

Human Rights Legal Regime Against Rape at Conflict Zone

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“Sexual violence in conflict represents a great moral issue of our time. This crime, in its utter destruction of the individual and the pervasive way in which it undermines the prospects for peace and development, casts a long shadow over our collective humanity.”-Ms. Zainab H Bangura, *Special Representative of the UN Secretary-General for Sexual Violence in Conflict, 2014*

Historically, sexual violence in conflict has been largely invisible. In recent incidents this has begun to change, although further research is urgently required both into the causes of sexual violence in conflict, its patterns and manifestations, and the means by which it might be prevented. (Paragraph 116) Sexual violence either in, or as a result of, conflict is a war crime and can also be a crime against humanity. We believe that recent efforts to prioritise preventing sexual violence in conflict were necessary and important. Sexual violence in conflict is a human rights violation and is contrary to international law. It jeopardises international peace and security, accentuates gender discrimination and prevents post-conflict societies achieving sustainable peace. The fight to eradicate sexual violence in conflict as with the historical and modern day campaigns to eliminate piracy, slavery, genocide and torture requires sustained political, legal and societal action.

The term conflict-related sexual violence refers to rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage and any other form of sexual violence of comparable gravity perpetrated against women, men, girls or boys that is directly or indirectly linked to a conflict. That link may be evident in the profile of the perpetrator, who is often affiliated with a State or non-State armed group, which includes terrorist entities, the profile of the victim, who is frequently an actual or perceived member of a political, ethnic or religious minority group or targeted on the basis of actual or perceived sexual orientation or gender identity, the climate of impunity, which is generally associated with State collapse, cross-border consequences such as displacement or trafficking, and violations of a ceasefire agreement. The term also encompasses trafficking in persons when committed in situations of conflict for the purpose of sexual violence or exploitation.

I. DEFINING RAPE IN CONFLICT ZONE

At the international level, rape has been essentially defined by the international criminal tribunals for Rwanda and the former Yugoslavia through three main cases. The first is the Akayesu case before the ICTR, in which the Trial Chamber (and then the Appeals Chamber) adopted a very broad and generic definition of rape. The ICTR simply held that rape is a physical invasion of a sexual nature, committed on a person under circumstances which are coercive. While the International Criminal Tribunal for the former Yugoslavia (ICTY) seemed initially to follow the approach taken by the ICTR, it shifted to a more precise definition of rape in the Furundžija case. Others would say that the ICTY did not radically depart from the ICTR definition but rather provided additional details on the constituent elements of acts considered to be rape.

After having noted that it was not possible to draw the elements of rape from international treaty law or customary law, the ICTY Trial Chamber conducted a comparative law analysis in order to extrapolate the “common denominators” of rape in the criminal law of major legal systems. It concluded that the objective elements (actus reus) of rape are: i) the sexual penetration, however slight: a) of the vagina or anus by the penis of the perpetrator or any other object used by the perpetrator, or b) of the mouth of the victim by the penis of the perpetrator; ii) by coercion or force or threat of force against the victim or third person.

In the Kunarac case, the Trial Chamber considered that the Furundžija definition was too narrow. While it maintained part (i) of the definition, it went one step further by clarifying – or rather broadening – part (ii). For the Trial Chamber, an act of sexual penetration constitutes rape not only if accompanied by “coercion or force or threat of force against the victim or third person” but also if there are other factors which would

render the act “non-consensual or non-voluntary” on the part of the victim. The key criterion is therefore the lack of consent or voluntary participation. The Trial Chamber further held that “[i]n practice, the absence of genuine and freely given consent or voluntary participation may be evidenced by the presence of ... various factors ... – such as force, threats of force, or taking advantage of a person who is unable to resist”. In other words, these factors are not elements of the crime of rape, but rather evidence of the lack of genuine consent.

The Trial Chamber therefore “replaced” in the Kunarac case the second part of the Furundžija definition with “where such sexual penetration occurs without the consent of the victim”. The ICC Elements of Crimes integrate these case-law evolutions and provide an even more refined definition of rape. An act is considered rape if: 1. 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. 2. 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.

