

## 1. DEFINITION OF RAPE IN IHT AND INTERNATIONAL LAW ARTICLES 12(First)(G), 13(Second)(V) and 13(Fourth)(F)

*Rape is defined in the IHT Elements of Crimes as:*

The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.

The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.

## 2. OVERVIEW OF RAPE AS TORTURE IN INTERNATIONAL LAW

*In certain circumstances, rape has been found to be torture under international law by the ICTY and ICTR.*

Rape is often used for such purposes as intimidation, degradation, humiliation, discrimination, punishment control or destruction of a person and can and should be tried as rape as a means of torture.

## 3. OVERVIEW OF SEXUAL VIOLENCE IN INTERNATIONAL LAW ARTICLES 12(First)(G), 13(Second)(V) and 13(Fourth)(F)

Sexual violence covers crimes that the definition of “rape” fails to encompass yet are of a sexual nature and can be equally painful and degrading to the victim.

## 4. OVERVIEW OF SEXUAL ENSLAVEMENT IN INTERNATIONAL LAW ARTICLES 12(First)(G), (C), 13(Second)(V) and 13(Fourth)(F)

Sexual enslavement involves exercise “of ownership” over the victim by the perpetrator and the subsequent coercion to engage in one or more acts of a sexual nature.

## 5. HONOUR CRIMES

*International bodies have declared that the failure to punish perpetrators of honour crimes violates international law and nullifies the victim’s freedom and enjoyment of human rights. Honour crimes are condoned by the Iraqi Penal Code No. 111 of 1969, and deter women from coming forward to testify.*

Honour crimes are acts of violence against female relatives who are perceived to have brought dishonour upon the family for a variety of reasons, including: refusing to enter into an arranged marriage, being the victim of a sexual assault, seeking a divorce, or allegedly committing adultery.

### What is Sexual Violence?

#### Definition

The word “rape” has a narrow definition and fails to encompass various other methods of sexual violence which can be equally painful and degrading to the victim. Sexual violence is not exclusively directed at women and there is much documented evidence of sexual violence perpetrated against men.

The term “sexual violence” covers the following:

- Violence to the sexual organs;
- Physical sexual assault that implies direct physical contact;
- Psychological sexual assault, such as forced nakedness,
- Sexual humiliations and threats;
- A combination of any of the above

#### Examples

“Forced prostitution, sexual slavery, forced impregnation, forced maternity, forced termination of pregnancy, enforced sterilization, indecent assault [that encompasses the mutilation of sexual organs], trafficking, inappropriate medical examination and strip searches,” forced nudity and more....

### IHT Statute 2005

*The IHT takes language directly from the Rome Statute: codifying sexual violence as a crime under Iraq law.*

Part Two: Crimes against Humanity -- Article 12

G. Rape, sexual slavery, forcible prostitution, forced pregnancy, or any other form of **sexual violence** of comparable gravity;

H. Persecution against any specific party or group of the population on political, racial, national, ethnic, cultural, religious, gender... in connection with any act referred to as a form of **sexual violence** of comparable gravity.

Part Three: War Crimes -- Article 13

First: V. Committing rape, sexual slavery, enforced prostitution, forced pregnancy, or any other form of **sexual violence** of comparable gravity;

Fourth:F. Committing rape, sexual slavery, forced prostitution, forced pregnancy, or any other form of **sexual violence** of comparable gravity;

## Progression of Sexual Violence in International Law

- Although not listed as a crime in the ICTR the prosecutor included it as a charge in the indictment against Jean-Paul Akayesu.
- The ICTR found Akayesu guilty of the crime of sexual violence and in doing so established sexual violence as an international crime.
- The Rome Statute became the first legal instrument to formally codify sexual violence as a crime against humanity and a war crime.
- When Iraq passed the IST, text was borrowed directly from the ROME Statute, making sexual violence both a war crime and a crime against humanity to be tried by the Tribunal.

### International Criminal Tribunal for Rwanda

#### *Akayesu*

#### **Facts:**

As bourgmestre, Jean Paul Akayesu was responsible for maintaining law and public order in his commune, where at least 2000 Tutsis were killed. Female civilians were regularly taken by armed local militia and/or communal police and subjected to sexual violence, and/or beaten at the bureau communal premises. Women endured multiple acts of sexual violence, at times committed by multiple assailants. The Hutu militia commonly employed sexual mutilation and public humiliation to heighten the suffering of their victims. Women and girls:

- were raped
- were stripped and/or slashed and exposed to public mockery
- suffered genital mutilation, breast and buttock amputation
- had pieces of trees branches pushed into their vagina

#### **Indictment:**

*The Indictment classifies sexual violence as a separate war crime for those mentioned in the ICTR Statute.*

Para 10A “In this indictment, acts of sexual violence include forcible sexual penetration of the vagina, anus or oral cavity by a penis and/or of the vagina or anus by some other object, and sexual abuse, such as forced nudity.”

#### **ICTR Statute:**

*The statute does not use the term ‘sexual violence.’*

#### Article 3: Crimes Against Humanity

- (g) rape
- (i) other inhumane acts

#### Article 4: Violations of Article 3 Common to the Geneva Conventions

(e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;

*Sexual violence is explicitly codified as a war crime and crime against humanity for the first time.*

Article 7 Crimes Against Humanity

1. (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of **sexual violence** of comparable gravity;

Article 8 War crimes

2. (b) (xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy....enforced sterilization, or any other form of **sexual violence** also constituting a grave breach of the Geneva Conventions;  
(e) (vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of **sexual violence** also constituting a serious violation of article 3 common to the four Geneva Conventions;

**Elements of Crimes of the ICC**

Article 7 (1) (g)-6

Crime against humanity of sexual violence

1. The perpetrator committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person or persons incapacity to give genuine consent.

Article 8 (2) (b) (xxii)-6

War crime of sexual violence

1. The perpetrator committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.