

# The Draft Crimes Against Humanity Convention

## Enumerating the Slave Trade and Aligning the Definition of Enslavement

### PROPOSED:

> | *Enumerate the Slave Trade in Article 2 of the Draft Articles on the Prevention and Punishment of Crimes Against Humanity*<sup>1</sup>

### PROPOSED TEXT

Article 2 – Definition of crimes against humanity

1. For the purposes of the present draft articles, “crimes against humanity” means any of the following acts committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
  - (...)
    - (c) enslavement, **and/or the slave trade;**
    - (...)
2. For the purpose of paragraph 1:
  - (c) ...; **and “the slave trade” means all acts involved in the capture, acquisition or disposal of a person with intent or knowledge to reduce that person to slavery; all acts involved in the acquisition of an enslaved person with a view to selling or exchanging that person; all acts of disposal by sale or exchange of a person acquired with a view to being sold or exchanged, and, in general, every act of trade or transport of an enslaved person by whatever means of conveyance.**<sup>2</sup>

### RATIONALE

Enumerating the international crime of the slave trade into the Draft Articles will redress acts of the slave trade committed as part of a widespread or systematic attack directed against any civilian population.

The slave trade, a peremptory or *jus cogens* norm with *erga omnes* obligations,<sup>3</sup> is a treaty and customary-based international crime,<sup>4</sup> war crime,<sup>5</sup> and non-derogable human rights violation.<sup>6</sup>

The slave trade outlaws the abduction, kidnapping, sale, or transfer of any person of any age from being reduced to or maintained in any form of enslavement. The slave trade, therefore, prohibits knowingly reducing a person to a situation of enslavement, as well as acquiring or disposing of an already enslaved person to further their condition of enslavement.<sup>7</sup>

Enumerating the slave trade in Article 2 of the Draft Articles closes an egregious impunity gap for acts, such as: the abduction of girls and women by militia groups; the distribution and redistribution of enslaved ‘wives’ among fighters; the kidnapping of adults to serve as porters or labor in mines for paramilitaries; the sale and transfer of migrants crossing the desert by handlers; the ‘recruitment and conscription’ of children as militia members; and the disposing of Yazidis among ISIS fighters and their households.

The slave trade precedes—as a precursor crime to—acts of enslavement and sexual slavery. Inclusion of the slave trade in Article 2 of the Draft Articles restores the legal framework of treaty and customary law that condemns both slavery and the enslaving and maintaining of persons in subsequent situations of enslavement

by means of the slave trade.<sup>8</sup>

The slave trade has always encompassed and continues to comprise notoriously gendered acts. Individuals can be slave traded based on assumed physical ability to become a fighter, perceived sexual maturity, presumed sexual orientation, or supposed fertility. Persons also can be slave traded due to their age because they are considered young adults, adolescents, or malleable children. Acts of the slave trade also can be committed based upon ethnicity, religion, race, political opinion or affiliation, disability, migrant, or other status, including previous enslavement, of the person.<sup>9</sup>

Slave trade acts can occur contemporaneously with other prohibited acts—notably torture, sexual violence, imprisonment, and enforced disappearance—under crimes against humanity.<sup>10</sup> Moreover, commission of the slave trade as a non-derogable human right should also be used as evidence of the severe deprivation of a fundamental human right as an element of the crime against humanity of persecution. A provision prohibiting the slave trade in the Draft Articles also will prompt recognition of its application regarding persecution.

The slave trade should be enumerated in Article 2(2)(c) of the Draft Articles to ensure effective redress for victims/survivors who were slave traded and to assure accountability for slave trade perpetrators.

## PROPOSED:

> | *Define enslavement in the Draft Articles in alignment with the conventional and customary-based definition of slavery. Article 2(2)(c) should read, ‘enslavement’ means the exercise of any or all of the powers attaching to the right of ownership over a person.*

## PROPOSED TEXT:

Article 2 Definition of crimes against humanity

1. For the purposes of the present draft articles, “crimes against humanity” means any of the following acts committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

(. . .)

(c) enslavement, **and/or the slave trade;**

(. . .)