The prohibition of rape is one of the oldest and most basic rules of war. Rape was explicitly prohibited and punished by death in the first modern code on the law of war, the Lieber Code of 1863. The 1949 Geneva Conventions and their Additional Protocols also prohibit rape, both explicitly and implicitly through the prohibition of cruel treatment and torture, outrages upon personal dignity, indecent assault and enforced prostitution, in both international and non-international armed conflicts. Prohibition is clear and absolute under both IHL and IHRL, which act in complementarity. The creation of the two ad hoc International Criminal Tribunals for the former Yugoslavia and for Rwanda (ICTY and ICTR) allowed the international community to acknowledge that such crimes should be punished, and that individuals can bear criminal responsibility for their commission.

The creation of the two ad hoc International Criminal Tribunals for the former Yugoslavia and for Rwanda (ICTY and ICTR) allowed the international community to acknowledge that such crimes should be punished, and that individuals can bear criminal responsibility for their commission. It is clear today that sexual violence, when linked to armed conflict, constitutes a war crime. In the Kunarac case, the ICTY found that rape can also constitute a crime against humanity in certain circumstances. In the Akayesu case, the ICTR found that rape and sexual violence can “constitute genocide in the same way as any other act as long as they [are] committed with the specific intent to destroy, in whole or in part, a particular group, targeted as such”. In the Čelebići case, the ICTY ruled for the first time that rape can constitute torture. Building on these important cases, the Rome Statute of the ICC includes “[r]ape, sexual slavery, enforced prostitution, forced pregnancy ... enforced sterilization, or any other form of sexual violence” as war crimes in both international and non-international armed conflicts. While some of the currently pending cases before the ICC include charges related to sexual violence, the Court has yet to secure a conviction for crimes of sexual violence.

II. CONTEMPORARY SCENARIO

In early 2016, a new Government was democratically elected in the Central African Republic, yet the security situation remained volatile across large swaths of the country. Several prefectures were shaken by clashes in the second half of the year, leading to the displacement of thousands of civilians and a pattern of conflict-related sexual violence of an ethnic and sectarian nature. During the reporting period, the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA) recorded 179 cases of conflict-related sexual violence committed primarily by ex-Séléka, anti-balaka and *Révolutionet Justice* elements and by the Lord's Resistance Army. These incidents included 151 rapes, of which 54 were gang rapes, as well as six forced marriages and four cases of sexual slavery. The victims included 92 women, 86 girls and one boy, although the actual number is suspected to be far higher than the figures reported.

In 2016, the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) verified 514 cases of conflict related sexual violence. The victims included 340 women, 170 girls, three men and one boy. During the same period, the United Nations Population Fund (UNFPA) reported 2,593 cases of sexual violence in conflict-affected provinces. The majority of perpetrators were non-State armed groups, who were responsible for 68 per cent of verified incidents. Among these groups, the Force de résistance patriotiques de l'Ituri was responsible for 20 per cent of incidents occurring mainly during attacks on villages and ambushes in Ituri Province. Mai Mai Raia Mutomboki combatants were responsible for 18 per cent of reported cases overall, raping 90 women and girls in four separate attacks between January and November in North and South Kivu provinces. Mai Mai Simba factions remained active at mining sites in the Mambasa territory of Ituri province and were liable for 4 per cent of reported incidents of conflict-related sexual violence. MONUSCO separated 40 girls from armed groups, all of whom reported being subjected to rape, sexual slavery, forced marriage or other forms of sexual violence.

In 2016, the United Nations Mission in South Sudan (UNMISS) documented 577 incidents of conflict related sexual violence, including rape, gang rape and sexual slavery. The survivors included 57 girls, several of whom were below 10 years of age, with two being less than one year old. In addition, service providers recorded 376 cases of sexual violence, of which 157 were forced marriage, with State and non-State armed actors among the alleged perpetrators. Overall trends point to an alarming increase in the number of rapes, with 20 per cent more victims seeking services following sexual assault. The period under review also saw a 32 per cent increase in the number of cases of gender-based violence perpetrated by men in uniform, as compared with 2015.

Colombia has a robust normative framework, although gaining access to justice remains a challenge. In 2017, thenationalvictims"unitregistered24,576victimsofconflict-relatedsexualviolence,ofwhichonethird had received compensation. Regarding efforts to promote accountability, by the end of 2017, the Office of the Attorney-General had issued indictments in 17 per cent of cases of sexual violence, 5 per cent of which resulted in convictions, including three criminal sentences for conflict-related sexual violence perpetrated by members of the Autodefensas Gaitanistas de Colombia. In 2017, the early warning system of the Office of the Ombudsman issued 22 reports on the elevated risk of conflict-related sexual violence, including two cases of the cross-border trafficking of Venezuelan women. Official statistics indicate that 73 per cent of victims of rape are girls, often leading to teenage pregnancy and school dropout. Girls between 12 and 16 years of age were subjected to targeted rape threats.

