

# CHART WITH ESTABLISHED ICL JURISPRUDENCE ON SEXUAL VIOLENCE

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## a. Beating, biting, mutilating or otherwise causing injury to a sexual body part

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- *Todorović Sentencing Judgement*, paras 38, 34, 37 (Stevan Todorović pled guilty to sexual assault as the underlying criminal conduct of the crime against humanity of persecution for acts including: "beat[ing] [the victim] and kick[ing] him in the genital area" and ordering the victim to bite another man's penis);
- *Simić Sentencing Judgement*, para 63 (Milan Simić pled guilty to torture as a crime against humanity for acts including: "order[ing] [victims] to stand with their legs apart in order to receive forceful kicks to their genitals");
- *Tadić Trial Judgement*, paras 206, 194-198, 720, 722-730 and p.285 (Dusko Tadić convicted of the war crime of cruel treatment and the crime against humanity of inhumane acts for acts including: ordering a prisoner to "hit and bite [another prisoner's] genitals" and "bit[e] off one of [his] testicles"); *Tadić Appeal Judgement*, paras 68, 170-171 and p. 144 (*overturning* Tadić's acquittal and entering convictions for the war crimes of torture and wilfully causing great suffering or serious injury to body and health based, inter alia, on these acts);
- *Kvočka et al Trial Judgement*, para 180, fn 343 (*finding that* "Sexual violence would also include such crimes as sexual mutilation");
- *Sesay et al Trial Judgement*, paras 1208, 1307-1309, 1347, 1352, 2063 and pp 677-678, 680-682, 684-685 (each accused convicted of the war crimes of terrorism and outrages on personal dignity for acts including: "slitting the [genitalia] of several male and female civilians with a knife"); *Sesay et al Appeal Judgement*, pp. 477-479 (*affirming* the convictions).
- *Brđanin Trial Judgement*, paras 498, 524, 538, 998, 1050, 1061, 1088 (Radoslav Brđanin convicted of the crime against humanity of persecutions, incorporating torture, and the war crime of torture for acts including: "kick[ing] [the victim] in [his] genitals"); *Brđanin Appeal Judgement*, paras 276, 288-289, and p. 162 (*reversing* Brđanin's convictions for these crimes, holding that the Trial Chamber erred in finding Brđanin responsible for aiding and abetting torture in the camps and detention facilities);
- *Kajelijeli Judgment and Sentence*, paras 936, 678, 683, 934-40, 942 (*finding that* the Interahamwe committed rapes and sexual assaults, constituting inhumane acts, including "[c]utting a women's breast off and licking it, and piercing a woman's sexual organs with a spear", *but acquitting* Juvénal Kajelijeli of the crime against humanity of other inhumane acts for these acts as the Prosecution did not prove that he was physically present during, gave an order for or knew or had reason to know about their commission); *Kajelijeli Appeal Judgement*, paras 4, 325 (*affirming* Kajelijeli's acquittal of this crime);

- *Krajišnik Judgement*, paras 372, 800, 803-806, 1126 (Momcilo Krajišnik convicted of the crime against humanity of persecution for acts including: “sexually mutilat[ing] [male detainees]”); *Krajišnik Appeal Judgement*, paras 283-4, 820 (reversing Krajišnik’s conviction for the crime against humanity of persecution for all underlying acts other than forcible transfer and deportation);
- *Kenyatta et al Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute*, paras 265-266, 264 (finding “every act of violence which targets parts of the body commonly associated with sexuality should [not] be considered an act of sexual violence”, that such determinations are “inherently a question of fact”, that “the evidence placed before it [did] not establish the sexual nature of the acts of forcible circumcision and penile amputation”, and therefore “the acts under consideration do not qualify as other forms of sexual violence” under the Rome Statute. Nevertheless, following this determination, the ICC OTP undertook to: “continue to present acts of genital mutilation or deliberate injuries to the genitalia as sexual crimes”. See *Policy Paper on Sexual and Gender-Based Crimes 2014*, fn 14.
- See also ICC OTP, *Report on Preliminary Examination Activities 2016*, para 94 (noting, in relation to the preliminary examination in the situation in Iraq/UK, allegations from an Article 15 communication from Public Interest Lawyers of “other forms of sexual violence”, including “inflicting physical injuries to the genitalia of detainees”).
- See also UN ECOSOC, “Contemporary forms of slavery, systematic rape, sexual slavery and slavery like practices during armed conflict: Final Report”, para 21 (stating that “sexual violence covers both physical and psychological attacks directed at a person’s sexual characteristics, such as mutilating a person’s genitals, or slicing off a women’s breasts”).

