

## Examples of definitions of humanitarian law violations\*

### Wilful killing or murder of civilians

Under International humanitarian law a party to the conflict is prohibited from wilfully killing or murdering a civilian. The prohibition is closely related to one of the cardinal principles of international humanitarian law, namely that parties to a conflict **distinguish** between military objectives and civilians. The intentional killing of civilians represents a war crime in both international armed conflict (in the form of wilful killing) and non-international armed conflict (in the form of murder). It may also constitute a crime against humanity if committed as part of a widespread or systematic attack directed against any civilian population, or be an element of genocide.

**Civilians** are persons who are not members of the armed forces of a party to the conflict. Civilians enjoy protection under international humanitarian law. Individual civilians lose this protection for such time as they take a direct part in hostilities.

The wilful killing or murder of civilians occurs where a party to an armed conflict, in the context of and associated with the conflict:

- **Intentionally kills** one or more persons; and
- Such persons are **civilians who are taking no direct part in hostilities**; and
- The perpetrator is **aware of the factual circumstances** establishing **this civilian status**.

Civilian deaths resulting from a necessary and proportional attack against a military objective do not constitute a violation.

States have an obligation to **investigate** all allegations of wilful killings or murders of civilians committed by their armed forces or nationals, or committed on their territory. Where there is sufficient evidence of the commission of the offence, States have a duty to **prosecute** those responsible. A State responsible for such violations must make full **reparation** for the loss suffered.

*Common art. 3 of the Geneva Conventions; Geneva Convention I art.50; Geneva Convention II art. 51; Geneva Convention III art. 130; Geneva Convention IV art. 147; Additional Protocol I art. 75(2)(a)(i); Additional Protocol II art. 4(2)(a).*

*Rome Statute arts.8(2)(a)(i) and 8(2)(c)(i).*

### Rape and other sexual violence

Rape and other forms of sexual violence are prohibited by international humanitarian law. It is a violation of international humanitarian law for a party to the conflict, in the context of and associated with the conflict to engage in:

- **Rape**; or
- **sexual slavery**; or

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- **enforced prostitution**; or
- **forced pregnancy**; or
- **enforced sterilization**; or
- any other form of **sexual violence** also constituting a serious violation of international humanitarian law.

These acts are war crimes recognized in international criminal law in both international and non-international armed conflict and may constitute torture and/or a crime against humanity. Rape, forced pregnancy and enforced sterilization may also constitute an element of genocide.

**Rape occurs where by force, threat of force or coercion, a person invades the body of another, causing the penetration, however slight, of any part of the body of the victim or perpetrator with a sexual organ; or penetration of the anal or genital opening of the victim with an object or body part.**

**Sexual slavery** is where a person exercises ownership over another and causes him/her to engage in one or more sexual acts.

**Enforced prostitution** occurs where a person is forced to engage in one or more acts of a sexual nature by force, threat of force or coercion in circumstances where the perpetrator or another is expecting money or other advantage in exchange for the sexual acts.

**Forced pregnancy** is where a woman is forcibly made pregnant and confined with the intent to change the ethnic composition of a population or to carry out other grave violations of international law.

**Enforced sterilization** is the permanent removal of a person's reproductive capacity without any medical justification or without genuine consent.

Other forms of sexual violence prohibited in armed conflict may include indecent assault, trafficking, inappropriate medical examinations and strip searches.

Parties to an armed conflict must adopt preventive measures. States must **investigate** all allegations of rape and sexual violence committed in armed conflict by their armed forces or nationals, or committed on their territory. Where there is sufficient evidence of the commission of the offence, States have a duty to **prosecute** those responsible. A State responsible for such violations must make full reparation for the loss suffered.

*Geneva Conventions common art. 3; Geneva Convention IV art. 27; Additional Protocol I arts. 75-77; Additional Protocol II art. 4(2).*

*Rome Statute arts. 7(1)(g), 8(2)(b)(xxii) and 8(2)(e)(vi).*

## Attacks against civilians

Parties to a conflict must **distinguish** between the **civilian population and combatants** and must not direct **attacks against civilian populations or individual civilians**. Attacks are acts of violence against an adversary. Civilians are persons who are not members of the armed forces of a party to the conflict, and the civilian population comprises all persons who are civilians. In case of doubt whether a person is a civilian, s/he shall be considered a civilian. Individual civilians lose the protection against attack that they enjoy under international humanitarian law if and for such time as they take a direct part in hostilities.

It is a violation of international humanitarian law if a party to an armed conflict, in the context of and associated with the conflict:

- **Intentionally targets a civilian population or individual civilians.**

It is a war crime to intentionally direct attacks against a civilian population or individual civilians not taking a direct part in hostilities in both international and non-international armed conflict.

