

DOCUMENTING EVIDENCE AND ITS USE IN CRIMINAL PROCEEDINGS

CHARGING THE CRIMES

- Crime Against Humanity
 - Act - Murder, Extermination, Enslavement, Deportation, Imprisonment or severe deprivation of physical liberty, Torture, Rape, Persecution against an identifiable group, Enforced Disappearance, Other Inhumane Acts causing suffering

CHARGING THE CRIMES

- Crime Against Humanity
- Other Inhumane Acts
 - “other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health”
 - Examples: being chained up for prolonged periods, forced nudity and dancing, being beaten

CHARGING THE CRIMES

- Crime Against Humanity
 - Act committed as part of a widespread or systematic attack
 - Against a civilian population – course of conduct involving multiple acts pursuant to/in furtherance of a State or organisational policy
 - With knowledge of the attack

EXAMPLE

- Overall attack = forced organ harvesting
- Acts committed = murder, torture, persecution, enforced disappearance, imprisonment/severe deprivation of liberty, other inhumane acts
- Widespread and Systematic = these acts committed in many camps across China, clear pattern
- State sponsored? State controlling camps, using resources to build hospitals, repetition of acts e.g. many medical tests performed (organ scans, blood tests)
- Civilian population = Falun Gong, Uyghurs

Genocide

- “Genocide” means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
- Killing members of the group;
- Causing serious bodily or mental harm to members of the group;
- Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- Imposing measures intended to prevent births within the group;
- Forcibly transferring children of the group to another group.

GENOCIDE

- Specific Intent - A distinguishing aspect of the crime of genocide is the specific intent (*dolus specialis*) to destroy a group in whole or in part. The *dolus specialis* applies to all acts of genocide mentioned in Article 2(a) to (e) of the Statute, that is, all the enumerated acts must be committed 'with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.' It is this specific intent that distinguishes the crime of genocide from the ordinary crime of murder (Prosecutor v. Kayishema, 21 May 1999)
- Targeted Part of the Group - Although the substantiality requirement is textually indicated in the provision describing the specific intent required for genocide, i.e. the requirement that there must exist an "intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such", [1] it is the objective, contextual characteristics of the targeted part of the group, including, inter alia, its numeric size relative to the total size of the group, [2] that form the basis for determining whether the targeted part of the group is substantial (POPOVIĆ et al., 30.1.2015).
- The existence of a plan or policy is not "a legal ingredient" of the crime of genocide (ITCY Appeals Chamber)

EVIDENCE

CHARGING THE CRIME: how to build a case

- Crime Base Information - Individual criminal acts; the targeted victims; the context in which crimes occurred; the overall patterns of crimes
- Linkage Information – connects alleged crimes to perpetrators

EVIDENCE

- Witness Evidence
- Documentary Evidence
- Physical Evidence
- Digital Evidence

EVIDENCE

- Direct Evidence – directly proves a fact without the need for additional inferences to be made
- Indirect Evidence – inference must be made and corroboration needed
- * Indirect Evidence can be very useful

EVIDENCE

- Hearsay – a statement by someone made out of court and offered in court by someone else to prove the matter asserted
- * can be very useful

EVIDENCE

- Admissibility
- Authenticity
- Relevance
- Probative Value
- Weight

EVIDENCE

- Reliability and Credibility
 - biased source?
 - inconsistencies?
 - is the witness believable?
- Investigator must remain impartial

EVIDENCE

HIGHEST STANDARD =

First hand + detailed + internally consistent +
corroborated from several angles +
demonstrating a pattern + fresh

10 ESSENTIAL RULES

1. DO NO HARM
2. MAINTAIN MINIMUM STANDARDS
3. MAINTAIN IMPARTIALITY AND OBJECTIVITY
4. BE CONFIDENT OF YOUR OWN COMPETENCE
5. FOCUS ON THE INFORMATION/EVIDENCE, NOT LAW OR OPINION
6. RECORD, COLLECT AND PRESERVE ALL INFORMATION/EVIDENCE
7. IMPLEMENT AN ORGANISED SYSTEM TO RECORD THE INVESTIGATIVE STEPS AND THE RESULTS
8. ENSURE INFORMED CONSENT, CONFIDENTIALITY AND PROTECTION OF WITNESSES
9. ALWAYS IMPLEMENT A CHAIN OF CUSTODY
10. BE AWARE OF YOUR OWN IN-HOUSE GUIDELINES

A note on social media/the press

- Only share clean and compelling evidence
- Consider safety and security (of both you and the witness)