



GUIDE

Sexual and gender-based violence:
A glossary from
AtoZ

AFGHANISTAN ARMANSHAH/OPEN ASIA | **ALBANIA** ALBANIAN HUMAN RIGHTS GROUP (AHRG) | **ALGERIA** COLLECTIF DES FAMILLES DE DISPARU(E)S EN ALGÉRIE (CFDA), LIGUE ALGÉRIENNE POUR LA DÉFENSE DES DROITS DE L'HOMME (LADH) | **ANGOLA** ASSOCIAÇÃO JUSTIÇA, PAZ E DEMOCRACIA (AJPD) | **ARGENTINA** CENTRO DE ESTUDIOS LEGALES Y SOCIALES (CELS), COMITÉ DE ACCIÓN JURÍDICA (CAJ), LIGA ARGENTINA POR LOS DERECHOS HUMANOS (LADH) | **ARMENIA** CIVIL SOCIETY INSTITUTE (CSI) | **AUSTRIA** ÖSTERREICHISCHE LIGA FÜR MENSCHENRECHTE (OLFM) | **AZERBAIJAN** HUMAN RIGHTS CLUB (HRC) | **BAHRAIN** BAHRAIN CENTER FOR HUMAN RIGHTS (BCHR), BAHRAIN HUMAN RIGHTS SOCIETY (BHRS) | **BANGLADESH** ODHIKAR | **BELARUS** HUMAN RIGHTS CENTER "VIASNA" | **BELGIUM** LIGA VOOR MENSENRECHTEN (LVM), LIGUE DES DROITS DE HUMAINS—BELGIQUE (LDH) | **BOLIVIA** ASAMBLEA PERMANENTE DE DERECHOS HUMANOS DE BOLIVIA (APDHB) | **BOTSWANA** THE BOTSWANA CENTRE FOR HUMAN RIGHTS—DITSHWANELO | **BRAZIL** JUSTIÇA GLOBAL (CJG), MOVIMENTO NACIONAL DE DIREITOS HUMANOS (MNDH) | **BURKINA FASO** MOUVEMENT BURKINABÉ DES DROITS DE L'HOMME ET DES PEUPLES (MBDHP) | **BURUNDI** LIGUE BURUNDAISE DES DROITS DE L'HOMME « ITEKA » | **CAMBODIA** CAMBODIAN HUMAN RIGHTS AND DEVELOPMENT ASSOCIATION (ADHOC), CAMBODIAN LEAGUE FOR THE PROTECTION AND DEFENSE OF HUMAN RIGHTS (LICADHO) | **CAMEROON** MAISON DES DROITS DE L'HOMME DU CAMEROUN (MDHC) | **CANADA** CANADIAN CENTRE FOR INTERNATIONAL JUSTICE (CCLJ), LIGUE DES DROITS ET DES LIBERTÉS DU QUÉBEC (LDL) | **CENTRAL AFRICAN REPUBLIC** LIGUE CENTRAFRICAINE DES DROITS DE L'HOMME (LCDH), OBSERVATOIRE CENTRAFRICAIN DES DROITS DE L'HOMME (OCDH) | **CHAD** ASSOCIATION TCHADIENNE POUR LA PROMOTION ET LA DÉFENSE DES DROITS DE L'HOMME (ATPDH), LIGUE TCHADIENNE DES DROITS DE L'HOMME (LTDH) | **CHILE** CORPORACIÓN DE PROMOCIÓN Y DEFENSA DE LOS DERECHOS DEL PUEBLO (CODEPU), OBSERVATORIO CIUDADANO | **CHINA** CHINA LABOUR BULLETIN (CLB), HUMAN RIGHTS IN CHINA (HRIC) | **COLOMBIA** CORPORACIÓN COLECTIVO DE ABOGADOS "JOSÉ ALVEAR RESTREPO" (CCAJAR), COMITÉ PERMANENTE POR LA DEFENSA DE LOS DERECHOS HUMANOS (CPDH), INSTITUTO LATINOAMERICANO DE SERVICIOS LEGALES ALTERNATIVOS (ILSA), ORGANIZACIÓN FEMENINA POPULAR (OFP) | **CONGO-BRAZAVILLE** OBSERVATOIRE CONGOLAIS DES DROITS DE L'HOMME (OCDH) | **CROATIA** CIVIC COMMITTEE FOR HUMAN RIGHTS (CCHR) | **CUBA** COMISIÓN CUBANA DE DERECHOS HUMANOS Y RECONCILIACIÓN NACIONAL (CCDHRN) | **CZECH REPUBLIC** LIGA LIDSKYCH PRAV (HUMAN RIGHTS LEAGUE) (HRL) | **DEMOCRATIC REPUBLIC OF CONGO** ASSOCIATION AFRICAINE DES DROITS DE L'HOMME (ASADHO), GROUPE LOTUS, LIGUE DES ÉLECTEURS (LE) | **DJIBOUTI** LIGUE DJIBOUTIENNE DES DROITS HUMAINS (LDDH) | **DOMINICAN REPUBLIC** COMISIÓN NACIONAL DE LOS DERECHOS HUMANOS (CNDH-RD) | **ECUADOR** ACCIÓN ECOLÓGICA, COMISIÓN ECUMÉNICA DE DERECHOS HUMANOS (CEDHU), FUNDACIÓN REGIONAL DE ASESORIA EN DERECHOS HUMANOS (INREDH) | **EGYPT** CAIRO INSTITUTE FOR HUMAN RIGHTS STUDIES (CIHRS), EGYPTIAN INITIATIVE FOR PERSONAL RIGHTS (EIPR), HUMAN RIGHTS ASSOCIATION FOR THE ASSISTANCE OF PRISONERS (HRAAP) | **EL SALVADOR** COMISIÓN DE DERECHOS HUMANOS DEL SALVADOR (CDHES) | **ETHIOPIA** HUMAN RIGHTS COUNCIL (HRCO) | **FINLAND** FINNISH LEAGUE FOR HUMAN RIGHTS (FLHR)—IHMIKSEUSLIITTO | **FRANCE** ASSOCIATION EUROPÉENNE POUR LA DÉFENSE DES DROITS DE L'HOMME (AEDH), LIGUE DES DROITS DE L'HOMME (LDH) | **GEORGIA** HUMAN RIGHTS CENTER (HRIC) | **GERMANY** INTERNATIONALE LIGA FÜR MENSCHENRECHTE (ILMR) | **GREECE** HELLENIC LEAGUE FOR HUMAN RIGHTS (HLHR) | **GUATEMALA** CENTRO PARA LA ACCIÓN LEGAL EN DERECHOS HUMANOS (CALDH) | **GUINEA** MÊMES DROITS POUR TOUS—GUINEE, (MDT), ORGANISATION GUINÉENNE POUR LA DÉFENSE DES DROITS DE L'HOMME (OGDH) | **GUINEA-BISSAU** LIGA GUINEENSE DOS DIREITOS HUMANOS (LGDH) | **GULF** GULF CENTRE FOR HUMAN RIGHTS (GCHR) | **HAITI** CENTRE CECUMÉNIQUE DES DROITS HUMAINS (CEDH), RÉSEAU NATIONAL DE DÉFENSE DES DROITS HUMAINS (RNDH), SOLIDARITÉ FANM AYISYÈN (SOFA) | **HONDURAS** CENTRO DE INVESTIGACIÓN Y PROMOCIÓN DE LOS DERECHOS HUMANOS (CIPRODEH), COMITÉ DE FAMILIARES DE DETENIDOS-DESAPARECIDOS EN HONDURAS (COFADEH) | **HUNGARY** HUNGARIAN HELSINKI COMMITTEE (HHC) | **INDIA** ASSOCIATION OF PARENTS OF DISAPPEARED PERSONS (APDP), COMMONWEALTH HUMAN RIGHTS INITIATIVE (CHRI), PEOPLE'S WATCH | **INDONESIA** KONTRAS | **IRAN** DEFENDERS OF HUMAN RIGHTS CENTER IN IRAN (DHRC), JUSTICE FOR IRAN (JFI), LIGUE DE DÉFENSE DES DROITS DE L'HOMME EN IRAN (LDDHI) | **IRELAND** FREE LEGAL ADVICE CENTRES (FLAC), IRISH COUNCIL FOR CIVIL LIBERTIES (ICCL) | **ISRAEL** ADALAH, ASSOCIATION FOR CIVIL RIGHTS IN ISRAEL (ACRI), B'TSELEM, PUBLIC COMMITTEE AGAINST TORTURE IN ISRAEL (PCATI) | **ITALY** LEGA ITALIANA DEI DIRITTI DELL'UOMO (LIDU ONLUS), UNIONE FORENSE PER LA TUTELA DEI DIRITTI UMANI (UFTDU) | **IVORY COAST** LIGUE IVOIRIENNE DES DROITS DE L'HOMME (LIDHO), MOUVEMENT IVOIRIEN DES DROITS HUMAINS (MIDH) | **JAPAN** CENTER FOR PRISONERS' RIGHTS (CPR) | **JORDAN** AMMAN CENTER FOR HUMAN RIGHTS STUDIES (ACHRS) | **KAZAKHSTAN** INTERNATIONAL LEGAL INITIATIVE (ILI), KAZAKHSTAN INTERNATIONAL BUREAU FOR HUMAN RIGHTS AND RULE OF LAW (KIBHR)

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INTERNATIONAL FEDERATION
FOR HUMAN RIGHTS

Sexual and gender-based violence: A glossary from A to Z



Ministry of Foreign Affairs of the
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List of terms

| | | | | | |
|------------------------|--|-------------------------|--|-------------------------|---|
| <p>A 12</p> | <p>Abortion</p> <p>Accountability</p> <p>Aggravating circumstances</p> <p>Armed conflict</p> <p>Autonomy (Personal)</p> | <p>G 84</p> | <p>Gender</p> <p>Gender-based violence and discrimination</p> <p>Gender bias</p> <p>Genital mutilation</p> <p>Genocide</p> <p>Gratification (sexual)</p> | <p>S 156</p> | <p>Sexual crimes</p> <p>Sexual violence</p> <p>Slavery (sexual)</p> <p>SOGI (sexual orientation and gender identity) rights</p> <p>Stigmatisation</p> <p>Survivor</p> |
| <p>C 28</p> | <p>Child abuse</p> <p>Child recruitment (child soldiers)</p> <p>Confidentiality</p> <p>Consent (informed)</p> <p>Consent to sexual activity</p> <p>Crimes against humanity</p> <p>Cruel, inhuman or degrading acts, treatments and punishments</p> | <p>H 100</p> | <p>Human rights</p> | <p>T 170</p> | <p>Torture</p> <p>Trafficking (human/sex)</p> <p>Transitional justice</p> <p>Trauma (psycho-traumatic disorder)</p> |
| <p>D 50</p> | <p>Domestic violence</p> <p>“Do no Harm” principle</p> <p>Due diligence</p> | <p>I 106</p> | <p>Impunity</p> <p>International Criminal Law</p> <p>International Humanitarian Law</p> | <p>U 182</p> | <p>Universal jurisdiction</p> |
| <p>E 60</p> | <p>Enforced prostitution</p> <p>Enforced sterilisation</p> <p>Evidence (non-admissible)</p> <p>Exploitation (sexual)</p> | <p>L 114</p> | <p>Liability (modes of)</p> | <p>V 186</p> | <p>Victim</p> <p>Victim-blaming</p> <p>Victim-centred approach</p> <p>Virginity testing</p> |
| <p>F 72</p> | <p>Femicide/Feminicide</p> <p>Forced contraception</p> <p>Forced nudity</p> <p>Forced pregnancy</p> | <p>M 118</p> | <p>Marriage</p> <p>Myths and stereotypes (gender)</p> | <p>W 196</p> | <p>War crimes</p> <p>Weapon of war (sexual violence as)</p> <p>Women’s rights</p> |
| | | <p>P 130</p> | <p>Polygamy</p> <p>Protective measures (for victims and witnesses)</p> | <p>Z 204</p> | <p>Zero tolerance policy</p> |
| | | <p>R 138</p> | <p>Rape</p> <p>Redress (Remedy; Reparation)</p> <p>Reproductive rights</p> <p>Rome Statute (ICC Statute)</p> | | |