The liberation of Mosul, Tall Afar and other areas from the control of ISIL in 2017 marked a major milestone for Iraq and the region. Government data indicate that 100 Yazidi and Christian women and children were rescued during the operation in Mosul in July, with a further 25 freed following the operation in Tall Afar, which ended in August. Turkmen Shi'a women and girls were also reportedly rescued during those offensives. Sunni women and girls living under ISIL occupation also endured forced and coerced marriages, in which rape was used as a weapon of punishment for disobeying ISIL rules. Overall, as at November 2017, 3,202 civilians (1,135 women, 903 girls, 335 men and 829 boys) had been released from ISIL captivity, while a further 3,215 (1,510 women and girls and 1,705 men and boys) remain missing.

The mass exodus of almost 700,000 Rohingya civilians from Rakhine state in Myanmar, to Cox's Bazar, Bangladesh, created a humanitarian crisis that seized the attention of the world. As documented by international medical staff and service providers operating in Bangladesh, many civilians bear the physical and psychological scars of brutal sexual assault. The assaults were allegedly perpetrated by members of the Myanmar Armed Forces (Tatmadaw), at times acting in concert with members of local militias, in the course of the military "clearance" operations in October 2016 and August 2017 characterized by the United Nations High Commissioner for Human Rights as "ethnic cleansing". The widespread threat and use of sexual violence was integral to their strategy, humiliating, terrorizing and collectively punishing the Rohingya community and serving as a calculated tool to force them to flee their homelands and prevent their return. Violence was visited upon women, including pregnant women, who are seen as custodians and propagators of ethnic identity, as well as on young children, who represent the future of the group.

The violence is linked with an inflammatory narrative alleging that high fertility rates among the Rohingya community represent an existential threat to the majority population. When my Special Representative visited camps and settlements in Cox's Bazar in November 2017, she heard accounts from almost every woman and girl of patterns of rape, gang rape, forced nudity and abduction for the purpose of sexual slavery during military campaigns of slaughter, looting and the razing of homes and villages. She also received first-hand testimony of women having been subjected to invasive body searches, including vaginal searches, performed by male security officers, ostensibly to look for valuables and documentation, and to sexual harassment during house-to-house searches.

In its resolution S-27/1 of 5 December 2017, the Human Rights Council expressed grave concern at consistent allegations of widespread sexual violence, including rape and gang rape. In its resolution 72/248 of 24 December 2017, the General Assembly expressed its deep distress about the excessive and unlawful use of force in Myanmar, including sexual violence. Moreover, paragraph 6 of the arrangement on the return of displaced persons from Rakhine state, agreed upon between the Governments of Myanmar and Bangladesh on 23 November, refers to "children born of unwarranted incidents", which implies children conceived through rape. My Special Representative visited Nay Pyi Taw and Yangon, Myanmar, in December where she met with the State Counsellor and senior military officials, with a view to generating commitments to address conflict-related sexual violence in line with Security Council resolution 2106 (2013), and following the presidential statement of 6 November 2017 (S/PRST/2017/22), which encouraged the Government to work with the Office of the Special Representative.

The United Nations verified the following specific and indicative cases of conflict-related sexual violence perpetrated during the military "clearance" operations in northern Rakhine: seven rapes reportedly perpetrated by Tatmadaw elements in Buthidaung on 4 and 5 May; the rape of 32 Rohingya women and one girl, allegedly by the Tatmadaw and border guard police, also in Buthidaung, as part of perceived "punitive operations"; the rape of a girl by a Tatmadaw soldier in Maungdaw in January; 30 girls subjected to sexual

violence by Government forces during military operations; and one girl allegedly raped by a member of the Arakan Rohingya Salvation Army. In early 2017, Tatmadaw soldiers allegedly raped a 16-year-old girl and her 20-year-old sister during operations in Maungdaw. After mentioning the incident to visiting journalists, she was arrested and forced to undergo a medical examination. On 30 August, a report was received of the alleged arbitrary detention and rape of several women in the village of Maung Nu in Buthidaung Township. Three girls who reported sexual violence were provided with case management services in northern Rakhine, as well as four children who were victims of sexual assault, in central Rakhine. The prevailing security environment precludes more complete documentation, given the climate of impunity, intimidation, reprisals and access restrictions.

