against Humanity](#), 2025, p.16.

32 See footnote 19, see also: Victims' Rights CAHC Brief, pp. 6-7.

## RECOMMENDATION 1

We recommend that states include a reference in the preamble to the crucial role played by victim

and survivors in the fight against CAH, and the need for survivor-centredness in their prevention, prohibition, and prosecution, as well as any reparation or other proceedings.

### Textual proposal:

#### Preamble para. 1:

Mindful that throughout history millions of **people, including** children, *women and men* have been victims of crimes that deeply shock the conscience of humanity, **and recognising the rights of victims and survivors to justice, truth and reparation,**

#### [New] Preamble para. 9:

**Acknowledging the crucial role played by survivors, victims and witnesses in preventing, investigating and prosecuting crimes against humanity and the need to strengthen efforts aimed at ensuring their protection, support and agency;**

## RECOMMENDATION 2

States should adopt the most progressive standards of victims' rights in the CAH Convention, make the provisions of victims' rights separate from the rights of witnesses and others, and include a broad and inclusive definition of 'victims'.

### Textual proposal

#### [New] Article 12: Definition of victim

**1. For the purpose of this Convention, and without prejudice to any broader definition provided for in international or national law, a "victim" is a person who has suffered harm as a result of the commission of any crime covered by this Convention. The term victim may also encompass persons who have assisted or tried to assist others who have suffered a violation, who have tried to prevent the violation, or may have been otherwise impacted by a violation of this Convention.**

**2. For the purpose of this Convention, the status of "victim" is not limited by a person's procedural role or standing under domestic law. In particular, a person who satisfies the above definition shall be recognised as a victim regardless of whether a formal complaint has been made to competent authorities and regardless of whether the perpetrator of the crime is identified, apprehended, prosecuted, or convicted.**



## RIGHT TO PARTICIPATION AND INFORMATION

The current Draft Articles recognise the rights of victims to have their “views and concerns [...] presented and considered” in criminal proceedings.<sup>33</sup> Meaningful participation is inseparable from access to information and access to legal advice. Victims’ ability to exercise agency, engage with proceedings, and make informed decisions depends directly on their right to have access to and receive timely and relevant information.<sup>34</sup>

During the debates, several states have emphasised the importance of recognising victims’ roles in criminal proceedings. Belgium, Colombia, Czechia, Portugal, and the United States underscored the need to recognise the role of victims in international criminal justice, including their ability to take part in proceedings.<sup>35</sup> The United Kingdom also expressed openness to adding language that underscores a survivor-centred approach and victims’ right to be informed about complaints,<sup>36</sup> and proposed amendments recognising the essential role survivors play in judicial proceedings.<sup>37</sup>

Victims’ rights to participation<sup>38</sup> and information,<sup>39</sup> including access to legal advice, and, as appropriate, representation, are well-established in international law and practice. Victim participation is expressly provided for in the Rome Statute and reflected, in varying forms, across a wide range of international and hybrid tribunals, including the Statutes of the Special Tribunal for Lebanon,<sup>40</sup> the Extraordinary Chambers in the Courts of Cambodia,<sup>41</sup> the Extraordinary African Chambers in Senegal,<sup>42</sup> the East Timor Special Panels,<sup>43</sup> and the Kosovo Relocated Specialist Judicial Institution.<sup>44</sup> This consistent practice demonstrates broad acceptance that victims have a legitimate role in international criminal justice proceedings.<sup>45</sup>

Both the rights to participation and information enable victims to engage with the criminal justice process and even at times influence the direction of proceedings. This is crucial because victims’ interests may not fully align with those of the prosecutor. Without avenues for participation and information, victims risk being excluded and their perspectives overlooked.<sup>46</sup>

International standards further affirm these rights. The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Basic Principles and Guidelines) recognise that victims must receive relevant information about the violations suffered and the mechanisms available to seek reparation.<sup>47</sup> They also emphasise the obligation of states to ensure such information is adequately shared with both victims and the public.<sup>48</sup> Taken together, these provisions reflect the firm grounding of victims’ rights to information in international law.<sup>49</sup>