Acronyms and Abbreviations

| | | | |
|--|------------------------|--|----------------------|
| African Commission on Human and Peoples' Rights | ACHPR | Lesbian, Gay, Bisexual, Transgender, Intersex, Queer, Asexual and others | LGBTIQ+ |
| Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment | CAT | United Nations Office of the High Commissioner for Human Rights | OHCHR |
| Committee Against Torture | CAT Committee | International Protocol on the Documentation and Investigation of Sexual Violence in Conflict | PSVI Protocol |
| Convention on the Elimination of All Forms of Discrimination against Women | CEDAW | Rules of Procedure and Evidence | RPE |
| Committee on the Elimination of Discrimination against women | CEDAW Committee | Special Court for Sierra Leone | SCSL |
| Committee on Economic, Social and Cultural Rights | CESCR | Sexual and gender-based crimes | SGBC |
| Convention on the Rights of the Child | CRC | Sexual and gender-based violence | SGBV |
| Committee on the Rights of the Child | CRC Committee | United Nations Development Programme | UNDP |
| European Court of Human Rights | ECtHR | United Nations Educational, Scientific and Cultural Organization | UNESCO |
| Human Rights Committee | HRC | United Nations Population Fund | UNFPA |
| Inter-American Commission on Human Rights | IACHR | United Nations General Assembly | UNGA |
| Inter-American Court of Human Rights | IACtHR | United Nations High Commissioner for Refugees | UNHCR |
| International Criminal Court | ICC | United Nations Children's Fund | UNICEF |
| International Committee of the Red Cross | ICRC | United Nations Office on Drugs and Crime | UNODC |
| International Criminal Tribunal for Rwanda | ICTR | United Nations Security Council | UNSC |
| International Criminal Tribunal for the former Yugoslavia | ICTY | United Nations Entity for Gender Equality and the Empowerment of Women | UN Women |
| | | World Health Organization | WHO |

Introduction

Sexual and gender-based violence is prevalent globally. It is a weapon used in all wars and in times of unrest and conflict. It is perpetrated, often behind closed doors, in all countries around the world in times of peace. For a long time, however, it has gone unacknowledged and was considered a marginal issue. Because it has not received the attention it so desperately needs, putting an end to it has been a challenge. Crimes and violations of a sexual and gender-based character continue to be under-documented, under-investigated and under-prosecuted. The vast majority of perpetrators benefit from impunity, while victims do not receive redress.

Sexual and gender-based violence is complex as it is directly linked to social and political power dynamics and norms such as inequality of the sexes, patriarchy, engrained biases, misconceptions, myths and stereotypes that continue to exist and proliferate from North to South. This often results in sexual and gender-based violence being considered “merely as a women’s issue” and dismissed as a “lesser” crime or a crime that is difficult to “identify and prosecute”. Thus crimes and violations of a sexual and gender-based character largely go unpunished. Moreover, despite the existence of international and regional legal frameworks, these are often not, or insufficiently, implemented at the domestic level. There continues to be a misunderstanding, misuse or lack of knowledge of key legal definitions or essential standards and practices by practitioners. This in turn has significantly increased obstacles to accountability and justice, and contributed to harmful, unethical practices towards victims and witnesses.

Slowly, the tides are turning. It seems that, finally, the plight of victims and survivors of sexual and gender-based violence is being increasingly recognised, and

action is being taken to address it, including by States and international organisations and institutions. This is largely due to the hard work of human rights defenders, feminists, victim movements, gender rights advocates, general practitioners and academics. Today, the prevention and prosecution of sexual and gender-based violence and reparation to its victims is part and parcel of the global discourse on the fight against impunity.

Civil society organisations globally, at local, national and international levels, have developed responses to tackle crimes and violations of a sexual and gender-based character. Other actors, including the media, academia or service providers, have also increasingly engaged with victims and witnesses of these crimes. The multiplicity and diversity of actors engaged in working on these issues requires an accurate understanding and use of appropriate terminology on sexual and gender-based violence. It is imperative that the words, concepts and terms, i.e. the language we use to talk about this often complex issue, be representative of the experiences of victims and survivors, and that it be based on international standards that we have all fought so hard to realise.

Based on our engagement with multiple stakeholders involved in the movement to eliminate sexual and gender-based violence, the International Federation for Human Rights (FIDH) decided to develop this Glossary to identify and clarify key definitions that practitioners should, at a minimum, be well acquainted with when working on issues of sexual and gender-based crimes or violations, and when engaging with victims and witnesses of these crimes. The Glossary is, by nature, not an exhaustive analysis of these terms, nor does it cover all terms and standards relevant to this topic. However, we hope it offers a starting point for explaining essential terms, rights, standards and other concepts that are often unknown, misunderstood or

misused. It is a Glossary based on existing international standards, so that it can be used globally, even though some States may apply different definitions or follow different approaches. Those wishing to go more in depth in relation to each of the issues raised herein will find a significant number of references for further reading.

While a reader may be familiar with many of the terms included, the Glossary seeks to contribute to correcting common misconceptions, and to highlight jurisprudence or other significant developments from all parts of the world. More broadly, the Glossary is a contribution to the development of a common language around sexual and gender-based violence and crimes, and to the creation of a coherent platform for civil society, governments, judicial institutions and other stakeholders to combat these violations and crimes.

By bringing together available information on key terms, as well as providing a brief background and explanation for each, this simplified and practical Glossary aims at supporting the day-to-day work of those working on sexual and gender-based violence, in all contexts. It should be used in conjunction with other relevant documents that have been developed over the years and as highlighted throughout this glossary. The Glossary will also be produced in several other languages including Spanish, French, Persian and Arabic.

Engaging against sexual and gender-based violence is a cornerstone of FIDH and its movement of more than 190 member organisations, in more than 110 countries around the globe. This Glossary is one of many initiatives and a continuation of the work conducted by FIDH on this issue.

This Glossary was written by Dr. Dorine Llanta, FIDH Programme Officer, under the supervision of Jürgen Schurr, Interim Head of FIDH International

Justice Desk, and Amal Nassar, FIDH Permanent Representative to the International Criminal Court. The Glossary's development and execution was guided by Guissou Jahangiri, FIDH Vice-President and Executive Director of OPEN ASIA|Armanshahr Foundation, and benefited from significant contributions from Patricia Huyghebaert, FIDH Deputy Director of Operations, and Justine Duby, FIDH Women's Rights Officer. Julia Tétrault-Provencher, FIDH Legal Intern and Melissa Eichhorn, Intern with the International Justice Desk, assisted with the research.



Abortion

Accountability

Aggravating circumstances

Armed conflict

Autonomy (personal)

Abortion

Abortion is a procedure for terminating a pregnancy, or the “removal of pregnancy tissue, products of conception or the foetus and placenta (afterbirth) from the uterus”¹.

Right to lawful and safe abortion

Access to safe² and affordable abortion, performed by medical professionals offering service of high standard³, is a fundamental sexual and reproductive right that States have a duty to fulfil, including by adopting relevant legislation and reforming legal frameworks preventing its exercise⁴.

Preventing or failing to ensure that women and girls, transgender men and non-binary people⁵, fully enjoy their sexual and reproductive rights constitutes gender-based violence and can impact their rights to life, health⁶, dignity and autonomy⁷, non-discrimination⁸, to education, to work, to participation in political, public and social life, and under certain circumstances, the right to be free from torture and/or degrading treatment⁹. This applies in all circumstances and particularly when the pregnancy is a result of rape or incest or when the health or life¹⁰ of the mother is at risk¹¹.

Forced abortion

Forced abortion is the crime of intentionally terminating or orchestrating the termination of a pregnancy through any procedure without prior, full, free and informed consent of the pregnant person¹². It can be perpetrated by anybody, and at any time (peace and conflict).

The crime of forced abortion does not appear as an independent crime in international criminal law instruments. However, judges at the International Criminal Tribunal for Rwanda recognised that forced abortion, as well as other sexual mutilation, forced marriage and other similar gender-based crimes specifically cited in the Rome Statute of the International Criminal Court, constitutes sexual violence susceptible to be prosecuted before international

A courts and tribunals¹³. According to UN Women, forced abortion can also amount to torture and be prosecuted as a distinct crime or, subject to relevant circumstances, as a crime against humanity¹⁴.

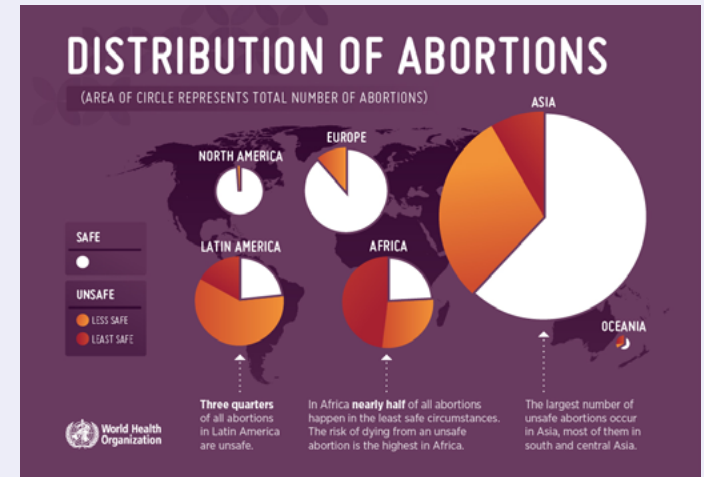
At the domestic level, States have approached the criminalisation of forced abortion in different ways, including: by recognising it as a specific and independent crime, by prosecuting it as assault¹⁵, and by prohibiting abortion in general, whether forced or consensual (see above).

In Colombia, forced abortion has been widely perpetrated against women and girls recruited by the FARC (Revolutionary Armed Forces of Colombia), in instances where their policy of forced contraception fails and a woman or a girl gets pregnant¹⁶. In 2015, a Colombian prosecutor publicly stated that based on 150 interviews with former FARC female fighters, forced abortions seem to have been a policy aimed at preserving the women's and girls' fighting ability¹⁷. In 2017, Spain extradited to Colombia the so-called Enfermero (the "nurse") in order to prosecute him before Colombian courts. He was accused of having performed hundreds of forced abortions against members of the FARC, the ELN (National Liberation Army) and other groups¹⁸.

