

United States Department of Justice
Criminal Division
Human Rights and Special Prosecutions Section



GUIDE TO HUMAN RIGHTS STATUTES

In carrying out its human rights enforcement responsibilities, the Human Rights and Special Prosecutions Section (HRSP) investigates and, where appropriate, prosecutes cases against human rights violators and other international violent criminals. Specifically, HRSP investigates and prosecutes human rights violators for genocide, torture, war crimes, and the recruitment or use of child soldiers. Additionally, HRSP investigates and charges immigration and naturalization fraud offenses arising from efforts to hide involvement in human-rights related crimes. HRSP also investigates and prosecutes persons who subject girls to female genital mutilation. This guide has been prepared to provide a basic overview of the human rights statutes, which can be complex and, in many instances, may differ from similar legislation in other countries and in the statutes of contemporary international and hybrid tribunals.

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INTRODUCTORY NOTES

The following summaries relate to United States laws criminalizing torture, genocide, war crimes, the use or recruitment of child soldiers, and female genital mutilation. Depending on the facts, other criminal statutes might be used to prosecute human rights abusers, either in addition to or as alternatives to these laws. Examples include certain violent crime statutes with extraterritorial reach outside the United States, material support to terrorism, conduct covered by the Military Extraterritorial Jurisdiction Act (MEJA), or charges related to immigration fraud.

For purposes of convenience, brevity, and readability, we have paraphrased the language of certain conventions and statutes. Please refer to primary source documents for complete and verbatim texts.

Most of the provisions discussed below were enacted by Congress to implement treaty obligations of the United States. As with all treaty obligations, it may be necessary to review any reservations, declarations, and understandings filed by the United States with its instrument of ratification and possibly thereafter.

Federal criminal laws of the United States generally do not incorporate the international legal concept of “command or superior responsibility” as that term is used by contemporary international and hybrid tribunals. However, in some instances, conduct can be reached through the application of United States laws on conspiracy or aiding and abetting.

Dates of enactment and amendment are important. The United States Constitution prohibits *ex post facto* (i.e., retroactive) application of criminal laws to acts that predate criminalization of the conduct.

Likewise, statutes of limitations (which limit the time the government has to bring criminal charges after the conduct occurred) can differ, even in the context of a single statute, depending on the particular facts of the conduct that is being charged.

GENOCIDE - 18 U.S.C. §§ 1091, 1093

The federal genocide statute criminalizes the following acts when committed against a particular national, ethnic, racial, or religious group:

1. killing members of the group;
2. causing serious bodily injury to members of the group;
3. causing permanent impairment of mental faculties to members of the group through drugs, torture, or similar techniques;
4. subjecting the group to conditions of life intended to cause physical destruction of a group in whole or in part;
5. imposing measures intended to prevent births within the group; or
6. forcibly transferring children of the group to another group.

In order to constitute genocide, the above acts must be committed with specific intent to destroy, “in whole or substantial part,” a national, ethnic, racial, or religious group. The words “substantial part” and certain other terms are defined in 18 U.S.C. § 1093. Genocide can occur regardless of the existence of an armed conflict.

The United States currently possesses jurisdiction over genocide if:

- the offense is committed in whole or in part within the United States;
- the offender is a United States national or a lawful permanent resident;
- the offender is a stateless person with habitual residence in the United States; or
- the offender is present in the United States.

Statute of Limitations

The statute of limitations for all acts of genocide was eliminated by the Human Rights Enforcement Act of 2009 (P.L. 111-122, Dec. 22, 2009). Prior to the December 2009 amendments most genocidal acts not resulting in death were subject to a five-year statute of limitations. Prior to the January 2007 amendment by the Genocide Accountability Act (P.L. 110-151, Dec. 21, 2007), the statute applied only to genocidal acts committed in the United States or committed by United States nationals.

Notes

This statute generally has been understood to apply only to conduct occurring on or after November 4, 1988, i.e., the date of the statute’s initial enactment, or, in the case of genocide committed abroad by persons who are not United States nationals, after December 21, 2007, the date of the first amendment of the statute. Prior to December 22, 2009, the statute had an attempt provision, but no conspiracy provision. As of December 22, 2009, the statute criminalizes both conspiracy and attempt.

TORTURE - 18 U.S.C. §§ 2340-2340A

The federal torture statute applies to acts committed outside the United States by a person acting under the color of law if the person specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) on another person within the perpetrator’s custody or physical control.

Severe mental pain or suffering is defined as the prolonged mental harm caused or resulting from:

1. the intentional infliction or threatened infliction of severe physical pain or suffering;
2. the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to profoundly disrupt the senses or personality;
3. the threat of imminent death; or
4. the threat that another person will imminently be subjected to any of the actions listed above.

The statute criminalizes the commission, attempt, and conspiracy to commit torture.

The United States currently possesses jurisdiction over torture if:

- it occurs outside the United States, and
- the offender is
 - a United States national; or
 - present in the United States (irrespective of nationality of the offender or victim).

Statute of Limitations

The statute of limitations is 8 years, unless death or foreseeable risk of death or bodily injury existed, in which case prosecution is not barred by a statute of limitations. *See* 18 U.S.C. §§ 2332b(g)(5)(B), 3286.