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**b. Causing someone to form a reasonable apprehension or fear of acts of sexual violence, including through sexual threats**

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- *Kvočka et al Trial Judgement*, paras 98, 108, 229, 234, 319-321, 408, 415, 419-420, 470, 504, 578-579, 691, 752-753 (Each accused convicted of the war crime of torture and the crime against humanity of persecution for acts including: “subject[ing] [women] to sexual intimidation or violence in Omarska” camp such as “approach[ing] a female detainee in the eating area, unbutton[ing] her shirt, [drawing] a knife over one of her breasts, and threaten[ing] to cut it off”); *Kvočka et al Appeal Judgement*, paras 329-34, 339, 594-599 and pp. 242-243 (overturning Miroslav Kvočka’s conviction for persecution for acts of “rape and sexual assault”, finding that the Trial Chamber erred in determining these acts were committed in Omarska while he was employed there, and overturning Zoran Zigic’s conviction for persecution for these acts, finding that no reasonable finder of fact could have concluded that he participated significantly in the functioning of Omarska camp and could thus be held responsible as a participant in the joint criminal enterprise);
- *Simić Sentencing Judgement*, para 63 (Milan Simić pled guilty to torture as a crime against humanity for acts including: participating in beating the victim while “[the victim] was forced to pull down his pants and one of the other Serb men who accompanied [the accused] threatened to cut off his penis while brandishing a knife”);
- *Brđanin Trial Judgement*, paras 516-517, 524, 538, 998, 1013, 1050, 1061, 1088 (Radoslav Brđanin convicted of the crime against humanity of persecutions, incorporating torture, and the war crime of torture for sexual assaults, including: “the threat of rape” and “uncover[ing] the breast of a female detainee, [taking] out a knife, and [running] it along her breast for several minutes”). *But see Brđanin Appeal Judgement*, paras 276, 288-289, and p. 162 (reversing Brđanin’s convictions for these crimes, holding that the Trial Chamber erred

in finding Brđanin responsible for aiding and abetting torture in the camps and detention facilities).

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#### c. Causing the victim to masturbate himself or herself or another person

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- *Martić Judgement*, paras 288, fn 899, 454-455, 477, 480, 518 (Milan Martić convicted of the crimes against humanity of persecution and torture and the war crime of torture for acts including: “sexually abus[ing] [detainees] through forced mutual oral sex or oral sex with prison guards, and mutual masturbation”); *Martić Appeal Judgement*, paras 185-190, 355 (affirming Martić’s convictions for these crimes).
- See also, *Report on Preliminary Examination Activities 2016*, para 94 (noting, in relation to the preliminary examination in the situation in Iraq/UK, allegations from an Article 15 communication from Public Interest Lawyers of “other forms of sexual violence” including “enforced masturbation”).

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#### d. Causing the victim to witness acts of a sexual nature

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- *Furundžija Trial Judgement*, paras 267, 87, 127, 268 and p. 112 (Anto Furundžija convicted of the war crime of torture for acts including: “forc[ing] [a victim] to watch [another soldier’s] sexual attacks on [another victim]”); *Furundžija Appeal Judgement*, p. 79 (rejecting each ground of appeal, dismissing the appeal and affirming *Furundžija’s conviction*);
- *Brđanin Trial Judgement*, paras 1018, 524, 538, 998, 1013, 1050, 1061, 1088 (Radoslav Brđanin convicted of the crime against humanity of persecution, incorporating torture and the war crime of torture for acts including: forcing “Bosnian Muslims and Bosnian Croats [...] to watch other members of their group being killed, raped and beaten”); *But see Brđanin Appeal Judgement*, paras 276, 288-289, p. 162 (reversing Brđanin’s convictions for these crimes, holding that the Trial Chamber erred in finding Brđanin responsible for aiding and abetting torture in the camps and detention facilities);
- *Sesay et al Trial Judgement*, paras 1194, 1299, 1347, 1352 and pp. 677-678, 680-682, 684-685 (each accused convicted of the war crimes of terrorism and outrages upon personal dignity for acts including: “ordering [the victim] to watch and to count the men raping his wife [while] [h]is children [...] were also watching”); *Sesay et al Appeal Judgment*, pp. 477-479 (affirming the convictions).

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#### e. Forced abortion

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- *Kvočka et al Trial Judgement*, para 180, fn 343: (finding that “Sexual violence would also include such crimes as [...] forced abortion”).

