

Index: Principle Gender Crimes

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.

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Definition of Rape for Iraq High Tribunal and in International Law

RAPE DEFINITION in the Elements of Crimes for Iraqi High Tribunal and the Rome Statute of the International Criminal Court

Definition:

1. The perpetrator invaded¹⁵ 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.
2. 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.¹⁶

¹⁵*The concept of "invasion" is intended to be broad enough to be gender-neutral.*

¹⁶*It is understood that a person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity. This footnote also applies to the corresponding elements of article 7(1)(g) - 3, 5 and 6.*

International Criminal Tribunal for Rwanda

Definition:

- Rape is a “physical invasion of a sexual nature, committed on a person under circumstances which are coercive.” In *Prosecutor v. Jean-Paul Akayesu* “coercion” was inherent b/c of the hostile military presence.

Charged as:

- **Crime against humanity:** where rape was “committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds”. *Prosecutor v. Jean-Paul Akayesu*
- **Genocide:** Rape crimes “constitute genocide in the same way as any other act so long as they were committed with specific intent to destroy, in whole or in part, a particular group, targeted as such. ... These rapes resulted in physical and psychological destruction of Tutsi women, their families and their communities.” *Prosecutor v. Jean-Paul Akayesu*

International Criminal Tribunal for the Former Yugoslavia

Definition

- “[t]he sexual penetration, however slight, either of the vagina or anus of the victim by the penis of the perpetrator, or any other object used by the perpetrator, or of the mouth of the victim by the penis of the perpetrator, where such penetration is effected by coercion or force or threat of force against the victim or a third person.” *Prosecutor v. Furundzija*, Dec. 10, 1998.
- Foca Trial definition of rape: “the sexual penetration, however slight: (a) of a vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or (b) the mouth of the victim by the penis of the perpetrator; where such sexual penetration occurs without the consent of the victim. Consent for this purpose must be consent given voluntarily, as a result of the victim’s free will, assessed in the context of the surrounding circumstances. The *mens rea* is the intention to effect this sexual penetration, and the knowledge that it occurs without the consent of the victim.” *Prosecutor v. Kunarac, Kovac, & Vukovic*, (Feb. 22, 2001) ¶ 460.

Charged As:

- Article 5 (Crimes Against Humanity) is the only article to specifically include rape as an offense:
“The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population: (g) rape.”

Sierra Leone and Cambodia Tribunals

The Statutes of the Sierra Leone and Cambodia Tribunals, like the IHT, are based on the Rome Statute of the ICC. Neither Tribunal has issued any decisions yet, therefore, there is no case law on how they will define rape.

Is Lack of Consent an Element of Rape?

IHT 2005 Rules of Procedure and Evidence

Rule 63: Rules of Evidence in Cases of Sexual Assault

First: In cases of sexual assault and if there is reasonable cause, no corroboration of the victim's testimony shall be required.

Second: Consent shall not be allowed as a defense if the victim

A. Has been subjected to or threatened with or has had reason to fear violence, duress, detention or psychological oppression, or reasonably believed to be the victim, submittance, threat or fear.

Third: The evidence submitted by the accused should prove the victim's consent without shortcomings.

Elements of Crimes of the Rome Statute

Crime against humanity of rape

Article 7 (1) (g)-1 and War Crime of Rape Article 8 (2) (b) (xxii)-1

Elements

2. 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. (It is understood that a person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity)

Prosecutor v. Kunarac et al. (IT-96-23 & 23/1)
Appeals Chamber's Judgment

127.the Trial Chamber concluded:

the *actus reus* of the crime of rape in international law is constituted by : the sexual penetration, however slight: **where such sexual penetration occurs without the consent of the victim.** Consent for this purpose must be consent given voluntarily, as a result of the victim's free will, assessed in the context of the surrounding circumstances. The *mens rea* is the intention to effect this sexual penetration, and the knowledge that it occurs without the consent of the victim.

128.It is worth emphasizing two points. First, it rejects the Appellants' "resistance" requirement, an addition for which they have offered no basis in customary international law. The... assertion that nothing short of continuous resistance provides adequate notice to the perpetrator that his attentions are unwanted is wrong on the law and absurd on the facts.

129.... in explaining its focus on the absence of consent as the *conditio sine qua non* of rape, the Trial Chamber sought to explain the relationship between force and consent. Force or threat of force provides clear evidence of non-consent, but force is not an element *per se* of rape....there are "factors [other than force] which would render an act of sexual penetration *non-consensual or non-voluntary* on the part of the victim". A narrow focus on force or threat of force could permit perpetrators to evade liability for sexual activity to which the other party had not consented by taking advantage of coercive circumstances without relying on physical force.

130. ... in some domestic jurisdictions, neither the use of a weapon nor the physical overpowering of a victim is necessary to demonstrate force. A threat to retaliate "in the future against the victim or any other person" is a sufficient *indicium* of force...

132.Appellants in this case were convicted of raping women held in *de facto* military headquarters, detention centres and apartments maintained as soldiers' residences. As the most egregious aspect of the conditions, the victims were considered the legitimate sexual prey of their captors. Typically, the women were raped by more than one perpetrator and with a regularity that is nearly inconceivable. (Those who initially sought help or resisted were treated to an extra level of brutality). Such detentions amount to circumstances that were so coercive as to negate any possibility of consent.