RELATED: Sexual violence, Reproductive rights, Consent (informed)

Accountability

Accountability dictates that persons, States or other entities must be answerable for their conduct, when that conduct is a violation of laws or rules or when it fails to meet expectations attached to a specific position or activity¹⁹. Accountability can take different forms including administrative²⁰, political²¹, judicial²², and criminal, and includes processes that seek to establish truth, justice and



SOURCE: WHO – https://www.who.int/reproductivehealth/publications/unsafe_abortion/abortion_infographics/en/

reparation to victims²³.

When it comes to judicial or criminal accountability, international treaties and customary international law stipulate that States hold the primary obligation to hold to account perpetrators of grave human rights violations and international crimes, including sexual and gender-based violence, through criminal investigations and prosecutions²⁴.

Accountability for human rights violations and other core international crimes requires domestic legal and institutional frameworks that enable the prompt, thorough, independent and impartial investigation and prosecution of these violations and crimes. Investigating and prosecuting sexual and gender-based violence and crimes requires a specific set of expertise and a broader understanding of such conduct that goes beyond rape, including how it affects men, boys, and LGBTI persons (lesbian, gay, bisexual, transsexual and intersex). It needs to be gender-sensitive and to capture in a truthful manner the experiences of victims²⁵.

In all countries, accountability for gender-based violence and crimes remains often elusive, due to reporting barriers at the individual and structural levels²⁶, limited capacities to effectively investigate and prosecute the perpetrators, incomplete and ill-suited legal frameworks, lack of specialised and adequate training for personnel in the medical, forensic, policing and judicial fields, and the persistence of discrimination and gender stereotypes, including among these professionals²⁷.

RELATED: Impunity, Human rights, International Criminal Law, Universal jurisdiction

Aggravating circumstances

Aggravating circumstances are factors considered by judges when determining the sentence for a person who was found

guilty of a given crime. These factors add to the severity of the crime or the context in which it was committed, and therefore are considered for a more severe sentence.

When sentencing persons convicted of sexual violence, the International Criminal Court (ICC) and the ad hoc tribunals have considered several aggravating factors including: the number of victims²⁸; the “defencelessness” and age of the victims²⁹; the severe physical, psychological or psychiatric trauma experienced by victims of sexual and gender-based violence in particular; the social consequences in the short, medium and long terms³⁰; and abuse of power, official capacity or discriminatory motives³¹. The African Commission on Human and Peoples’ Rights also recommends that the applicable penalties for sexual and gender-based violence take any aggravating circumstances into consideration, including the existence of a family relationship; status as a former or current spouse, partner or cohabitant; the number of attackers; the presence of accomplices and/or witnesses; the knowledge of the attacker that he/she is infected with HIV; whether the offence was repeatedly committed; recidivism; and whether the offence was committed in the presence of a child³².

In 2016, in the case against Jean-Pierre Bemba Gombo, prosecuted (and, in 2019, acquitted on appeal) before the ICC for alleged crimes against humanity (murder, rape and pillaging) committed in the Central African Republic, judges found two aggravating circumstances to the crime of rape: the particular defencelessness of the victims and the particular cruelty of the acts committed³³. Concerning victims’ defencelessness, judges particularly looked at the young age of eight of the victims who were between ten and seventeen years old at the time the rape was committed³⁴. They also found the circumstances of being unarmed, targeted by multiple armed soldiers in isolated or private locations (homes, bushes, while seeking

A refuge) and forcefully restrained to be contributing to their defencelessness³⁵. The aggravating circumstance of particular cruelty was retained as a result of what the judges called “especially sadistic”³⁶ acts, due to: the multiple perpetrators (in some cases more than 20 soldiers), the reasons behind the acts, their repetition (some victims were raped several times, vaginally, anally and orally) and the conjunction of rape with other crimes such as murder and pillaging, in the same attack, against different members of the family. Judges also looked at the fact that rape was often perpetrated in the presence of victims’ family members or relatives³⁷.

Sexual violence can also be an aggravating factor for another crime when it has not in itself been prosecuted as a crime³⁸.

Armed conflict

Despite clear prohibitions under international law, sexual and gender-based violence is frequently used as a deliberate tool in conflict and continues to be prevalent and widespread in armed conflicts. Recognising this prevalence, the United Nations Security Council in its Resolution 1888 (2009) requested that a Special Representative of the Secretary-General (SRSG) on sexual violence in conflict be appointed³⁹. The SRSG acts as a spokesperson and political advocate against conflict-related sexual violence, and the reports prepared by the office of the SRSG document conflict-related sexual violence in various armed conflicts around the world, providing information also on alleged perpetrators. To be de-listed in subsequent reports, the identified perpetrators are required to address the violations through an action plan and dialogue with the SRSG office⁴⁰.

Under international criminal law, the Rome Statute of the International Criminal Court prohibits a set of sexual

and gender-based crimes as war crimes irrespective of whether they are committed within an international or non-international armed conflict⁴¹.

International and non-international armed conflicts

International law distinguishes and defines two categories of armed conflicts: international armed conflicts and non-international armed conflicts (or internal conflicts)⁴². Legally speaking, no other type of conflict exists. A conflict can evolve from internal to international, or the opposite, depending on the facts prevailing at a certain moment.

The distinction matters because the characterisation of the conflict will determine which law applies. The law of armed conflict, or international humanitarian law (see term below), contains rules that seek to limit the effects of armed conflicts. Theoretically, the law governing non-international armed conflicts is less codified, as explained below. However, this law continues to develop and is drawing closer to the international humanitarian law rules for international armed conflicts, thus decreasing the distinction between the two sets of rules. Finally, a study conducted by the International Committee of the Red Cross⁴³ demonstrates that many rules initially designed to apply only to international conflicts also apply – as customary rules – to non-international armed conflicts.

International

A conflict is characterised as international whenever there is resort to armed force between two or more States, even if one of these States does not recognise the situation as war⁴⁴.

Non-international

Non-international or internal armed conflicts are conflicts between governmental forces and non-governmental armed groups, or between such groups only⁴⁵. Internal

A conflicts must be distinguished from situations of violence of low intensity such as riots and isolated and sporadic acts of violence⁴⁶. For a situation to constitute an internal armed conflict, two criteria must be met: 1. The hostilities must reach a minimum level of intensity (an example of this is when the State uses the armed forces as opposed to the police against the other party) and 2. That the armed groups involved possess organised armed forces, including command structures, to be recognised as party to the conflict⁴⁷.

RELATED: International Humanitarian Law, Weapon of war (sexual violence as)

Autonomy (personal)

Personal autonomy means that individuals are free to make decisions regarding their own life. It is the capacity “to hold views, to make choices, and to take actions based on personal values and beliefs”⁴⁸.

Gender-based violence, particularly sexual assaults and domestic violence in the form of excessive control by a member of the household, is a violation of the personal autonomy of its victims⁴⁹. It deprives them of their right to decide on private and intimate aspects of their lives such as whether or not to engage in an act of a sexual nature or to decide on any matter related to their reproductive health⁵⁰. A violation of a person’s autonomy may also take the form of restrictions related to clothing, movement, thoughts, financial and administrative decisions, or social life⁵¹.

In all societies, individuals’ autonomy is limited by law. This is justified by the need to establish a balance between individual rights and duties towards society and can be embodied by the maxim “One person’s freedom ends where another’s begin”. Autonomy can also be legally restricted in certain circumstances and according to certain factors

such as age and physical or mental capacity⁵². However, when limitations go beyond this necessity, they constitute a human rights violation. For example, anti-abortion laws are a violation of women’s rights, particularly their right to privacy, health and bodily autonomy⁵³.

RELATED: Abortion, Enforced sterilisation, Genital mutilation, Marriage, Domestic violence, Sexual violence, Consent to sexual activity, Consent (informed)

ENDNOTES

- 1 Harvard Medical School, *Abortion (Termination of Pregnancy)*, Harvard Health Publishing, January 2019, at <https://www.health.harvard.edu/medical-tests-and-procedures/abortion-termination-of-pregnancy-a-to-z>.
- 2 World Health Organization (WHO), *Medical management of abortion*, 2018, at <https://apps.who.int/iris/bitstream/handle/10665/278968/9789241550406-eng.pdf>.
- 3 United Nations Office of the High Commissioner for Human Rights (OHCHR), *Information series on sexual and reproductive health and rights: Abortion*, at https://www.ohchr.org/Documents/Issues/Women/WRGS/SexualHealth/INFO_Abortion_WEB.pdf.
- 4 Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, E/C.12/GC/22, 2 May 2016, paras. 28, 34, 40, 41, 45. FIDH believes that all States should allow abortion without restriction and provide access to legal and safe abortion services, under all circumstances, based solely on the expression of their will. See the term “Reproductive Rights” below.
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Child abuse

Child recruitment
(child soldiers)

Confidentiality

Consent (informed)

Consent to sexual activity

Crimes against humanity

**Cruel, inhuman or
degrading acts, treatments
and punishments**

Child abuse¹

Child abuse refers to physical, psychological and/or sexual abuse of a person below the age of eighteen². It can take many forms including acts of maltreatment, child marriage and harmful omissions such as neglect or deprivation, and is often committed by persons known to the child, such as parents, family members, or authority figures³. Child abuse can also take place digitally, through online pornography involving children⁴, “webcam sex tourism”⁵ or grooming⁶. A study conducted in 2015 showed that in 2014–2015, 1 billion children aged 2–17 years suffered at least one form of child abuse⁷.

All forms of child abuse, especially those of a sexual nature, have direct and long-lasting effects on the victims. The consequences can be physical and psychological, impacting future development, including damage to the development of the brain and nervous system; negative coping and health risk behaviours; unintended pregnancies, gynaecological complications and genital lesions; non-communicable diseases and sexually transmitted infections (STIs), such as HIV; dissociation and traumatic memory; and post-traumatic stress disorder⁸. Child abuse can also have social and financial consequences such as abandoning schooling, loss of training opportunities, job loss, financial difficulties, social exclusion, stigmatisation, and difficulty in forming sentimental and other personal relationships⁹.

International and regional human rights treaties, including the nearly universally ratified Convention on the Rights of the Child, set out obligations on States to take “legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child”¹⁰.

RELATED: Marriage, Child recruitment (child soldiers)

Maternal and child health

Death (including foetal health)
Unintended and adolescent pregnancy
Pregnancy complications

Injury

Internal injury
Head injury
Fractures
Burns

Mental Health Problems

Suicide
Assault
Depression and Anxiety
Post Traumatic Stress Disorder

VIOLENCE AGAINST CHILDREN

Communicable disease and risk behaviours

Alcohol and drugs
Unsafe sexual practices
HIV
Multiple partners
STDs

Noncommunicable disease and risk behaviours

Stroke
Cancer
Diabetes
Chronic lung disease
Heart disease
Obesity
Alcohol
Physical inactivity
Smoking

Child recruitment (child soldiers)

Armed forces and groups often recruit children to serve in their ranks as soldiers or to perform support roles that entail great risks and violations of their rights. Some are recruited by force while others join to escape a situation of extreme vulnerability, only to be then exploited by these forces or groups¹¹. The term “child soldiers” is often used to include all children who have been recruited, enlisted or used by an armed force or armed group in any capacity, including but not limited to children, boys and girls used as fighters, cooks, porters, spies or for sexual purposes¹². Child recruitment affects boys and girls, although they tend to play different roles once recruited or enlisted¹³. Boys are more often sent to the battle, while girls may be forced to engage in sexual activities with the soldiers or to serve as cooks or wives¹⁴.

