

Colombia – Sexual violence

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N.B. As per the disclaimer ^[1], neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

Sexual violence in conflict: Report of the Secretary-General

[Source : A/67/792 – S/2013/149, "« Sexual violence: Report of the Secretary-General" », 14 March 2013, available online at [<http://www.un.org/sexualviolenceinconflict/key-documents/reports/> ^[2]]]

[...]

II. Current and emerging concerns regarding sexual violence as it relates to international peace and security

5. The term “sexual violence” refers to rape, sexual slavery, forced prostitution, forced pregnancy, enforced sterilization and any other form of sexual violence of comparable gravity perpetrated against women, men or children with a direct or indirect (temporal, geographical or causal) link to a conflict. This link to conflict may be evident in the profile and motivations of the perpetrator, the profile of the victim, the climate of impunity or State collapse, any cross-border dimensions or violations of the terms of a ceasefire agreement.

6. [...] [T]he present report highlight[s] several emerging concerns, including the perpetration of sexual violence against men and boys, the plight of children born as a result of rape and the practice of forced marriages by armed groups. Attention is also drawn to the nexus between sexual violence and the illicit extraction of natural resources, the displacement of civilian populations and the inadequacy of disarmament, demobilization and reintegration and security sector reform efforts.

[...]

9. In some countries, available information indicates that there is a correlation between spikes in incidents of sexual violence and military activity linked to the illegal extraction of natural resources. [...] In Colombia, illegal armed groups have used sexual violence to forcibly displace populations from lucrative mining or agricultural zones and from areas of strategic importance for drug trafficking. Despite some efforts made by companies and Governments over the past 18 months to diminish armed groups’ ability to generate income from conflict minerals, policymakers and industry leaders must redouble their efforts to better monitor the illegal extraction process.

[...]

A. Information on parties to armed conflict credibly suspected of committing or being responsible for acts of rape or other forms of sexual violence

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24. Sexual violence continues to be perpetrated within the context of armed conflict in Colombia. In rural areas, women, particularly from Afro-Colombian and indigenous populations, indicated that sexual violence had been used by armed groups, including by the Fuerzas Armadas Revolucionarias de Colombia — Ejército del Pueblo and other illegal armed groups that have emerged since demobilization, to forcefully displace populations from lucrative mining or agricultural zones, or in corridors strategic for drug trafficking. The Government considers the illegal armed groups to be criminal gangs. Survivors and women's groups have indicated that many of the victims of sexual violence are children and that acts of such violence include abductions, rape, sexual slavery and forced abortions. Civil society groups have also indicated that pregnancies and children resulting from rape are significant concerns for which there has been limited response.

25. In a newly observed dynamic, members of illegal armed groups have used sexual violence against relatives and other kin to exert control over their families and those of their subordinates in specific neighbourhoods. In some cases, women heading households were forced to hand over their daughters to the leaders of these illegal armed groups. As a result, women and girls have fled their neighbourhoods and cities seeking protection.

26. The systematic targeting of women leaders and activists and their families with sexual

violence or threats of sexual violence by members of illegal armed groups that have emerged since demobilization is of concern. Although the Victims and Land Restitution Law (No. 1448), which came into force on 10 June 2011, provides for reparations to victims of sexual violence, it excludes those who were targeted by illegal armed groups that the Government does not consider to be parties to the conflict and to which most cases of sexual violence are attributed. Due consideration should be given to how this could be addressed through the law's implementation.

27. There were reports of sexual violence against both females and males attributed to members of the military during the reporting period. In May, two boys were held and sexually assaulted at a military checkpoint in Meta. Afterwards, they were threatened and forced to sign a paper stating that they had been treated well. In July, a woman was repeatedly raped and threatened by members of the army, while in August a 13-year-old indigenous girl was sexually abused and photographed by four army soldiers who were later discharged from the army.

28. During the visit to Colombia conducted in May 2012 by my former Special Representative, the Vice-President of Colombia, Angelino Garzón, on behalf of the Government, committed to identifying strategies for strengthened technical cooperation between the Government and the United Nations to address sexual violence in conflict in the following three priority areas: fighting impunity; placing survivors at the centre of strategies and actions; and sharing knowledge on sexual violence and response initiatives. The Attorney-General reiterated his commitment to addressing impunity through investigations and prosecutions for sexual violence, but stressed that there were practical constraints, such as the enormous backlog of cases. In a meeting with military and police leaders, my Special Representative was informed that the security forces had adopted a zero-tolerance policy and codes of conduct to prevent human rights violations, including sexual violence, by its personnel.