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Overview of International Law on Rape as Torture

Rape can be torture under international law. The Iraq High Tribunal is bound by the precedents set by other international war crimes tribunals. Examples of their decisions, as well as reports from other international bodies, are outlined below.

International Bodies Finding Rape to be Torture

The International Criminal Tribunal for Yugoslavia ruled in *Furundzija, Celebici, and Kunarac* that the accused committed torture by means of rape.

The *Akayesu* Judgment (ICTR): “Like torture rape is used for such purposes as intimidation, degradation, humiliation, discrimination, punishment control or destruction of a person. Like torture rape is a violation of personal dignity, and rape in fact constitutes torture when inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” (1998)

Report of the Special Rapporteur on Torture to the Commission on Human Rights: “Since it was clear that rape or other forms of sexual assault against women in detention were a particularly ignominious violation of the inherent dignity and the right to physical integrity of the human being, they accordingly constituted an act of torture.” (1992)

Report of the Special Rapporteur on Contemporary Forms of Slavery, Systematic Rape, Sexual Slavery and Slavery-like Practices During Armed Conflict: “The Committee on the Elimination of Discrimination against Women has recognized that violence directed against a woman because she is a woman, including ‘acts that inflict physical, mental or sexual harm or suffering,’ represents a form of discrimination that seriously inhibits the ability of women to enjoy human rights and freedoms. Accordingly, in many cases the discrimination prong of the definition of torture in the Torture Convention provides an additional basis for prosecuting rape and sexual violence as torture.” (1998)

Definition of Torture

The Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment:

Article 1 - “the term ‘torture’ means as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain and suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or any other person acting in an official capacity.”

Case Summaries and Opinion Language

Elements of Torture as a Crime against Humanity before the ICTY and ICTR

- (1) The infliction, by act or omission, of severe pain or suffering, whether physical or mental.
- (2) The act or omission must be intentional.
- (3) The act or omission must aim at obtaining information or a confession, or at punishing, intimidating or coercing the victim or a third person, or at discriminating, on any ground, against the victim or a third person.

In 2001, the ICTY Trial Chamber held in *Foca* that pursuant to customary international law, torture does not have to be committed by an official, at the instigation of an official or with the consent of an official or a person acting in an official capacity.

Rape constitutes torture when the elements of torture are met.

Examples of Case Law Detailed Below

- ***Furundzija*** (ICTY), finding a violation of the laws or customs of war (torture) under Article 3 of the ICTY Statute.
- ***“Celebici”*** (ICTY), finding a grave breach of the Geneva Conventions under Article 2(b) (torture) and a violation of the laws or customs of war under Article 3 of the ICTY Statute.
- ***“Foca”*** (ICTY), finding a crime against humanity under Article 5(f) (torture) and a violation of the laws or customs of war under Article 3 of the ICTY Statute.
- ***Semanza*** (ICTR), finding a crime against humanity under Article 3(f) (torture) of the ICTR Statute.
- ***Aydin*** (ECHR), finding a violation of Article 3 (prohibition of torture) of the European Convention on Human Rights (ECHR).
- ***Mejía*** (Inter-Am. C.H.R.), finding a violation of Article 5 (right to humane treatment) of the American Convention on Human Rights.

International Criminal Tribunal for the Former Yugoslavia (ICTY)
Prosecutor v. Furundzija – December 10, 1998

Facts

A soldier forced Witness A to undress and remain naked in front of a substantial number of soldiers while he interrogated her. The accused left Witness A in the soldier's custody, who repeatedly raped, sexually assaulted, physically abused and degraded her.

Law

- Violation of the laws or customs of war (torture) under Article 3 of the ICTY Statute. **Article 13(Second) of the IHT Statute is equivalent to Article 3 of the ICTY Statute.**

OPINION LANGUAGE

Paragraph 163 – International case law, and the reports of the United Nations Special Rapporteur evince a momentum towards addressing, through the legal process, the use of rape in the course of detention and interrogation as a means of torture and, therefore, as a violation of international law. Rape is resorted to either by the interrogator himself or by other persons associated with the interrogation of a detainee, as a means of punishing, intimidating, coercing or humiliating the victim, or obtaining information, or a confession, from the victim or a third person.

Paragraph 267(i) – The Trial Chamber finds that in relation to Witness A, the elements of torture have been met. Within the provisions of Article 7(1) and the findings of the Trial Chamber on liability for torture, the accused is a co-perpetrator by virtue of his interrogation of her as an integral part of the torture. The Trial Chamber finds that the accused tortured Witness A.

Paragraph 269 – The Trial Chamber therefore finds the accused, as a co-perpetrator, guilty of a Violation of the Laws or Customs of War (torture).

International Criminal Tribunal for the Former Yugoslavia (ICTY) ***Prosecutor v. Delalic et al. (“Celebici”) – November 16, 1998***

Facts

In the Celebici prison-camp one of the accused, Hazim Delic, in uniform, raped two women prisoners during interrogations and throughout their detention.

Law

- Grave breach of the Geneva Conventions under Article 2(b) (torture) of the ICTY Statute.
Article 13(First)(b) of the IHT Statute is equivalent to Article 2(b) of the ICTY Statute.
- Violation of the laws or customs of war under Article 3 of the ICTY Statute.
Article 13(Second) of the IHT Statute is equivalent to Article 3 of the ICTY Statute.

