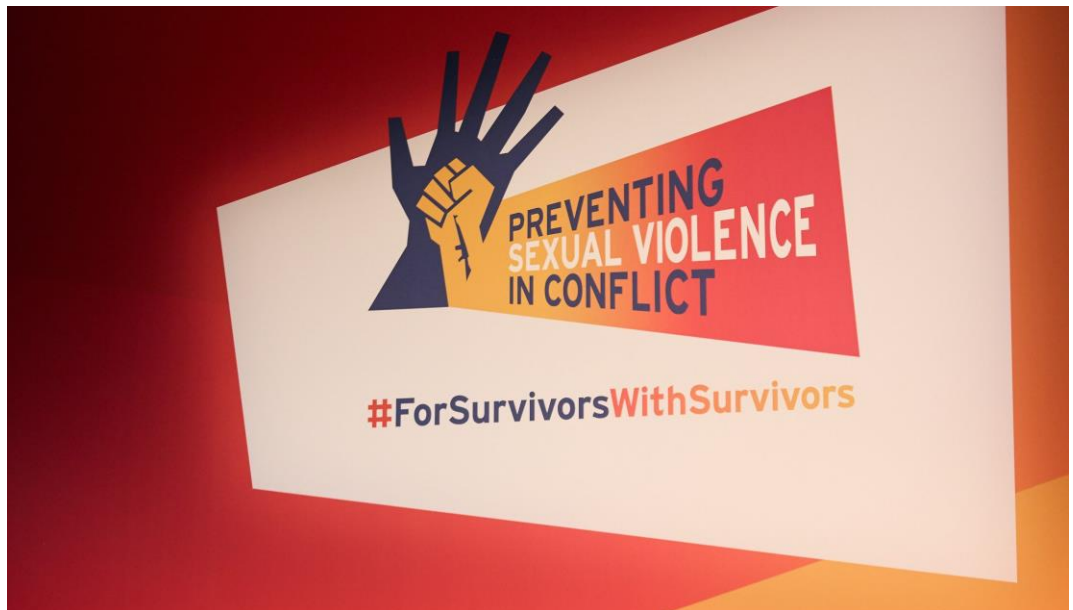




Wilton Park



## **Conflict Related Sexual Violence and Crimes Against Humanity**

Wednesday 15 – Friday 17 March 2023 | WP3108



## Report

# Conflict Related Sexual Violence and Crimes Against Humanity

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In association with the UK's Foreign, Commonwealth and Development Office

From Wednesday 15 – Friday 17 March 2023, Wilton Park together with the FCDO's CRSV Accountability Team hosted a dialogue on the UN's draft Articles on Prevention and Punishment of Crimes Against Humanity, or draft Crimes Against Humanity Convention (CAHC). The dialogue sought to bring together diverse voices from survivors, states, legal experts, civil society groups and academics, and focussed on how the international legal architecture around conflict related sexual violence (CRSV), and gender equality more broadly could be strengthened through the draft convention.

The UK has publicly set out an ambitious approach to tackling CRSV, including through the recently launched [Preventing Sexual Violence in Conflict Initiative \(PSVI\) strategy](#). One of the key objectives of the strategy is to strengthen the global response to CRSV, and as part of this the UK Government set out its intention to pursue further concerted action on the CAHC, as a means of strengthening the international legal architecture including on some forms of CRSV. This intention was reiterated by the Foreign Secretary at the PSVI conference in November and the UK Government continues to take an ambitious approach to the CAHC.

The dialogue took place over three days, and focused on the background to the convention, the opportunity that the CAHC presents in strengthening the international legal architecture on gender equality and sexual and gender-based violence (SGBV) including CRSV, and the opportunity to ensure that survivor voices are kept front and centre throughout the process, and that their needs are adequately represented within the final convention.

### Key points

- The dialogue highlighted the **importance of and need for a specific convention** on Crimes Against Humanity (CAH). While some participants noted that relevant frameworks already exist, there was general consensus that having a standalone convention on CAH was a positive move. Building on the existing legal frameworks including the Rome Statute and Genocide Convention, a specific convention on CAH will signal strongly that the international community takes this seriously and is an important step in the current climate of increased instability and conflict.
- **Refining definitions** around CAH and related topics may help to reduce ambiguity, but care is needed to ensure this does not narrow the legal interpretation in an unhelpful way, serve to undermine existing treaties such as the Rome Statute, or make prosecuting CAH more difficult. The CAHC also provides the opportunity to refine and update outdated language and definitions from the Rome Statute, which no longer reflect current thinking or legal approaches to gender globally.