Seven years of conflict and humanitarian crisis continues to cause intolerable human suffering, with sexual violence used as a tactic of war, torture and terrorism. Sexual violence, harassment, abduction and forced marriage have affected numerous women and girls. The rape and sexual torture of men and boys in detention settings, often aimed at extracting confessions during interrogation, has also been a hidden horror of the conflict. Owing to social norms and honour codes, however, men tend to be celebrated by their community upon their release, whereas women face shame, stigma and rejection by husbands or parents, who assume that they were raped in custody. "Honour killings" of women and girls have followed not only in cases of rape, but even in cases of assumed rape, indecent assault and street harassment. Such killings have reportedly increased since the onset of the crisis, owing to rising rates of sexual violence and lawlessness and the proliferation of extremist groups.

Syrian women describe a daily struggle to survive, with many suffering serious physical injuries consistent with rape, including traumatic fistulae and sexually transmitted infections. In response to the elevated risk of sexual assault, child marriage has morphed from a cultural practice into a coping mechanism. While early marriage is not a new phenomenon in the Syrian Arab Republic, the protracted nature of the conflict has led to an increase in the rate of early marriage and a decrease in the age of brides, which has taken a heavy toll on Syrian girls, exposing them to domestic and intimate partner violence, unwanted pregnancies, lost educational and employment opportunities, isolation and psychological harm. Adolescent girls, women and girls who are heads of household, widows and divorcees are at greatest risk of forced marriage, polygamy and serial temporary marriages.

Since 2009 the cessation of hostilities between the Liberation Tigers of Tamil Eelam and the Government, Sri Lanka has yet to benefit from a comprehensive transitional justice process to address the crimes committed during three decades of brutal civil war, including crimes of conflict-related sexual violence. In its resolution 30/1 of 1 October 2015, the Human Rights Council outlined the elements of a transitional justice system, also highlighting issues of sexual violence, torture and abduction and the climate of intimidation for human rights defenders, which are part of the legacy of war. Efforts continued in 2017 to advance implementation of the resolution through national consultations on the design of transitional justice mechanisms, which incorporated the voices of survivors of sexual violence. The issue of conflict-related sexual violence featured prominently in the resulting report (A/HRC/34/20).

Sri Lanka faces major challenges in ensuring accountability for crimes of sexual violence, including the lack of protection for victims and witnesses and the backlog of cases, with rape cases taking on average more than five years to resolve. The latest annual Grave Crimes Abstract of the Sri Lankan Police recorded 2,036 complaints of rape and no convictions. Since the passage of the Witnesses and Victims Protection Act (2015), a division has been established within the police to safeguard the rights of those reporting violent crimes. However, more female officers are needed (currently, 9 per cent) to improve outreach to women and rates of reporting of and response to sexual violence. With the support of the United Nations, the Government launched a national action plan to address sexual and gender-based violence, in 2016, and a plan on the promotion of human rights, in 2017, which includes specific measures to expedite the handling of cases of sexual violence. The Cabinet approved a series of proposals to support women heads of household, including those in the heavily militarized provinces of the north and east. Strategic interventions are also needed to tackle the stigma experienced by survivors of sexual violence, which is often compounded by the cultural stigma attached to widowhood, and the plight of children conceived through rape in wartime. Survivors of conflict-related sexual violence come from all of the three largest population groups, with Tamil women in the northeast the most affected, as well as Muslim and Sinhala women. Stigma manifests differently in each community, requiring a tailored response. Patterns of sexual violence against men and boys by members of the security forces continue to be underreported, owing to cultural taboos and fear of being penalized in a context where all same-sex relations, consensual or otherwise, are criminalized. Reports continue to surface of rape, gang rape and sexual torture perpetrated by police and military intelligence operatives, in the absence of rigorous accountability and oversight.