Allegations concerning an attack against civilians must be investigated, and where there is sufficient evidence, persons responsible for the commission of the offence or ordering of the offence must be prosecuted. A State responsible for such violations must make full reparation for the loss suffered.

*Additional Protocol I arts. 48, 49, 50, 51, 52, 57, 58, 79; 85; Additional Protocol II art. 13.  
Rome Statute arts. 8(2)(b)(i) and (iv), and 8(2)(e)(i).*

## Denial of humanitarian relief

Parties to armed conflicts must allow and facilitate rapid and unimpeded humanitarian relief for civilians in need. This is linked to the requirement to protect civilians during the conflict.

It will be a violation of international humanitarian law if a party to an armed conflict, in the context of and associated with the conflict:

- **Impedes access of humanitarian relief** to civilians; or
- **Arbitrarily denies consent to enable humanitarian relief operations;** or
- **Restricts freedom of movement of humanitarian relief personnel** other than temporarily and when required by imperative military necessity.

Humanitarian relief includes foodstuffs, water, clothing, means of shelter, medicine and other supplies needed for the survival of the civilian population.

Under international criminal law, “wilfully impeding relief supplies” may constitute starvation of civilians as a method of warfare, which is a war crime when committed in international and non-international armed conflict. The intentional deprivation of access to

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food and medicine calculated to bring about the destruction of part of a population may also constitute a crime against humanity if the other requirements are present.

*Geneva Convention IV art. 23, Additional Protocol I art. 70; Additional Protocol II art. 18.*

*Rome Statute arts. 7(1)(b), 8(2)(b)(xxv).*

## Use of human shields

Civilians who are used as human shields to protect military objectives or military operations are obviously placed in grave danger of becoming subject to attack.

It is a violation of international humanitarian law if a party to the armed conflict, in the context of and associated with the conflict:

- Uses **civilians as human shields**, that is **intentionally uses the presence or movement of civilians** to render points or areas immune from military operations.

Whilst there has to be a specific intent to use civilians in this way, it may occur in a passive form (e.g., deliberately intermingling with civilians to prevent an attack) or an active form (moving civilians to a particular location to shield that location or operation). The Rome Statute specifically recognizes the use of human shields as a war crime in international armed conflict. The practice has also been recognized as a war crime in non-international armed conflict, either as a form of cruel treatment or an outrage upon personal dignity.

If a party to the armed conflict uses human shields, this does not render the related military objective immune from attack. However, the opposing force must take into account the presence of the human shields in applying the principles of distinction and proportionality in planning attacks.

*Geneva Convention III art. 23; Geneva Convention IV 28; Additional Protocol I art. 51(7).*

*Rome Statute art. 8(2)(b)(xxiii).*

## Attacks against civilian objects or other protected objects

Parties to the conflict must always clearly **distinguish between civilian objects and military objectives and must not deliberately attack a civilian object**. For an object to constitute a military objective it must both (a) make an effective contribution to the military action of the enemy by virtue of its nature, location, purpose or use; and (b) be of such a nature its capture, destruction or neutralization provides the attacking party with a definite military advantage. If there is doubt as to an object's status, a presumption applies that it is a civilian object and that it is not being used for a military purpose.

It will be a violation of international humanitarian law if a party to the armed conflict, in the context of and associated with the conflict:

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- **Directs** an attack against an **object**; and
- The object is a **civilian object** or another **protected object**; and
- The party intends such object(s) to be the object of the attack.

This protection extends not only to civilian objects such as dwellings, schools, civilian means of transportation, but also specifically to medical units or transports, objects used for humanitarian relief and peacekeeping missions, as well as cultural property. If objects are being used for hostile acts, however, they will not enjoy this protection.

**As serious violations of international humanitarian law, attacks against civilian objects and other protected objects must be investigated, and where there is sufficient evidence, persons responsible for the commission of the offence or ordering of the offence must be prosecuted.** A State responsible for such violations must make full reparation for the loss suffered.

*Geneva Convention I arts. 19; 35-36; Geneva Convention II arts. 22-23, 38-39; Geneva Convention IV arts. 18, 21-22; Additional Protocol I arts. 8, 12, 21, 48, 49, 52, 53; Additional Protocol II arts. 11, 16.*

*Rome Statute arts. 8(2)(b)(ii),(iii),(v),(ix) and (xxiv) and 8(2)(e)(ii)-(iv), and (xii).*

## Use of anti-personnel landmines

**Anti-personnel mines** are mines that are designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons. States which have ratified the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines (the Ottawa Convention) are subject to a total ban on anti-personnel landmines.