The United Nations (UN) Security Council identifies recruitment or use of children in armed forces or armed groups, and rape and other conflict-related sexual violence against children (including within armed groups or armed forces) as one of the six gravest violations of children’s rights¹⁵. In 2019, judges at the International Criminal Court issued a landmark decision in the case against Bosco Ntaganda, a leader of a Congolese armed group, convicting him of sexual slavery and rape as war crimes, including acts committed against child soldiers in his armed group¹⁶.

Recruitment of children - “every human being below the age of eighteen”¹⁷ - risks violating multiple rights of children including the right to non-discrimination; to life; not to be separated from their parents against their will; to privacy; to a standard of living adequate for their physical, mental, spiritual, moral and social development; and to be protected against all forms of sexual exploitation and sexual abuse¹⁸.

Under international law, child recruitment is absolutely prohibited¹⁹ for children under the age of fifteen, including

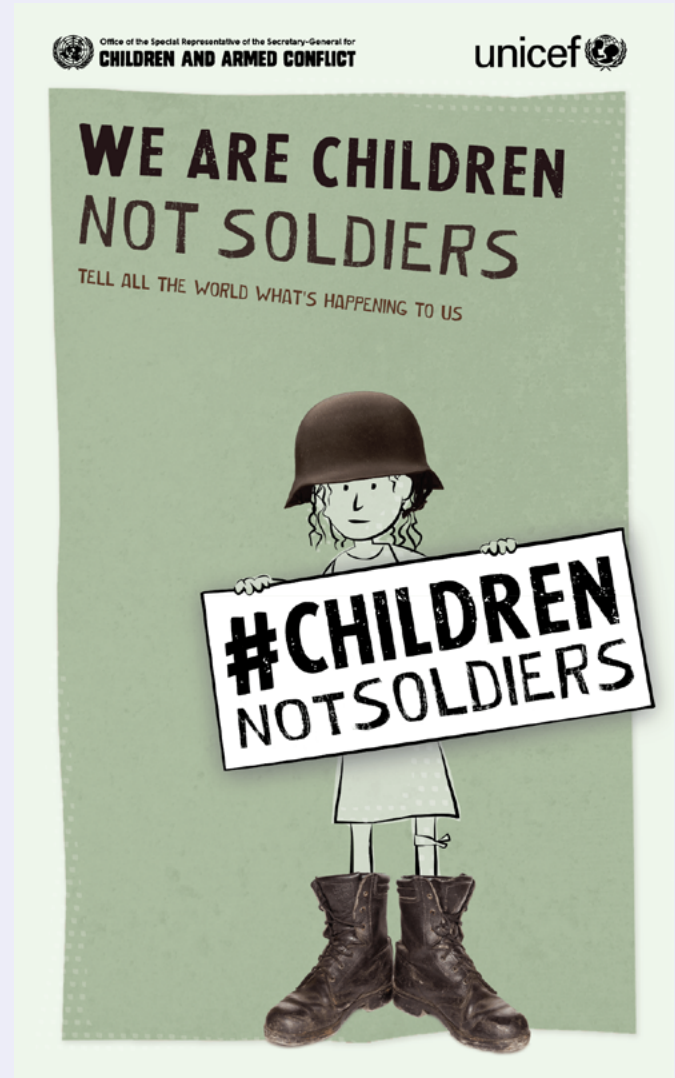
under the Convention on the Rights of the Child²⁰ international humanitarian law²¹ and international criminal law²². However, this leaves a protection gap for children between fifteen and eighteen years old²³ as recognised in the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict²⁴. Adopted in 2000 in response to the widespread use of child soldiers in conflict, the Optional Protocol obliges States parties to ensure that no children under the age of eighteen take part in hostilities or be compulsorily recruited²⁵. Similarly, the African Charter on the Rights and Welfare of the Child, adopted in 1990,²⁶ stipulates that States should refrain from recruiting any child. The UN Secretary General publishes annual reports²⁷ on “children and armed conflict” providing an overview of the situation of children around the world in countries affected by armed conflicts. The reports contain updated lists of parties to armed conflicts that commit grave violations affecting children.

RELATED: Sexual violence, Rape, War crime, Armed conflict

Confidentiality

Confidentiality is an ethical principle that entails taking measures and giving assurances to providers of information, including victims, witnesses, and other sources, that their identity and, where necessary, the information provided will not be shared with any other person or entity other than the one meant to receive such information, unless informed consent has been given for such use²⁸. This means that information about victims, witnesses or other sources should be collected, used, shared and stored in a confidential manner. Key to ensuring confidentiality of information is taking measures to protect the information from leaking when storing or using it²⁹.

Even if consent (see below “Informed” consent) to the



SOURCE: UNICEF. We are children, not soldiers – <https://childrenandarmedconflict.un.org/children-not-soldiers/>

sharing of information has been given, the information should remain confidential if disclosing it would risk the safety of the person providing the information and/or of other people implicated in the situation³⁰.

Confidentiality is particularly important when working with sexual and gender-based violence victims, where, besides security threats and risks of reprisals, victims may be at risk of rejection, stigmatisation and/or punishment by their family or community.

It is essential that individuals and organisations involved in the collection of information on these violations are specifically trained to know their confidentiality responsibilities, and that they adequately assess the risks associated with the disclosure of any information, even when consent is obtained³¹. Practitioners involved should apply the confidentiality principle throughout the documentation (and, where relevant, litigation) process³². Defining clear confidentiality measures and procedures is key to ensuring that this principle is fully respected. All members of the documentation team should be aware of what information should or should not be gathered and/or written down, where and how it may be stored, and who has or should be allowed access to it. A policy regarding audio or visual recordings should be developed³³.

All identifying information of the victim, witness or other source should be protected by tailored, adequate measures. These measures could include the use of pseudonyms and coding systems for testimonies, and the implementation of referral options and/or protective measures. All members of a documentation team should fully understand and apply the parameters of confidentiality established in the documentation methodology. The conditions and limits of confidentiality should be clearly and fully explained to survivors, witnesses and sources so that they are in a position to provide their informed consent regarding how

the information will be used³⁴.

However, under certain circumstances, confidentiality procedures must be lifted. For instance, mandatory reporting laws state that confidentiality no longer applies when the victim's life is threatened, when there is a risk to the health or safety of children, or in cases of sexual allegations involving humanitarian workers³⁵.

RELATED: “Do no Harm” principle, Protective measures (for victims and witnesses), Consent (informed)

Consent (informed)

Any type of intervention in support of victims and survivors of sexual and gender-based violence, for any purposes including documentation and investigation, requires their informed consent in all its aspects and stages. This is crucial for many reasons, including avoiding a breach of confidentiality (which can lead to security issues and (risks of) reprisals) and re-traumatisation. Obtaining informed consent “ensures that the victim, witness or source maintains full control and power over her/his own experiences”, their life and body³⁶.

Informed consent implies that individuals involved are legally capable of consenting and that all relevant information concerning the intervention, its implications and its consequences have been provided³⁷, in a language that is fully understood³⁸. It implies that before consenting, individuals involved must be fully aware of and understand precisely all the parameters concerning the intervention and what it entails³⁹.

Obtaining informed consent before any intervention, whether psychological, medical, forensic, legal, cultural, social, economic or humanitarian, is necessary to guarantee the respect of the participant's autonomy and the right to integrity and self-determination⁴⁰. This consent must be given prior to the intervention and can be withdrawn by the person who gave it "at any time and for any reason"⁴¹. It is a requirement under the universal and international "Do no Harm" standard (see below).

Informed consent must be obtained through a careful process that can be divided into several steps: (1) creating a safe environment that ensures genuine consent; (2) providing all relevant information; (3) making sure that the implications of any referral or processes involved are understood; (4) explaining the limitations to confidentiality and the benefits and risks of participation in the relevant intervention; (5) explicitly asking for consent to all activities and processes⁴²; and, by doing so, (6) verifying if there are any limitations to consent from the participant⁴³. The International Protocol on the Documentation and Investigation of Sexual Violence in Conflict ("PSVI Protocol") identifies several examples of processes that need an informed consent when documenting sexual violence. These include conducting and recording interviews, taking photos, referral to any other services or sharing information with any other person or entity⁴⁴.

In some situations, such as documentation or investigation of sexual and gender-based violence, informed consent of the victim or witness is a legal requirement. Its absence can invalidate the evidence or testimony and therefore have a negative impact on the person and the activity⁴⁵.

RELATED: "Do no Harm" principle, Confidentiality

Consent to sexual activity

Consent to sexual activity refers to the will of the participants to engage in such activity⁴⁶.

Consent must be genuine, voluntary, specific and ongoing⁴⁷. It has to be expressed by a person considered capable of consenting. This can be assessed considering different factors such as age, potential disabilities, unequal power relationships and contexts of vulnerability (e.g., migration, detention, intoxication, conflict)⁴⁸. Consent needs to be ongoing and cover all the different acts within a sexual activity. This implies that consent is at any time retractable, and consenting to one act does not equal consenting to every sexual act. This applies in every context, including prostitution and conjugal relationships.

Consent cannot be inferred through the say of a third party or based on particular habits, behaviour and/or perceived sexual availability of a person. Further guidance in international legal frameworks specifies that consent cannot be inferred by the silence or lack of resistance of the victims, or by any words or conduct they might say or adopt in a context of force, threat of force or coercion, or when the victims are in a coercive environment or a specific state affecting their ability to give genuine and voluntary consent⁴⁹. Common expectations of what a victim should say or do are irrelevant to the determination of consent. Such determination has to be made on a case by case basis, guided by the specific circumstances in which the sexual activity took place.

As highlighted in the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict ("PSVI Protocol"), due to the specific nature and context in which international crimes and systematic human rights violations are committed, genuine consent is nearly impossible and, therefore, coercion is inherent⁵⁰. International and regional institutions have defined and

prosecuted crimes of sexual violence based on the context of coercion surrounding their perpetration, which impacts the ability to give genuine consent, rather than referring to the lack of consent.⁵¹ The latter would impose on the victim a higher burden of proof and fail to reflect for instance the circumstances of armed conflict or massive violations of human rights. The ad-hoc tribunals have also limited the possibility to invoke consent as a defence.⁵²

Conversely in domestic procedures, when it comes to crimes committed in times of peace or outside of contexts of systemic human rights violations, consent is a key factor in determining whether or not a crime of sexual nature has been committed. Victims should not have to convince judges or a jury of the existence of a coercive environment which impacted their ability to genuinely consent to the sexual activity. What should be considered is their expressed consent to the sexual activity. This is already the case in a number of countries⁵³. In order to avoid a trial focused on the behaviour or attitude of the victim, as opposed to that of the perpetrator, some civil society organisations are calling for a standard of “affirmative consent”⁵⁴. This standard implies that as long as a person does not expressly and clearly say “yes” to sexual activity, its occurrence has to be considered as nonconsensual⁵⁵.