29. On 12 September 2012, the President of Colombia presented a national policy for gender equality, which is expected to lead to the development of strategies on, inter alia, health, sexual and reproductive rights and the protection of girls and women who survive sexual violence.

30. The Ministry of Health has developed programmes to ensure access to health care and psychosocial support services for survivors. However, such access is difficult in conflict-affected rural areas, where most survivors of sexual violence are located. Other obstacles include a lack of awareness about order No. C-355 of 2006 of the Constitutional Court, which guarantees the right of survivors to access services for the voluntary interruption of pregnancies resulting from rape.

31. In its efforts to provide victims of sexual violence with access to justice and reparations, during the reporting period the Government presented several legislative initiatives, including an amendment to the Criminal Code. Other initiatives, such as the approval in June 2012 of a constitutional reform entitled “Legal framework for peace”, could lead to de facto amnesties benefiting alleged perpetrators of human rights violations, including members of the security forces.

32. Implementing the strong legal framework and enforcing compliance with codes of conduct and the zero-tolerance policy through the chains of command of the security forces remain key priorities in Colombia. The United Nations looks forward to further dialogue on the implementation of the proposed elements for strengthened technical cooperation. It is also essential for sexual violence concerns to be explicitly reflected in ongoing ceasefire and peace negotiations.

Discussion

I. Applicable law

1. Is there an armed conflict in Colombia? What is the nature of the conflict? What elements may suggest there is a NIAC? Would Protocol II apply? If not, what law would be applicable? Does the Government's position on the existence or the nature of the conflict influence your answer? (GC I-IV, Common Art. 3 ^[3]; P II, Art. 1 ^[4])?
2. (Para. 24) If there is an armed conflict, is it possible to distinguish illegal armed groups that are parties to the conflict from criminal gangs that are not parties? Under what circumstances is conduct of the latter not governed by IHL?
3. Does International human rights law (IHRL) apply in times of armed conflict? In the same way as in times of peace? Are Colombia's armed groups bound by IHRL? Are criminal gangs?
4. (Para. 9) Are companies, commercial entities and the governments of non-belligerent States involved in extraction industries bound by IHL or IHRL in relation with the events described in Colombia? If their activities result in an "armed group's ability to generate income from conflict minerals"?

II. Sexual violence

5. What protection does IHL provide against rape and other forms of sexual violence? Does IHL expressly prohibit rape and other forms of sexual violence in international armed conflicts? In non-international armed conflicts? (CIHL, Rules 90 ^[5], 91 ^[6] and 93 ^[7]; P II, Art. 4(2)(a) ^[8] and (e) ^[8]; GC I-IV, Common Art. 3 ^[3]; GC IV, Art. 27 ^[9]; P I, Arts 75(2) and 76 ^[10])
6. Does IHL protect all individuals against sexual violence? Does it matter whether the rape victim is a civilian, a combatant, a fighter, a militant sympathizer, or a terrorist? Man, woman or a child? Does the IHL prohibition against sexual violence apply between members of the same military or armed group? If so, justify your answer. If not, what rules would protect in such cases? (CIHL, Rules 93 ^[7], 134 ^[11] and 135 ^[12]; P II, Art. 4(2) ^[8]; GC I-IV, Common Art. 3 ^[3]; GC I, Art. 12 ^[13]; GC II, Art. 12 ^[14]; GC III, Art. 14 ^[15]; GC IV, Arts 27 ^[9]; P I, Arts 75(2), 76 ^[10] and 77 ^[16])
7. (Para. 27)
 - a. Does IHL apply to sexual violence committed against men and boys? As many rules of IHL are framed in terms of women's "honour", does this mean in practice that different rules protect men and women from sexual violence under

IHL? (CIHL, Rules 90 ^[5], 91 ^[6] and 93 ^[7]; P II, Art. 4(2)(a) ^[8] and (e) ^[8]; GC I-IV, Common Art. 3 ^[3]; GC IV, Art. 27 ^[9]; P I, Arts 75(2) and 76 ^[10])

