

International Humanitarian and Human Rights Law Issues

Factual Circumstance	Applicable Law	Commentary
	<p>against such interference or attacks.</p> <p>Art. 14 AC states:</p> <p>"The right to property" shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws."</p>	<p>if it is contrary to international or domestic law and is "arbitrary" where the interference contains elements of injustice, unpredictability and unreasonableness.</p>
<p>Rape of Women</p> <p>Attacks by the GOS and/or their allies have included rape of women.</p> <p>Some persons interviewed have stated that the rape of women in itself has caused an entire village to flee.</p>	<p>Common Art. 3 does not explicitly prohibit rape⁴ but it requires parties to the conflict to treat all persons who are not active participants in the conflict "humanely without any adverse distinction founded on ... sex". Furthermore it prohibits "outrages on personal dignity, in particular humiliating and degrading treatment". (See also Art. 2(1) Protocol II)</p> <p>Art. 4(2)(e) Protocol II prohibits, <i>inter alia</i>, "outrages upon personal dignity, in particular ... rape ... and any form of indecent assault".</p> <p>Art. 1 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines torture as:</p> <p>"any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as ... intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted ... with the consent or acquiescence of a public official or other person acting in an official capacity."</p> <p>Art. 5 ICCPR states:</p>	<p>⇒ Under Common Art. 3, clarified by Art. 4(2)(e) of Protocol II, rape is prohibited. Rape of women by the GOS forces or their allies, such as militias is a violation of international humanitarian law.</p> <p>⇒ The rights to life and security of the person and the prohibition of torture and cruel, inhuman or degrading treatment are non-derogable rights and any abrogation of them is a violation of international law. A violation of the prohibition against torture and cruel, inhuman or degrading treatment constitutes a war crime and where systematic, a crime against humanity. Inasmuch as rape is cruel, inhuman and degrading treatment it also constitutes a crime in international law.</p>