The context in which the violence happens and its nature are therefore key factors to take into consideration when determining the role consent plays in defining or prosecuting sexual violence.

Crimes against humanity

The term “crimes against humanity” was first used internationally in the Declaration of France, Great Britain and Russia, made on the 29th of May 1915, to describe the crimes committed against Armenians by the Ottoman government⁵⁶. It was then listed as one of the crimes

prosecuted before the International Military Tribunals at Nuremberg and Tokyo⁵⁷. Despite these earlier references, it was decades later that the notion of crimes against humanity was considerably developed and specified with the establishment of international criminal courts, including the ad hoc Tribunals for the former Yugoslavia (ICTY, 1993) and for Rwanda (ICTR, 1994)⁵⁸, as well as the Rome Statute (1998) establishing the International Criminal Court⁵⁹.

Crimes against humanity have not yet been codified in a dedicated treaty of international law, unlike genocide and war crimes. Since 2014, the International Law Commission has been working on a Convention on the Prevention and Punishment of Crimes against Humanity. A draft of 15 articles was made public in August 2019, including definition of such crimes similar to the ones contained in Article 7 of the Rome Statute (see above)⁶⁰.

The Rome Statute is the document that reflects the latest consensus among the international community on the definitions of crimes against humanity. According to the Rome Statute, crimes against humanity mean are of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: murder, extermination, enslavement, deportation or forcible transfer of population, imprisonment or other severe deprivation of physical liberty, torture, enforced disappearance of persons, apartheid and other inhumane acts of a similar character⁶¹. Relevant to sexual and gender-based crimes, the Rome Statute codifies the following acts as crimes against humanity: persecution on gender grounds, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation and any other form of sexual violence of comparable gravity⁶².

Crimes against humanity can be prosecuted at the national level whenever States have incorporated relevant provisions in their domestic laws or simply recognised such

crimes as prohibited under national criminal law. Several States have provisions in their domestic legislation that allow the exercise of universal jurisdiction over crimes against humanity⁶³.

Acts of sexual and gender-based crimes have been prosecuted as crimes against humanity before the ad hoc Tribunals, which significantly developed the international legal framework for holding to account those most responsible for acts of sexual and gender-based crimes, based on the principle of command responsibility. These cases also shed light on the role of military and political leaders who often instigated, encouraged, or oversaw the commission of these acts. Landmark cases include the case against Jean-Paul Akayesu⁶⁴ at the ICTR, where the accused was found guilty of rape as a crime against humanity (and as genocide), based on the concept of superior responsibility, given his role in encouraging the commission of these crimes⁶⁵.

RELATED: Rome Statute, Universal jurisdiction, International Criminal Law

Cruel, inhuman or degrading acts, treatments and punishments

Cruel, inhuman or degrading acts, treatments and punishments are prohibited under customary and treaty law, the latter including the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter the Torture Convention). These are acts that do not amount to torture⁶⁶, because they do not meet the required elements (see definition of torture below)⁶⁷, but are nonetheless committed by, at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity. Several acts of sexual and gender-based violence can fall

under this category, including sexual harassment and/or humiliation⁶⁸, forced nudity⁶⁹, forced marriage⁷⁰, and genital mutilation⁷¹.

If the necessary jurisdictional and contextual elements are met, an inhuman act or treatment, including of sexual or gender-based nature, can be prosecuted before the International Criminal Court (ICC) as a crime against humanity⁷² and/or as a war crime⁷³. Domestically, States can prosecute it as a stand-alone crime, as a war crime or as a crime against humanity, subject to their national legislation.

In the history of international criminal justice, and due to the lack of elaborate provisions criminalising sexual and gender-based crimes in the Statutes of international tribunals, this broad category has been a valuable avenue for the prosecution of acts of sexual and gender-based violence⁷⁴. One example is the very first case before the International Criminal Tribunal for the former Yugoslavia, against Dusko Tadić, where acts including mutilation, forced oral sex between two brothers, and assault of a similar nature were prosecuted as inhumane treatment and cruel treatment as war crimes, and inhumane acts as crimes against humanity⁷⁵.

While the sexual and gender-based nature of the act is less emphasised in this category, this provision nevertheless reflects the gravity of the act and the severe pain inflicted upon the victim. The Office of the Prosecutor of the ICC highlighted in its Policy Paper on Sexual and Gender-based Crimes that inhuman acts can have a sexual and/or gender element⁷⁶.

ENDNOTES

- 1 Note that this explanation does not aim to be exhaustive or fully comprehensive of what constitutes child abuse. For further information on the topic, please refer to relevant contributions from UNICEF, the World Health Organisation, and national and international nongovernmental organisations working on protecting children's welfare.
- 2 The age of eighteen has been established by the Convention on the Rights of the Child. *UN Convention on the Rights of the Child*, 20 November 1989 (entry into force 2 September 1990), Article 1.
- 3 World Health Organization (WHO), "Violence against Children, Overview", at https://www.who.int/health-topics/violence-against-children#tab=tab_1.
- 4 See for example an in-depth analysis of the types of online child pornography committed in Australia. T. Krone (Australian Institute of Criminology and Australian High Tech Crime Center) (2004), "A Typology of Online Child Pornography Offending", Trends & Issues in crime and criminal justice, N°279, at https://www.researchgate.net/publication/237371926_A_Typology_of_Online_Child_Pornography_Offending.
- 5 For more information, read S. van der Hof, I. Georgieva, B. Schermer and B-J Koops (eds.), *Sweetie 2.0, Using Artificial Intelligence to Fight Webcam Child Sex Tourism*, Springer, Asser Press, 2019.
- 6 D. Pollack (American Bar Association), "Understanding Sexual Grooming in Child Abuse Cases", 1 November 2015, at https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-34/november-2015/understanding-sexual-grooming-in-child-abuse-cases/.
- 7 S. Hills, J. Mercy, A. Amobu and H. Kress (2006), "Global Prevalence of Past-year Violence Against Children: A Systematic Review and Minimum Estimates", *Pediatrics*, Vol. 137(3).
- 8 Other examples of consequences include lack of trust; low self-esteem; shame; guilt; anxiety and mood disorders; sleep disorders; loss of appetite; depression; drug abuse; self-harm and high-risk behaviour, including suicidal behaviour; isolation; decrease in or loss of sexual enjoyment; relationship problems with family, friends and partners; trauma that is passed down through generations; as well as death. These responses to child abuse are not exhaustive and will depend on each victim. WHO, "Violence against Children, Key Facts", June 2019, at <https://www.who.int/news-room/fact-sheets/detail/violence-against-children>; Dr. M. Salmona (2016), "Children victims of sexual abuse. Traumatic memory: sexual abuse and psychotrauma", Conference of the French Cour de Cassation, at http://www.memoiretraumatique.org/assets/files/v1/Documents-pdf/2016-trad2018-Children_victims_of_sexual_abuse-ENM.pdf; Dr. M. Salmona (2017), "Impact des violences sexuelles sur la santé des victimes: la mémoire traumatique à l'oeuvre" in C. Tarquinio et al. (Eds.), *Pratique de la psychothérapie EMDR*, Paris: Dunod, 2017, pp 207-218.
- 9 WHO, Key facts on Violence against Children, op. cit.; African Commission on Human and Peoples' Rights (ACHPR), *Guidelines on combating sexual violence and its consequences in Africa*, Niamey, 2017, para. 3.3.
- 10 Convention on the Rights of the Child, op. cit., Article 19.
- 11 Human Rights Watch, "Child Soldiers", at <https://www.hrw.org/topic/childrens-rights/child-soldiers>; Office of the Special Representative of the Secretary-General for Children and Armed Conflict, "Child recruitment and Use", at [https://www.unicef.org/protection/57929_58007.html](https://childrenandarmedconflict.un.org/six-grave-violations/child-soldiers/); UNICEF, "Child recruitment by armed forces or armed groups", at https://www.unicef.org/protection/57929_58007.html.
- 12 *The Paris Principles, Principles and Guidelines on Children Associated with Armed Forces or Armed Groups*, 2007, paras. 1.0, 2.1; See examples of conscription and enlistment of children below the age of fifteen in the following cases: International Criminal Court (ICC), Trial Chamber I, *Prosecutor v. Thomas Lubanga Dyilo*, Judgment pursuant to Article 74 of the Statute, ICC-01/04-01/06, 14 March 2012, paras. 574-578, 820-908; Special Court for Sierra Leone (SCSL), *Prosecutor v. Fofana and Kondewa*, Trial Judgment, SCSL-04-14-T, 2 August 2007, paras. 193, 688; SCSL, *Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu*, Trial Judgment, SCSL-04-16-T, 20 June 2007, paras. 736, 1267.
- 13 R. Grey (2014), "Sexual Violence against Child Soldiers", *International Feminist Journal of Politics*, Vol. 16(4), pp. 601-621.
- 14 Office of the Special Representative of the Secretary-General for Children and Armed Conflict, "Child recruitment and Use", op. cit.; S. McKay and D. Mazurana, *Where are the Girls? Girls fighting in Northern Uganda, Sierra Leone and Mozambique: Their Lives During and After War*, Montreal: Rights & Democracy, 2004.
- 15 United Nations Security Council (UNSC), *Resolution 1882 (2009)*, S/RES/1882(2009), 4 August 2009.
- 16 ICC, Trial Chamber VI, *Prosecutor v. Bosco Ntaganda*, Judgment, ICC-01/04-02/06, 8 July 2019.
- 17 Convention on the Rights of the Child, op. cit., Article 1. This article defines a child as a person under the age of eighteen.
- 18 See in particular the Convention on the Rights of the Child, *ibid*, and the Paris Principles and Guidelines on Children associated with armed forced or armed groups, op. cit. These rights are also recognised more broadly by other international instruments such as the *UN International Covenant on Civil and Political Rights* (ICCPR), 16 December 1966 (entry into force 23 March 1976).
- 19 To know more about the prohibition of recruitment of child soldiers, see J-M. Hencckaerts and L. Doswald-Beck, *Customary International Humanitarian Law, Volume II: Practice*, Cambridge: Cambridge University Press and International Committee of the Red Cross, 2005, Practice related to Rule 136 "Recruitment of child soldiers", p. 3109-3127.
- 20 Convention on the Rights of the Child, op. cit, Article 38: "1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child. 2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities. 3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest. 4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict".