Notes

This statute applies only to conduct occurring on or after November 20, 1994, i.e., the date of the statute's initial enactment. Although the statute contains a conspiracy provision, it was not enacted until October 26, 2001, by the USA PATRIOT Act, Pub. L. No. 107-56, § 811(g). Thus, conspiracy to commit torture can only be charged in relation to conduct occurring after October 26, 2001.

RECRUITMENT OR USE OF CHILD SOLDIERS - 18 U.S.C. § 2442

The federal statute prohibiting the recruitment or use of child soldiers applies to whoever knowingly (a) recruits, enlists, or conscripts a person to serve in an armed force or group while such person is under 15 years of age; or (b) uses a person under 15 years of age to participate actively in "hostilities" (as defined). The offender must know the person is under 15 years of age. Active participation in hostilities means taking part in combat or military activities related to combat including sabotage, serving as a decoy, a courier, or at a military checkpoint. It can also mean supporting "functions related to combat, such as transporting supplies or providing other services."

The United States currently possesses jurisdiction over the recruitment or use of child soldiers if:

- the offender is a United States national or a lawful permanent resident;
- the offender is a stateless person whose habitual residence is in the United States;
- the offender is present in the United States (irrespective of nationality of the offender); or
- the offense occurred in whole or in part within the United States.

Statute of Limitations

Criminal charges must be filed against a potential defendant within ten years of the crime's commission. *See* 18 U.S.C. § 3300. However, according to 18 U.S.C. § 3283, a statute of limitations shall not preclude prosecution for an offense involving physical abuse, sexual abuse, or kidnapping of a minor, "during the life of the child, or for 10 years after the offense, whichever is longer."

Notes

This statute applies only to conduct occurring on or after October 3, 2008, i.e., the date of the statute's initial enactment.

WAR CRIMES - 18 U.S.C. § 2441

The federal war crimes statute was enacted in 1996 and has been substantively amended multiple times. The statute's applicability varies based on the date of the alleged offense, the type of offense, and the character of the armed conflict.

The statute is particularly complicated. In some instances, the statute criminalizes “grave breaches” of the Geneva Conventions and portions of the Annex to the 1907 Hague Convention IV Respecting the Laws and Customs of War on Land. In other circumstances, the statute criminalizes “grave breaches of Common Article 3,” including torture, cruel or inhuman treatment, performing biological experiments, murder, mutilation or maiming, intentionally causing serious bodily injury, rape, sexual assault or abuse, and hostage-taking. Other crimes are also punishable under the statute.

The United States currently possesses jurisdiction over war crimes if:

- the offender or victim is a member of the United States Armed Forces; or
- the offender or victim is a United States national.
- Note: unlike other statutes discussed above, the United States does not have jurisdiction over a person for committing war crimes based solely on the person being “present in” the United States.

Statute of Limitations

If the commission of a war crime results in death, prosecution is not barred by a statute of limitations. *See* 18 U.S.C. § 3281. In all other instances, other war crimes are generally subject to a five-year statute of limitations from the date of the crime’s commission. *See* 18 U.S.C. § 3282

Notes

This statute applies only to conduct occurring on or after August 21, 1996, i.e., the date of the statute’s initial enactment.

FEMALE GENITAL MUTILATION (FGM) – 18 U.S.C. § 116

The federal FGM statute was passed in 1996 and amended in 2013 and 2021. The current statute applies when an individual knowingly: (1) performs, attempts, or conspires to perform FGM on a girl under 18, (2) a parent, guardian, or caretaker facilitates or consents to FGM of such person, or (3) transports such person for the purpose of FGM, including taking a girl outside the United States. FGM is defined as “any procedure performed for non-medical reasons that involves partial or total removal of, or injury to, the external female genitalia” of a girl under 18. The statute contains exceptions for licensed practitioners performing medically necessary procedures. A belief that FGM is required as a matter of religion, custom, tradition, ritual, or standard practice is not a defense.

Statute of Limitations

The statute of limitations is 5 years. *See* 18 U.S.C. § 3282. However, according to 18 U.S.C. § 3283, a statute of limitations shall not preclude prosecution for an offense involving physical abuse, sexual abuse, or kidnapping of a minor, “during the life of the child, or for 10 years after the offense, whichever is longer.”

Notes

The STOP FGM Act of 2020 went into effect on January 5, 2021, and amended the law, clarifying the jurisdictional basis under which the law was passed, expanding the scope of prosecutable conduct to include other procedures such as incising or cauterizing that are harmful to the external female genitalia and increasing the maximum penalty.

REPORTING HUMAN RIGHTS VIOLATIONS

Members of the public who have information about human rights violators in the United States are urged to contact law enforcement through the toll-free ICE tip line at 866-347-2423 or the FBI tip line at 1-800-CALL-FBI (800-225-5324). To submit a tip online, complete the ICE [online tip form](https://ice.gov/webform/ice-tip-form), at ice.gov/webform/ice-tip-form, or the [FBI online tip form](https://tips.fbi.gov) at tips.fbi.gov. The FBI’s call center and online portal are available anytime, and tips may be provided anonymously.

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