III. LANDMARK CASES

Since its inception the ICTY has carried out extensive investigations and prosecution of wartime sexual violence, raising a number of indictments for sexual violence committed in Bosnia and Herzegovina as early as 1995. Since then more than seventy individuals have been charged with crimes of sexual violence including sexual assault and rape. As of early 2011, almost thirty have been convicted. In a number of landmark judgements, the Tribunal advanced the development of international justice in the realm of gender crimes by enabling the prosecution of sexual violence as a war crime, a crime against humanity and genocide. Ultimately, rape ceased to be perceived as the unrestrained sexual behaviour of individuals and was recognised as a powerful tool of war, used to intimidate, persecute and terrorise the enemy. An overview of selected cases and relevant judgements is provided below

The first case at the ICTY to concentrate entirely on charges of sexual violence was that against Anto Furundžija. The trial focused on the multiple rapes of a Bosnian Muslim woman committed during interrogations led by Furundžija who was at the time the commander of the Jokers, a special unit of the Croatian Defence Council (HVO) in BiH. It was not Furundžija personally, but his subordinate who raped the woman in front of a laughing audience of other soldiers. Nevertheless, as the unit's commander, Furundžija was found guilty as a co-perpetrator and as an aider and abettor. The conviction was upheld on appeal and Furundžija was sentenced to 10 years' imprisonment. Presenting its legal considerations in the judgment, the Trial Chamber made important remarks on the qualification of rape in the context of international crimes. In the Tribunal's Statute, the only explicit reference to rape is as one of the crimes constituting crimes against humanity. The Trial Chamber widened that scope and stated that rape may also be prosecuted as a grave breach of the Geneva Conventions and as a violation of the laws and customs of war. Importantly, the Tribunal's judges also confirmed that rape may be used as a tool of genocide. "Rape may also amount to (...) an act of genocide, if the requisite elements are met, and may be prosecuted accordingly." A landmark precedent was set in 1998 when ICTY's sister tribunal the ICTR rendered a judgment in Akayesu case in which it was concluded that rape constitutes genocide.

The second ICTY trial to deal entirely with charges of sexual violence made another significant contribution to international criminal law. The judgment broadened the acts that constitute enslavement as a crime against humanity to include sexual enslavement and determined the relationship of gender crimes to customary law. The three accused Bosnian Serb army officers Dragoljub Kunarac, Zoran Vuković and Radomir Kovač, played a prominent role in organising and maintaining the system of infamous rape camps in the eastern Bosnian town of Foča. The campaign of sexual abuse started after the Bosnian Serb takeover of Foča, in the spring of 1992. Bosnian Serbs gathered Muslim women in detention centres around the town where they were raped by Serb soldiers. Many women were then taken to apartments and hotels run as brothels for Serb soldiers. The judges heard the testimonies of over 20 women regarding repeated acts of rape, gang rape and other kinds of sexual assault and intimidation.

IV. INTERNATIONAL LEGAL ORDER

In contemporary IHL treaties, rape and other forms of sexual violence are prohibited in both international and non-international armed conflicts. In international armed conflicts, the Third Geneva Convention of 1949 continues to provide that prisoners of war are in all circumstances entitled to respect for their persons and honour and that women shall be treated with all regard due to their sex. The drafters used the same language as the 1929 Convention on prisoners of war. The Fourth Geneva Convention is more explicit and provides that civilian "women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault". While the Fourth Geneva Convention – adopted in 1949 as the first treaty specifically on the protection of the civilian population during armed conflict – expressly addresses rape and other forms of sexual violence, this phrasing has been criticized because rape and sexual violence seem to be characterized as an intrusion on the victim's honour and thus as not reflecting the seriousness of the offence, i.e. an attack against the physical and psychological well-being of the victim. This wording indeed seems euphemistic and old-fashioned today, but the notion of "honour" had a completely different connotation at the time. While they seem weak and symbolic today, notions of honour (as evidenced by the principle of chivalry, for instance) were considered highly important constraints in war and were at the core of IHL rules in 1949 and before. In any case, and because of these fundamental changes of values and societal norms, the connection between sexual violence and honour is less present in more recent IHL treaties.

Additional Protocol I to the Geneva Conventions (AP I), of 1977, provides that outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault, are "prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents. Two additional provisions protect specifically women against rape, enforced prostitution and any other form of indecent assault"⁵⁵ and children "against any form of indecent assault."

Surprisingly, most human rights treaties, universal and regional, do not contain explicit or specific prohibitions of sexual violence. Even the Convention on the Elimination of Discrimination against Women (CEDAW) of 1979 does not contain any provision to that effect. Only “traffic in women and exploitation of prostitution of women” is explicitly prohibited. IHL treaties – and even the 1949 Geneva Conventions – appear thus to be more explicit, specific and precise than human rights treaties in general as regards the prohibition of sexual violence. At the regional level, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women of 1994 prohibits “violence against women”, which includes not only physical and psychological but also sexual violence, whether it is committed in the public or private sphere.