Reasoning for Finding Rape to be Torture

- Strikes at the very core of human dignity and physical integrity
- Committed by, or at the instigation of, a public official, or with the consent or acquiescence of such an official and therefore involves punishment, coercion, discrimination or intimidation
- May be exacerbated by social and cultural conditions and can be particularly acute and long lasting

OPINION LANGUAGE

Paragraph 495 – “The Trial Chamber considers the rape of any person to be a despicable act which strikes at the very core of human dignity and physical integrity. The condemnation and punishment of rape becomes all the more urgent where it is committed by, or at the instigation of, a public official, or with the consent or acquiescence of such an official. Rape causes severe pain and suffering, both physical and psychological. The psychological suffering of persons upon whom rape is inflicted may be exacerbated by social and cultural conditions and can be particularly acute and long lasting. Furthermore, it is difficult to envisage circumstances in which rape, by, or at the instigation of a public official, or with the consent or acquiescence of an official, could be considered as occurring for a purpose that does not, in some way, involve punishment, coercion, discrimination or intimidation. In the view of this Trial Chamber this is inherent in situations of armed conflict.”

Paragraph 496 – “Accordingly, whenever rape and other forms of sexual violence meet the aforementioned criteria, then they shall constitute torture, in the same manner as any other acts that meet this criteria.”

International Criminal Tribunal for the Former Yugoslavia (ICTY)
Prosecutor v. Kunarac et al. (“Foca”) – June 12, 2002

Facts

Kunarac took victims FWS-75, FWS-87, FWS-50 and D.B. to Ulica Osmana Dikica no 16 where he and three other soldiers raped FWS-87, while FWS-75 and FWS-50 were raped by other soldiers. Kunarac was originally charged with both rape and sexual enslavement as sexual enslavement was not amongst the crimes enumerated in the statute.

Law

- Crime against humanity under Article 5(f) (torture) of the ICTY Statute.
Article 12(First)(f) of the IHT Statute is equivalent to Article 5(f) of the ICTY Statute.
- Violation of the laws or customs of war under Article 3 of the ICTY Statute.
Article 13(Second) of the IHT Statute is equivalent to Article 3 of the ICTY Statute.

Reasoning for Finding Rape to be Torture

- The accused acted intentionally and with the aim of discriminating between the members of his ethnic group and the Muslims, in particular its women and girls
- The rapes resulted in severe mental and physical pain and suffering for the victims

OPINION LANGUAGE

Trial Chamber

Paragraph 669 – The rapes resulted in severe mental and physical pain and suffering for the victims. The Trial Chamber is satisfied that the victims were taken to Ulica Osmana Dikica no 16 by Dragoljub Kunarac for the very purpose of rape and that they were chosen for this purpose on the basis only of their Muslim ethnicity.

Appeals Chamber

Paragraph 150 – The Appeals Chamber holds that the assumption of the Appellants that suffering must be visible, even long after the commission of the crimes in question, is erroneous. Generally speaking, some acts establish *per se* the suffering of those upon whom they were inflicted. Rape is obviously such an act. The Trial Chamber could only conclude that such suffering occurred even without a medical certificate. Sexual violence necessarily gives rise to severe pain or suffering, whether physical or mental, and in this way justifies its characterisation as an act of torture.

Opinion Language (continued)

Paragraph 151 – Severe pain or suffering, as required by the definition of the crime of torture, can thus be said to be established once rape has been proved, since the act of rape necessarily implies such pain or suffering. The Appeals Chamber thus holds that the severe pain or suffering, whether physical or mental, of the victims cannot be challenged and that the Trial Chamber reasonably concluded that that pain or suffering was sufficient to characterise the acts of the Appellants as acts of torture. The Appellants’ grounds of appeal in this respect are unfounded and, therefore, rejected.

Paragraph 670 – The Trial Chamber is satisfied that, on 2 August 1992, Dragoljub Kunarac went to Partizan Sports Hall where he took out FWS-75, FWS-87, FWS-50 and D.B. and drove them to the house in Ulica Osmana Dikica no 16, where some women who had been taken out of the Kalinovik school had already arrived. The Trial Chamber is also satisfied that Kunarac took these women to this house in the knowledge that they would be raped by soldiers during the night. The Trial Chamber finds that Kunarac took FWS-87 to one of the rooms of the house and forced her to have sexual intercourse in the knowledge that she did not consent. The Trial Chamber also finds that, on that occasion, FWS-75 and FWS-50 were repeatedly raped by other soldiers while Kunarac raped FWS-87. The Trial Chamber further finds that FWS-87 was also raped by other soldiers that same night. The fact that Kunarac took the girls to the house and left them to his men in the knowledge that they would rape them constituted an act of assistance which had a substantial effect on the acts of torture and rape later committed by his men. He therefore aided and abetted in that torture and rape.

Paragraph 816 – In the Final Trial Brief of the Defence, the accused Zoran Vukovic argued that, even if it were proved that he had raped a woman, the accused would have done so out of a sexual urge, not out of hatred. However, all that matters in this context is his awareness of an attack against the Muslim civilian population of which his victim was a member and, for the purpose of torture, that he intended to discriminate between the group of which he is a member and the group of his victim. There is no requirement under international customary law that the conduct must be *solely* perpetrated for one of the prohibited purposes of torture, such as discrimination. The prohibited purpose need only be part of the motivation behind the conduct and need not be the predominant or sole purpose. The Trial Chamber has no doubt that it was at least a predominant purpose, as the accused obviously intended to discriminate against the group of which his victim was a member, ie the Muslims, and against his victim in particular.

