

THE HAGUE PRINCIPLES ON SEXUAL VIOLENCE

ANSWERS FOR PRACTITIONERS OF INTERNATIONAL LAW

1. THE ROME STATUTE PROHIBITS VARIOUS SEXUAL CRIMES AND “ANY OTHER FORM OF SEXUAL VIOLENCE”. WHAT ARE THESE OTHER FORMS OF SEXUAL VIOLENCE?

- While the Rome Statute allows for the prosecution of “any other form of sexual violence” that is not explicitly mentioned, the ICC’s legal instruments provide no guidance as to the parameters of what constitutes an act of a sexual nature. International jurisprudence has established that acts such as injuring someone’s sexual body parts without consent can be prosecuted as a crime against humanity or a war crime. Survivors, however, believe that sexual violence is not limited to those acts established by jurisprudence. From their viewpoint, “other forms of sexual violence” can include acts such as depriving someone of access to HIV treatment, prohibiting certain groups from engaging in consensual sexual activity, or using procedures to determine a person’s sexual orientation. More examples can be found in the Civil Society Declaration, which is part of The Hague Principles.

2. HOW SHOULD WE INTERPRET THE PHRASE “ANY OTHER FORM OF SEXUAL VIOLENCE”?

- The ICC Elements of Crimes only stipulate that in order to establish “any other form of sexual violence”, it must be demonstrated, inter alia, that the perpetrator committed or caused another person to engage in “an act of a sexual nature”. However, no guidance is provided on what constitutes an act of a sexual nature. The Hague Principles attempt to fill this gap and acknowledge that the concept of sexual violence should be interpreted broadly to encompass all violations of sexual autonomy and sexual integrity, which is often characterized by humiliation, domination, and destruction. A delineation of the concept and examples can be found in the Civil Society Declaration, which is part of The Hague Principles.

3. WHY IS IT IMPORTANT TO KNOW ABOUT “OTHER FORMS OF SEXUAL VIOLENCE”?

- Sexual violence occurs in many different forms, but only some are codified, explicitly defined, and included as crimes in international legal instruments. Since

many other forms may not neatly fit within these enumerated crimes, a good understanding of “other forms of sexual violence” is important to close the gap between how the violence is perceived and experienced by victims, and how it is addressed in a court. If certain acts are not recognized or identified as sexual violence, the victims of these crimes risk being marginalized.

4. THE ROME STATUTE ALLOWS FOR THE PROSECUTION OF ACTS OF SEXUAL VIOLENCE AS A CRIME AGAINST HUMANITY IF THE ACT IS OF “COMPARABLE GRAVITY” TO OTHER CRIMES AGAINST HUMANITY INVOLVING SEXUAL VIOLENCE. WHAT IS THE “COMPARABLE GRAVITY” CRITERION FOR THE PROSECUTION OF SEXUAL VIOLENCE AS A CRIME AGAINST HUMANITY?

- To date, the only jurisprudence addressing the “comparable gravity” criterion emanates from a decision in the Bemba case, in which an ICC Pre-Trial Chamber declined to include in an arrest warrant a charge of other forms of sexual violence as a crime against humanity for “order[ing] people to undress in public in order to humiliate them”. The Pre-Trial Chamber ruled that these facts did constitute an act of sexual violence of comparable gravity to other crimes against humanity involving sexual violence. (ICL Guidelines, paras 26–29) Findings from the consultations during the development of The Hague Principles suggest that the gravity of an act may be exacerbated if the act, for example, occurred in public, was committed by multiple perpetrators, performed by staff of a humanitarian organization, or the victim contracted an infection.

5. FOR AN ACT OF SEXUAL VIOLENCE TO AMOUNT TO A WAR CRIME, IT MUST BE OF A GRAVITY COMPARABLE TO THAT OF A GRAVE BREACH OR SERIOUS VIOLATION OF THE GENEVA CONVENTIONS. WHAT IS THE “COMPARABLE GRAVITY” CRITERION FOR THE PROSECUTION OF SEXUAL VIOLENCE AS A WAR CRIME?

- To date, the jurisprudence has not addressed the “comparable gravity” threshold in relation to war crimes. Findings from the development of The Hague Principles, however, suggest that the gravity of an act may be exacerbated if the act, for example, occurred in public, was committed by multiple perpetrators, performed by staff of a humanitarian organization, or the victim contracted an infection.

6. WHAT ARE INDICIA THAT AN ACT OF SEXUAL VIOLENCE IS RELATED TO AN ARMED CONFLICT?

- Sexual violence is likely related to an armed conflict if the perpetrator is a combatant and the victim a non-combatant, or if the victim belonged to the opposing party. Other indications can be the fact that the sexual violence crime may be said to serve the ultimate goal of a military campaign or that it was committed as part of the perpetrator’s official duties. (ICL Guidelines, para 37).

7. WHAT ARE THE HAGUE PRINCIPLES ON SEXUAL VIOLENCE?

- The Hague Principles are the result of extensive consultations with more than 500 survivors, 60 civil society organizations, and legal practitioners from around the world. As such, they provide widely shared views on what makes violence “sexual”.

8. HOW CAN I USE THE HAGUE PRINCIPLES ON SEXUAL VIOLENCE?

- The Hague Principles were developed to provide guidance for criminal justice practitioners on the interpretation and application of legal principles relating to sexual violence. The Hague Principles can be used, for example, to identify and gather evidence of various forms of sexual violence, and to learn about or teach a broad, forward - looking, and culturally sensitive understanding of sexual violence. The International Criminal Law Guidelines on Sexual Violence (ICL Guidelines), which are part of the Principles, translate the input from survivors and experts into practical guidance to support practitioners in investigating and prosecuting conflict and atrocity-related sexual violence (CARSV). The Civil Society Declaration, which is also part of the Principles, includes non - exhaustive lists of examples of sexual body parts and indicators of when an act is sexual in nature.