2. For the purpose of paragraph 1:

(c) “enslavement” means the exercise of any or all of the powers attaching to the right of ownership over a person **and includes the exercise of such power in the course of trafficking in persons, in particular women and children;**<sup>11</sup>

## RATIONALE

The 1926 Slavery Convention and the 1956 Supplementary Slavery Convention define slavery as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”<sup>12</sup> Evidence or *indicia* of slavery—acts or omissions that constitute the exercise of powers attaching to ownership rights over a person—is non-exhaustive. Slavery proof could comprise restrictions of movement; measures to deter or prevent escape; psychological control or pressure; control of sexuality and reproductive autonomy; imposition of starvation; forced labor; torture; cruel treatment and abuse, etc.<sup>13</sup>

Under the Draft Articles, enslavement is defined as “any or all of the powers attaching to the right of ownership over one or more persons and includes the exercise of such power in the course of trafficking in persons, in particular women and children.” The Draft Articles reprise the definition of enslavement in Article 7(2)(c) of

the Rome Statute under the Elements of the Crimes that combines the treaty definition of slavery together with an example or *indicia* of enslavement—namely trafficking in persons, in particular women and children.

The definitional element for enslavement under the Rome Statute, as contained in the Elements of Crimes document, are “any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.”<sup>14</sup> The differing examples of *indicia* of enslavement, as set forth in the Rome Statute and the Elements of Crimes, while illustrative, lead to confusion and conflation, in particular between the transnational crime of trafficking in persons and the prohibition of enslavement.<sup>15</sup> The Draft Articles, which will not govern trafficking in persons, should refrain from importing such legal morass as it pertains to provisions for enslavement and the slave trade.

Therefore, the Draft Articles should define enslavement under Article 2(2)(c) as “the exercise of any or all of the powers attaching to the right of ownership over a person” in alignment with the concise treaty and customary-based definitions.

Inserting a clearly enunciated, non-exhaustive list of *indicia* of enslavement in the *travaux préparatoires*, commentaries, and/or placed in a footnote of the Draft Articles would be more instructive and remove any ambiguity from the definition of enslavement.

## CONCLUSION

The Draft Crimes Against Humanity Convention should enumerate the slave trade under Article 2(1)(c) and define the slave trade under 2(2)(c). Additionally, the Draft Crimes Against Humanity treaty should align the definition of enslavement with its concise treaty and customary-based definition under Article 2(2)(c). These thoughtful and necessary proposals ensure that all persons, irrespective of age, gender, race, religion, ability, or any other status, are protected from *jus cogens* violations of enslavement and the slave trade as intended under international law.