- b. Despite the fact that men and boys are also victims of sexual violence in armed conflicts, why is it, in your opinion, that women are accorded special protection in armed conflicts in this respect? (See also Case No. XX, Women and sexual violence)
8. (Paras 28-32) Does IHL require specific strategies to be put in place to cater for the medical and psycho-social needs of victims and survivors of sexual violence? Can this be read into the obligation to care for the wounded and sick? Who should put these strategies in place? Does IHL contain the same or a similar requirement? (CIHL, Rules 110 ^[17] and 134 ^[11]; GC I-IV, Common Article 3 ^[3]; P II, Art. 7 ^[18])
9. (Para. 30) Does IHL provide for a right of rape victims “to access services for the voluntary interruption of pregnancies resulting from rape”? May this be based upon the right to reparation for IHL violations? The right of the wounded and sick to be cared for? (CIHL Rules 110 ^[17], 134 ^[11] and 150 ^[19]; GC I-IV, Common Article 3 ^[3]; P I, Arts 10 ^[20] and 91 ^[21]; P II, Art. 7 ^[18])

III. Criminal repression

10. (Para. 5) Is all sexual violence that occurs during an armed conflict a violation of IHL? What do you think of the phrase “with a direct or indirect (temporal, geographical or causal) link to a conflict”? Why is it important to be clear regarding acts that are linked to the armed conflict and those that are not so linked?
11. Is rape a war crime? Are other forms of sexual violence war crimes? What additional measures could help put an end to these practices, particularly in light of the connection Document A para. 9 makes between military activity linked to the illegal extraction of natural resources and sexual violence? Would an additional international instrument be useful? What provisions should it contain? (CIHL, Rule 156 ^[22]; GC I, Art. 50 ^[23]; GC II, Art 51 ^[24]; GC III, Art. 130 ^[25]; GC IV, Art. 147 ^[26]; P I, Art. 85 ^[27]; ICC Statute, Art. 8(2)(b)(xxii) and (e)(vi) ^[28])
12. (Para 24) Can sexual violence constitute a means of warfare? A method of warfare? What would be the advantages and disadvantages of referring to it as a means of warfare rather than a systematic violation of IHL and a war crime? What rules of IHL

would be violated by the employment of a policy that instrumentalized rape and sexual violence to “forcefully displace populations from lucrative mining or agricultural zones”? Who would be criminally responsible for the violation(s) of that/those rule(s)? (CIHL, Rules 156 ^[22], 158 ^[29]-159 ^[30])

13.

- a. Does IHL impose an obligation on States to investigate allegations of rape and other forms of sexual violence committed in international armed conflicts? In non-international armed conflicts? (CIHL, Rules 93 ^[7] and 158 ^[29]; GC I, Art. 49 ^[31]; GC II, Art 50 ^[32]; GC III, Art. 129 ^[33]; GC IV, Art. 146 ^[34]; P I, Art 85 ^[27])
- b. Do you think that the obligation to investigate also binds armed groups?
- c. Under IHL, what are the requirements for an inquiry into an alleged rape? Must the victim be involved? Must the result be made public? (CIHL, Rules 93 ^[7] and 158 ^[29]; GC I-IV, Common Art. 1 ^[35]; P II, Art. 6 ^[36]; GC I, Art. 49 ^[31]; GC II, Art 50 ^[32]; GC III, Art. 129 ^[33]; GC IV, Art. 146 ^[34]; P I, Art. 85 ^[27])

14.

- a. Does IHRL impose an obligation on States to prevent and repress rape and other forms of sexual violence? To investigate allegations of rape and other forms of sexual violence? If yes, do you think that the obligations imposed on States under IHL and IHRL are different? If different, which regime is more protective?
- b. Under IHRL, what are the requirements for an inquiry into an alleged rape? Must the victim be involved? Must the result be made public?

16. (Para. 31) May amnesties include IHL violations such as rape? Human rights violations? (CIHL, Rule 159 ^[30]; P II, Art. 6(5) ^[36])

17. (Para. 29) Does IHL provide for gender equality? Is there an obligation for armed groups to accept women to join the armed group and take part in hostilities? (CIHL Rule 88 ^[37]; P II, Art. 2(1) ^[38]; GC I-IV, Common Art. 3 ^[3]; GC I, Art. 12 ^[13]; GC II, Art. 12 ^[14]; GC III, Art. 14 ^[15]; GC IV, Art. 27 ^[9]; P I, Art. 9(1) ^[39])

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[3]

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[5] https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule90

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[11] https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule134

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[17] https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule110

[18]

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[19] https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule150

[20]

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[22] https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule156

[23]

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[37] https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule88

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