Under the **Ottawa Convention**, it is a violation for State parties to:

- **use, develop, produce, otherwise acquire, stockpile, retain or transfer anti-personnel mines** except for training purposes or where they are being transferred for destruction; or
- **assist, encourage or induce prohibited activities** (including the use of anti-personnel land mines).

State parties to the Ottawa Convention have an obligation to destroy or ensure the destruction of all stockpiled anti-personnel mines that they own or possess or are subject to their control or jurisdiction, and to demine mined areas. Where in a position to do so, States are to provide assistance for the care and rehabilitation and social and economic reintegration of mine victims.

The use of anti-personnel landmines is also significantly restricted by the operation of the general rules of international humanitarian law. For **all** parties to an armed conflict, it will be a violation of international humanitarian law to:

- **Use anti-personnel landmines** which are designed or by their nature **will cause superfluous injury or unnecessary suffering** (that is which cause injury or suffering

greater than that which is unavoidable to achieve the legitimate military objective);  
or

- Use anti-personnel landmines which are **indiscriminate in their effects** (that is, they do not distinguish between military and civilian targets); or
- Use anti-personnel landmines without **particular care to minimize their indiscriminate effects (e.g., through signposting/markings)**; or
- Fail to **record the placement of anti-personnel landmines** as far as possible; or
- Fail, at the end of a conflict, to **remove or otherwise render harmless to civilians** the anti-personnel landmines they have laid or **facilitate their removal**.

*Additional Protocol I art. 35(2)*

*Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel mines and on their destruction (Ottawa Convention); Amended Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, Annexed to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects.*

## Unlawful deportation, forced transfer or displacement of civilians

International humanitarian law prohibits the unlawful deportation, forced transfer or displacement of civilians for reasons related to the conflict. Specifically, it is a violation if:

- Parties to an international armed conflict **deport or forcibly transfer** the civilian population of an occupied territory; or
- Parties to a non-international armed conflict, **order the displacement** of the civilian population;

**Unless** an evacuation is demanded in order to protect the security of the civilians involved or because of imperative military reasons.

As a matter of terminology, deportation refers to movement of persons across a State border, transfer refers to movement within a State, whilst displacement can refer to movement of either type.

Unlawful deportation, transfer or forcible displacement requires an element of force. Such force is not restricted to physical force, but may include 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 persons, or by taking advantage of a coercive environment.

**Allegations concerning the unlawful deportation, transfer or displacement of civilians must be investigated, and where there is sufficient evidence, persons responsible for the commission of the offence or ordering of the offence must be prosecuted.** A State responsible for such violations must make full reparation for the loss suffered.

*Geneva Convention IV arts 49, 147; Additional Protocol I art. 85; Additional Protocol II arts 4, 17.*

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*Rome Statute arts. 7(1)(d), 8(2)(a)(vii), 8(2)(b)(viii), 8(2)(e)(viii).*

*Guiding Principles on Internal Displacement, adopted by the Commission on Human Rights, E/CN.4/1998/53/Add.2 (11 February 1998)*

## Denial of fair trial rights

It is a violation of international humanitarian law for a party to an armed conflict, in the context of and associated with a conflict, to:

- **Convict or sentence** a person where that person has not been afforded a **fair trial** affording all **essential judicial guarantees**.

Such **essential judicial guarantees** include a hearing by a regularly constituted, independent and impartial tribunal; the right to examine and call witnesses; application of the presumption of innocence; the right to be informed promptly of the nature and cause of charge; the right to have defence counsel of choice/defend oneself; legal aid if the interests of justice require; adequate time and facilities to prepare the defence; a trial without undue delay; the right to be present during one's trial; the right not to be compelled to testify against oneself or confess; a public trial; free assistance of an interpreter; the right to appeal or review; and the right not to be sentenced twice for the same crime (*ne bis in idem*).

To deny a person a fair and regular trial by denying judicial guarantees constitutes a war crime in international armed conflict. There is a similar war crime which applies to non-international armed conflict, phrased in terms of sentencing a person without due process. In both instances, there is an obligation on the State to investigate allegations, and where the evidence is sufficient, to prosecute persons responsible for the violation.

*Common art. 3 of the Geneva Conventions; Geneva Convention I art. 49; Geneva Convention II art. 50; Geneva Convention III arts. 84, 86, 96, 99, 102-106; Geneva Convention IV arts. 5, 66-75, 117, 123; Additional Protocol I art. 75(4); Additional Protocol II art. 6(2).*

*Rome Statute arts 8(2)(a)(vi), 8(2)(c)(iv).*