

ANNEX A

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I. Article 7 - Crimes against humanity**A. Contextual Elements****1. Attack**

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

2. Widespread or systematic

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

3. Directed against a civilian population

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

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B. Specific Charges**1. Article 7 (1) (a) – Murder****a) The perpetrator killed one or more persons**

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

b) The conduct was committed as part of a widespread or systematic attack directed against a civilian population

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

c) 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

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

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2. Article 7 (1) (g)-1 – Rape

a) The perpetrator invaded¹⁵ 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.

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

b) 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.

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

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c) The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

d) 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.

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

3. Article 7 (1) (g)-2 - Sexual slavery

a) 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

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

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b) The perpetrator caused such person or persons to engage in one or more acts of a sexual nature.

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

c) The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

d) 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.

Claim	Factual allegation		Source	Location	Other
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#		Textual fact in the element of proof	(start ERN)	(precise ERN)	References

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II. Article 8 – War crimes**A. Contextual elements****1. Armed conflict**

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

2. International

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

3. The conduct took place in the context of and was associated with an international armed conflict

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

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4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

B. Specific elements of crimes

1. Article 8 (2) (a) (i) – Wilful killing

a) The perpetrator killed one or more persons.

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

b) Such person or persons were protected under one or more of the Geneva Conventions of 1949.

Claim	Factual allegation		Source	Location	Other
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#		Textual fact in the element of proof	(start ERN)	(precise ERN)	References

c) The perpetrator was aware of the factual circumstances that established that protected status.

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

2. Article 8 (2) (b) (i) - Attacking civilians

a) The perpetrator directed an attack.

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

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b) The object of the attack was a civilian population as such or individual civilians not taking direct part in hostilities.

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

c) The perpetrator intended the civilian population as such or individual civilians not taking direct part in hostilities to be the object of the attack.

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

3. Article 8 (2) (b) (xiii) - destroying or seizing the enemy's property

a) The perpetrator destroyed or seized certain property.

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

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b) Such property was property of a hostile party.

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

c) Such property was protected from that destruction or seizure under the international law of armed conflict.

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

d) The perpetrator was aware of the factual circumstances that established the status of the property.

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

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e) The destruction or seizure was not justified by military necessity.

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

4. Article 8 (2) (b) (xvi) - Pillaging**a) The perpetrator appropriated certain property.**

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

b) The perpetrator intended to deprive the owner of the property and to appropriate it for private or personal use.

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

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				ERN)	

c) The appropriation was without the consent of the owner.

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

5. Article 8 (2) (b) (xxii)-1 - Rape

a) The perpetrator invaded 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.

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

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b) 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.

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

6. Article 8 (2) (b) (xxii)-2 – Sexual slavery

a) 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.

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

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b) The perpetrator caused such person or persons to engage in one or more acts of a sexual nature.

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

7. Article 8 (2) (b) (xxvi) – Using, conscripting or enlisting children**a) The perpetrator conscripted or enlisted one or more persons into the national armed forces or used one or more persons to participate actively in hostilities.**

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

b) Such person or persons were under the age of 15 years.

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

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c) The perpetrator knew or should have known that such person or persons were under the age of 15 years.

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

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III. Individual criminal responsibility

Article 25 (3)(a) – Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible

A. Objective elements for commission of the crime through another person, regardless of whether that other person is criminally responsible

1. Organised and hierarchical apparatus of power

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

2. Automatic compliance with the orders of superiors

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

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3. The perpetrator exercised authority and control over the organisation

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

4. The perpetrator used his authority and control over the organisation to execute the crime(s)

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

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B. Objective elements of joint commission of a crime**1. Existence of an agreement or common plan between two or more persons.**

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

2. Coordinated essential contribution by each co-perpetrator resulting in the realisation of the objective elements of the crime.

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

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C. Subjective elements

1. General mental element: The objective elements were committed with intent and knowledge (*dolus directus* of the first or second degree).

a) *Dolus directus* of the first degree: The perpetrator knew that his actions or omissions would bring about the objective elements of the crime and undertook such actions and omissions with the express intent to bring about the objective elements of the crime.

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

b) *Dolus directus* of the second degree: The perpetrator was aware that in the ordinary course of events the objective elements of the crime would occur as a consequence of his actions or omissions.

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

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2. Specific mental element for co-perpetration: The perpetrators must be aware of the factual circumstances enabling them to control the crimes jointly.

a) The perpetrators were mutually aware and mutually accepted that implementing their common plan would result in the realisation of the objective elements of the crimes.

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

b) The perpetrator must be aware of the factual circumstances enabling them to control the crimes jointly.

(1) The perpetrator was aware of his essential role in the implementation of the common plan.

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

(2) The perpetrator was aware of his ability – by reason of the essential nature of his task – to frustrate the implementation of the common plan and hence the commission of the crime.

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

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3. Specific mental element for co-perpetration of a crime through another person¹: The perpetrator was aware of the factual circumstances enabling them to exercise control over the crime through another person.

a) The perpetrator was aware of the organised and hierarchical character of his organisation.

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

b) The perpetrator was aware of his authority within the organisation

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References

¹ According to the Decision on the Confirmation of Charges, this mental element is not required for the charge of using, conscripting or enlisting children (Article 8 2) b) xxvi)), see ICC-01/04-01/07-717, 26 September 2008, par. 535

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c) The perpetrator was aware of the factual circumstances enabling near-automatic compliance with his orders

Claim #	Factual allegation	Textual fact in the element of proof	Source (start ERN)	Location (precise ERN)	Other References