

Submission to the Special Rapporteur on Torture

Call for Input on Identifying, Documenting, Investigating, and Prosecuting Crimes of Sexual Torture Committed during War and Armed Conflicts, and Rehabilitation for Victims and Survivors

Women's Initiatives for Gender Justice (WIGJ) appreciates the opportunity to submit comments and recommendations to the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in response to the call for inputs on the topic of identifying, documenting, investigating, and prosecuting crimes of sexual torture committed during war and armed conflicts.

WIGJ is an international feminist human rights organisation advocating for gender justice in international criminal law, including on accountability for gender-based crimes. In its 20 years of activity, WIGJ has contributed to the discourse on gender-based crimes and supported efforts to bring justice to survivors. WIGJ's advocacy is informed by an engagement with civil society, human rights defenders and legal experts, which allows for a nuanced understanding of the challenges and complexities in addressing gender-based crimes, including those committed in the situations of enslavement.

The submission is grounded in a comprehensive understanding of what constitutes an act of *sexual violence*, guided by The Hague Principles on Sexual Violence¹ and further delineated through research as presented in the document annexed to this submission. The Hague Principles on Sexual Violence, developed through extensive legal research and consultations with survivors, practitioners and experts, provide a foundational framework for understanding sexual violence within the ambit of international law, highlighting the significance of recognizing various forms of sexual violence for the purposes of legal redress and accountability.

Understanding sexual violence: indicia of sexual nature

The concept of 'sexual' in the context of violence, as elucidated by The Hague Principles, is central to understanding and addressing the crime of sexual torture. The criteria for determining the sexual nature of violence are multifaceted, considering both the objective and subjective dimensions of the acts in question. Acts of violence are deemed sexual not only when they involve physical invasion of the human body or direct physical contact but also when they violate sexual autonomy, integrity, or dignity, regardless of physical contact.

The indicia that an act is sexual in nature include, but are not limited to:

- The involvement of sexual body parts;²
- The perception of the act as sexual by the perpetrator, victim, or their respective communities;
- Deriving or intending to derive sexual gratification from the act;
- An infringement of sexual autonomy or integrity, sexual orientation or gender identity, or reproductive capacity or autonomy, even if the act was not necessarily sexual in itself;
- An involvement of sexual innuendos or connotations.

Widely recognized elements of sexual violence

Sexual violence, a pervasive issue across various jurisdictions, lacks a universally accepted definition. However, there are widely recognized elements that contribute to a common understanding of what

¹[The Hague Principles on Sexual Violence](#), 2020.

² For a comprehensive list of examples of body part that might be considered sexual, consult The Hague Principles, p 15.

constitutes sexual violence. These elements are crucial for identifying, documenting, investigating, and prosecuting crimes of sexual violence, including sexual torture. Drawing from international, regional, and domestic perspectives, the following elements emerge as central to the conceptualization of sexual violence:

1. Acts of sexual violence can be both physical and non-physical (psychological);
2. Sexual violence should be defined in relation to the legally protected interests of integrity, dignity, autonomy, self-determination;
3. Acts of sexual violence can be carried out through sexual means or by targeting sexuality;
4. Legal responses to sexual violence should situate their analysis within the context in which the violence occurred; and
5. Including a non-exhaustive list of the types of acts which may amount to sexual violence has proven useful to illustrate the broad range of forms sexual violence can take.³

Recommendations

1. Inclusive definitions: Legal frameworks should adopt definitions which recognize the broad spectrum of acts that can constitute sexual torture, beyond mere physical invasion. It is similarly recommended not to limit the understanding of what constitutes sexual torture to acts previously established in jurisprudence but to also incorporate examples of acts identified by survivors as such.⁴
2. Survivor-centred approach: Investigations and prosecutions should be informed by the diverse perceptions and experiences of survivors. Moreover, it is recommended to understand a survivor-centered approach as a contextual approach cognizant of the broader context in which sexual torture has occurred, acknowledging the subjective nature of sexual crimes, including the discrimination and impact experienced as a result of such violence.
3. Training and sensitization: All actors involved in the documentation, investigation, prosecution and adjudication of sexual torture but also policymakers should receive training on the nuanced understanding of these crimes, in order to be able to recognize the various forms they take and to ensure sensitive and informed handling of such violence.
4. Interdisciplinary support: It is recommended to incorporate psychological, medical, and social expertise in assessing and documenting the impact of sexual torture, facilitating a comprehensive approach to justice.

Conclusion

It is imperative to adopt a nuanced and inclusive understanding of sexual violence, as outlined by The Hague Principles. Recognizing the broad spectrum of acts that can constitute sexual torture is fundamental to ensuring justice and accountability for survivors. Our recommendations aim to enhance the legal and procedural frameworks for addressing crimes of sexual torture, grounded in a deep understanding of the sexual nature of violence.

³ Please refer to the annex for a more detailed explanation of these elements and examples from international, regional and domestic legislation and jurisprudence.

⁴ For a division of established acts versus acts as identified by survivors, please consult The Hague Principles, pp 70-80.