

ANNEX 10

Under Seal

***EX PARTE*, only available to
Prosecution**

Pursuant to Pre-Trial Chamber I's instruction dated 01-08-2025, this document is reclassified as "Public"

ANNEX 10 – ELEMENTS OF CRIMES TABLE

Count	Crime	Elements of Crimes	Prosecution’s factual assertions and supporting material ¹
1	Imprisonment as a crime against humanity, article 7(1)(e)	1. The perpetrator imprisoned one or more persons or otherwise severely deprived one or more persons of physical liberty.	See paras. 56-101
		2. The gravity of the conduct was such that it was in violation of fundamental rules of international law.	See paras. 56-101
		3. The perpetrator was aware of the factual circumstances that established the gravity of the conduct.	See paras. 56-101
		4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.	See paras. 4, 51-54
		5. 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.	See para. 141, fn. 653 and paras. 56-101
2	Outrages upon personal dignity as a war crime, article 8(2)(c)(ii)	1. The perpetrator humiliated, degraded or otherwise violated the dignity of one or more persons. ²	See paras. 56-101
		2. The severity of the humiliation, degradation or other violation was of such degree as to be generally recognized as an outrage upon personal dignity.	See paras. 56-101
		3. Such person or persons were either hors de combat, or were civilians, medical personnel or religious personnel taking no active part in the hostilities.	See para. 57
		4. The perpetrator was aware of the factual circumstances that established this status.	See para. 141 and paras. 56-101
		5. The conduct took place in the context of and was associated with an armed conflict not of an international character.	See paras. 45-48-50, 86
		6. The perpetrator was aware of factual circumstances that established the existence of an armed conflict	See para. 141
3	Cruel treatment as a war crime, article 8(2)(c)(i)	1. The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons.	See paras. 65-80
		2. Such person or persons were either hors de combat, or were civilians, medical personnel, or religious personnel taking no active part in the hostilities.	See para. 57
		3. The perpetrator was aware of the factual circumstances that established this status.	See para. 141 and paras. 56-101
		4. The conduct took place in the context of and was associated with an armed conflict not of an international character.	See paras. 45-48-50, 86

¹ In accordance with paragraph 6 of the Chamber’s “Decision on the Prosecution’s request for an extension of page limit” (ICC-01/11-168-US-Exp), the Prosecution provides a list of the paragraphs of its Application for a Warrant of Arrest for Khaled Mohamed Ali EL HISHRI (“Khaled AL HISHRI”) which address each of the elements of the crimes included therein, where relevant together with specific footnotes referencing supporting materials. These references are also provided in the Application itself (*see* para. 8, fn. 22) and are provided in this annex together with the text of the elements for ease of reference.

² Elements of Crimes, Article 8(2)(c)(ii), fn. 57: “For this crime, “persons” can include dead persons. It is understood that the victim need not personally be aware of the existence of the humiliation or degradation or other violation. This element takes into account relevant aspects of the cultural background of the victim”.

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		5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.	See para. 141
4	Torture as a war crime, article 8(2)(c)(i)	1. The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons.	See paras. 65-80
		2. The perpetrator inflicted the pain or suffering for such purposes as: obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind.	See paras. 5, 58, 141 and 68-74, 91-101
		3. Such person or persons were either hors de combat, or were civilians, medical personnel or religious personnel taking no active part in the hostilities.	See para. 57
		4. The perpetrator was aware of the factual circumstances that established this status.	See para. 141 and paras. 56-101
		5. The conduct took place in the context of and was associated with an armed conflict not of an international character.	See paras. 45-48-50, 86
		6. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.	See para. 141
5	Torture as a crime against humanity, article 7(1)(f) ³	1. The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons.	See paras. 65-80
		2. Such person or persons were in the custody or under the control of the perpetrator.	See paras. 65-80
		3. Such pain or suffering did not arise only from, and was not inherent in or incidental to, lawful sanctions.	See para. 59, fn. 216 and paras. 56-101
		4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.	See paras. 4, 51-54
		5. 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.	See para. 141, fn. 653 and paras. 56-101
6	Sexual violence as a war crime, article 8(2)(e)(vi)	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.	See paras. 75-80
		2. The conduct was of a gravity comparable to that of a serious violation of article 3 common to the four Geneva Conventions.	See paras. 75-80
		3. The perpetrator was aware of the factual circumstances that established the gravity of the conduct.	See paras. 75-80

³ Elements of Crimes, Article 7(1)(f), fn. 14: “It is understood that no specific purpose need be proved for this crime”.

