

CRIMES AGAINST HUMANITY

The Commission requests States to provide information, by 31 January 2015, on their domestic law and their practice, in particular judicial practice, with reference to the following issues:

- A. Whether the State's national law at present expressly criminalizes "crimes against humanity" as such and, if so:**
B. The text of the relevant criminal statute(s)

Crimes against humanity are penalised by Article 4 of the International Crimes Act. The International Crimes Act entered into force in 2003. The Act penalises various international crimes: genocide, war crimes, crimes against humanity, torture and enforced disappearance.

Article 4 reads (in an unofficial translation, because there is no official translation in English):

Article 4

1. Anyone who commits one of the following acts shall be guilty of a crime against humanity and liable to life imprisonment or a term of imprisonment not exceeding thirty years or a sixth category fine, if such acts are committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
 - (a) intentional killing;
 - (b) extermination;
 - (c) enslavement;
 - (d) deportation or forcible transfer of population;
 - (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
 - (f) torture;¹
 - (g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence of comparable gravity;
 - (h) persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognised as impermissible under international law, in connection with any act referred to in this subsection or any other crime as referred to in this Act;

¹ As defined in Article 1, subsection 1(d) of the International Crimes Act, which reads: "torture" means the intentional infliction of severe physical or mental pain or suffering upon a person who is in the custody or under the control of the accused, subject to the proviso that the pain or suffering does not result solely from, and is not inherent in or incidental to, lawful sanctions.

- (i) enforced disappearance of a person;
 - (j) the crime of apartheid;
 - (k) other inhumane acts of a similar character which intentionally cause great suffering or serious injury to body or to mental or physical health.
2. For the purposes of this Article:
- (a) 'attack directed against any civilian population' means a course of conduct involving the multiple commission of acts referred to in subsection 1 against any civilian population, pursuant to or in furtherance of a State or organisational policy to commit such attack;
 - (b) 'enslavement' means the exercise of any or all of the powers attaching to the right of ownership over a person, including the exercise of such power in the course of trafficking in persons, in particular women and children;
 - (c) 'persecution' means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;
 - (d) 'enforced disappearance of a person' means the arrest, detention, abduction or any other form of deprivation of liberty of a person by, or with the authorisation, support or acquiescence of a State or a political organisation, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of that person, or by concealment of that fate or those whereabouts with the intention of removing them from the protection of the law for a prolonged period of time.
3. For the purpose of this Article, 'extermination' includes the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population.

C. Under what conditions the state is capable of exercising jurisdiction over an alleged offender for the commission of a crime against humanity (e.g. when the offence occurs within its territory or when the offence is by its national or resident)

Pursuant to the Dutch Criminal Code and the International Crimes Act, the Netherlands is capable of exercising jurisdiction over an alleged offender for the commission of a crime against humanity in case:

- the crime against humanity has been committed *in* the Netherlands (territoriality principle – Article 2 of the Criminal Code);
- the crime against humanity has been committed *on board* a vessel or an aircraft registered in the Netherlands (flag principle – Article 3 of the Criminal Code);*

- the crime against humanity has been committed outside the Netherlands *by* a Dutch national (including the situation that the alleged offender has become a Dutch national only after committing the crime) (active nationality principle – Article 2 of the International Crimes Act);
- the crime against humanity has been committed outside the Netherlands *by* a Dutch resident, under the condition of double criminality (active personality principle – Article 7(1) en (3) of the Criminal Code);*
- the crime against humanity has been committed outside the Netherlands *against* a Dutch national (passive nationality principle – Article 2 of the International Crimes Act);
- the crime against humanity has been committed outside the Netherlands *against* a Dutch resident, under the condition of double criminality (active personality principle – Article 5(2) of the Criminal Code);*
- the crime against humanity has been committed *outside* the Netherlands, provided that the alleged offender is *present in* the Netherlands (universality principle – Article 2 of the International Crimes Act).

It is worth mentioning that the International Crimes Act does not have retroactive effect and that its jurisdictional provisions therefore only concern the crimes against humanity committed after the entry into force of the Act, on 1 October 2003.

D. Decisions of the state’s national courts that have adjudicated crimes against humanity

Decisions of Dutch courts concerning international crimes are accessible through the website of the Dutch Public Prosecution Service (<https://www.om.nl/onderwerpen/international-crimes-0/>) and through the International Crimes Database (ICD) website, hosted and maintained by the T.M.C. Asser Institute in The Hague and supported by the Dutch Ministry of Security and Justice and the International Centre for Counter-Terrorism – The Hague (<http://www.internationalcrimesdatabase.org/>).