- 21 *Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* ("Geneva Convention I"), Geneva, 12 August 1949, Article 50; *Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts* (Protocol II), 8 June 1977, Article 4(3)(c). See as well J-M. Henckaerts and L. Doswald-Beck, *Customary International Humanitarian Law, Volume I: Rules*, Cambridge: Cambridge University Press and International Committee of the Red Cross, 2005, Rule 136 "Recruitment of child soldiers", p. 482-485.
- 22 *Rome Statute of the International Criminal Court*, A/CON.183/9 ("Rome Statute"), 17 July 1998 (entry into force 1 July 2002), Article 8(2)(b)(xxvii) and 8(2)(e)(vii).
- 23 See for example the ICC case against Thomas Lubanga, who was charged with "conscripting and enlisting children under the age of fifteen" as a war crime and convicted in 2012. ICC Trial Judgment Lubanga, op. cit. After assessing the testimonies and evidence related to the alleged child recruitment presented by the Prosecution, the Chamber decided to exclude some of the evidence and testimonies as judges were not convinced "beyond reasonable doubt" that the victims were under the age of fifteen when enlisted or conscripted by the armed groups or forces (paras. 480-481). This is in line with the limit imposed by the Rome Statute. The Chamber noted that these two offences under the Statute would end "when the child reaches 15 years of age or leaves the force or group" (para. 759), which confirms that children between fifteen and eighteen years old remain unprotected.
- 24 *UN Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, 25 May 2000 (entry into force 12 February 2002).
- 25 *Ibid.*, particularly Articles 1 and 2.
- 26 Organization of African Unity, *African Charter on the Rights and Welfare of the Child*, 11 July 1990 (entry into force 29 November 1999, Article 22
- 27 Mandate created by the United Nations General Assembly, *Resolution 51/77 on the Rights of the Child*, A/RES/51/77, 20 February 1997. See also UNGA, *Children and armed conflict, Report of the Secretary-General*, A/55/163-S/2000/712, 19 July 2000.
- 28 Interagency Gender-Based Violence Case Management Guidelines, *Providing Care and Case Management Services to Gender-Based Violence Survivors in Humanitarian Settings*, First Edition, 2017, p. 20, at https://reliefweb.int/sites/reliefweb.int/files/resources/interagency-gbv-case-management-guidelines_final_2017_low-res.pdf; UK Foreign & Commonwealth Office, *International Protocol on the Documentation and Investigation of Sexual Violence in Conflict*, Second edition ("PSVI Protocol"), March 2017, p. 95-96.
- 29 WHO, *Ethical and safety recommendations for researching, documenting and monitoring sexual violence in emergencies*, 2007, pp. 18-21, at https://apps.who.int/iris/bitstream/handle/10665/43709/9789241595681_eng.pdf;jsessionid=54CB886518298F650530BEA2C01B6F02?sequence=1; Interagency Gender-Based Violence Case Management Guidelines 2017, op. cit., p. 34.
- 30 *Idem.*
- 31 Ethical and safety recommendations for researching, documenting and monitoring sexual violence in emergencies 2007, op. cit., p. 26.
- 32 PSVI Protocol, op. cit., p. 95-97.
- 33 Ethical and safety recommendations for researching, documenting and monitoring sexual violence in emergencies 2007, op. cit., p. 18-21; Interagency Gender-Based Violence Case Management Guidelines 2017, op. cit., p. 34; PSVI Protocol, op. cit., p.95.
- 34 PSVI Protocol, op. cit., p.96.
- 35 GBV-Sub Cluster (Turkey Hub – Syria), *Standard Operating Procedures Gender-Based Violence Prevention and Response*, 2018, p. 35, at https://reliefweb.int/sites/reliefweb.int/files/resources/gbv_sc_sops_2018_english_final.pdf; Interagency Gender-Based Violence Case Management Guidelines 2017, op. cit., p. 51.
- 36 PSVI Protocol, op. cit., p. 90; Standard Operating Procedures for Gender-Based Violence Prevention and Response 2018, op. cit., p. 35.
- 37 Standard Operating Procedures for Gender-Based Violence Prevention and Response 2018, *Ibid.* For more in-depth information on informed consent, see p. 35-38 (including when informed consent concerns survivors for disabilities or children).
- 38 Care International Secretariat, *Communications involving survivors of gender-based violence policy and guidelines*, 2014, p. 2, at <https://insights.careinternational.org.uk/images/in-practice/GBV/GBV-Comms-Policy-and-Guidelines.pdf>; InterAction Protection Working Group, *Data collection in humanitarian response, A guide for incorporating protection*, p. 3, at https://www.globalprotectioncluster.org/assets/files/tools_and_guidance/InterAction_Guide_Incorporating_Protection_2003_EN.pdf.
- 39 Ethical and safety recommendations for researching, documenting and monitoring sexual violence in emergencies 2007, op. cit., p. 22.
- 40 PSVI Protocol, op. cit., p. 89; H.A.M.J. ten Have and M.S. Jean (UNESCO) (eds.), *The UNESCO Universal Declaration on Bioethics and Human Rights: background, principles and application* ("UNESCO Commentary on the Declaration on Bioethics"), 2009, p. 126. See above the term "Autonomy (Personal)".
- 41 UNESCO, *Universal Declaration on Bioethics and Human Rights*, 19 October 2005, Article 6. To learn more about the background of "informed consent" and its importance in the field of medical ethics and bioethics, see UNESCO Commentary on the Declaration on Bioethics, *ibid.*, p. 124-127. See as well the four steps identified by the UNESCO to get informed consent in these situations at p. 131-132.
- 42 If the consent is required through a specific form, several elements have to be taken into account. See Data Collection in Humanitarian Response, op. cit., p 3-4.
- 43 See more in depth analysis of the different stages of the process in the following documents: Standard Operating Procedures for Gender-Based Violence Prevention and Response 2018, op. cit., p. 35, and PSVI Protocol, op. cit., p. 91.
- 44 PSVI Protocol, op. cit., p. 90; Ethical and safety recommendations for researching, documenting and monitoring sexual violence in emergencies 2007, op. cit., p. 22-23.
- 45 PSVI Protocol, op. cit., p. 90.
- 46 RAINN, "What consent looks like", at <https://www.rainn.org/articles/what-is-consent>.
- 47 Women's Initiatives for Gender Justice (WIGJ), *Civil Society Declaration on Sexual Violence*, 2019, Annex 1, Part 1 "General Principles", Principle N° 1, at <https://gender-justice.org/wp-content/uploads/2019/11/English-Civil-Society-Declaration-on-Sexual-Violence.pdf>.

- 48 Ibid, Part 5: "Factors affecting whether an act of a sexual nature is committed without genuine, voluntary, specific and ongoing consent".
- 49 ICC, *Rules of Procedure and Evidence*, ICC-ASP/1/3 and Corr.1, part II.A ("ICC Rule of Procedure and Evidence"), 3-10 September 2002, Rule 70.
- 50 PSVI Protocol, op. cit., p. 59. The Special Rapporteur on systematic rape, sexual slavery and slavery-like practices during armed conflict Gay J. McDougall noted in 1996 that "the manifestly coercive circumstances that exist in all armed conflict situations establish a presumption of non-consent and negates the need for the prosecution to establish a lack of consent as an element of the crime". Commission on Human Rights, *Final report submitted by Ms. Gay J. McDougall, Special Rapporteur, Systematic rape, sexual slavery and slavery-like practices during armed conflict*, E/CN.4/Sub.2/1998/13, 28 May 1998, para. 25. ACHPR Guidelines on combating sexual violence and its consequences in Africa, op. cit, p. 38.
- 51 See for example the definitions of rape adopted by the judges in the cases of Jean-Paul Akayesu and Anto Furundzija. International Criminal Tribunal for Rwanda (ICTR), *Prosecutor v. Jean-Paul Akayesu*, Trial Judgment, ICTR-96-4-T, 2 September 1998, paras. 597-598; International Criminal Tribunal for the former Yugoslavia (ICTY), *Prosecutor v. Anto Furundzija*, Trial Judgment, IT-95-17/1-T, 10 December 1998, para. 185. In the case of Dragoljub Kunarac (ICTY), another definition was adopted based on the element of consent. In subsequent jurisprudence, however, judges considered lack of consent to be more relevant in domestic prosecutions for crimes committed in times of peace rather than in the context of international crimes. ICTY, *Prosecutor v. Kunarac, Kovac and Vukovic*, Trial Judgment, IT-96-23-T, 22 February 2001. See also W. Schomburg and I. Peterson (2007), "Genuine Consent to Sexual Violence under International Criminal Law", *The American Journal of International Law*, Vol. 101(1), pp. 121-140. ACHPR Guidelines on combating sexual violence and its consequences in Africa, op. cit, p. 38.
- 52 ICTY, *Rules of Procedure and Evidence*, IT/32/Rev.50, adopted on 11 February 1994, amended on 8 July 1995, Rule 96(iii): "before evidence of the victim's consent is admitted, the accused shall satisfy the Trial Chamber in camera that the evidence is relevant and credible".
- 53 See the comparative study by D. Llanta, *La protection de l'individu contre les violences sexuelles : de la prévention à la réparation au sein de l'ordre juridique international et des systèmes nationaux*, PhD Thesis defended on 22 November 2019, University of Perpignan Via Domitia (France), pp. 337-353.
- 54 See for instance, Amnesty International, "Let's talk about yes!", February 2020, at <https://www.amnesty.org/en/latest/campaigns/2018/11/rape-in-europe/>. This is also known as the "yes means yes" standard. In California (United States of America), this was applied in response to the high rate of sexual violence occurring on college campuses and the impunity attached to it. See End Rape on Campus, "Yes means yes & affirmative consent", at <https://endrapeoncampus.org/yes-means-yes>.
- 55 Idem. See as well A.E. Hatch, *Campus Sexual Assault: A Reference Handbook*, ABC-CLIO (Santa Barbara, California), 2017, pp. 95-97.
- 56 The governments refer to "crimes against humanity and civilizations". See France, Great Britain and Russia *Joint Declaration (1915)*, at <https://www.armenian-genocide.org/>; M.M de Guzman, "Crimes Against Humanity", in Bartram S. Brown (Ed.), *Research Handbook on International Criminal Law*, Edgar Elgar Publishing, 2011; M. C. Bassiouni, *Crimes Against Humanity in International Criminal Law*, Martinus Nijhoff Publishers, 1999, p. 62.
- 57 *Charter of the International Military Tribunal (Nuremberg Charter)*, London, 8 August 1945, Article 6 (c); *International Military for the Far East Charter*, Tokyo, 19 January 1946, Article 5(c).
- 58 *Statute of the International Criminal Tribunal for the former Yugoslavia*, adopted by UNSC, *Resolution 827(1993)*, S/RES/827(1993), 25 May 1993, Article 5; *Statute of the International Criminal Tribunal of Rwanda*, adopted by UNSC, *Resolution 955(1994)*, S/RES/955(1994), 8 November 1994, Article 3.
- 59 Rome Statute, op. cit., Article 7.
- 60 *UN Report of the International Law Commission*, A/74/10, 20 August 2019, p. 10-140; See also Amnesty International, *International Law Commission – Commentary to the Third Report on Crimes Against Humanity*, 2017, at <https://www.amnesty.org/download/Documents/IOR4058172017ENGLISH.pdf>.
- 61 Idem.
- 62 Ibid, Article 7(1)(g).
- 63 FIDH and REDRESS, *Extraterritorial Jurisdiction in the European Union: A study of the laws and practice in the 27 Member States of the European Union*, 2010, at https://www.fidh.org/IMG/pdf/Extraterritorial_Jurisdiction_In_the_27_Member_States_of_the_European_Union_FINAL.pdf.
- 64 ICTR, *Prosecutor v. Jean-Paul Akayesu*, Appeal Judgment, ICTR-96-4-A, 1 June 2001.
- 65 To learn more about the case, see International Residual Mechanism for Criminal Tribunals, "Historic judgement finds Akayesu guilty of genocide", at <https://unictr.irmct.org/en/news/historic-judgement-finds-akayesu-guilty-genocide>.
- 66 *UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984 (entry into force 26 June 1987), Article 16.
- 67 ICC, *Elements of Crimes*, 3-10 September 2002 (reviewed in 2010), Article 7(1)(k).
- 68 ACHPR, *Egyptian Initiative for Personal Rights and INTERIGHTS v Egypt*, Communication 323/06, 12 to 16 December 2011.
- 69 ICTR, Trial Judgment Akayesu, op. cit., para. 688. The judges found that forcing a person to parade naked or perform gymnastics in a state of nudity was a form of sexual violence falling under the category of "other inhumane acts", "outrages upon personal dignity" and "serious bodily and mental harm".
- 70 SCSL, *Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu*, Appeals Judgment, SCSL-2004-16-A, 22 February 2008, paras. 187-203, particularly para. 195.
- 71 ICTY, Trial Judgment *Tadić*, op. cit., paras. 729-730.
- 72 Rome Statute, op. cit., Article 7(1)(k).