33 Draft Articles, art. 12(2).

34 Victims’ Rights CAHC Brief, pp. 6-7.

35 Report of the Secretary General, A/78/717, p. 35, para. 194.

36 Report of the Secretary General, A/78/717, p. 35, para. 195.

37 Report of the Secretary General, A/78/717, p. 8, para. 26.

38 ICCPD, art. 24(2); OPCRCSC, art. 8(1)(c); PPSPT, art. 6(2)(b); Rome Statute, art. 68; CRC, art. 12. See also EU Victims’ Directive, art. 10.

39 ICCPD, art. 18; OPCRCSC, art. 8(1)(b); PPSPT, art. 6(2)(a). See also EU Victims’ Directive, art. 4 and 6, p. 14.

40 UN Security Council, [Statute of the Special Tribunal for Lebanon](#), S/RES/1757 (2007), art. 17.

41 [Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the prosecution of crimes committed during the period of Democratic Kampuchea](#), 27 October 2004, art. 23.

42 [Statute of the Extraordinary African Chambers within the courts of Senegal created to prosecute international crimes committed in Chad between 7 June 1982 and 1 December 1990](#), 30 January 2013, art. 14.

43 UN Transitional Administration for East Timor, [Regulation No. 2000/30 on Transitional Rules of Criminal Procedure](#), UNTAET/REG/2000/30, 25 September 2000, sec. 12.

44 [Provisional Criminal Procedure Code of Kosovo](#), UNMIK/REG/2003/26, 6 July 2003.

45 Mariana Pena, ‘Victim Participation in International Criminal Proceedings’, Max Planck Encyclopedia of International Law, April 2019.

46 Harry Hobbs, ‘Victim Participation in International Criminal Proceedings: Problems and Potential Solutions in Implementing an Effective and Vital Component of Justice’, *Texas International Law Journal*, 3 April 2014, pp. 5-6.

47 UN Basic Principles and Guidelines, Principle 11(c).

48 Ibid, Principle 24.

49 Thomas Becker et al., ‘Will Victims’ Rights Be Lost in Translation? Bridging the Information Gap in Universal Jurisdiction Cases’, *Utrecht Journal of International and European Law*, vol. 38, 27 April 2023, pp. 39-61.

Specifically, the right to information shapes the relationship between the criminal justice process and the victims and affected communities in important ways. When information about criminal proceedings is inaccessible, victims and affected communities risk losing a meaningful connection to proceedings, undermining trust and the perceived legitimacy of the process.<sup>50</sup>

Incorporating an explicit right to information into the CAH Convention would strengthen the existing participation framework. Such a provision could operate as an enabling rather than mandatory clause, providing a legal basis for authorities to allocate the necessary resources, whether human, financial or otherwise, to ensure victims can participate meaningfully in proceedings.

### RECOMMENDATION 3

We recommend that states broaden the scope of the right to participation in the Convention in Draft Article 12 beyond criminal proceedings, namely to administrative, civil, and other proceedings. We also recommend that states explicitly recognise the rights of victims and their families to receive and access information regarding the violations, the proceedings, and their rights.

#### Textual proposal:

Article ~~12~~ **14**: Victims' rights

1. Each State shall take the necessary measures to ensure that:

(a) any person who alleges that acts constituting crimes against humanity have been or are being committed has the right to complain to the competent authorities; and

**(b) any complaint received is examined promptly and impartially, in order to determine whether there are reasonable grounds to believe that these crimes have been or are being committed.**

**(c) In all proceedings concerning children, the best interests of the child shall be a primary consideration, and a child who is capable of forming his or her own views shall have the right to express those views freely with the views of the child being given due weight in accordance with the child's age and maturity.**

**2. Each State shall take appropriate measures to ensure victims receive information about their rights and updates on the progress and results of any investigation, prosecution or judicial or other proceeding in a language they understand, and, as appropriate, that they receive access to legal representation and legal aid.**

<sup>50</sup> Ibid.