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#### f. Forced marriage

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- *Kvočka et al Trial Judgement*, para 180, fn 343: (finding that “Sexual violence would also include such crimes as [...] forced marriage”);
- *Sesay et al Trial Judgement*, paras 1295-1297, 1301, 1406-1413, 1460-1475, 1562-1565, 1579-1583 and pp 677-678, 680-682, 684-685 (each accused convicted of the war crimes of terrorism and outrages upon personal dignity, as well as the crime against humanity of inhumane acts for acts including “forced marriage”); *Sesay et al Appeal Judgment*, pp. 477-479 (affirming the convictions);
- Case 002/02 *Judgment*, paras 3686-3694, 4326, and p. 2230 (convicted of the crime against humanity of other inhumane acts through forced marriage). As of the time of writ-

ing, the Co-Prosecutor's appeal from the Trial Judgment remained pending. See Case 002 [Co-Prosecutors' Appeal against the Case 002/02 Trial Judgment](#).

- *Katanga Trial Judgment*, paras 1000, 1001-1023 (*finding that*, in the context of the aftermath of an attack, "the statement that someone was 'taken as a wife' by a combatant or that she was to 'become his wife' is a clear reference to a coercive environment entailing almost certain engagement in acts of a sexual nature" and that such combatants committed the war crime and crime against humanity of sexual slavery); and paras 1620-1621, 1663-1664 (*acquitting* the accused of these crimes on the basis that they did not fall within the common criminal purpose required to establish liability under Article 25(3)(d)(ii) of the Rome Statute).

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#### g. Having someone undress partially or fully in public while performing physical activities such as dancing, exercising or marching whilst nude

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- *Akayesu Trial Judgment*, paras 688, 685, 692-695, 697, 731-732, 734 and Section 8. Verdict, p. 293 (Jean Paul Akayesu convicted of the crime against humanity of other inhumane acts and genocide for acts including: "order[ing] the Interahamwe to undress a student and force her to do gymnastics naked in the public courtyard of the bureau communal, in front of a crowd, constitut[ing] sexual violence"); *Akayesu Appeal Judgment*, p. 143 (*dismissing* Akayesu's appeal in its entirety);
- *Kunarac et al Judgment*, paras 772, 766-771, 773, 782, 886 (Radomir Kovač convicted of the war crime of outrages upon personal dignity for acts including: "forc[ing] [the victims] to strip and dance naked on a table while [the accused] watched them from the sofa, pointing weapons at them"). *Kunarac et al Appeal Judgment* paras 283-285 and pp. 125-126 (*affirming* Kovač's conviction).
- *Brđanin Trial Judgment*, paras 1013, 524, 538, 998, 1050, 1061 (Radoslav Brđanin convicted of the crime against humanity of persecutions, incorporating torture, and the war crime of torture for sexual assaults, including: "forc[ing] [the victim] to undress herself in front of cheering Bosnian Serb policemen and soldiers"). *But see Brđanin Appeal Judgment*, paras 276, 288-289, p. 162 (*reversing* Brđanin's convictions for these crimes, holding that the Trial Chamber erred in finding Brđanin responsible for aiding and abetting torture in the camps and detention facilities);
- *Bemba Arrest Warrant Decision*, paras 39-40 (*finding* that the act of "order[ing] people to undress in public in order to humiliate them" did not qualify as "other forms of sexual violence" under Article 7(1)(g) of the Rome Statute as it "[did] not constitute forms of sexual violence of comparable gravity to the other crimes set forth in article 7(1)(g) of the Statute").

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#### h. Inspecting someone's sexual body parts, or

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- *Milutinović et al Trial Judgment*, Vol. 2 of 4, paras 631-632, 558, 622, 689-690 and Volume 3 of 4, paras 472, 476, 629, 631, 633, 785, 788, 928, 931, 1135, 1139, 1206-1212 (Nebojša Pavković convicted of the crime against humanity of persecutions through sexual assault for acts including: "[soldiers] forc[ing] [a victim] to take her clothes off [...] search[ing][her and] [telling] [her] to lift her blouse and her bra up [...]"; and "[taking] the women out of the room and search[ing] them one by one [and] forcing them to take their clothes off");
- *Šainović et al Appeal Judgment*, paras 1550, 1582, 1592, 1604 and pp. 739-740, 742 (*holding* that the Trial Chamber erred in declining to convict Nikola Šainović and Sreten Lukić

for these acts, and therefore finding them responsible for persecution as a crime against humanity, through sexual assaults, while declining to enter new convictions).