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		4. The conduct took place in the context of and was associated with an armed conflict not of an international character.	See paras. 45-48-50, 86
		5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.	See para. 141
7	Sexual violence as a crime against humanity, article 7(1)(g)	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.	See paras. 75-80
		2. Such conduct was of a gravity comparable to the other offences in article 7, paragraph 1 (g), of the Statute.	See paras. 75-80
		3. The perpetrator was aware of the factual circumstances that established the gravity of the conduct.	See paras. 75-80
		4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.	See paras. 4, 51-54
		5. 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.	See para. 141, fn. 653 and paras. 56-101
8	Rape as a war crime, article 8(2)(e)(vi)	1. The perpetrator invaded ⁴ 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.	See paras. 75-80, 90
		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. ⁵	See paras. 75-80, 90
		3. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.	See paras. 4, 51-54
		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.	See para. 141, fn. 653 and paras. 56-101

⁴ Elements of Crimes, Article 8(2)(e)(vi)-1, fn. 63: "The concept of "invasion" is intended to be broad enough to be gender-neutral".

⁵ Elements of Crimes, Article 8(2)(e)(vi)-1, fn. 64: "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".

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9	Rape as a crime against humanity, article 7(1)(g)	1. The perpetrator invaded ⁶ 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.	See paras. 75-80, 90
		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. ⁷	See paras. 75-80, 90
		3. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.	See paras. 4, 51-54
		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.	See para. 141, fn. 653 and paras. 56-101
10	Murder and attempted murder as a war crime, articles 8(2)(c)(i) and 25(3)(f))	1. The perpetrator killed one or more persons.	See paras. 81-85
		2. Such person or persons were either hors de combat, or were civilians, medical personnel, or religious personnel ⁸ taking no active part in the hostilities.	See para. 57
		3. The perpetrator was aware of the factual circumstances that established this status.	See para. 141 and paras. 56-101
		4. The conduct took place in the context of and was associated with an armed conflict not of an international character.	See paras. 45-48-50, 86
		5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.	See para. 141
11	Murder and attempted murder as a crime against humanity, articles 7(1)(a) and 25(3)(f)	1. The perpetrator killed ⁹ one or more persons.	See paras. 81-85
		2. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.	See paras. 4, 51-54
		3. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack against a civilian population.	See para. 141, fn. 653 and paras. 56-101

⁶ Elements of Crimes, Article 7(1)(g)-1, fn. 15: “The concept of “invasion” is intended to be broad enough to be gender-neutral”.

⁷ Elements of Crimes, Article 7(1)(g)-1, fn. 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”.

⁸ Elements of Crimes, Article 8(2)(c)(i)-1, fn. 56: “The term “religious personnel” includes those non-confessional non-combatant military personnel carrying out a similar function”.

⁹ Elements of Crimes, Article 7(1)(a), fn. 7: “The term “killed” is interchangeable with the term “caused death”. This footnote applies to all elements which use either of these concepts”.

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12	Passing of sentences without previous judgment pronounced by a regularly constituted court, or “summary punishment”, as a war crime, article 8(2)(c)(iv)	1. The perpetrator passed sentence or executed one or more persons. ¹⁰	See para. 87, fns. 379-382
		2. Such person or persons were either hors de combat, or were civilians, medical personnel or religious personnel taking no active part in the hostilities.	See para. 57
		3. The perpetrator was aware of the factual circumstances that established this status.	See para. 141 and paras. 56-101
		4. There was no previous judgement pronounced by a court, or the court that rendered judgement was not “regularly constituted”, that is, it did not afford the essential guarantees of independence and impartiality, or the court that rendered judgement did not afford all other judicial guarantees generally recognized as indispensable under international law. ¹¹	See para. 87 and e.g. paras. 60-64
		5. The perpetrator was aware of the absence of a previous judgement or of the denial of relevant guarantees and the fact that they are essential or indispensable to a fair trial.	See para. 87 and e.g. paras. 60-64
		6. The conduct took place in the context of and was associated with an armed conflict not of an international character.	See paras. 45-48-50, 86
		7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.	See para. 141
13	Enslavement as a crime against humanity, article 7(1)(c)	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. ¹²	See paras. 88-90 (fns. 387-396)
		2. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.	See paras. 4, 51-54
		3. 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.	See para. 141, fn. 653 and paras. 56-101