**3.** Each State shall, in accordance with its national law, enable the views and concerns of victims of a crime against humanity to be presented and considered at appropriate stages of **any proceedings in relation to crimes against humanity, including** criminal proceedings against alleged offenders in a manner not prejudicial to the rights referred to in draft article 11.

[...] see below section on truth and reparation for proposed paras 4 and 5.

## RIGHT TO PROTECTION

Draft Article 12(1)(b) shields complainants, victims, witnesses, their families and representatives, as well as others involved in proceedings, from ill-treatment or intimidation linked to submitting a complaint or providing information, testimony, or other evidence.

The United Kingdom has expressed strong support for a broad and robust approach to protection under the draft Convention. It proposed revising Draft Article 12(1)(b) to ensure that safeguards extend not only to complainants, victims and witnesses but also to their relatives, representatives and any other individuals exposed to risks through their involvement in investigations, prosecutions, extradition, or related proceedings. The United Kingdom also underscored that such protections must shield individuals from ill-treatment or intimidation linked to the provision of complaints, information or testimony.<sup>51</sup>

The United Kingdom also called for a more explicit articulation of what protection from “ill-treatment” entails. Drawing on Article 68 of the Rome Statute, it suggested specifying that states must safeguard the physical and psychological well-being, dignity, and privacy of those concerned, while taking into account heightened risks in cases involving sexual or gender-based violence or crimes against children.<sup>52</sup>

Draft Article 12(1)(b) provides protection against ill-treatment or intimidation linked to the submission of complaints or the provision of information, testimony, or evidence. This safeguard should be broadened to cover individuals who may face risks arising from the proceedings even if they do not hold a formal role in them.<sup>53</sup>

Because CAH are committed in contexts marked by extreme violence, severe violations, and ongoing instability or insecurity, often by or at the instigation of powerful actors, victims who engage with international criminal processes often do so at significant personal risk, both during and after proceedings.<sup>54</sup>

International tribunals have consistently recognised that safeguarding victims and witnesses is essential to both their own safety and the integrity of justice processes.<sup>55</sup> Without adequate protection, victims and witnesses may be unable or unwilling to come forward, undermining investigations and making prosecutions nearly impossible, particularly as international criminal tribunals rely heavily on testimonial evidence.<sup>56</sup>

<sup>51</sup> Report of the Secretary General, A/78/717, p. 35, para. 197.

<sup>52</sup> Ibid, p. 35, para. 198.

<sup>53</sup> Victims' Rights CAHC Brief, p. 9.

<sup>54</sup> Mariana Pena, 'Victim Participation in International Criminal Proceedings', Max Planck Encyclopedia of International Law, April 2019, para. 44.

<sup>55</sup> Anne-Marie de Brouwer, '[The problem of witness interference before international criminal tribunals](#)', International Criminal Law Review, 2015, vol. 15, no. 4, pp. 1-33, p. 714. See for example, ICTY, 'Mr. Nobile Found to be in Contempt of the Tribunal', 15 December 1998; *Prosecutor v. Haradinaj et al.*, Judgement, IT-04-84-A, 19 July 2010, para. 35.

<sup>56</sup> Brouwer, 'The problem of witness interference before international criminal tribunals', p. 714.

A broad and clearly articulated provision on protection in the CAH Convention would strengthen states' capacity to respond to these risks. Such a provision would provide national authorities with a legal basis they could invoke to justify allocating the necessary resources (whether human, financial or otherwise) to ensure effective protection in practice.

## RECOMMENDATION 4

We recommend that states expand effective protection to all individuals whose safety or well-being might be jeopardised by investigations or criminal proceedings, even if they do not have a formal role in proceedings. We also recommend that states explicitly include in the Convention a protection against secondary victimisation and the establishment by states of measures aiming to make this right effective.