- **The CAHC provides an important opportunity to strengthen the international legal framework on CRSV and gender equality**, but this must be done in a meaningful way, and a gender sensitive approach should be applied throughout the convention and process. There is a unique opportunity to use the CAHC to modernise our approach to these issues, keeping the origins and history of CAH to mind, while also ensuring that a new convention is reflective of, and able to meet the challenges of contemporary conflict and instability.
- **The needs of survivors** must be appropriately reflected at all stages of the process, as well as in the content of the final agreement. Meaningful survivor participation and representation is needed throughout the process, including within the design and concept stage, negotiation process, implementation and monitoring of the convention.
- **State engagement, the role of civil society, and awareness raising of the CAHC** is important. There is a limited understanding and engagement in the CAHC, as well as a lack of capacity among some states to engage with the process in a meaningful way. For some the CAHC is seen as a global north initiative, despite recent UN efforts led by global south states. The role of civil society is key in advocating with and engaging states globally.
- **A coordination mechanism** to support civil society engagement around the CAHC process over the next year was deemed a good option. While there is a willingness within civil society to engage with the CAHC, gaps remain in terms of coordination, exacerbated by a lack of funding, and lack of understanding of CAH and the potential of the convention. The UK and other states are looking at how to support a coordinating mechanism in this space.

“The crimes are global but the narrative is local”

### **Framing the need for a Crimes Against Humanity Convention. What does the current international landscape look like?**

1. There is currently no standalone international legal framework which deals specifically with Crimes Against Humanity (CAH). The idea of Crimes Against Humanity was first introduced during the Nuremberg and Tokyo trials, and different definitions were subsequently used in various international tribunals and conventions, until a more commonly agreed definition was codified in the Rome Statute (RS) in 1998. A standalone convention on CAH has the potential to make states more accountable, ensure non-repetition of crimes, put in place obligations to prevent, penalise delays and obstruction of justice, and contribute to the improvement of the lives of survivors and their communities.
2. Following the launch in 2008 of the Crimes Against Humanity Initiative, led by Leila Sadat, academics, scholars and practitioners wrote a model treaty, which was picked up by the International Law Commission (ILC) in 2013. In 2019 the ILC’s draft was taken to the UN General Assembly, however with limited state support it did not move further. Since then state support for the convention has increased significantly, however, and in 2022 the CAHC started to move out of procedural inertia in the United Nations General Assembly Sixth Committee and into the current context where substantive discussions on the text can take place. The next step is for the international community to consider what the convention will look like, and to work to maximise opportunities to strengthen the international framework around CAH.
3. Participants reflected that there is widespread support for a CAHC. The CAHC provides an opportunity to address CAH specifically in international law and to strengthen the definition of CAH. A standalone convention would send a strong message that the international community continues to take CAH seriously and that states will take action to prevent and prosecute these crimes. Although covered within some existing international frameworks, most notably the Rome Statute, the absence of a specific convention on Crimes Against Humanity means that there remains some ambiguity in interpreting CAH. The current draft of the CAHC covers a

number of issues which are not covered adequately elsewhere, including the reference to the prohibition of CAH being “jus cogens” and the obligation on states to prevent CAH.

4. The CAHC provides an excellent opportunity to strengthen and update language on gender equality and CRSV, and to include topics such as forced abortion, forced marriage and religion-related sexual violence within the definition of crimes against humanity.
5. Participants noted that while the CAHC could provide a number of opportunities to strengthen the international frameworks around CAH, gender and CRSV, caution is needed to ensure that the convention is fit for purpose and doesn't undermine existing international law or allow for a regression on progressive language, rights and responsibilities.
6. There were substantive discussions about the interplay between the CAHC and the Rome Statute. The CAHC provides the opportunity to update the now outdated language in the Rome Statute, including on gender and SGBV, which due to its age no longer reflects current approaches to gender in international law. Caution is also needed however, to avoid the CAHC undermining the Rome Statute in any way, and the interaction of a CAHC with the Rome Statute needs further consideration. It is not yet clear how the CAHC would work together with the Rome Statute, and there is a potential for conflict between the two, which could increase the burden on states when implementing them. The Rome Statute's definition of CAH is, in some respects, narrower and harder to prove than the customary law definition of CAH. Care is needed here in ensuring that a new convention does not make it harder for national prosecutors to prosecute CAH.

“If you can have an obligation not to commit a crime, you have a right for the crime not to be committed against you.”

### **Making the convention survivor-centred**

7. Participants emphasised that the voice of survivors in all elements of the CAHC is essential if we are to end up with a document which effectively and meaningfully addresses the needs of those affected. Survivor engagement is multifaceted, and it is important to avoid oversimplification and tokenism. It is not enough to just reference survivors in the document, rather they must be meaningfully represented and included throughout all stages of the process, including in the drafting, design, negotiation, implementation, and monitoring of the CAHC, and the document itself must be survivor centred. Participants reflected on how best to strengthen the language around survivors in the draft *document*, and how to ensure strong survivor engagement and representation throughout the *process*.