International Criminal Tribunal for Rwanda (ICTR)
Prosecutor v. Semanza – May 15, 2003

Facts

The Accused, in the presence of commune and military authorities, encouraged a crowd to rape Tutsi women before killing them. Victim A was raped immediately thereafter by one of the men from this crowd.

Law

- Crime against humanity under Article 3(f) of the ICTR Statute.
Article 12(First)(f) of the IHT Statute is equivalent to Article 3(f) of the ICTR Statute.

Reasoning for Finding Rape to be Torture

- The perpetrator inflicted severe mental suffering sufficient to form the material element of torture
- The rape was committed on the basis of discrimination
- The Accused acted intentionally and with the awareness that he was influencing others to commit rape for a discriminatory purpose as part of a widespread attack on the civilian population on ethnic grounds

OPINION LANGUAGE

Paragraph 482 – Noting, in particular, the extreme level of fear occasioned by the circumstances surrounding the event and the nature of the rape of Victim A, the Chamber finds that the perpetrator inflicted severe mental suffering sufficient to form the material element of torture. It is therefore unnecessary to determine whether this rape also inflicted *severe physical* pain or suffering, for which the Prosecutor only adduced evidence of the fact that non-consensual intercourse occurred.

Paragraph 483 – The Chamber finds that the rape was committed on the basis of discrimination, targeting Victim A because she was a Tutsi woman. The Chamber recalls that severe suffering inflicted for the purposes of discrimination constitutes torture and, therefore, finds that the principal perpetrator tortured Victim A by raping her for a discriminatory purpose.

Opinion Language (continued)

Paragraph 484 – The Chamber also finds that the torture formed part of the widespread attack on the civilian population since the victim was raped because she was a Tutsi, the ethnicity targeted by the attack. The Chamber finds that the perpetrator was aware of the larger context of his actions, since he acknowledged that he was acting on the encouragement of the Accused to rape women as part of their broader work of killing Tutsis and he knew that others from the crowd were similarly targeting Tutsis for rape and murder. The Chamber therefore finds that the principal perpetrator committed torture as a crime against humanity.

Paragraph 485 – The Chamber finds that by encouraging a crowd to rape women because of their ethnicity, the Accused was encouraging the crowd to inflict severe physical or mental pain or suffering for discriminatory purposes. Therefore, he was instigating not only rape, but rape for a discriminatory purpose, which legally constitutes torture. The Chamber finds that his words were causally connected to and substantially contributed to the torture of Victim A because immediately after the Accused made his remarks to the crowd, the assailant went to a nearby home and tortured Victim A by raping her because she was a Tutsi woman. The Chamber notes that the Accused's general influence in the community and the fact that his statements were made in the presence of commune and military authorities gave his instigation greater force and legitimacy. The Chamber finds that the Accused acted intentionally and with the awareness that he was influencing others to commit rape for a discriminatory purpose as part of a widespread attack on the civilian population on ethnic grounds. Therefore, the Chamber finds that the Accused is criminally responsible for instigating torture as a crime against humanity.

European Court of Human Rights

Aydin v. Turkey – August 26, 1997

Facts

The applicant was taken to an interrogation room in the gendarmerie headquarters and raped by an individual in military clothing.

Law

- Violation of Article 3 (prohibition of torture) of the European Convention on Human Rights (ECHR).

Article 13(First)(b) of the IHT Statute is equivalent to Article 3 of the ECHR.

Reasoning for Finding Rape to be Torture

- An especially grave and abhorrent form of ill-treatment
- The offender [an official] can exploit the vulnerability and weakened resistance of his victim with ease
- Leaves deep psychological scars on the victim
- Acute physical pain of forced penetration

OPINION LANGUAGE

Paragraph 83 – “Rape of a detainee by an official of the State must be considered to be an especially grave and abhorrent form of ill-treatment given the ease with which the offender can exploit the vulnerability and weakened resistance of his victim. Furthermore, rape leaves deep psychological scars on the victim which do not respond to the passage of time as quickly as other forms of physical and mental violence. The applicant also experienced the acute physical pain of forced penetration, which must have left her feeling debased and violated both physically and emotionally.”

Paragraph 86 – “Against this background the Court is satisfied that the accumulation of acts of physical and mental violence inflicted on the applicant and the especially cruel act of rape to which she was subjected amount to torture in breach of Article 3 of the Convention.”

Note

Article 13 of the ECHR imposes an obligation on states to carry out a thorough and effective investigation of incidents of torture. This obligation is implicit in the notion of an “effective remedy” (see *Aksoy v. Turkey* 1 BHRC 625 at 646-647 para. 98 (1996)). Here, it appeared that the Public Prosecutor’s primary concern in ordering medical examinations was to establish whether the applicant had lost her virginity. Instead, the focus of the examinations should have been whether the applicant was a rape victim. No attempt was made to psychologically evaluate whether her attitude and behavior conformed to that of a rape victim. Accordingly, *Aydin* also concludes that no thorough and effective investigation was conducted into the applicant’s allegations. This failure undermined the effectiveness of any other remedies which may have existed given the centrality of the Public Prosecutor’s role to the system of remedies as a whole. There was therefore a violation of Article 13 of the Convention.

