Sexual violence
IHL ANALYSIS

Sexual violence is prohibited under various branches of international law, including international humanitarian law (IHL) and international criminal law. Some recent judgments by international courts have shed further light on the legal status of the crimes.

Specific protection
International humanitarian law (IHL) expressly protects women against rape, enforced prostitution or any other form of indecent assault (article 27 IVGC, article 75(2)(b) IAP, article 76 IAP).

- To ICRC and Article 27 IVGC
- To ICRC and Article 75(2)(b) IAP
- To ICRC and Article 76 IAP

General protection
Many forms of sexual violence, such as rape, are implicitly prohibited through the prohibitions on torture, other cruel, inhuman and degrading treatment, outrages against personal dignity as laid down in, for example, the Convention against Torture (CAT), common article 3 of the four Geneva Conventions, article 75 (2) of the First Additional Protocol and article 4(2) in the Second Additional Protocol.

The prohibition against torture also forms part of customary international law and a violation of the prohibition constitutes a grave breach (war crime) under IHL (Article 147 IVGC).

INTERNATIONAL COURTS AND SEXUAL VIOLENCE

Historically, perpetrators of sexual violence have enjoyed impunity for their actions. Rape was mentioned in the post-WWII Tokyo Tribunals but only prosecuted under the general charge of “inhumane treatment”.

The creation of the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and the International Criminal Court (ICC) offers some hope that victims of sexual violence might finally gain greater access to justice on the international level, which would in turn hopefully influence enforcement in local courts.

The International Criminal Court
The ICC Statute has been praised for being the most gender mainstreamed international treaty. Contrary to the Geneva Conventions, rape and other sexual crimes commonly committed against women, are explicitly mentioned as serious crimes in the Statute, and formulated as clear prohibitions.

- To the ICC’s website
- To the ICC and the Rome Statute
- Read more about the ICC

Crimes against humanity
The statute of the International Criminal Court (ICC) recognizes rape, sexual slavery, enforced sterilization, forced pregnancy, enforced prostitution, and other forms of sexual violence of comparable gravity, as crimes against humanity when committed as part of a widespread or systematic attack directed against any civilian population, where the perpetrator has knowledge of the attack (article 7(1)(g) of the ICC Statute). In addition, gender-based persecution of an identifiable collective (in case it follows the two pre-conditions above) is regarded as a crime against humanity (article 7(1)(h)).

- Read more about crimes against humanity
War crimes
The above acts or other outrages upon personal dignity or humiliating and degrading treatment also amount to a war crime in accordance with article 8 (2) of the ICC Statute – even if they are not committed as part of a widespread or systematic attack.

- Read more about war crimes

Genocide
Sexual violence, in particular rape, can also under certain circumstances be used as a means to commit genocide, which is prohibited under article 6 of the ICC Statute.

- Read more about genocide

Ad hoc international tribunals
The Statutes, as well as the jurisprudence, of the ad hoc international criminal tribunals for Rwanda (ICTR) and the Former Yugoslavia (ICTY) respectively, confirm that rape and other forms of sexual violence may amount to torture, crimes against humanity, war crimes or genocide.

- To Articles 2-4 of the ICTR Statute
- To Articles 2-5 of the ICTY Statute

Jurisprudence that followed the atrocities committed in the two conflicts has highlighted the gender perspectives of warfare and war crimes.

- To the ICTY's website and the Furundziya case (rape amounted to outrages upon dignity and torture under common Article 3 of the four Geneva Conventions, 1995)
- To the ICTR's website and the Akayesu case (rape amounted to crimes against humanity and genocide, 1998)
- To UN and the International Criminal Tribunal for Former Yugoslavia
- To UN and the International Criminal Tribunal for Rwanda

Sexual violence as genocide
“In light of all the evidence before it, the Chamber is satisfied that the acts of rape and sexual violence described above, were committed solely against Tutsi women, many of whom were subjected to the worst public humiliation, mutilated, and raped several times, often in public, in the Bureau Communal premises or in other public places, and often by more than one assailant. These rapes resulted in physical and psychological destruction of Tutsi women, their families and their communities. Sexual violence was an integral part of the process of destruction, specifically targeting Tutsi women and specifically contributing to their destruction and to the destruction of the Tutsi group as a whole.”

“...rape and sexual violence (...) constitute genocide in the same way as any other act as long as they were committed with the specific intent to destroy, in whole or in part, a particular group, targeted as such.”

Akayesu case, 2 September 1998

Impunity for sexual crimes
As in peacetime, it is very rare that the perpetrators of sexual violence during war are held to account for their acts.

Victims of sexual violence hesitate to report their cases as they fear to be shamed by their community, which often blames the victim for what happened. They also fear reprisals from the perpetrators or simply prefer to repress their experience, and pretend it never occurred.

In times of armed conflict it may be seen as a luxury to seek justice for sexual crimes. There is a silent acceptance by society that sexual violence is an unavoidable part of armed conflict. In addition, the victim may feel that it is not a priority to report a sexual crime when there are other urgent problems to cope with, such as protecting the family from military attack or starvation.

Women who do report cases often face gender-biased judicial processes, and inadequate counselling. Perpetrators of sexual violence may even be granted formal amnesty as part of a peace agreement.

During armed conflict legal remedies diminish. The national law enforcement mechanisms, including the court system, often collapse due to the political and social turbulence created by conflict.