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- ⁷³ Ibid. In international armed conflict: Article 8(2)(a)(ii) for inhuman treatment, 8(2)(a)(iii) for “willfully causing great suffering, or serious injury to body or health” and Article 8(2)(b)(xxi) for “committing outrages upon personal dignity, in particular humiliating and degrading treatment”. In non-international armed conflict: Article 8(2)(c)(i) for “cruel treatment”, Article 8(2)(c)(ii) for “committing outrages upon personal dignity, in particular humiliating and degrading treatment”.
- ⁷⁴ ICTY Statute, *op. cit.* The Statute also provided a provision against enslavement (as crime against humanity) which could comprise acts of sexual violence more broadly, but “rape” was, at the time, the only crime openly referring to sexual and gender-based violence. Article 4 of the Statute on the crime of Genocide also included “imposing measures intended to prevent births within the group”.
- ⁷⁵ ICTY, Trial Judgment *Tadić*, *op. cit.*
- ⁷⁶ ICC, Office of the Prosecutor, *Policy Paper on Sexual and Gender-Based Crimes*, June 2014, para. 18.



Domestic violence

“Do no Harm” principle

Due diligence

Domestic violence

Domestic violence is defined as all acts of physical, sexual, psychological, emotional, verbal, financial or administrative violence that occurs within the family or domestic unit¹. This includes for example violence committed against a spouse, partner, former partner, family member, or any other similar relationship in which the persons are cohabiting or have cohabited². Although they are often used interchangeably, the term “domestic violence” is broader than and comprises “intimate partner violence” which is limited to spouses, partners and former partners³. Domestic violence can also include “coercive control”, as in controlling a person’s behaviour, isolating a person, or invading their privacy through monitoring their movement, conversation or interaction, or imposing upon them a certain physical style⁴.

Domestic violence is often deeply rooted in social and societal inequalities as well as patriarchal norms and attitudes and gender stereotypes. It is frequently a consequence of customs, traditions and incomplete and ill-suited laws⁵. This type of violence exists in all societies, albeit at varying degrees⁶, and affects women and girls disproportionately, even if men and boys can also fall victim to it⁷. According to the World Health Organization, almost one-third of women who are or have been in a relationship have suffered some form of physical and/or sexual violence at the hand of their partners or former partners during their life⁸. Domestic violence is exacerbated by poverty, insecurity, conflict and under-punishment⁹. This has been particularly highlighted in the outbreak of COVID-19 in 2020, with several governments imposing lockdowns to curtail the spreading of the virus, leading to significant increases in the number of cases of domestic violence¹⁰.

Domestic violence can amount to a violation of, among others, of the right to life; to freedom from torture or cruel, inhuman or degrading treatment¹¹; to equal protection under the law; to liberty and security; to equality within the family; to health; and to freedom from discrimination¹². States are obliged to prevent and protect against such violence, to punish perpetrators whenever it occurs and to ensure that victim(s) receive reparation¹³. When States fail their obligations, they can be held responsible, regardless of who the perpetrator is¹⁴.

RELATED: Child abuse, Sexual violence, Autonomy (personal), Due diligence

“Do no Harm” principle

The principle of “Do no Harm” is a key ethical principle and obligation that guides any humanitarian, human rights or accountability interventions. It imposes upon intervening actors the duty to analyse the possible negative impacts of their actions, particularly on victims, witnesses, and affected populations, and to accordingly put in place measures to prevent or minimise such harm¹⁵. A thorough analysis has to be conducted to fully understand all the existing dynamics within a context, with a goal of avoiding the aggravation of existing conflicts as a consequence of the intervention and ensuring better and lasting outcomes¹⁶.

The Do no Harm principle is of crucial importance for any activities that tackle sexual and gender-based violence. Given the grave and lasting physical, psychological and other harm caused by sexual and gender-based violence to victims and witnesses, subsequent inadequate interaction, response or support may cause further harm, be it from the authorities, civil society or humanitarian organisations, or the media. Additionally, interventions to tackle sexual and gender-based violence need to carefully

assess complex gender dynamics within societies and communities, especially where they expose victims of sexual violence or their families to any stigma or harmful societal repercussions¹⁷.

When documenting sexual and gender-based violence, the Do no Harm principle requires the respect of victims’ autonomy, including enabling them to make their own decisions¹⁸. Although some risks are unavoidable¹⁹, minimum steps that should be taken to comply with the Do no Harm principle include: obtaining informed consent, taking measures to mitigate harm at the individual (such as re-traumatisation) or structural (such as stigmatisation) levels; coordinating activities with other actors to avoid multiple interviewing; ensuring confidentiality; and putting in place relevant referral pathways for the provision of assistance or other services²⁰. The principle of Do no Harm obliges practitioners to ensure that safety, integrity (mental and physical) and dignity of victims are at the centre of the work, meaning that this process should prioritise their demands and needs²¹.

The UN Population Fund for instance highlighted the impact that media coverage can have on victims of sexual and gender-based violence, calling on journalists to report on victims’ testimonies with care. This was in response to the coverage of violence against members of the Yazidi community, which many victims considered lacking in ethics in ignoring the negative impact the reporting can have on them²².

Due diligence

Under international law, States have obligations towards potential and actual victims before and after sexual and gender-based violence is committed, whether by an official or a private actor. Specifically, the principle of due diligence obliges States to adopt measures to prevent, protect against and punish the commission of sexual and gender-based violence and to provide victims with redress. This can entail, for instance, the adoption of criminalising legislation and the establishment of relevant institutional frameworks to enforce the legislation. Failing to take such measures is a breach of States' obligation²³. The United Nations Committee on the Elimination of Discrimination against Women ("CEDAW Committee") stated in 2017 that "the failure of a State party to take all appropriate measures to prevent acts of gender-based violence against women in cases in which the authorities are aware or should be aware of the risk of such violence, or the failure to investigate, to prosecute and punish perpetrators, and to provide reparations to victims survivors of such acts, provides tacit permission or encouragement to perpetrate acts of gender-based violence against women. Such failures or omissions constitute human rights violations"²⁴.

States have to apply due diligence to their conduct or behaviour by taking all necessary and reasonable measures to prevent and punish sexual and gender-based violence, but are not required to obtain a specific result²⁵. The due diligence principle applies in times of peace as well as during armed conflict. According to the CEDAW Committee, "States parties' obligations continue to apply during conflict or states of emergency without discrimination between citizens and non-citizens within their territory or effective control, even if not situated within the territory of the State party"²⁶. The African Commission on Human and Peoples' Rights, in a case involving widespread violations

committed in Darfur, Sudan, including sexual and gender-based violence, stated that "State Parties to the African Charter [are obliged] to respect human and peoples' rights at all time including in times of armed conflict"²⁷. This means that the existence of conflicts, unrest or other crises does not discharge States from their obligation to put in place measures that effectively deal with the prevention and response to sexual and gender-based violence.

ENDNOTES

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- 16 Video “Do No Harm Principle”, at https://www.youtube.com/watch?v=PZThWwVE_DY; Inter-Agency Standing Committee, *Guidelines for Integrating Gender-Based Violence Intervention in Humanitarian Action: Reducing risk, promoting resilience and aiding recovery*, 2015, p. 33, 50, at https://gbvguidelines.org/wp/wp-content/uploads/2015/09/TAG-protection-08_26_2015.pdf; CDA Collaborative Learning Projects, *Do no Harm Workshop, Trainer’s Manual*, 2016, at <https://www.cdacollaborative.org/wp-content/uploads/2017/02/Do-No-Harm-DNH-Trainers-Manual-2016.pdf>; UN High Commissioner for Refugees (UNHCR), “Humanitarian Principles, Key points”, at <https://emergency.unhcr.org/entry/44765/humanitarian-principles>.
- 17 See, for example, M. Puerto, “Beyond No Harm: Addressing Gender-Based Violence in Development Responses to Displacement Impacts in Uganda”, World Bank Blogs, June 2018, at <https://blogs.worldbank.org/nasilkiza/beyond-no-harm-addressing-gender-based-violence-in-development-responses-to-displacement-impacts-in>. The author raises that building a school can in itself have harmful consequences where girls do not have access to education, because it may exacerbate the existing inequality.
- 18 PSVI Protocol, op. cit., p. 85.
- 19 The PSVI Protocol states: “When documenting Conflict and Atrocity-Related Sexual Violence, some risks are unavoidable. Investigators cannot offer a complete guarantee of protection and well-being to victims, witnesses or entire communities. However, investigators must remember that the safety and dignity of survivors is at the centre of the entire documentation process”. Ibid, p. 85.

²⁰ Ibid, pp. 85-103.

²¹ The Do no Harm principle must at times be balanced with a victim's desire to tell her or his story and to seek justice and reparation. According to the PSVI Protocol, "respecting the principle of Do No Harm should not automatically be interpreted as a reason not to pursue the documentation of CARSV—rather, it can pave the way towards safely and ethically giving survivors the opportunity to speak out, while identifying potential support mechanisms for them. It should, first and foremost, mean respecting and supporting survivor autonomy". Ibid, p.85.

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²³ See for example, in the context of sexual violence, African Commission on Human and Peoples' Rights (ACHPR), *Guidelines on combating sexual violence and its consequences in Africa*, Niamey, 2017, p. 18: "States must ensure that agents acting on their behalf or under their effective control refrain from committing any acts of sexual violence. States must adopt the necessary legislative and regulatory measures to act with due diligence to prevent and investigate acts of sexual violence committed by State and non-State actors, prosecute and punish perpetrators, and provide a remedies to victims."; See as well CEDAW Committee, *General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations*, CEDAW/C/GC/30, 1 November 2013, para. 15.

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²⁵ See for instance ACHPR, *Zimbabwe Human Rights NGO Forum v. Zimbabwe*, Communication 245/02, 15 May 2006, para. 147: "the doctrine of due diligence is therefore a way to describe the threshold of action and effort which a State must demonstrate to fulfil its responsibility to protect individuals from abuses of their rights".

²⁶ CEDAW General Recommendation No. 30, op. cit., para. 2.