### **A survivor centred document**

8. The focus on accountability in the document is key, and holding perpetrators to account can help reduce the stigma that survivors face. Some participants questioned whether the CAHC could effectively deliver for survivors, in a context where there has been little progress in some states in tackling impunity following the Rome Statute. The current CAHC draft has no statute of limitation which means there is no time limit for survivors to step forward to seek judicial remedy. Participants viewed this as particularly critical in supporting survivors' access to justice and bringing perpetrators to account. Universal Jurisdiction cases in 'safe' third countries could also encourage survivors to seek justice without the fear of reprisals.
9. Participants acknowledged the importance of ensuring that survivors are able to participate in decisions which affect them, and that the decisions of survivors are respected, including in defining how they see justice and accountability. While this is a complex area, it is important that survivors retain agency, and as an example participants emphasised that it was not acceptable to force a mandate for going to court on a survivor.
10. The CAHC could specifically reference indigenous groups and disabled people, and

children born of sexual violence should be included in the definition of “victim”, and other language around survivors. Participants reflected on the importance of the Kinshasa Declaration when considering the role of survivors. The definition of victims could also be extended to witnesses of SGBV including CRSV, and families and communities of those affected.

11. The language on reparations in the document could be strengthened. It is clear in international law that victims have an existing right to reparations, however the language should be strengthened to place the responsibility more firmly on states in ensuring that victims and survivors are able to exercise their rights to reparation. Reparations must be commensurate with the gravity of the harm, and better cooperation is needed between states in this area.
12. The CAHC provides an opportunity to strengthen and codify international best practice on support for and treatment of survivors, including by using the Murad Code and other guidelines for engagement. Wording on gender-sensitive victim protection should be included in the text.

### **Survivor representation and participation in the process**

“Survivors are not a homogenous group, and the State should not be arbiter of who is a survivor and who is not.”

13. Ensuring survivors are at the centre of responses to CRSV and SGBV is critical if we are to effectively address these issues through international law. Survivor engagement in the CAHC process must be meaningful and not tokenistic. It is important that they are supported in their understanding of the CAHC and how it may affect them if they are to be able to participate in the process in a meaningful way. Survivors should be empowered to design and develop the programme for survivors, and it is critical that the final CAHC text is seen as legitimate in the eyes of survivors and the public in the local and regional context.
14. Engagement with survivor networks and civil society groups is key in engaging survivors in the process, however participants acknowledged that it was important to ensure that diverse survivor voices were heard. The global network of human rights survivors could be a good starting point for engagement.
15. Survivor engagement must be done in a safe, ethical and empowering way, and deliberate and intentional risk assessment processes should be undertaken. Survivors must be included at **all stages** of the process, including through conception, design, implementation, monitoring and evaluation. Participants expressed that we must be careful not to treat survivors as consumers or to “market” things to them where we want their buy in. The complexities and multifaceted nature of survivor engagement should be acknowledged, and “survivors” are not a homogenous group. Participants were clear that just because someone is a survivor, that does not mean they automatically speak for all survivors.

### **How can we strengthen the CRSV and gender equality elements of the CAHC?**

“Everything old is new again.”

16. The final text of the CAHC should, in the long-term, form the basis for action and implementation on prevention and prosecution for CAH. It is therefore key that the final text is as strong as possible. Both the process and final document provide an important opportunity to ensure that the international approach to CAH is robust and progressive, and it particularly provides an opportunity to strengthen language on gender equality, SGBV including CRSV, survivor rights and needs, and associated issues. The dialogue allowed for a deep dive into some of these areas, and participants held substantive discussions around the existing draft text.
17. Participants argued that a holistic gender approach should be embedded throughout the draft text and process. Entrenched gender inequality and discrimination is at the root of SGBV including CRSV, and if we don’t address this, we will fail to prevent commission of CRSV and other gendered CAH crimes. As currently drafted the text is heavily focussed on the criminal aspects of CAH, and participants felt there was an

opportunity to embed a stronger human rights narrative throughout the document.

18. **Preamble:** The preamble of the convention sets the context and frames the convention, including by expressing the importance of addressing CAH. Language in the preamble therefore should be carefully considered, with explicit reference to gender equality and SGBV including CRSV included. The current wording around “children, women and men” should be altered to “people” to cover everyone, including those from other gender groups.
19. **Definitions:** The definitions contained within the draft convention should receive particular attention when looking to strengthen gender equality and CRSV elements. For example, the definition on forced pregnancy could be addressed to remove the caveat that national laws should take precedent, strengthening the language from wording in the Rome Statute. The definition of sexual slavery could also be strengthened to include reproductive control such as forced contraception.

