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# Sexual violence in armed conflicts and other situations of violence





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# Outline

## **I. Film: *Congo Kinshasa: the hidden battlefield***

## **II. Background**

- What is sexual violence?
- What are the causes and consequences of this IHL violation?

## **III. Legal framework**

- International humanitarian law (IHL)
- International human rights law (IHRL)
- International criminal law
- Domestic legislation

## **IV. Humanitarian response to sexual violence**

- Assistance
- Protection
- Prevention / Dialogue

## **V. Case studies**



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# ***I. Congo Kinshasa: the hidden battlefield***



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## II. Background



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# Definition of sexual violence

## DEFINITION

An act of a sexual nature imposed by **force**, **threat** of force or **coercion**

Victims can be women, men, girls and boys

Encompasses: rape, sexual slavery, forced pregnancy, forced sterilization, forced abortion, etc.



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# Definition of rape

**Invasion** of the  
body of a  
person, through  
penetration, with  
a sexual organ  
or with any other  
object

Committed by  
force, threat of  
force or coercion





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# Sexual violence versus gender-based violence

## Inter-Agency Standing Committee:

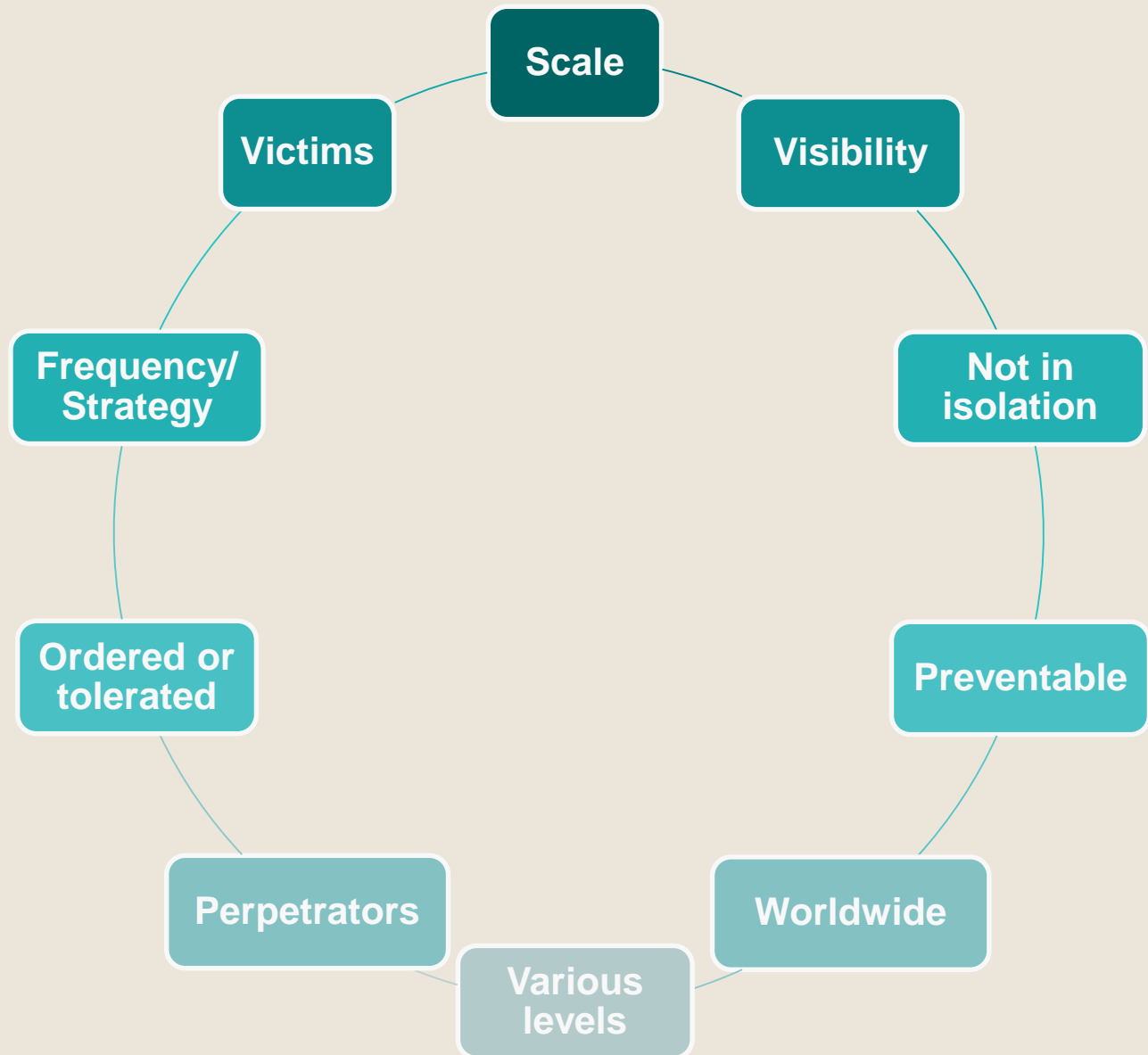
- umbrella term
- harmful act against a person's will
- based on socially ascribed (gender) differences between males and females