Inter-American Commission on Human Rights ***Raquel Martí de Mejía v. Perú* – March 1, 1996**

Facts

A Peruvian soldier told Raquel Mejía that she was considered a subversive and raped her. The soldier returned, dragged her into her room and raped her again.

Law

- Violation of Article 5 (right to humane treatment) of the American Convention on Human Rights.
Article 13(First)(b) of the IHT Statute is equivalent to Article 5 of the American Convention.
- The Commission defined torture and established three elements that must be satisfied for a finding of torture under Article 5 of the American Convention:
 - 1) It must be an intentional act through which physical and mental pain and suffering is inflicted on a person;
 - 2) it must be committed with a purpose; and
 - 3) it must be committed by a public official or by a private person acting at the instigation of the former.

Reasoning for Finding Rape to be Torture

- Causes physical and mental suffering in the victim
- The victims are commonly hurt or, in some cases, are even made pregnant
- Psychological trauma that results from having been humiliated and victimized and from suffering the condemnation of the members of their community if they report what has been done to them

OPINION LANGUAGE

“Regarding the first element, the Commission considers that rape is a physical and mental abuse that is perpetrated as a result of an act of violence... Rape causes physical and mental suffering in the victim. In addition to the violence suffered at the time it is committed, the victims are commonly hurt or, in some cases, are even made pregnant. The fact of being made the subject of abuse of this nature also causes a psychological trauma that results, on the one hand, from having been humiliated and victimized, and on the other, from suffering the condemnation of the members of their community if they report what has been done to them... [Regarding the second element,] Raquel Mejía was raped to personally punish and humiliate her... [Regarding the third element,] the man who raped Raquel Mejía was a member of the security forces... Accordingly, the Commission, having established that the three elements of the definition of torture are present in the case under consideration, concludes that the Peruvian State is responsible for violation of Article 5 of the American Convention.”

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.

Overview of Sexual Violence in International Law

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.

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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.

Overview of Sexual Enslavement in International Law

Sexual Enslavement in the International Criminal Court

The IHT Statute and Elements of Crimes are virtually the same as the Rome Statute and ICC Elements of Crimes.

Rome Statute

The Rome Statute was the first to codify sexual slavery.

- Sexual slavery is a crime against humanity under Article 7(1)(g).
- “Enslavement” is defined under Article 7(2)(c) as “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.” “Sexual slavery” is not defined.
- Sexual slavery is also a war crime under Article 8(2)(b)(xxii) and Article 8(2)(e)(vi).

ICC Elements of Crimes

Article 7(1)(g)-2: Crime Against Humanity of Sexual Slavery

1. The perpetrator exercised 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.
2. The perpetrator caused such person or persons to engage in one or more acts of a sexual nature.
3. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
4. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Article 8(2)(b)(xxii)-2: War Crime of Sexual Slavery

1. The perpetrator exercised 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.
2. The perpetrator caused such person or persons to engage in one or more acts of a sexual nature.
3. The conduct took place in the context of and was associated with an international armed conflict.*
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

* Article 8(2)(3)(vi)-2 similarly lists sexual slavery as a war crime substituting “the conduct took place in the context of and was associated with an armed conflict not of an international character” for point three.

International Criminal Tribunal for the Former Yugoslavia (ICTY) *Prosecutor v. Kunarac et al. (“Foca”) – February 22, 2001*

Facts

The accused’s criminal conduct was part of a systematic attack on the non-Serb civilian population which included the specific targeting of Muslim women, who were detained in “rape camps” where they were held in sexual slavery and repeatedly raped.

Law

- Crime against humanity under Article 5(c) (enslavement) of the ICTY Statute.
Article 12(First)(c) of the IHT Statute is equivalent to Article 5(c) of the ICTY Statute. Article 12(First)(g) of the IHT Statute specifically lists sexual slavery as a Crime Against Humanity, while Article 13(Second)(v) lists sexual slavery as a War Crime.

Note

The ICTY Statute does not define “enslavement.” The Trial Chamber looked to international humanitarian law and human rights law that address it (including the 1926 Slavery Convention, 1956 Supplementary Slavery Convention, 1957 Forced Labor Convention, 1946 Nuremberg judgment, 1948 *Milch* and 1947 *Pohl* judgments of the US Military Tribunal, and 1949 Geneva Conventions). The Trial Chamber also looked to international human rights treaties that address slavery without explicitly defining it (the 1948 Universal Declaration of Human Rights, 1966 International Covenant on Civil and Political Rights, 1950 European Convention on Human Rights, 1969 American Convention on Human Rights, and 1981 African Charter on Human and Peoples’ Rights).

***** The Trial Chamber noted that the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) includes an obligation that states parties suppress all forms of traffic in women. The Trial Chamber also acknowledged that the 1989 Convention on the Rights of the Child forbids trafficking in children.**

Reasoning: Indications of Enslavement

- Elements of control and ownership; the restriction or control of an individual’s autonomy, freedom of choice or freedom of movement; and, often, the accruing of some gain to the perpetrator.
- The consent or free will of the victim is absent.
- Exploitation; the exaction of forced or compulsory labor or service, often without remuneration and often, though not necessarily, involving physical hardship; sex; prostitution; and human trafficking.
- Control of someone’s movement, control of physical environment, psychological control, measures taken to prevent or deter escape, force, threat of force or coercion, duration, assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality and forced labor.