The definition of “victims” should be expanded to include children born of rape and those who have witnessed sexual violence. It is key to acknowledge that these crimes can also affect the families and communities of victims.
20. The **types of CRSV crimes** included in Article 2.2, should be expanded, including by adding forced marriage. Sexual orientation and gender identity should also be added to the crime of persecution, explicitly referencing existing International Human Rights Law. There is currently no definition of rape, which is problematic as this could result in countries using definitions in line with their own national jurisprudence, much of which will end up being discriminatory and falling short of the international standard. There should also be a clear recognition that **all** CAH crimes, including those sometimes considered “non-gendered” can be carried out in a gendered way.
21. **International best practice** should be included throughout the document, particularly within Articles 8 and 12, including using the Murad Code during investigations, and referencing the importance of gender sensitivity when considering protection and reparations.
22. The paragraph on **reparations** could be strengthened, including victims’ access to reparations without a conviction. States must also ensure that victims have the right and opportunity to exercise their right to reparations. There could also be a reference to state obligations to monitor reparations, and whether remedies meet the standard. Participants argued that amnesties and immunities should be addressed within the draft text.
23. **Implementation:** A treaty monitoring body would support State implementation. It would allow civil society to engage with the implementation of the treaty and develop best practice, such as encouraging states to use resources like SRSG Patten’s Prevention Framework and eliminate gender discrimination laws. Survivor groups should be included as recognised experts. Participants discussed the efficacy of treaty monitoring bodies, considering the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment as an example of where early intervention works.

## Recommendations and next steps

24. **Strategic approach:** The next 18 months will be a critical time for creating a strong future framework for CAH. The meetings at the UN in April 2023 will provide the first opportunity for states to lay down markers on their CAHC ‘asks’ and test the parameters for potential support and challenge. States should use this as a moment to set out a strong stance on gender equality and CRSV, although caution will be needed to ensure that the CAHC is not rejected by less forward leaning states. We should take a strategic approach to the process.

**Recommendation:** *Participants suggested drafting a political strategy for state*

*negotiations; a survivor strategy for engagement in a meaningful way; and a gender strategy to create a feminist document.*

**25. Education and Awareness Raising:** There is a general lack of awareness and understanding amongst states, civil society, survivors, and other actors about the CAHC. Clear education and information about the CAHC, process and implications for states and survivors will help to address this. The UK is currently working with the Mukwege Foundation to produce the “Guidebook on the Law of State Responsibility for CRSV”, which aims to help states to understand their obligations under international law around CRSV. Participants suggested education and awareness raising around the timeline for CAHC engagement, content of the draft text, and implications for states were particularly important.

**Recommendation:** *Participants suggested drafting a two-pager for states and Civil Society Organisations (CSO’s) outlining the CAHC and relevant information.*

**26. Civil society engagement:** Civil Society has a key role to play in advancing the needs of survivors, SGBV including CRSV and gender throughout the CAHC drafting and negotiating process. Galvanising Civil Society around the convention is important, as previously demonstrated by the Coalition of the ICC (a network of hundreds of CSO’s worldwide) who were a key factor in the creation of the Rome Statute. Civil society has a particular role to play in advocating for states to engage in the process, which is particularly important with middle ground or less engaged states.

**Recommendation:** *Participants suggested the idea of a state funded CSO coordination mechanism for engaging with the process. The UK agreed to consider how they could support this proposal.*

**27. State engagement:** How we communicate the CAHC process with other states is critical. There has been increased support and engagement from states for the CAHC over the years, which should be maximised over the next 18 months. We should think strategically about how we engage states; ensure that this is not seen as a global north initiative; and reflect cautiously on potential spoilers. Care is needed to ensure that the CAHC doesn’t get overly politicised in the current international climate.

**Recommendation:** *Participants suggested that a record of state commentary was a positive step in recording state engagement.*

*Participants suggested that documents from the process should be published widely.*

## **Conclusion**

Overall, the meeting provided a positive opportunity to gather states, civil society, survivors, and legal experts, to look at how best we can coordinate action to ensure that gender equality and SGBV including CRSV are strengthened throughout the process and document, and in international law.

Participants emphasised that the process itself is a powerful tool for keeping discussions around CRSV and gender live and at the forefront of the international agenda, and that even if it is clear that certain topics can’t be negotiated and won’t be accepted, that we should still raise these.

The dialogue resulted in tangible next steps for states and civil society, and many of these will be implemented in the next phases of discussions at the UN in April 2023. Practical recommendations such as the civil society coordinating mechanism will be picked up separately and will provide an exciting opportunity to strengthen engagement in the process.

**Rose Wright**

Wilton Park | May 2023

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