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# Facts about sexual violence







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# Facts about sexual violence

## Why it happens

- Climate of **impunity**
- Absence of **clear orders/instructions** prohibiting SV
- **Proliferation** of small arms and light weapons
- **Increased vulnerabilities** (IDPs, migrants, widows, etc.)
- **Destruction** of community ties and individual coping mechanisms

## What's driving it

- Creates **fear**
- Serves as **reprisal**
- Used as **torture**
- Warfare **strategy**
- Often not **sexual desire**, but instead about **power, dominance** and **abuse of authority**



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# Do you think that...

...sexual violence is a violation of international law like any other?

**Yes**

**Explicitly prohibited under IHL**

**Need for assistance**

**Need for protection**

**No**

**Very specific health consequences  
(physical and psychological)**

**Impact on families/communities**

**Stigmatization of victims**

**Requires a multidimensional  
humanitarian response**

**Cultural taboos**



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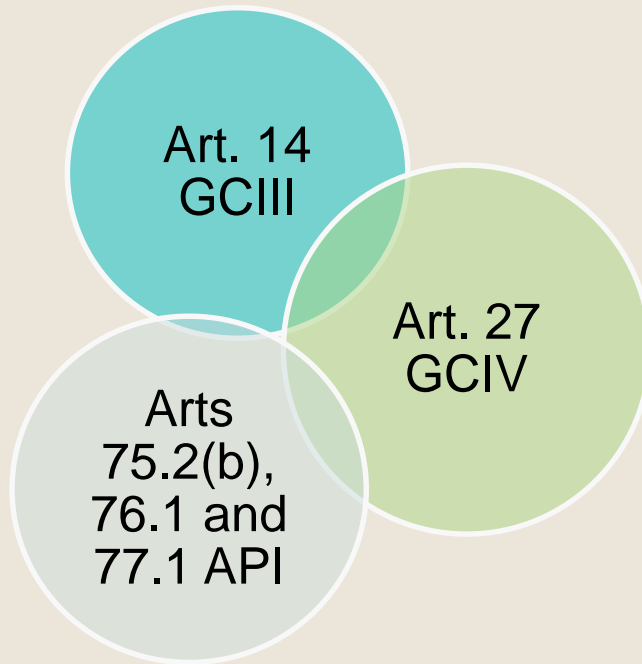
### III. Legal framework