### Textual proposal:

Article 12 **13: Protection of** victims, witnesses and others

1. Each State shall take the necessary measures to **protect** complainants, victims, witnesses, and their relatives and representatives, as well as other persons participating in, or cooperating with, any investigation, prosecution, extradition, or other proceeding within the scope of the present **Convention**, against ill-treatment, intimidation **or secondary victimisation in respect of any such proceeding.**
2. **All processes, including reparations, should be accessible to and protective of children.**
3. **Without prejudice to the rights of the defendant, including the right to due process, the measures referred to in paragraph 1 may include:**
  - a) **Establishing procedures for the physical protection of the persons referred to in paragraph 1, such as relocating them and permitting non-disclosure or limitations on the disclosure of information concerning their identity and location;**
  - b) **Establishing procedures to allow victims, witnesses, and experts to make a deposition in a manner that ensures their safety and their physical and psychological well-being and privacy such as allowing the use of communication technologies.**
4. **States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1.**

## RIGHT TO REPARATION

The right to reparation is currently reflected in Draft Article 12 using the comprehensive reparation concept that lists six open-ended forms of reparation, both on an individual and collective basis. The language of the draft remains restrictive, limiting reparation to harms linked to acts attributable to a state or committed within its territory.<sup>57</sup> We recommend that the comprehensive reparation concept be kept in the Convention, but the recognition of the right to reparation be broadened to cover not just material or moral harms but also any resulting harm. We also recommend that the CAH Convention should not limit reparation to harm attributable to the state or territory within its jurisdiction.<sup>58</sup>

During the debates, several states expressed support for a flexible and comprehensive approach to reparation. Colombia, Mexico, New Zealand, and Sweden on behalf of Nordic countries supported this broad approach,<sup>59</sup> as reflecting the evolution of international human rights law.<sup>60</sup> Other states such as Turkey were not in favour of recognising state responsibility to provide reparation to victims, viewing it as the responsibility of the individual perpetrators.<sup>61</sup>

A number of delegations, such as Colombia, also supported the recognition of both individual and collective reparation.<sup>62</sup> The United Kingdom suggested that reparation should address social stigma.<sup>63</sup> By contrast, some delegations (Australia, Canada, and China),<sup>64</sup> were in favour of vague and broad language to give states leeway and cater for the specificities of different domestic legal frameworks.

International law and jurisprudence firmly recognise the right of victims of international crimes, including CAH, to access effective remedies and reparation. The notion of a “remedy” encompasses the legal procedures through which truth is established, justice is pursued, and reparation is made available. “Reparation” refers to the concrete measures adopted to address and repair the harm suffered as a result of violations of international human rights or humanitarian law, or as a result of other international crimes, including CAH.<sup>65</sup>

Under international law, states are obligated to provide reparation when violations are attributed to them.<sup>66</sup> This includes situations in which violations are carried out by state officials, representatives, or agents, as well as by private actors acting on the state’s behalf, with its consent, acquiescence, or tolerance, or while exercising functions comparable to those of the state. State responsibility also arises where authorities fail to prevent violations, protect victims, or respond adequately, including by neglecting to carry out prompt, effective, independent, impartial, thorough, and gender-sensitive investigations.<sup>67</sup>

States that exercise jurisdiction over international crimes are required to ensure the availability of effective avenues that allow victims to access adequate, prompt, and effective reparation for the harm suffered. In practice, this entails establishing appropriate legal frameworks and mechanisms that enable victims

<sup>57</sup> Draft Articles, art. 12(3).

<sup>58</sup> Victims' Rights CAHC Brief, p. 12.

<sup>59</sup> Report of the Secretary General, A/78/717, p. 36, para. 203.

<sup>60</sup> Ibid.

<sup>61</sup> Ibid, p. 15, para. 69.