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**i. The occurrence of menstruation**

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- *Kvočka et al Trial Judgement*, paras 105, 415, 419-420, 470, 504, 578-579, 691, 752-753 (each accused convicted of the war crime of torture and the crime against humanity of persecution for acts including: "forc[ing] [the victim] to prove [she was menstruating] to [a guard]"). *But see Kvočka et al Appeal Judgement*, paras 329-334, 339, 594-599, pp. 242-243 (*overturning* Miroslav Kvočka's conviction for persecution for acts of "rape and sexual assault", finding that the Trial Chamber erred in determining these acts were committed in Omarska while he was employed there, and *overturning* Zoran Žigić's conviction for persecution for these acts, finding that no reasonable finder of fact could have concluded that he participated significantly in the functioning of Omarska camp and could thus be held responsible as a participant in the joint criminal enterprise).

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**j. Kissing or licking the victim's body, especially a sexual body part**

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- *Tadić Trial Judgement*, paras 206, 194, 198, 722-726, 730 and p. 285 (Dusko Tadić convicted of the war crime of cruel treatment and the crime against humanity of inhumane acts for acts including: "order[ing] [a prisoner] to lick [another prisoner's] naked bottom and [a different prisoner] to suck his penis and then to bite his testicles"); *Tadić Appeal Judgement*, paras 68, 170-171 and p. 144 (*overturning* Tadić's acquittal and finding him guilty for these acts, in addition, of the war crimes of torture and wilfully causing great suffering or serious injury to body and health).

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**k. Touching the victim in a sexual way, such as touching a sexual body part, including with a sexual body part, weapon or other object**

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- *Kvočka et al Trial Judgement*, para 180: *finding that* "sexual violence [...] includes such crimes as sexual [...] molestation";
- *Milutinović et al Trial Judgement*, Vol. 2 of 4, paras 631-632, 689, 558, 622, 690 and Volume 3 of 4, paras 472, 476, 629, 631, 633, 785, 788, 928, 931, 1135, 1139, 1206-1212 (Nebojša Pavković convicted of the crime against humanity of persecution through sexual assault for acts including: "soldier[s] searching [a victim] touch[ing] her breasts and taunt[ing] her with sexual comments", "touch[ing] [victims] in a sexual and threatening manner" and "order[ing] a victim to take her clothes off and [...] touching her breasts and vagina, at which point she fainted");
- *Šainović et al Appeal Judgement*, paras 1550, 1582, 1592, 1604 and pp. 739-740, 742 (*holding that* the Trial Chamber erred in declining to convict Nikola Šainović and Sreten Lukić for these acts and therefore finding them responsible for persecution as a crime against humanity, through sexual assaults, while declining to enter new convictions);
- *Furundžija Trial Judgement*, paras 264, 40, 267 and p. 112 (Anto Furundžija convicted of the war crime of torture for acts including: interrogating the victim while "[another soldier] rubbed his knife on the inner thighs of [the victim] and threatened to cut out her private parts if she did not tell the truth in answer to the interrogation"); *Furundžija Appeal Judgement*, p. 79 (*rejecting* each ground of appeal, dismissing the appeal and affirming *Furundžija's conviction*).
- *But see Brđanin Trial Judgement*, paras 516-517, 524, 538, 998, 1013, 1050, 1061, 1088 (Radoslav Brđanin convicted of the crime against humanity of persecutions, incorporating torture, and the war crime of torture for acts including: "uncover[ing] the breast of a female

detainee, [taking] out a knife, and [running] it along her breast for several minutes"); *Brđanin Appeal Judgement*, paras 276, 288-289, p. 162 (reversing Brđanin's convictions for these crimes, holding that the Trial Chamber erred in finding Brđanin responsible for aiding and abetting torture in the camps and detention facilities);

- *Rukundo Judgement*, paras 381, 574-576, 591 (Emmanuel Rukundo convicted for the crime of genocide for acts including: "forc[ing] sexual contact with [a victim] by opening the zipper of his trousers, trying to remove her skirt, forcefully lying on top of her and caressing and rubbing himself against her until he ejaculated and lost his erection". The Trial Chamber found that "[t]he actions in question were clearly of a sexual nature: [...] Rukundo's actions and words, such as telling her that if she made love with him he would never forget her, support the Chamber's finding [...]"); *Rukundo Appeal Judgement*, paras 236, 227-235, 237-2388, 270 (finding that Rukundo's sexual assault on the victim, "while taking place during a genocide, was not necessarily a part of the genocide itself" and accordingly reversing Rukundo's conviction for genocide, in part, for causing serious mental harm to the victim through this assault).
- See also *Report on Preliminary Examination Activities 2016*, para 94 (noting, in relation to the preliminary examination in the situation in Iraq/UK, allegations from an Article 15 communication from Public Interest Lawyers of "other forms of sexual violence" including "provocative physical touching of detainees' genital and anal area, and touching detainees' body with perpetrators' sexual organs").