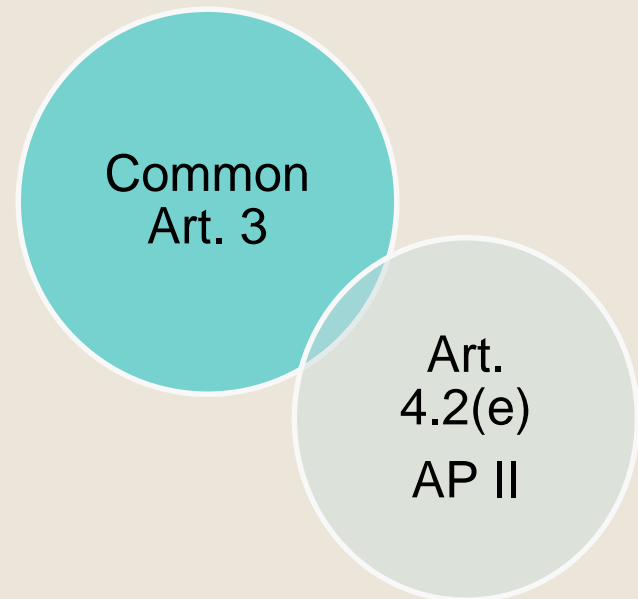
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# Treaty IHL