OPINION LANGUAGE

Paragraph 539 – In summary, the Trial Chamber finds that, at the time relevant to the indictment, enslavement as a crime against humanity in customary international law consisted of the exercise of any or all of the powers attaching to the right of ownership over a person.

Paragraph 540 – Thus, the Trial Chamber finds that the *actus reus* of the violation is the exercise of any or all of the powers attaching to the right of ownership over a person. The *mens rea* of the violation consists in the intentional exercise of such powers.

Paragraph 541 – This definition may be broader than the traditional and sometimes apparently distinct definitions of either slavery, the slave trade and servitude or forced or compulsory labour found in other areas of international law. This is evidenced in particular by the various cases from the Second World War referred to above, which have included forced or compulsory labour under enslavement as a crime against humanity. The work of the ILC, discussed above, further supports this conclusion.

Paragraph 542 – Under this definition, indications of enslavement include elements of control and ownership; the restriction or control of an individual's autonomy, freedom of choice or freedom of movement; and, often, the accruing of some gain to the perpetrator. The consent or free will of the victim is absent. It is often rendered impossible or irrelevant by, for example, the threat or use of force or other forms of coercion; the fear of violence, deception or false promises; the abuse of power; the victim's position of vulnerability; detention or captivity, psychological oppression or socio-economic conditions. Further indications of enslavement include exploitation; the exaction of forced or compulsory labour or service, often without remuneration and often, though not necessarily, involving physical hardship; sex; prostitution; and human trafficking. With respect to forced or compulsory labour or service, international law, including some of the provisions of Geneva Convention IV and the Additional Protocols, make clear that not all labour or service by protected persons, including civilians, in armed conflicts, is prohibited – strict conditions are, however, set for such labour or service. The “acquisition” or “disposal” of someone for monetary or other compensation is not a requirement for enslavement. Doing so, however, is a prime example of the exercise of the right of ownership over someone. The duration of the suspected exercise of powers attaching to the right of ownership is another factor that may be considered when determining whether someone was enslaved; however, its importance in any given case will depend on the existence of other indications of enslavement. Detaining or keeping someone in captivity, without more, would, depending on the circumstances of a case, usually not constitute enslavement.

Paragraph 543 – The Trial Chamber is therefore in general agreement with the factors put forward by the Prosecutor, to be taken into consideration in determining whether enslavement was committed. These are the control of someone's movement, control of physical environment, psychological control, measures taken to prevent or deter escape, force, threat of force or coercion, duration, assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality and forced labour. The Prosecutor also submitted that the mere ability to buy, sell, trade or inherit a person or his or her labours or services could be a relevant factor. The Trial Chamber considers that the *mere ability* to do so is insufficient, such actions actually occurring could be a relevant factor.

**Women's International War Crimes Tribunal for the Trial on
Japan's Military Sexual Slavery (Tokyo Tribunal)
*The Prosecutors and the Peoples of the Asian Pacific
v. Hirohito Emperor Showa et al.*
December 4, 2001**

On December 3-4, 2001, the Women's International War Crimes Tribunal held a legal hearing in The Hague about Japan's role in setting up brothels to service Imperial Army soldiers during World War Two. The exercise—a repeat of a hearing held in 2000 in Tokyo—was convened by a group of women's rights activists. Although the Tribunal lacks legal authority, it has nonetheless forced the Japanese government to acknowledge its culpability, and provided a sense of justice for the wartime victims.

Facts

Imperial Army soldiers raped and sexually enslaved an estimated 200,000 Korean, Indonesian, Chinese, Filipino, Dutch, Malaysian and Taiwanese women in Japanese brothels during World War Two.

Finding

- Crime against humanity (rape and sexual slavery) under Article 3 of the Tribunal Charter.

Reasoning

- Designed and maintained to facilitate the rape and sexual slavery of tens of thousands.
- The scale of the “comfort system” was so enormous, the conditions so inhumane, the operations so consistent.

OPINION LANGUAGE

Paragraph 794 – In sum, the Judges find that the “comfort system” was designed and maintained to facilitate the rape and sexual slavery of tens of thousands of young girls and women from occupied or conquered territories in the Asia-Pacific region. The scale of the “comfort system” was so enormous, the conditions so inhumane, and the operations so consistent, that no other conclusion can be reached but that the highest level political and military officials must have known of the criminal nature of the system which they set in motion and sustained. Indeed, a system so vast required the planning and knowing participation of a large number of actors at all levels of the hierarchy. Military and government leaders responsible for organizing and supervising the movement and activities of troops had to have approved of the “comfort stations” or other facilities for rape and sexual slavery and/or known of the criminal nature of the system. Indeed, from the lowest level soldier visiting the stations, to the top military and government officials who devised and oversaw the regulation of the system, to midlevel actors who procured women and girls for the stations and supplied the necessities, officials at all levels participated in facilitating and maintaining the system of rape and sexual slavery. In light of the fact that there were regulations distinguishing between visits to the “comfort stations” by officers and soldiers, it is the view of the Judges that many superiors also used the “comfort stations,” which would also serve to condone and encourage the system.

The Special Court For Sierra Leone Indictment of Charles Taylor

The Prosecutor against Charles Taylor

Amended Indictment:

Count 5: Sexual Slavery and any other form of sexual violence, a CRIME AGAINST HUMANITY, punishable under Article 2.g. of the statute.

The Prosecutor against Alex Tamba Brima et al

Further Amended Consolidated Indictment

Counts 6-9 Sexual Violence:

Para 51. Widespread sexual violence committed against civilian women and girls included brutal rapes, often by multiple rapists, and forced ‘marriages’.