<sup>62</sup> UN General Assembly, Sixth Committee, ‘[Written Summary - Crimes against Humanity](#)’, 2024, A/C.6/78/2, p. 33, para. 157; Report of the Secretary General, A/78/717, p. 36, para. 203.

<sup>63</sup> Report of the Secretary General, A/78/717, p. 37, para. 205.

<sup>64</sup> Ibid, p. 36-37, para. 204.

<sup>65</sup> Victims' Rights CAHC Brief, p. 11; see also: Universal Declaration of Human Rights, art. 8; International Covenant on Civil and Political Rights, art. 2; International Convention on the Elimination of All Forms of Racial Discrimination, art. 6; ICPPED, art. 24; UNCAT, art. 14; Convention (IV) respecting the Laws and Customs of War on Land, art. 3; International Committee of the Red Cross, Customary International Humanitarian Law Rules, Rule 150; Rome Statute, art. 75; LHC, art. 83; see also: Basic Principles and Guidelines.

<sup>66</sup> UN International Law Commission, [Articles on Responsibility of States for Internationally Wrongful Acts \(ARSIWA\)](#) 2001, arts. 2 and 31.

<sup>67</sup> Victims' Rights CAHC Brief, p. 11; see also: [International Protocol on the Documentation and Investigation of Sexual Violence in Conflict](#), Chapter 5: State Responsibility, p. 66.

to seek reparation through judicial, administrative, or other relevant procedures, and to obtain the implementation of reparation awards.<sup>68</sup>

Recognising that reparation can be both on an “*individual or collective basis*” conforms to international legal standards, as outlined under the Basic Principles and Guidelines<sup>69</sup> and ICC jurisprudence.<sup>70</sup> It also recognises the impact of CAH on both individuals and communities, and the need to repair both to build sustainable peace.

The Convention should recognise a non-exhaustive list of categories of harm. It should remain open-ended, to enable states to recognise the diversity of harms suffered by victims, and reflect the diverse and multifaceted impacts of CAH on victims and communities in their practice. For instance, victims of gender-based crimes, including children, suffer from social harms such as stigma and exclusion, cultural and spiritual harms such as loss of cultural identity and religion, education, and transgenerational harm. The Basic Principles and Guidelines<sup>71</sup> and ICC jurisprudence<sup>72</sup> have recognised that harm can include “*physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights*”, among others.<sup>73</sup> A restrictive recognition to only “physical and moral damages” could lead to incomplete or inadequate reparation measures, leaving harm unaddressed, and individual victims and communities unable to move forward.

## RECOMMENDATION 5

We recommend the following textual amendment to Draft Article 12:

Article 12 **14, para. 5:**

“5. Each State shall take the necessary measures to ensure in its legal system that the victims of a crime against humanity, committed through acts attributable to the State under international law or committed in any territory under its jurisdiction, have the right to **prompt, full, and effective** obtain reparation, **including through administrative or other reparation programmes, for any physical, mental, moral material, legal, or other harm** material and moral damages, on an individual or collective basis, consisting, as appropriate, of one or more of the following or other forms: restitution; compensation; satisfaction; rehabilitation; cessation and guarantees of non-repetition. **Each State shall further ensure that special attention be given to child victims.**”

68 Victims' Rights CAHC Brief, p. 11; see also: LHC, art. 83, which recognises victims' right to reparation: when “[t]he crime has been committed in any territory under the jurisdiction of that State Party; or [when t]hat State Party is exercising its jurisdiction over the crime”; FIDH, ECCHR, REDRESS, [Breaking Down Barriers: Access to Justice in Europe for Victims of International Crimes](#), September 2020, pp. 126 and following.

69 Basic Principles and Guidelines, Principle 8.

70 ICC, Trial Chamber IX, Reparations Order, 28 February 2024, ICC-02/04-01/15 (Ongwen): In this case the Chamber ordered both individual symbolic monetary awards, collective measures of rehabilitation and satisfaction, including apology ceremonies, memorial prayers, and cleansing ceremonies as reparation.