International armed conflict



Non-international armed conflict

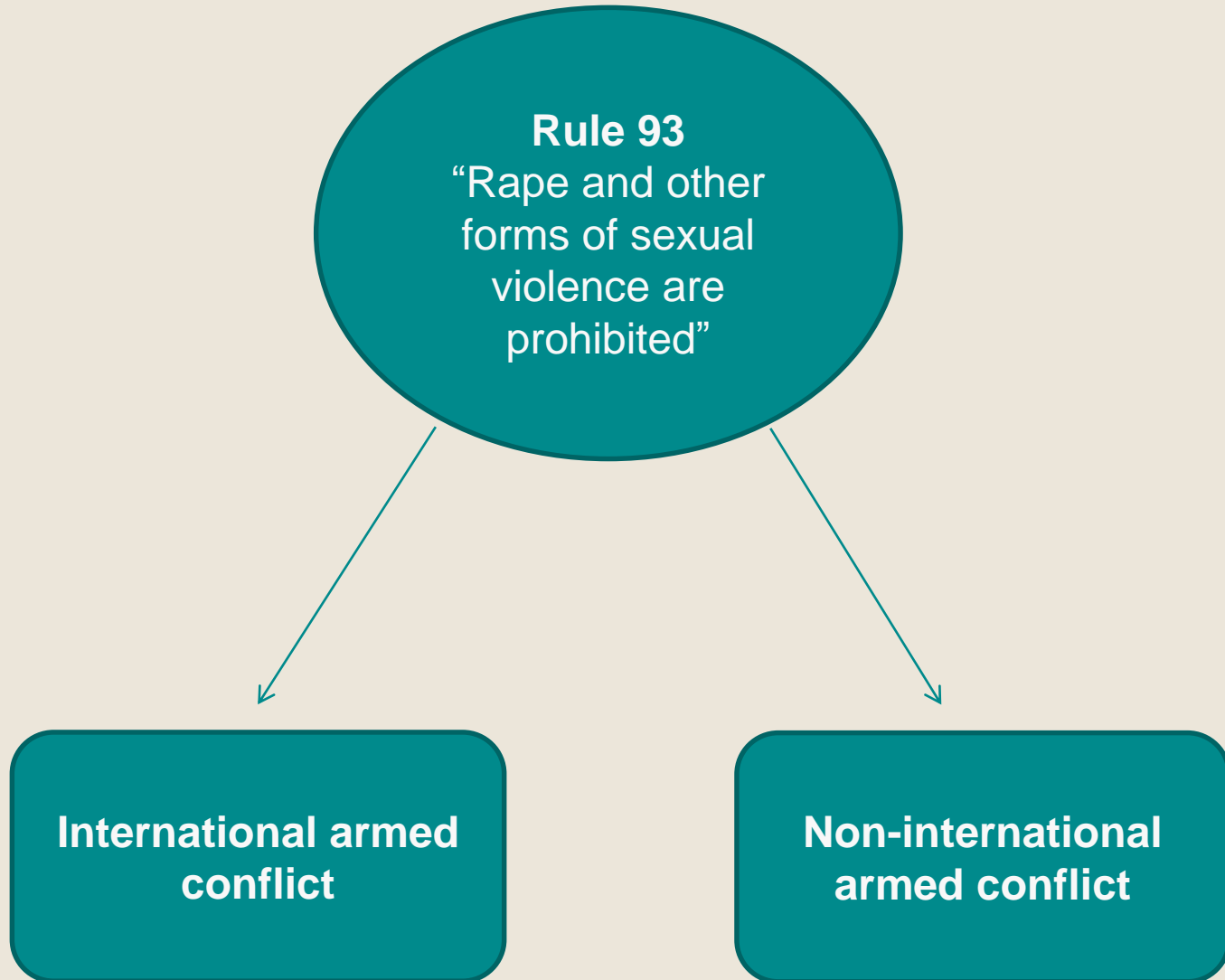


Rape; cruel treatment and torture; outrages upon personal dignity; respect for persons and honour; any form of indecent assault; enforced prostitution



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# Customary IHL





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# In armed conflict, do you think that:

a.

Rape is a **weapon** of warfare.

b.

Rape is a **method** of warfare.

c.

Rape is **both** a weapon and a method of warfare.

d.

Rape is **neither** a weapon nor a method of warfare.



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# Sexual violence and HRL

**Sexual violence is prohibited in all circumstances under human rights law**

## Mainly as

- **torture and cruel, inhuman or degrading treatment**

### Treaties explicitly prohibiting sexual violence

- Convention on the Rights of the Child
- 1994 Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women

### Other relevant instruments/resolutions

- 1993 United Nations Declaration on the Elimination of Violence against Women
- UN Security Council Resolutions





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# Definition of torture under HRL

1.

- Infliction of severe pain or suffering, whether physical or mental

2.

- Intentionally

3.

- Specific purpose

4.

- Official capacity (found in treaty law but not present in customary law)



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# Sexual violence involves two types of responsibilities



**State  
responsibility**

**Individual  
criminal  
responsibility**





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# Sexual violence as an international crime

Acts of sexual violence are **self-standing crimes** in international criminal law

Crimes under international law entail **individual criminal responsibility**

Perpetrators of acts of sexual violence must be **prosecuted**



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# Sexual violence as a war crime

Acts

- Rape
- Sexual slavery
- Enforced prostitution
- Forced pregnancy
- Enforced sterilization
- Any other form of sexual violence **also constituting a grave breach of the Geneva Conventions or a serious violation of common Article 3**

Additional elements

- Act takes place in the context of, and is associated with, an armed conflict
- Perpetrator is aware of such factual circumstances



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# Sexual violence as a crime against humanity

Acts

- Rape
- Sexual slavery
- Enforced prostitution
- Forced pregnancy
- Enforced sterilization
- Any other form of sexual violence of **comparable gravity**

Additional elements

- Committed as part of a **widespread or systematic attack** directed against a **civilian population**
- Committed with **knowledge** of the attack



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# Sexual violence as an act of genocide

Acts

- Causing **serious bodily or mental harm** to members of the group
- Conditions calculated to bring about their physical destruction
- Imposing **measures** intended to **prevent births** within the group

Additional elements

- Special intent: **to destroy, in whole or in part, a national, ethnic, racial or religious group**



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# Liability for SV crimes

## Individual criminal responsibility – ICC Statute, Art. 25

- Commission (either individually, or jointly with or through another person)
- Ordering, soliciting, inducing
- Aiding, abetting, assisting
- ...