- <sup>1</sup> This Note is based upon the brief, [Including the Slave Trade in the Draft Articles on Prevention and Punishment of Crimes Against Humanity](#), prepared by Patricia Viseur Sellers, Jocelyn Getgen Kestenbaum, and Alexandra Lily Kather [hereinafter Slave Trade Brief]. Please consult the brief for further explanations and supporting sources.
- <sup>2</sup> The proposed wording for Article 2 aligns with the phrasing in the depository notification of the United Nations Secretary-General from Sierra Leone regarding the amending the slave trade into the Rome Statute of the International Criminal Court. See United Nations, [Reference: C.N.175.2025.TREATIES-XVIII.10 \(Depository Notification\), Rome Statute of the International Criminal Court](#), Rome, 17 July 1998, Sierra Leone: Proposal of Amendments (Slavery crimes).
- <sup>3</sup> M.C. Bassiouni, *International Crimes: Jus Cogens and Obligatio Erga Omnes*, 59 L. CONTEMP. PROBS. 63, 68, 70-71, 73 (1996).
- <sup>4</sup> [Convention to Suppress the Slave Trade and Slavery](#), art. 1(2), Sept. 25, 1926, 46 Stat. 2183, 2191, 60 L.N.T.S. 253, 263 [1926 Slavery Convention]; [Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practice Similar to Slavery](#), art. 7(c), Apr. 30, 1957, 266 U.N.T.S. 3 [1956 Supplementary Slavery Convention].
- <sup>5</sup> [Additional Protocol II of 1977 to the Geneva Conventions of 1949](#), Art. 4(2)(f); ICRC, Customary International Humanitarian Law, Vol. 1: Rules, [Rule 94](#) (2005).
- <sup>6</sup> [International Covenant on Civil and Political Rights](#), art. 8(1), Dec. 16, 1966, 999 U.N.T.S. 171; [Universal Declaration of Human Rights](#), art.4, Dec. 8, 1948, G.A. Res. 217A (III), U.N. Doc. A/810, at 71 (1948). The slave trade is also a regional human rights violation, Org. of African Unity, [African Charter on Human and Peoples’ Rights](#), art. 5, June 27, 1981, 1520 U.N.T.S. 217, OAU Doc.CAB/LEG/67/3 rev. 5 (1981); Org. of American States, [American Convention on Human Rights “Pact of San José, Costa Rica,”](#) art. 6, Nov. 22, 1969, 1144 U.N.T.S. 123.
- <sup>7</sup> The 1926 Slavery Convention, *supra* note 4, at art. 1(2) and the 1956 Supplementary Slavery Convention, *supra* note 4, at art. 7(c) define the slave trade as “all acts involved in the capture, acquisition or disposal of a person with intent or knowledge to reduce that person to slavery; all acts involved in the acquisition of an enslaved person with a view to selling or exchanging that person; all acts of disposal by sale or exchange of a person acquired with a view to being sold or exchanged, and, in general, every act of trade or transport of an enslaved person by whatever means of conveyance.”
- <sup>8</sup> See ICC-OTP, [Policy on Slavery Crimes](#), ¶¶ 41-42 (2024) [hereinafter 2024 Policy on Slavery Crimes]; Patricia Viseur Sellers & Jocelyn Getgen Kestenbaum, *Missing in Action: The International Crime of the Slave Trade*, 18 J. INT’L CRIM. JUST. 517, 536–37 (2021). For an understanding of the distinction between the international crime of the slave trade and the trans-national crime of trafficking in persons, see the Slave Trade Brief, *supra* note 1; Patricia Viseur Sellers et al., *Disentangling to Fortify: The Crimes of Slavery, the Slave Trade and Human Trafficking*, 5 J. HUM. TRAFFICKING, ENSLAVEMENT & CONFLICT-RELATED SEXUAL VIOLENCE 9, 9-32 (2024); and Aimée Comrie, *Moving Parts: At the Intersections of Trafficking in Persons, Slavery, and the Slave Trade*, 5 J. HUM. TRAFFICKING, ENSLAVEMENT & CONFLICT-RELATED SEXUAL VIOLENCE 67, 67-100 (2024).
- <sup>9</sup> Structural factors of perpetration drive the slave trade. Who is targeted to be slave traded often is inscribed in the perpetrators’ objectives of the enslavement, such as to replenish fighters in militia groups, constitute enslaved labor for extraction of minerals, or provide enslaved persons for so-called “marriages.”

- 10 The slave trade's status as a peremptory, *jus cogens* norm and as an international crime under treaty and customary law requires that such conduct not be charged under the residual clause of "other inhumane acts" in the Draft Articles.
- 11 The proposed wording for Article 2 aligns with the phrasing in the depository notification of the United Nations Secretary-General from Sierra Leone regarding amending the slave trade into the Rome Statute of the International Criminal Court. See United Nations, [Reference: C.N.175.2025.TREATIES-XVIII.10 \(Depository Notification\), Rome Statute of the International Criminal Court, Rome, 17 July 1998, Sierra Leone: Proposal of Amendments](#) (Slavery crimes).
- 12 1926 Slavery Convention, *supra* note 4, at art. 1(1); 1956 Supplementary Slavery Convention, *supra* note 4, at art. 7(a).
- 13 See [Kony CD](#), ¶ 34, 116-27; [Ntaganda TJ](#), ¶ 952; [Katanga TJ](#), ¶ 976; [Katanga CD](#), ¶ 431; [Al Hassan CD](#), ¶¶ 546-47; [Ongwen TJ](#), ¶¶ 2715-16; [Kunarac et al. TJ](#), ¶¶ 542-43; [Kunarac et al. AJ](#), ¶¶ 119-24; [Sesay et al. TJ](#), ¶¶ 160-61 & 199; [Taylor TJ](#), ¶ 420; 2024 Policy on Slavery Crimes, *supra* note 8, at ¶ 68.
- 14 Int'l Crim. Ct., [Elements of Crimes](#) (as amended), 2nd November 2000 (ICC-ASP/1/3 (Pt II-B), U.N. Doc. PCNICC/2000/1/Add.2), at art. 7(1)(c).
- 15 See 2024 Policy on Slavery Crimes, *supra* note 8, at ¶¶ 55-59; For a detailed discussion on the distinctions between the transnational crime of trafficking in persons and the international crimes of slavery and the slave trade, see the Slave Trade Brief, *supra* note 1; *Viseur Sellers et al.*, *supra* note 8; *Comrie*, *supra* note 8.