71 Victims' Rights CAHC Brief, p. 12; Basic Principles and Guidelines, Principle 8; note that the LHC does not list types of harm in order to avoid unduly limiting the notion and providing states with leeway in recognising forms of harm not envisaged by the drafters of the Convention: LHC, art. 81. See also: Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985, art. 1.

72 ICC, Appeals Chamber, Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008, 11 July 2008, ICC-01/04-01/06-1432 (Lubanga), para. 32; PTC1, Decision on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6, 17 January 2006, ICC-01/04-101 (DRC), para. 116.

73 See also: ICC, [Reparations Order](#) (Ongwen), ICC-02/04-01/15, 28 February 2024, para. 178.



## RIGHT TO TRUTH

Currently, the Draft Articles do not explicitly contain a provision on victims' right to truth.<sup>74</sup> During the debates, Argentina and Liechtenstein proposed adding or reformulating the relevant provision to include *"the right of victims to know the truth about the circumstances in which the crimes occurred."*<sup>75</sup>

Although the ILC stated in its Commentaries that Draft Article 12 implicitly encompasses this right, an explicit provision is necessary to reflect the central importance of truth for victims and affected communities.

Established instruments and jurisprudence supports the explicit recognition of the right to truth as an autonomous and essential victims' right.<sup>76</sup> The right of victims and society to know the full, complete, and public truth about past violations forms part of the right to reparation, contributes to satisfaction and guarantees of non-repetition, and plays a critical role in preventing future crimes.<sup>77</sup>

The CAH Convention should expressly recognise the right to truth, in line with evolving international standards and victims' rights jurisprudence.

### RECOMMENDATION 6

We recommend that states include an express provision guaranteeing the right to truth to victims of CAH.

#### Textual proposal:

Article 12 **14**, para. **4**:

**"4. Each victim has the right to know the truth regarding the circumstances of crimes against humanity, the progress and results of any investigation, and the fate and whereabouts of disappeared, missing, and deceased relatives or other persons. Each State shall take appropriate measures in this regard."**

## NO STATUTE OF LIMITATIONS FOR REPARATION PROCEEDINGS

Draft Article 6(6) currently requires states to take the necessary measures to ensure that statutes of limitations do not apply to CAH.<sup>78</sup> While this approach is consistent with international standards, the provision should be self-executing, not requiring state action.<sup>79</sup> During the debates, Austria, Brazil, Colombia, Czechia, the Netherlands, Portugal, Sweden on behalf of the Nordic countries, and the United Kingdom agreed that CAH should not be subject to any statute of limitations, with Austria, Brazil, and Liechtenstein supporting a self-executing formulation.<sup>80</sup>

<sup>74</sup> See among others: Human rights Committee, *Lyashkevich v. Belarus*, Communication No 887/1999, Views adopted on 3 April 2003, A/58/40, vol. II, Annex V, Appendix P, para. 9.2; Inter-American Commission on Human Rights, *Monsenor Oscar Arnulfo Romero y Galdamez v. El Salvador*, 13 April 2000, Report No. 37/700, Case 11.481, OEA/Ser.L/V/II.106, para. 148; see also: ICPPED, Preamble and art. 24.

<sup>75</sup> Report of the Secretary General, A/78/717, p. 35, para. 195.

<sup>76</sup> ICPPED, Preamble and art. 24; Basic Principles and Guidelines, Principles IX(22)(b), and X; ACHPR Guidelines on Enforced Disappearances in Africa, para. 3.7; Victims' Rights CAHC Brief, p. 10; see also among others: Human rights Committee, *Lyashkevich v. Belarus*, Communication No 887/1999, Views adopted on 3 April 2003, A/58/40, vol. II, annex V, appendix P, para. 9.2; Inter-American Commission on Human Rights, *Ignacio Ellacuría et al.*, 22 December 1999, Report No. 136/99, para. 221; Inter-American Commission on Human Rights, *Monsignor Oscar Arnulfo Romero y Galdamez v. El Salvador*, 13 April 2000, Case 11.481, para. 148.

