

**Justice for Children in the Future Convention on the Prevention and Punishment of Crimes
Against Humanity:
Suggested textual changes to the Draft Articles**

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Nearly one third of the world’s population is under age 18. Children are among the victims of every act currently considered a crime against humanity, as well as other acts of similar gravity. Historically, justice mechanisms have taken an adult-centric approach to the investigation and prosecution of international crimes, as have reparation initiatives. In the last 30 years, much more has been learned about how children are targeted and uniquely harmed because of their age. More, too, has been learned about how to make justice processes accessible and safe for children.

The current draft articles mention children only twice. The following are proposals for how the future convention could better integrate comprehensive prevention, protection, justice, and reparation for child victims of crimes against humanity.¹

Crimes Against Children

Persecution

Include “age” as an explicit ground for persecution by replacing the text in article 2(1)(h) with the following:

“persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, **age**, or other grounds that are universally recognized as impermissible under international law.”

Recruiting or Using Children

Include a crime of recruiting or using persons under the age of 18, when committed as part of a widespread or systematic attack directed against any civilian population by adding article 2(1)(i)*ter*:

“Recruiting persons under the age of 18 as part of the attack, or using them to participate in the attack.”

¹ For more information about these proposals, please see: Children and Crimes Against Humanity Coalition, “Justice for Children in the Future Convention on the Prevention and Punishment of Crimes Against Humanity,” <https://cahtreatynow.org/justice-for-children-in-the-future-convention-on-the-prevention-and-punishment-of-crimes-against-humanity/>.

Forced Pregnancy

Include girls in the definition of forced pregnancy by changing “woman” to “person” in the definition of forced pregnancy and replacing the text in article 2(2)(f) with the following:

“forced pregnancy” means the unlawful confinement of a ~~woman~~ **person**, forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law.

Forced Marriage

Recognize forced marriage as a separate crime against humanity, and specify that age is a factor in determining consent by adding article 2(1)(g)*bis*:

“forced marriage.”

And adding article 2(2)(f) *bis*

“forced marriage” means the compulsion of a person to enter into a conjugal union with another person by the use of physical or psychological force, or threat of force, or by taking advantage of a coercive environment or a person’s inability to give genuine consent, including because of young age.”

Safe Water

Add deprivation of “safe water” to the definition of “extermination” by replacing the text in article 2(2)(b) with the following:

“extermination” includes the intentional infliction of conditions of life, inter alia the deprivation of access to food, **safe water**, sanitation and medicine, calculated to bring about the destruction of part of a population.

Children Accused of Crimes Against Humanity

Add to the text the exclusion of people who were under age 18 at the time of the alleged commission of a crime from the jurisdiction of the adult criminal justice system by adding article 11(2)*bis*

Each State shall take the necessary measures to ensure that any person who was under the age of 18 years at the time of the alleged offense shall be subject to the exclusive

jurisdiction of a child justice system that prioritizes their best interests and rehabilitation, and shall not be prosecuted within the adult criminal justice system.

Child Victims and Witnesses

Add “children” to the preamble in the context of victims and witnesses by replacing the text in paragraph 10 with the following:

“Considering the rights of victims, witnesses and others, including children, in relation to crimes against humanity, as well as the right of alleged offenders to fair treatment,”

Include a definition of victims by adding article 12(1)(b)*bis*

Victims are all natural persons who have suffered harm at any time as a result of the commission of any crime to which this Convention applies.

Explicitly include children in provisions for reparations and include in the definition the diverse forms of harm that children experience by replacing article 12(3) with the following text:

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 obtain prompt, full, and effective reparation, including through administrative or other reparation programs, for ~~material and moral damages~~ any physical, mental, moral material, legal, or other harm, 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.

Add to the text an article on children in the form of article 12(4) *bis*

Each State shall take the necessary measures to ensure that:

(a) For the purposes of the present Convention, a child means every human being below the age of eighteen years.

(b) 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.

(c) Criminal processes, including reparations, should be accessible to and protective of children.