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OVERVIEW OF LEGAL PROTECTION AGAINST SEXUAL VIOLENCE AFFORDED TO WOMEN DURING SITUATIONS OF ARMED CONFLICT

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Directorate General of Human Rights and Legal Affairs

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The level of legal protection of women against sexual violence during armed conflict is not only determined by the character and stage of the conflict, but also by the particular role of each woman caught up in it. Armed conflict may be of international or national character, involving state actors or non-state actors. Women may be combatants, persons deprived of their freedom, refugees, internally displaced persons (IDPs), mothers and/or members of the civilian population. It is important to note that sexual violence is not limited to rape. It also encompasses forced prostitution, sexual slavery, forced impregnation, forced maternity, forced termination of pregnancy, enforced sterilisation, indecent assault, trafficking, inappropriate medical examinations and strip searches.

The provisions of international humanitarian law listed below afford women protection against sexual violence.[1] While the Geneva Conventions generally apply to international armed conflict, Article 3, which is common to all four Geneva Conventions, also relates to non-international armed conflict. Additional Protocol I is concerned solely with international armed conflict, whereas Additional Protocol II focuses on non-international armed conflict.

I. WOMEN AS PART OF THE CIVILIAN POPULATION IN INTERNATIONAL AND NON-INTERNATIONAL ARMED CONFLICTS

1. Protection under the Geneva Conventions[2]

International armed conflicts

4th Geneva Convention Article 27	Women must be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any other form of indecent assault.
Additional Protocol I to the Geneva Conventions Article 75(2)(a);(b)	Prohibition of violence to the life, health or physical or mental well/being of persons, in particular torture of all kinds, whether physical or mental and prohibition of outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault or threats thereof.
Additional Protocol I to the Geneva Conventions Article 76	Women must be the object of special respect and must be protected in particular against rape, forced prostitution and any other form of indecent assault.

[1] Source: "Addressing the Needs of Women Affected by Armed Conflict, An ICRC Guidance Document, Annex: General and specific protection of women under international humanitarian law", ICRC, March 2004.

[2] All Council of Europe member states have ratified the Geneva Conventions I-IV, while 44 member states have ratified its Additional Protocols I and II (Andorra, Azerbaijan and Turkey have not ratified the Additional Protocols).

Non-international armed conflicts

Geneva Conventions, Common Article 3	Prohibition of outrages upon personal dignity, in particular humiliating and degrading treatment in non-international armed conflicts.
Additional Protocol II to the Geneva Conventions Article 4(2)(a);(e)	The following acts against persons *hors de combat* are prohibited in non-international armed conflicts: violence to life, health and physical or mental well-being, in particular cruel treatment such as torture; outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault, and slavery.

2. Protection under the Statute of the International Criminal Court[3]

Article 7(1)(g)	Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence of comparable gravity (if committed as a "crime against humanity" meaning committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack)
Articles 8(2)(b)(xxi); (xxii); 8(2)(c)(ii); 8(2)(e)(vi)	Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence as well as outrages upon personal dignity, in particular humiliating and degrading treatment, are war crimes in both international and non-international armed conflicts (if committed as part of a plan or policy or as part of a large-scale commission)

II. WOMEN DEPRIVED OF THEIR FREEDOM DURING ARMED CONFLICT

International armed conflicts

3rd Geneva Convention Articles 13 and 14	Prisoners of war must be treated humanely at all times and are entitled to respect for their persons and their honour in all circumstances. Unlawful acts or omissions by a detaining authority causing the death or seriously endangering the health of prisoners of war are prohibited. Prisoners of war must not be subjected to physical mutilation or to medical or scientific experiments.
3rd Geneva Convention Article 13	A Detaining Power must protect prisoners of war from acts of violence or intimidation and from insults and public curiosity.

[3] 39 member states of the Council of Europe have ratified the Statute of the International Criminal Court (Albania, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Czech Republic, Croatia, Cyprus, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, "The former Yugoslav Republic of Macedonia, United Kingdom).

3rd Geneva Convention Article 14	Women prisoners of war must be treated with all the regard due to their sex and must in all cases benefit from treatment as favourable as that granted to men.
3rd Geneva Convention Article 17	Prohibition of the use of physical or mental torture and any form of coercion in order to secure information of any kind from prisoners of war.
3rd Geneva Convention Article 88	Female prisoners of war may not be sentenced to more sever punishment or be treated more severely when undergoing punishment than female or male members of the Detaining Power's forces for a similar offence.
3rd Geneva Convention Article 97, 4th Geneva Convention Articles 76;124; Additional Protocol I Article 75(5)	Women deprived of their liberty in relation to international or non-international armed conflicts must be placed under the immediate supervision of women.
4th Geneva Convention Article 97	A woman civilian internee must not be searched except by a woman.
4th Geneva Convention Article 117	Disciplinary penalties may not be inhuman, brutal or dangerous to the health of civilian internees and account must be taken of the internee's age, sex and state of health.

Non-international armed conflicts

Additional Protocol II Article 5(2)(e)	The physical or mental integrity of persons deprived of their liberty for reasons related to a non-international conflict must not be endangered by any unjustified act or omission. It is prohibited to subject these persons to any medical procedure not justified by the state of health of the person concerned.
Additional Protocol II Article 5(2)(a)	Women deprived of their liberty in relation to international or non-international armed conflicts must be placed under the immediate supervision of women.