<sup>77</sup> Inter-American Commission on Human Rights, *Monsignor Oscar Arnulfo Romero y Galdamez v. El Salvador*, 13 April 2000, Case 11.481, para. 148.

<sup>78</sup> Draft Articles, art. 6(6).

<sup>79</sup> Victims' Rights CAHC Brief, p. 13.

<sup>80</sup> Report of the Secretary General, A/78/717, p. 20, para. 100-101.

This Article should also prohibit statutes of limitations for, and other barriers to, reparation proceedings linked to CAH, including when these are detached from criminal proceedings (civil, administrative, or other proceedings).<sup>81</sup>

Brazil and Liechtenstein share the view that “...civil proceedings seeking redress and reparations for crimes against humanity should not be subject to any statute of limitations.”<sup>82</sup> On the contrary, China and Japan stated that the inapplicability of statutes of limitations to any offences constituting CAH should be carefully examined and studied.<sup>83</sup> According to Morocco, this should be specifically re-evaluated for the crime of enforced disappearance.<sup>84</sup>

Statutes of limitations should be prohibited for reparation proceedings linked to CAH as they “...present a barrier for survivors and victims to realise their right to reparation and often leads to re-traumatisation.”<sup>85</sup>

In Bosnia and Herzegovina, victims who have sought to obtain reparation through civil proceedings but were rejected based on expired statutes of limitations had to pay not only for their own fees but also for those incurred by the alleged perpetrators. Many ended up in debt, or bankrupt, and were severely re-traumatised. The Constitutional Court of Bosnia and Herzegovina upheld statutes of limitations for war time compensation claims in 2013, perpetuating this issue in the country. In the case of *A v. Bosnia and Herzegovina*, the Committee Against Torture (CAT) in 2019 ruled that statutes of limitations should not apply to reparations proceedings in cases of torture. The CAT held that this derived from victims’ right to an effective remedy, which imposes an obligation on States to “enact legislation and establish complaints mechanisms and ensure that such mechanisms and bodies are effective and accessible to all victims”; and from the “continuous nature of the effects of torture.”<sup>86</sup> Statutes of limitation for enforced disappearance also run contrary to international legal standards.<sup>87</sup>

## RECOMMENDATION 7

We recommend that Draft Article 6, para. 6 be amended as follows:

“6. Each State shall take the necessary measures to ensure that, under its criminal **domestic** law, the offences referred to in this draft article, shall not be subject to any statute of limitations.”

81 Victims’ Rights CAHC Brief, p. 13. See also Human Rights Watch, [Recommendations for the International Convention on Prevention and Punishment of Crimes Against Humanity](#).

82 Report of the Secretary General, A/78/717, p. 20, para. 101.

83 Ibid, para. 102.

84 Ibid.

85 Victims’ Rights CAHC Brief, p. 13.

86 CAT, *A v. Bosnia and Herzegovina*, No. 854/2017, 2 August 2019, CAT/C/67/D/854/2017, para. 7.5.

87 ICC Rome Statute, Art. 7(1)(i), Art. 7(2)(i).

## MUTUAL LEGAL ASSISTANCE

Mutual legal assistance in the investigation and prosecution of CAH is provided for in Draft Article 14(2), which covers assistance for the purpose of: “*identifying, tracing or freezing proceeds of crime, property, instrumentalities or other things for evidentiary or other purposes*”.<sup>88</sup>

States have generally expressed support for the existing provision on mutual legal assistance,<sup>89</sup> but they have seemingly not expressed any specific position on the use of mutual legal assistance towards reparation. The United Kingdom suggested replacing paragraph 2 of Draft Article 14, stating “*investigations, prosecutions, judicial and other proceedings*”, with the wording of the annex, stating only “*investigations, prosecutions and judicial proceedings*.”<sup>90</sup> We are of the view that this would not allow for the provision of mutual legal assistance in all reparation schemes and consequently oppose this proposal.

