

CALL TO ACTION

# A TOOLKIT FOR ADVOCATES

## THE INTERNATIONAL CRIMES AGAINST HUMANITY TREATY

The City University of New York

CUNY SCHOOL OF LAW

Law in the Service of Human Needs



**OUTRIGHT**  
ACTION INTERNATIONAL

# A NEW TREATY ON CRIMES AGAINST HUMANITY

A new convention on crimes against humanity (CAH) is in its final draft stages, but most civil society groups — including women, LGBTIQ, disability, Indigenous, aboriginal, youth, caste, and racial and ethnic minority rights groups — have not weighed in. While the current treaty draft embraces strong language from the Rome Statute (which created the International Criminal Court (ICC)), including gender as a protected class from persecution, it also adopts an opaque definition of gender.

Civil society organizations have changed the course of history by organizing together to ensure that all human rights violations are taken seriously in key international documents. The CAH drafting process is moving quickly in the UN process, and now is a critical time to get involved.

## WHERE IS THE PROGRESS ON GENDER?

The last two decades of international law have clarified that women's rights and LGBTIQ rights are human rights, making the gender definition contained in the Rome Statute opaque.

Strong convention language that complies with existing human rights law would be an invaluable tool for confronting impunity and enhancing state efforts to prevent and punish gender-based crimes. However, a text that does not understand gender could sideline women and other marginalized victims and result in even greater impunity for gender-based crimes amounting to crimes against humanity.



This is a pivotal moment in history to broaden the discourse on gender and affirm our understanding of discrimination, including when based on sexual orientation, gender identity, or sex characteristics. More importantly, we have real-world conflict situations, including ones involving militias like ISIS, where women, men and youth, including LGBTIQ persons, are being persecuted because of their gender.

Over the last two decades, international human rights law and jurisprudence have adopted language that accounts for the social construction of gender. Since its formation nearly twenty years ago, its understanding of gender-based persecution has never been tested, largely due

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## **CHANGES WE WANT TO SEE**

### **AN INCLUSIVE DEFINITION OF:**

- **GENDER**
- **PERSECUTION**
- **TORTURE**
- **ENSLAVEMENT, WHICH INCLUDES SEXUAL SLAVERY**

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to its opaque definition in the Rome Statute.

What we do now will affect minority rights for generations to come.

# ON THE FRONTLINES

In the 1990s, MADRE housed the Women’s Caucus for Gender Justice, a worldwide coalition of women’s rights activists working to address gender gaps in the draft Rome Statute. The Human Rights and Gender Justice (HRGJ) Clinic of CUNY Law School, known then as the International Women’s Human Rights (IWHR) Clinic, served as secretariat for the Caucus and coordinated an effort to ensure the Statute accounted for gender in crimes, procedure, evidence, and International Criminal Court (ICC) composition. At the same time, OutRight (then the International Gay and Lesbian Human Rights Commission) was fighting at the Beijing World Conference on Women and in the UN General Assembly for recognition of the heightened vulnerabilities experienced by LGBTIQ people on the basis of their gender.

Caucus members provided practical recommendations for addressing gender-based crimes, backed by international law. A socially conservative opposition objected, fearing that the term “gender” would increase protections for women and LGBTIQ persons from discrimination. While only a handful of delegates initially supported activists, momentum started to build and support significantly increased by the time the Rome Conference came about. Swapping “sex” for “gender” was one of the most important safeguards to happen at Rome. However, it came with an opaque definition: “it is understood that the term ‘gender’ refers to the two sexes, male and female, within the context of society.” No other protected class under persecution has a definition.

## RECOGNIZING RAPE AS TORTURE

Similar to the call to end impunity for atrocities committed on the basis of gender, the struggle to secure the recognition of rape as a form of torture initially faced resistance. Sexual violence crimes were not taken as seriously as other crimes in the early years of international criminal tribunals. However, women's rights activists successfully rallied Rome Statute drafters to abandon "outrages of personal dignity" language and broaden the category for sexual violence to not only include rape but also sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and other undefined forms of sexual violence.

## IN CONTEXT: HOLDING ISIS ACCOUNTABLE FOR GENDER-BASED CRIMES

In November 2017, advocates filed a **petition**—the first of its kind—to the International Criminal Court. Filed jointly by CUNY Law School, MADRE and the Organization of Women’s Freedom in Iraq (OWFI), with help from the law firm Debevoise & Plimpton and OutRight Action International, the petition argues that the international community should prosecute ISIS fighters for crimes committed on the basis of gender, including discrimination based on sexual orientation and gender identity.

With the help of UN WOMEN, CUNY Law School, MADRE, and OutRight Action International convened a meeting on women's and LGBTIQ rights and international criminal law with experts from around the world. Together they honed the strategy for the petition to the ICC and for ensuring the safety and security of those associated with it. Activists also held a series of in-country consultations with Iraqi women’s organizations. For safety reasons, the petition was not translated into Arabic and several contributing groups left their names off the official submission. Advocates then convened these same experts again, this time to discuss the gender provisions in the draft crimes against humanity treaty.

This is the first time the world has seen this kind of robust documentation of crimes against women and LGBTIQ persons for transgressing gender norms during an armed conflict. The draft CAH treaty offers a new opportunity to hold perpetrators of gender-based crimes accountable.

To learn more about the ICC petition, watch the event held at CUNY Law School just before the petition was submitted: **Prosecuting ISIS Crimes against Women and LGBTIQ Persons.**

## WHERE IS THE TREATY NOW?

The draft crimes against humanity (CAH) treaty was completed by the International Law Commission and has been preliminarily reviewed by the UN General Assembly's 6th Committee.

It has now been transmitted to governments, international organizations and others for comments and observations, with the request that such comments and observations be submitted to the UN Secretary-General by December 1, 2018. To view the current CAH draft treaty, [click here](#).



# WHAT CAN YOU DO TO SUPPORT A GENDER- INCLUSIVE CRIMES AGAINST HUMANITY TREATY?

## Sign Our Petition:

Sign our petition calling on the International Law Commission to update the definition of gender and ensure everyone's rights are protected, including women and LGBTIQ persons. The petition will be coming out soon. To stay involved and receive a copy of the petition, [click here](#).

## Stay Informed:

For more information about the CAH treaty, [click here](#).

For updates from the Crimes Against Humanity Initiative, [click here](#).

If you would like additional information or have any questions, please email: [advocacy@madre.org](mailto:advocacy@madre.org).

## Write Your Own Submission:

You can also write your own submission for the International Law Commission. All submissions should be addressed to the UN Legal Counsel and sent by email to the Director of the UN Codification Division, Mr. Huw Llewellyn by December 1, 2018 at [llewellyn@un.org](mailto:llewellyn@un.org).

## Spread the Word:

It is critical that civil society weighs in on the development of the new CAH treaty. You can help by sharing this toolkit and encouraging others to make their voices heard.

For more detailed information on how gender includes women and LGBTIQ rights under the Rome Statute, [click here](#).



**MADRE**

[www.madre.org](http://www.madre.org)

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