This Convention drew its inspiration from the non-binding United Nations Declaration on the Elimination of Violence against Women of 1993, which contains similar provisions. The Protocol to the African Charter on Human and Peoples’ Rights of Women in Africa (Maputo Protocol) of 2003 prohibits violence against women in a similar way and contains a number of provisions aimed at protecting women from sexual violence.⁹⁶ One provision deals specifically with armed conflicts and provides that: States Parties undertake to protect asylum seeking women, refugees, returnees and internally displaced persons, against all forms of violence, rape and other forms of sexual exploitation, and to ensure that such acts are considered war crimes, genocide and/or crimes against humanity and that their perpetrators are brought to justice before a competent criminal jurisdiction.

Sexual and gender-based violence against women and girls has been a persistent issue in all conflict zones. Parties to the conflict resort to sexual violence as a tool to instil fear, humiliate and punish or, in the case of terrorist groups, as part of their enforced social order. While the immense suffering induced by these practices impacts from all backgrounds, women and girls have been disproportionately affected, victimised on multiple grounds, irrespective of perpetrator or geographical area.

Government forces and associated militias have perpetrated rape and sexual abuse of women and girls and occasionally men during ground operations, house raids to arrest protestors and perceived opposition supporters, and at checkpoints. In detention, women and girls were subjected to invasive and humiliating searches and raped, sometimes gang-raped, while male detainees were most commonly raped with objects and sometimes subjected to genital mutilation. Rape of women and girls was documented in 20 Government political and military intelligence branches, and rape of men and boys was documented in many branches. Sexual violence against females is used to force confessions, to extract information, as punishment, as well as to terrorise opposition communities. Rapes and other acts of sexual violence carried out by Government forces and associated militias during ground operations, house raids, at checkpoints, and during detention formed part of a widespread and systematic attack directed against a civilian population, and amount to crimes against humanity. These acts also constitute the war crimes of rape and other forms of sexual violence, including torture and outrages upon personal dignity.

Though considerably less common than rape by Government forces and associated militias, incidents of female rape by members of armed groups were also documented. Rapes and other forms of sexual violence carried out by armed group members constitute the war crimes of rape and other forms of sexual violence, including torture and outrages upon personal dignity. These acts also contravene fundamental international human rights norms including the right to life, liberty and security of person, the right to freedom from torture and other forms of cruel, inhuman, or degrading treatment, and the right to the highest attainable standard of physical and mental health.

Rape and other forms of sexual violence are absolutely prohibited under both IHL and international human rights law. The Geneva Conventions and their Additional Protocols prohibit expressly rape. They also outlaw cruel or inhuman treatment and torture, outrages upon personal dignity, indecent assault and enforced prostitution, and require respect for persons and honour. The IHL prohibition of rape and other forms of sexual violence applies to both international and non-international armed conflicts and is also part of customary law. Human rights law prohibits sexual violence at all times. This is done first and foremost through the prohibition of torture or cruel, inhuman or degrading treatment or punishment. Other human rights are also relevant, such as the prohibition of sexual slavery, trafficking of persons for the purpose of prostitution of others or other forms of sexual exploitation, the right to privacy or to a private life, and the prohibition of discrimination. Rape and other forms of sexual violence can amount to international crimes – war crimes, crimes against humanity and acts of genocide – when the conditions for such crimes (including the contextual elements) are fulfilled.

As such, they entail individual criminal responsibility. The international legal framework for the prohibition and criminalization of sexual violence is thus extremely strong, even if imperfect. Sexual violence is one of those areas where the different international law branches (IHL, human rights law, international criminal law) echo and reinforce each other, providing for an essential complementarity. Despite these legal achievements, the reality on the ground is appalling. In order to fill the gap between the law and the reality, there is an urgent need to strengthen the implementation of the international prohibition of sexual violence and the prosecution of sexual violence both at the domestic and international levels. At the domestic level, proper implementation of the prohibition of sexual violence goes beyond a mere translation of international law and

into domestic rules. Large institutional reforms are needed sometimes to ensure respect for the law. At the international level, effective IHL compliance mechanisms are needed and further efforts must be made to ensure that sexual crimes are properly investigated and prosecuted by international judicial bodies.

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