We recommended that the Convention provide for broader language on mutual legal assistance to include the seizure and confiscation of assets - including but not limited to proceeds of crimes - of individuals investigated for CAH, and the liquidation of the assets of convicted perpetrators, to finance reparation.<sup>91</sup> This ensures that the perpetrators do not dissipate their assets and that the CAH that yield no material proceeds, such as torture, sexual violence, enforced disappearance, and murder, are accounted for, and that the difficulties of obtaining restitution are recognised.<sup>92</sup>

Making the right to reparation effective is central to victims' rights, yet reparation orders in CAH cases are frequently not implemented due to lack of political will, perpetrators' indigence, and insufficient funding. Allowing states to use mutual legal assistance to enforce reparation orders and identify perpetrators' assets to fund reparation measures and programmes would help address these obstacles. It would also align with the LHC.<sup>93</sup>

A future CAH Convention should include broader provisions on mutual legal assistance to ensure effective reparation, including for administrative reparation programmes.<sup>94</sup> Asset freezing should not be limited to restitution, which is rarely achievable in practice for CAH victims. States should also enable mutual legal assistance for the liquidation of a convicted perpetrators' assets to finance other forms of reparation than just restitution or compensation, to respect the comprehensive reparation concept.<sup>95</sup>

88 UN International Law Commission, Draft Articles on the Prevention and Punishment of Crimes against Humanity, 2019, Draft Article 14(2).

89 Report of the Secretary General, A/78/717, p. 29, paras. 160-161.

90 Report of the Secretary General, A/78/717, p. 29, para. 162.

91 Victims' Rights CAHC Brief, p. 15.

92 Ibid.

93 Ibid; see also: LHC, art. 45, 46, and 47 on asset recovery, reinforced by art. 83 on victims' rights.

94 Basic Principles and Guidelines, Principles 12-17; ICC Rome Statute, art. 75(2) and 79(1)-(2); ICCPED, art. 15; UNGA A/RES/40/34, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (1985), paras. 12-13; Draft Articles, Commentary to art. 14, para. 14.

95 Victims' Rights CAHC Brief, p. 15; see a *minima* language included in the LHC at art. 45(1): “the proceeds of crime or [equivalent], or other property for the purposes of providing reparations to victims in accordance with art. 83, para. 3, situated in its territory.”

## RECOMMENDATION 8

We recommend that Draft Article 14 of the Convention read as follow:

Mutual legal assistance

1. States shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions, and judicial, **and administrative** proceedings, **including reparation and implementation proceedings**, in relation to the offences covered by the present draft articles **Convention** in accordance with this draft article.

2. In relation to the offences for which a legal person may be held liable in accordance with draft article 6, paragraph 8, in the requesting State, mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State with respect to investigations, prosecutions, judicial, **administrative** and other proceedings, **including reparation and implementation proceedings**.

3. Mutual legal assistance to be afforded in accordance with this draft article may be requested for any of the following purposes:

[...]

(h) identifying, tracing or freezing **assets, including but not limited to, the** proceeds of crime, property, instrumentalities or other things for evidentiary or other purposes, **or for providing reparation to victims**;

(i) facilitating the voluntary appearance of persons in the requesting State; or

**(j) ensuring reparation to victims of the offences covered by the present Convention; or**

**(k)** any other type of assistance that is not contrary to the national law of the requested State.

[...]

6. Without prejudice to its national law, the competent authorities of a State may, without prior request, transmit information relating to crimes against humanity to a competent authority in another State where they believe that such information could assist the authority in undertaking or successfully concluding investigations, prosecutions, and judicial proceedings, **including reparation and implementation proceedings**, or could result in a request formulated by the latter State pursuant to the present **Convention**.

(...)



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