Para 54. Between about 1 May `998 and 31 November 1998, members of the AFRC/RUF raped an unknown number of women and girls in locations in Bombali District... In addition, an unknown number of abducted women and girls were used as sex slaves and/or forced into “marriages”...

Sexual Enslavement in the Iraq High Tribunal

IHT Statute

- Sexual slavery is a crime against humanity under Article 12(First)(g).
- “Enslavement” is defined under Article 12(Second)(c) as “the exercise of any or all of the powers attached to the right of ownership over a person and includes the exercise of such power in the course of human trafficking, in particular women and children.” “Sexual slavery” is not defined.
- Sexual slavery is also a war crime under Article 13(Second)(v) and Article 12(Fourth)(f).

IHT Elements of Crimes

9. Article 12(a)(7): Crime Against Humanity of Sexual Slavery

- a. The perpetrator willfully exercised 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, including, but not limited to, exacting forced labor or otherwise reducing a person to a servile status as defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956, or the trafficking in persons, in particular women and children;
- b. The perpetrator caused such person or persons to engage in one or more acts of a sexual nature;
- c. The conduct was committed as part of a widespread or systematic attack directed against a civilian population; and
- d. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

39. Article 13(b)(22): War Crime of Sexual Slavery

- a. The perpetrator willfully exercised 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, including, but not limited to, exacting forced labor or otherwise reducing a person to a servile status as defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956, or the trafficking in persons, in particular women and children;
- b. The perpetrator caused such person or persons to engage in one or more acts of a sexual nature;
- c. The conduct took place in the context of and was associated with an intentional armed conflict; and *
- d. The perpetrator was aware of the factual circumstances that established the existence of an armed conflict.

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Honour Crimes

Iraqi Laws Condoning Honour Killings Violate Women's Access to Justice as Required by the Iraq Constitution, CEDAW, ICCPR and Security Council Resolution 1325

Definition of Honour Crimes

Honour killings are the most prevalent form of honour crimes. These murders are mostly committed by males against female relatives, who are perceived to have brought dishonour upon the family. A woman can be targeted by individuals within her family for a variety of reasons, including: refusing to enter into an arranged marriage, being the victim of a sexual assault, seeking a divorce (even from an abusive husband) or allegedly committing adultery. The mere perception that a woman has behaved in a specific way to "dishonour" her family, is sufficient to trigger an attack.

Statistics on Honour Crimes in Iraq

(see table for worldwide)

In northern Iraq, more than 4,000 women have been maimed and killed to date in the name of honour; the killers have not been brought to justice. [Kurdish Women's Action Against Honour Killings (KWAHK)] *There are no exact statistics on honour crimes because women are reluctant to come forward due to the unjust laws.*

Articles in Iraqi Penal Code Number 11 of 1969 that Condone Honour Crimes

(see attached chart)

Article 111 of the Iraqi Penal Code was introduced by Saddam Hussein in 1990

He who discovers his wife, one of his female relatives committing adultery or a male relative engaged in sodomy and kills, wounds or injures one of them, is exempted from any penalty.

Paragraph 128- (1) ...the commission of an offense with honourable motive or in response to the unjustified and serious provocation of a victim of an offense is considered a mitigating excuse.

Revolutionary Command Council Order Number 6 of 2001:

Considering the killing of one's wife or a close female relative (muharam) for honour reasons a mitigating factor under law.

Subject to the conditions of clause (1) of Article 42 of the Constitution, the Revolutionary Command Council decided the following:

First: For the purpose of implementing Article 130 of the Penal Code Number 111 of 1969, it shall be a mitigating factor if a man kills his wife or muharam for honour reasons, or if one of the relatives of the deceased woman killed the one who imputed dishonour to any of them by making reference to her disgraceful deed, which she was killed for.

IRAQI KURDISTAN: Amended Penal Code Provisions

The government in Kurdistan amended the IPC in 2000 and 2001 to remove mitigated sentences for crimes motivated by honour. This means that women in Kurdish Iraq have more rights than women in the rest of Iraq.

- The Patriotic Union of Kurdistan (PUK) passed Decree No.59 on April 12, 2000: Lenient punishment for killing women or torturing them with the pretext of purifying shame shall not be implemented. The court should not apply articles 130 and 132 of the Iraqi Penal Code no.111 of the year 1969 to reduce the penalty of the perpetrator.
- The Kurdistan Democratic Party (KDP) passed **Law No.14 of 2002:**

Crimes against women with the pretext of ‘honourable motivation’ will not be legally liable for lenient punishment and Articles 128, 130 and 131 of the Iraqi Penal Code no.111 of the year 1969 will not be implemented.

International Bodies on Honour Crimes

U.N. General Assembly 59th session, Third Committee *October 2004*

Bearing in mind that States have an obligation to exercise due diligence to prevent, investigate and punish the perpetrators of crimes committed against women and girls in the name of honour and to provide protection to the victims, and that not doing so violates and impairs or nullifies the enjoyment of their human rights and fundamental freedoms.

CEDAW Committee General Recommendation No.19 *1992 para.24*

The Committee on the Elimination of Discrimination Against Women recommends that:

- (r) measures that are necessary to overcome family violence should include:
 - (ii) legislation to remove the defense of honour in regard to the assault or murder of a female family member.