## Irrelevance of official capacity – ICC Statute, Art. 27

- Head of State or government, a member of a government or parliament, an elected representative or a government official

## Responsibility of commanders and other superiors – ICC Statute, Art. 28

- Military commanders
- Other superiors, e.g. mayor





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# Domestic legislation

States have an obligation to **criminalize**, **investigate** and **prosecute** rape and other SV



National criminal law in many countries recognizes rape and other SV as crimes



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## VI. Humanitarian response to sexual violence





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# What do you think?

Hint: Should you simply expect victims to come to you, or should you adopt another approach?





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# SV as an ICRC priority (2013)

**Interview with Pierre Krähenbühl,  
former ICRC head of operations,  
19 December 2013**



**We need a  
paradigm shift ...  
We need to  
assume that SV  
and abuse is  
going to be  
widespread**

<http://www.icrc.org/eng/resources/documents/audiovisuals/video/2013/12-19-sexual-violence-krahenbuhl.htm>



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# A holistic and multidisciplinary humanitarian response





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# What do you think?

**Is there a “right to abortion” under IHL for women and girls who become pregnant as a result of rape?**

No reference to abortion in IHL, but:

- rape and sexual violence are prohibited;
- belligerents must provide medical care to the wounded and sick without discrimination;
- women who have been raped and/or who are pregnant are covered by IHL provisions protecting the wounded and sick;
- in some circumstances, abortion may be included within the meaning of medical care under IHL;
- performing abortions following rape depends on domestic law.



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# Questions & discussion







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## V. Case studies



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# India, Press Release, Violence in Kashmir (1992)

## Facts

- Indian security forces are involved in counter-insurgency operations in Kashmir.
- A report by Asia Watch and Physicians for Human Rights documents 15 cases of rape committed by Indian security forces.
- By failing to prosecute and punish those responsible, the Indian authorities have signalled that the practice of rape is tolerated, if not condoned.

## Questions

1. Does it matter under IHL whether the rape victim is a civilian, a combatant, a fighter, a militant sympathizer, or a terrorist? Why?
2. What charges for international crimes could be brought against members of the Indian security forces? Why? Does your answer depend on how the violence in Kashmir is classified under IHL?
3. Does a State violate IHL if rapes are committed by its security forces even though they are not government policy? Why? And even though rape is prohibited under that State's laws?



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# DRC, 2009 Conflict in the Kivus

## Facts

- 2009 Rwandan-Congolese offensive against the FDLR
- HRW documented 42 cases of rape by coalition soldiers
- Increase in cases of male rape since the launch of military operations against the FDLR
- Cases of sexual violence registered at health facilities near the conflict areas in North and South Kivu doubled or tripled

## Questions

1. What protection does IHL confer against rape and other forms of sexual violence? Does IHL also protect men against sexual violence? How?
2. Can rape be prosecuted by the ICC? What about by the Congolese courts? How? Who can be prosecuted for these acts? (Congolese soldiers, Rwandan soldiers, members of the FDLR, military commanders?) What practical constraints have to be overcome for prosecution of rape to take place?
3. What measures can be taken to improve compliance with IHL by government soldiers on the battlefield? And by the FDLR? What practical measures can be taken when violations occur on such a large scale?



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# Armed conflicts in the former Yugoslavia (1993); ICTY, *The Prosecutor v. Tadić*

## Facts

- Widespread atrocities committed as part of practices of “ethnic cleansing”
- International community insists on the punishment of those responsible, asks for a specific instrument against such practices
- The ICTY is established by UN Security Council resolution 827 (1993)
- One Muslim woman testifies that she was beaten and raped many times at various premises

## Questions

1. Is rape prohibited by IHL governing international armed conflicts? What about by IHL governing non-international armed conflicts? How? Is it a war crime? Even in non-international armed conflicts? Justify your answer.
2. If rape was indeed committed as part of an “ethnic cleansing” policy, what crimes would that entail? Who could be found criminally liable for those crimes?
3. What additional measures could help put an end to the practice of rape in armed conflicts? Would an additional international instrument be useful? What provisions should it contain?





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# Group feedback session and discussion





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# Conclusion