¹⁰ Elements of Crimes, Article 8(2)(c)(iv), fn. 58: “The elements laid down in these documents do not address the different forms of individual criminal responsibility, as enunciated in articles 25 and 28 of the Statute”.

¹¹ Elements of Crimes, Article 8(2)(c)(iv), fn. 59: “With respect to elements 4 and 5, the Court should consider whether, in the light of all relevant circumstances, the cumulative effect of factors with respect to guarantees deprived the person or persons of a fair trial”.

¹² Elements of Crimes, Article 7(1)(c), fn. 11: “It is understood that such deprivation of liberty may, in some circumstances, include exacting forced labour 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. It is also understood that the conduct described in this element includes trafficking in persons, in particular women and children”.

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14	Sexual slavery as a war crime, article 8(2)(e)(vi) ¹³	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. ¹⁴	See paras. 88-90 (fns. 387-396)
		2. The perpetrator caused such person or persons to engage in one or more acts of a sexual nature.	See paras. 88-90 (fns. 394-396) and 75-80 (fns. 325-328, 331-332, 343)
		3. The conduct took place in the context of and was associated with an armed conflict not of an international character.	See paras. 45-48-50, 86
		4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.	See para. 141
15	Sexual slavery as a crime against humanity, article 7(1)(g) ¹⁵	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. ¹⁶	See paras. 88-90 (fns. 387-396)
		2. The perpetrator caused such person or persons to engage in one or more acts of a sexual nature.	See paras. 88-90 (fns. 394-396) and 75-80 (fns. 325-328, 331-332, 343)
		3. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.	See paras. 4, 51-54
		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.	See para. 141, fn. 653 and paras. 56-101
16	Persecution as a crime against	1. The perpetrator severely deprived, contrary to international law, ¹⁷ one or more persons of fundamental rights.	See paras. 93 and 56-90

¹³ Elements of Crimes, Article 8(2)(e)(vi)-2, fn. 65: “Given the complex nature of this crime, it is recognized that its commission could involve more than one perpetrator as a part of a common criminal purpose”.

¹⁴ Elements of Crimes, Article 8(2)(e)(vi)-2, fn. 66: “It is understood that such deprivation of liberty may, in some circumstances, include exacting forced labour or otherwise reducing a person to 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. It is also understood that the conduct described in this element includes trafficking in persons, in particular women and children”.

¹⁵ Elements of Crimes, Article 7(1)(g)-2, fn. 17: “Given the complex nature of this crime, it is recognized that its commission could involve more than one perpetrator as a part of a common criminal purpose”.

¹⁶ Elements of Crimes, Article 7(1)(g)-2, fn. 18: “It is understood that such deprivation of liberty may, in some circumstances, include exacting forced labour 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. It is also understood that the conduct described in this element includes trafficking in persons, in particular women and children”.

¹⁷ Elements of Crimes, Article 7(1)(h), fn. 21: “This requirement is without prejudice to paragraph 6 of the General Introduction to the Elements of Crimes”.

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	humanity, article 7(1)(h)	2. The perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such.	See paras. 91-101
		3. Such targeting was based on political, racial, national, ethnic, cultural, religious, gender as defined in article 7, paragraph 3, of the Statute, or other grounds that are universally recognized as impermissible under international law.	See paras. 91-101
		4. The conduct was committed in connection with any act referred to in article 7, paragraph 1, of the Statute or any crime within the jurisdiction of the Court. ¹⁸	See paras. 91-101 and 56-90
		5. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.	See paras. 4, 51-54
		6. 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.	See para. 141, fn. 653 and paras. 56-101

¹⁸ Elements of Crimes, Article 7(1)(h), fn. 22: “It is understood that no additional mental element is necessary for this element other than that inherent in element 6”.