Concluding Observations of the CEDAW Committee: Iraq *06/14/2000 para.193, 194.*

The Committee is also deeply concerned by the violence against women perpetrated through honour killings. The Committee urges the Government in particular to condemn and eradicate honour killings and ensure that these crimes are prosecuted and punished in the same way as other homicides.

International Law

CEDAW, Article 5(a)

Modify the social and cultural patterns of conduct of men and women with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

International law addresses situations in which custom and tradition interfere with the treatment of women as citizens and human beings with the same rights as men.

ICCPR, Article 9

Everyone has the right to liberty and security of person.

International protections for the right of women to sexual autonomy can also be found in the principal of bodily integrity enumerated in ICCPR provisions on liberty and security of person. Therefore, when a woman is severely punished for pre-marital sex, her right to make free decisions regarding her body is violated.

United Nations, Beijing Declaration and Platform for Action October 1995, para.96.

International human rights law guarantees women the right to have control over and decide freely and responsibly on matters relating to their sexuality free of coercion, discrimination, and violence.

Security Council Resolution 1325

10. *Calls* on all parties to armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict;

11. *Emphasizes* the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, war crimes including those relating to sexual violence against women and girls, and in this regard, stresses the need to exclude these crimes, where feasible from amnesty provisions;

International Trends to Remove Honour as a Defense

Law Reform via Legislation

TURKEY:

In 2004, the new Turkish Penal Code was accepted by the Turkish Parliament.

- Certain articles in the Penal Code that were used to grant sentence reductions to honour killing perpetrators have been removed.
- There has been an amendment to the “Unjust Provocation” article, previously employed to grant sentence reductions in honour killing cases. The Justification of Article 29, now entitled “Unjust Acts,” states that this reduction is not applicable to killings in the name of honour.
- Article 38, of the Penal Code states that any person who forces a person to commit crimes receives the same sentence as the perpetrator, and if the person forced is a minor, the sentence is increased.

JORDAN:

- A Draft law amending Article 340 of the Penal Code which provides for a reduced penalty for men who murder their female relatives in cases of honour killings was submitted to Parliament for consideration in 1999.
- In November of 1999, the amendment was defeated by a large majority of the Lower House of Parliament.

Law Reform Via Judiciary - Cases

JORDAN:

In October 2002, for the first time, the Court of Cassation sent an honour crime case back to the Criminal Court for tougher sentencing on the basis that the murder was premeditated. The original 3-month sentence passed against Fawaz Syouf was increased to 10 years.

- In January 2002, two brothers from Jordan were given a three-month prison sentence for killing their sister Safa Samir on 7 July 2001.
- The brothers turned themselves in to the police, claiming to have killed their sister to cleanse the family’s honour.
- They were tried for premeditated murder, but the Criminal Court reduced the charge to a misdemeanor citing Article 98 of the Penal Code, which stipulates that a person "provoked" into committing a crime benefits from a reduction in penalty. "The two defendants benefit from a reduction in penalty because their sister's acts brought shame to her family," the court ruled.
- The Court of Cassation increased the sentence against Fawaz Syouf for the honour killing of his sister.

DENMARK:

In June 2006, nine people were sentenced to prison for the honour killing of an 18 year old woman, including family members and friends who plotted and carried out the murder.

- Ghazala Khan was a Danish-Pakistani woman, who was shot and killed in Denmark by her brother after she had married against the will of the family.
- The murder of Ghazala had been ordered by her father to save the family “honour.”
- Nine members of the family and friends of the family took part in arranging and performing the murder.
- They were all found guilty by Østre Landsret (the High Court of Eastern Denmark) on 27 June 2006 on counts of manslaughter and attempted manslaughter (of her husband).

The convicted were ordered to pay one million Danish kroner (134,000 euros) to the husband.

Other International Bodies’ Comments

Commission on Human Rights: Report to the Social and Economic Council on the Sixteenth Session of the Commission Resolution April 2004

The UN Commission on Human Rights has addressed “honour killings” in the context of the right to life and called on States to “investigate promptly and thoroughly all killings committed in the name of passion or in the name of honour... and to bring those responsible to justice before a competent, independent and impartial judiciary and to ensure that such killings, including those committed by security forces, police and law enforcement agents, paramilitary groups or private forces, are neither condoned nor sanctioned by government officials or personnel.

General Comment No.28 Human Rights Committee of the ICCPR 03/2000 para.31

The right to equality before the law and freedom from discrimination, protected by article 26, requires States to act against discrimination by public and private agencies in all fields. The commission of so-called “honour crimes” which remain unpunished constitutes a serious violation of the Covenant and in particular of articles 6, 14, and 26.

Concluding Observations of the CEDAW Committee: Jordan 01/27/2000 para.179.

The Committee urges the Government to provide all possible support for the speedy repeal of article 340 and to undertake awareness-raising activities that make “honour killings” socially and morally unacceptable.

Concluding Observations of the CEDAW Committee: Turkey 12/08/97 para.179,195

**note Turkey has since repealed its old laws and replaced it with stricter laws.*

The Committee was concerned about the provisions of the Penal Code that allowed less rigorous sanctions or penalties for “honour killings”. The concept contravened the principle of respect for human life and the security of all persons, which was protected by all the international human rights laws. The practice of so-called honour killings, based on customs and traditions, was a violation of the right to life and security of persons and therefore must be appropriately addressed under the law.