



# The Hague Principles on Sexual Violence

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## Ensuring a Survivor Centered Approach

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## Sexual Violence in International Criminal Law

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- The Rome Statute codified the crime of “any other form of sexual violence” as a war crime and a crime against humanity but does not offer any definition of what ‘sexual’ might mean, whether by reference to survivor’s experience or otherwise.
  - The Elements of Crimes, that are designed to “assist the Court in the interpretation and application” of Rome Statute crimes, fails to provide any further assistance.
  - The definition in the Elements of Crimes is entirely circular: sexual violence is defined with reference to acts of a sexual nature. Nowhere is it explained what constitutes an act of a sexual nature and thus anything or nothing could meet the definition of sexual violence.
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# ICL examples

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- *Bemba*: failed to seek the views of the victim or affected community on the gravity of the forced nudity that was alleged, or the significance and impact of those acts.
- *Kenyatta*: Pre-Trial Chamber II refused to characterize the forcible circumcision of Luo men as the crime of ‘other forms of sexual violence’, insisting that it should instead be considered as part of the charge of ‘other inhumane acts’.
- *Kenyatta*: PTC confirmation of charges concluded that ‘the determination of whether an act is of a sexual nature is inherently a question of fact’, their claim that [quote], ‘not every act of violence which targets parts of the body commonly associated with sexuality should be considered an act of sexual violence’ [closed quote] was a little more difficult to compute.





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## What makes violence “sexual”?

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We began to ask the questions:

- What makes acts sexual in nature?
- What makes violence sexual?
- When does that violence amount to an international crime?



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## Why does this matter?

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- Hierarchies of victims
- Was it actually a crime?
- Impact of possible reparations
- Stigma
- Validation for survivors

## Call it what it is

- The *Call it what it is* campaign gathered input from more than 500 survivors, civil society, legal practitioners, academics, and policy makers to develop The Hague Principles on Sexual Violence.
- The Principles give an **enhanced understanding of the many various forms of sexual violence** to allow for more inclusive and survivor-centered justice-based responses to these crimes.
- The Principles seek to ensure that violence is not overlooked or trivialized by those who may not always recognise such acts, and to provide survivors with recognition and validation of their experiences.



# Who are the real experts?

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- The foundation of the campaign and the Principles is based on the belief that **survivors are experts** and should be at the center of all work
- The campaign brought together survivors, legal practitioners, academics and civil society to ensure that a broad range of experiences were considered
- We prioritized placing survivors' experience at the front, back and middle of all work in the field of sexual violence in order to move past the current state of misunderstanding and poor outcomes

The background of the slide is a repeating pattern of stylized human silhouettes in profile, facing right. The silhouettes are rendered in a light blue color against a darker blue background. A large, semi-transparent white circle is positioned on the left side of the slide, containing the main text and a list of bullet points.

# Ensuring a victim centered approach

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- 54 consultations
- 26 countries
- Over 500 survivors

## What did we learn?

- Participants were asked to comment on various factors that may make an act “sexual” in nature.
- In all the consultations, participants gave fascinating insights on what can be considered “sexual” but also identified elements that need not be present in order for an act to be considered “sexual”.
- For example, participants in numerous consultations indicated that an act can be “sexual” in nature even if the perpetrator neither intends to derive sexual gratification from it, nor actually derives sexual gratification from it, which has been misconstrued in the legal sphere.

# Translating lived experience into law

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## Examples involving physical contact

- Act involving penetration (vaginal/anal) by sexual organ, body part or object
- Touching
- Genital mutilation
- Violence related to menstruation
- Virginity testing
- Punishment for any sign of sexuality, especially related to the LGBT community or persons affected by disability
- Forcibly undressing somebody

# Translating lived experience into law

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## Examples involving no physical contact

- Sexual harassment
- Coercion to share intimate photos/videos, especially of genitalia
- Recording of consensual or forced sexual intercourse
- Being exposed to nudity
- Being exposed to sexually explicit language

# Translating lived experience into law

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## Examples based on fear and/or sexual humiliation

- Imminent *threat* of sexual violence
- Being forced to defecate or urinate in front of others
- Being forced to dress as a gender not in line with the gender perceived by the survivor
- Dress or behave in a way corresponding with a gender with which the does not identify
- Being forced to use toilet facilities designed in a way that genitals are exposed to others
- Being forced to witness acts of sexual violence

## Lessons learned

- Facilitators remarked that in absence of the need to make a formal statement that included their name and details about perpetrators, participants felt more at ease to disclose information in this setting.
- Indeed, by the accounts of the survivors, consultations guaranteed anonymity – whereas documentation is often based on sworn, formal testimony – and were carried out in an inviting open and engaging manner.
- There was also little to no time pressure imposed on the survivors, and many consultations lasted therefore more than three hours.
- In the Middle East and North African region, regional consultants and partners reported that they had not anticipated the prevalence of “other” acts of violence that are experienced as being “acts of a sexual nature” by survivors.



## THE HAGUE PRINCIPLES ON SEXUAL VIOLENCE

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- The Civil Society Declaration on Sexual Violence
- International Criminal Law Guidelines on Sexual Violence
- Key Principles for Policy Makers on Sexual Violence





## The Hague Principles – A Survivor Centered Approach to Sexual Violence

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- “Sexual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact”.
- International and regional human rights law, for example, that arising from the Inter-American system, repeatedly makes explicit that sexual violence includes both physical and **psychological (or non-physical) acts**.
- State practice also reveals widespread appreciation of both physical and psychological violence, with many State recognising that sexual violence can take place even in the absence of physical contact.





## The Hague Principles – A Survivor Centered Approach to Sexual Violence

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- Definitions of sexual violence across the international, regional and domestic spheres commonly recognise and explicitly make mention of **the legally protected interests** underlying the violence.
  - This includes mention of acts directed against a person's sexual autonomy or integrity, their dignity or self-determination.
  - Review of best practice from international human rights law points clearly to attacks that are carried out through **sexual means or by targeting a person's sexuality amounts to sexual violence**.
  - Arguably, had this definition been more in the minds of the ICC at the time of Kenyatta, that case may have been decided differently. While the circumcisions and amputations may well have been ethnically-motivated, they were plainly aimed at the unfortunate victims' sexuality.
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## The Hague Principles – A Survivor Centered Approach to Sexual Violence

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- Critical importance of a contextual approach that takes into consideration the intention of the perpetrator, and the perceptions of the victim and/or affected community.
  - This approach is at the heart of The Hague Principles on Sexual Violence, has widespread support among survivors
  - It does not imply adopting highly subjective views without analysis. It implies ensuring that all relevant circumstances are taken into account in furtherance of a robust analysis.
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## Find The Hague Principles on Sexual Violence online

- <https://4genderjustice.org/the-hague-principles/#>
- Available in English, French, Spanish, Arabic, Georgian and Russian