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Enforced prostitution

Enforced sterilisation

Evidence (non-admissible)

Exploitation (sexual)

Enforced prostitution

Enforced prostitution is a form of sexual violence¹ and of human trafficking² that can amount to “modern slavery”³. It is the act of forcing⁴ a person to engage in one or more acts of a sexual nature with another person, with the intent to obtain pecuniary or other advantages (for instance, in exchange for food, housing, drugs or other), or under threat of exposing personal information or material that would threaten or stigmatise the person forced into prostitution⁵. The advantage obtained through enforced prostitution does not necessarily need to be received by the perpetrator; it can be received or meant to be received by a third person⁶. The European Institute for Gender Equality defines enforced prostitution as a “form of slavery incompatible with human dignity and fundamental human rights”⁷, in line with the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others adopted in 1949⁸.

Where the relevant contextual elements are met, enforced prostitution can be prosecuted by the International Criminal Court and in all countries with relevant legislation, as a crime against humanity⁹ and as a war crime¹⁰.

Although this affects all genders and regions, a 2017 study on modern forms of slavery found that among the persons forced into the commercial sex industry, women and girls represented 99% of the victims¹¹, and 73% of the cases occur in Asia and the Pacific¹².

RELATED: Rome Statute, War crimes, Crimes against humanity, Sexual violence

Enforced sterilisation

Enforced sterilisation is the act of permanently depriving¹³ a person of her/his reproductive capacity without obtaining prior informed and genuine consent, or when it is not

Women and girls represent

99%

of the persons forced into
the commercial sex industry.

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SOURCE: International Labour Office (ILO) and WALK FREE Foundation, Global Estimates of modern slavery: forced labour and forced marriage, 2017 https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575479.pdf

required or justified by medical necessity¹⁴. Examples include the enforced sterilisation of persons with mental or physical disabilities¹⁵, persons with HIV¹⁶, indigenous and ethnic minorities¹⁷; transgender and intersex persons¹⁸, female inmates¹⁹, human rights defenders²⁰, and impoverished women. Enforced sterilisation disproportionately and mostly affects women and girls²¹.

Enforced sterilisation has been described by national, regional and international human rights bodies as a violation of fundamental human rights, including the right to health, information, privacy and family (including the number and spacing of children), and to be free from discrimination²². Additionally, international and regional human rights bodies have found that enforced sterilisation can amount to inhuman treatment or torture²³. If the necessary contextual elements are met, enforced sterilisation can also be prosecuted by the International Criminal Court and, where domestic legislation permits, at the national level, as a crime against humanity²⁴ and/or a war crime²⁵. Enforced sterilisation can also qualify as a “measure intended to prevent births within a group” constituting the crime of genocide²⁶.

Accountability for enforced sterilisation demands at times decades- long efforts by affected communities and those supporting them. In Peru, the government’s forced sterilisation policy of the 1990s resulted in the forced sterilisation of about 200,000 Peruvian women²⁷. Victims fought for nearly two decades to see those responsible for the policy held to account. In 2018, former President Alberto Fujimori was eventually indicted for a range of crimes, including enforced sterilisation²⁸.

RELATED: Rome Statute, Crimes against humanity, War crimes, Genocide, Torture, Forced contraception, Sexual violence, Consent (Informed)

Evidence (non-admissible)

Key international criminal law instruments provide that some evidence should not be admissible in cases involving sexual and gender-based violence due to their discriminatory, victimising, stigmatising and, significantly, irrelevant nature. For instance, the International Criminal Court Rules on Evidence and Procedure provide that for proving a sexual crime, corroboration of a victim's testimony is not required, and it is not permitted to admit evidence on the prior or subsequent sexual conduct of a victim or witness²⁹. The same guideline is shared in a number of human rights instruments, such as the African Commission of Human and Peoples' Rights *Guidelines on combating sexual violence and its consequences in Africa*, which provides that such evidence should not be "taken into account to determine whether sexual violence has taken place or as a mitigating circumstance, including [...] arguments that the victim has delayed in reporting the violence"³⁰. An example of the type of "evidence" that is not admissible in the prosecution of sexual violence is information provided as a result of virginity tests (see below).

Corroboration

Corroboration requires that the testimony of a victim is supported by additional evidence that validates, or proves the accuracy, of the victim's account. In other words, it means that a conviction for sexual violence cannot be reached only on the basis of a victim's testimony. Corroborating evidence can include medical prescriptions, pictures, forensic evidence, written materials and often, witnesses who support the truthfulness of the victim's account³¹. Due to the particular circumstances in which sexual violence occurs, often in close settings or in the absence of witnesses, a requirement of a corroborating

testimony from a witness almost inevitably results in blocking the victim from reporting the crime or, if the corroboration is required at a later stage, the failure in prosecuting or convicting the perpetrator of the crime.

The requirement of corroboration is a residue of historic stereotypes and misconceptions. First, it relies on the mistaken assumption that women's testimonies are unreliable as they are inclined to lie, exaggerate or be emotional³². This misconception has been refuted by numerous studies, finding that the percentage of women who fabricate sexual assault complaints is very low³³. Second, it assumes the availability of physical evidence, such as injuries that would result from the crime of sexual violence, which is a common yet inaccurate assumption that for instance rape always involves physical struggle or resistance³⁴. This disregards the different ways in which victims may respond to the assault, which can include immobility, the feeling of being frozen or feeling detached from the body³⁵.

Despite progress in lifting corroborating requirements in cases of sexual violence at the international level, and, in some cases, through legislative reforms or judicial precedents at the national level³⁶, the rule remains in practise before national jurisdictions in a vast number of countries.

RELATED: Rome Statute, Virginity testing, Myths and stereotypes, Stigmatisation, Consent to sexual activity

Exploitation (sexual)

Sexual exploitation is defined as an "actual or attempted abuse of a position of vulnerability, power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another"³⁷.

It can take many forms, including sex trafficking, enforced prostitution, forced marriage, or the use of nude pictures or videos in pornography without the genuine consent of the depicted person³⁸. Sexual exploitation is the most detected form of human trafficking and mainly targets women and girls³⁹, who represent more than 70% of victims of this crime⁴⁰. More than four out of every five trafficked women, and nearly three out of every four trafficked girls, are trafficked for sexual exploitation purposes⁴¹.

Although it can affect all individuals, regardless of age, sex, gender, religion, culture, nationality, ethnicity, disabilities and other categories, sexual exploitation is an extended practice used against children⁴². With the evolution of global internet access, children not only are affected by physical exploitation but can also suffer other forms of online exploitation, such as online grooming, online child pornography, or “sextortion”⁴³. This occurs when a child is enticed to produce an explicit photo or video of themselves, which is later used to blackmail the child mostly for sexual, but also material, favours, under the threat of sharing the material⁴⁴.

Accounts that have gained attention over the past few years have uncovered sexual exploitation throughout the United Nations (UN) system, particularly among staff working in humanitarian response and peacekeeping, several of whom took advantage of their position of power to exploit the vulnerability of affected communities or individuals, including through engaging in sexual activity in exchange for protection, food or services. The accounts also included abuse against children⁴⁵. In response to this alarming form of exploitation, the UN adopted a zero tolerance policy on sexual exploitation and abuse throughout the UN system, including the agencies, funds and programmes (see below)⁴⁶.

RELATED: Zero tolerance policy, Sexual violence, Enforced prostitution, Marriage

ENDNOTES

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- 12 Ibid, p. 39.

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- 39 *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000, Article 3(a); UNODC, *Global Report on Trafficking in Persons*, 2018, p. 10, at https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTIP_2018_BOOK_web_small.pdf. See the term “Trafficking (Human/Sex)” below.
- 40 Global Report on Trafficking in Persons 2018, *Idem.*
- 41 *Ibid.*, p. 25-28.
- 42 Lanzarote Convention, op. cit., Preamble.
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- 45 United Nations, “Preventing Sexual Exploitation and Abuse”, at <https://www.un.org/preventing-sexual-exploitation-and-abuse/>; United Nations, “Standards of Conduct”, at <https://peacekeeping.un.org/en/standards-of-conduct>; UNICEF, “Position on sexual exploitation and abuse and sexual harassment”, at <https://www.unicef.org/press-releases/unicefs-position-sexual-exploitation-and-abuse-and-sexual-harassment>.
- 46 UNICEF, *Strategy on Preventing and Responding to Sexual Exploitation and Abuse and Sexual Harassment*, at https://www.unicef.org/sites/default/files/2019-05/UNICEF%20Strategy%20Preventing%20SEA%20SH%20summary_0.pdf; United Nations Population Fund (UNFPA), “Protection from Sexual Exploitation, Sexual Abuse and Sexual Harassment”, last updated 20 December 2019, at <https://www.unfpa.org/fr/node/17819>.



Femicide/Feminicide
Forced contraception
Forced nudity
Forced pregnancy

Femicide/Feminicide

Femicide, or feminicide¹, is the crime of intentionally killing women because they are women or identify as such². Broader definitions include any killing of women or girls³, or the unintentional or indirect murder of women or girls, “as exemplified by some instances of domestic violence which could result in the death of women”⁴. The concept “gained modern relevance in the feminist movement of the 1970s when ‘femicide’ was proposed as an alternative to the gender-neutral term of homicide, in order to recognise the discriminative, oppressive, unequal and systematic violence” against women, girls or those who identify as such, who could die as a consequence of such violence⁵.

Femicide can take different forms and include⁶: 1) intimate femicide, perpetrated by a current or former partner, usually during or after a relationship which was already violent (e.g. ongoing domestic violence and/or sexual violence); 2) so-called honour killing⁷; 3) dowry-related femicide, occurring in a context of conflict between families of two newly married spouses, usually committed by the in-laws contesting mainly the amount of the dowry; and 4) non-intimate femicide, perpetrated by a non-intimate aggressor, which is widespread in parts of Latin America and usually follows acts of sexual violence or torture⁸. Other identified categories recognised as femicide include sex-selective practices at birth⁹, genital mutilation-related death, the death of women, girls or those who identify as such in the context of smuggling, trafficking, homophobia and racism¹⁰, and witchery- or sorcery-related death¹¹.

Femicide is a gender-motivated crime linked to the existence of a system of structural discrimination against women and girls, characterised by the persistence of patriarchal, sexist and harmful norms, values, stereotypes and conducts, and unequal power dynamics between men and women¹². It is mostly perpetrated by men, and,

About

66,000

women are killed
every year, globally.

F The causes of femicide are rooted in systemic gender-based discrimination:

Institutionalized discrimination

Gender inequality

Sexism

Misogyny

Power imbalances

although femicide can be committed outside the private sphere, the majority of cases are perpetrated by partners or ex-partners and are often an ultimate act in a continuum of gender-based discrimination and violence¹³. The European Parliament includes femicide under a broader category of “gendercide”, that is, “the systematic, deliberate and gender-based mass killing of people belonging to a particular sex”¹⁴.

In all its forms, femicide constitutes a serious violation of human rights. Human rights bodies have condemned femicide and raised concerns in relation to the significant obstacles for women in accessing justice for violence that occurs before, and leading up to, the femicide, the climate of impunity surrounding such cases, and the systematic failure of States to investigate or provide redress¹⁵.

While femicide is not yet recognised as a specific crime in the majority of countries globally¹⁶, some countries in Latin America have made specific references to this crime in their legislation¹⁷. The 1994 Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (known as the Convention of Belém do Pará) obliges State parties to take legislative and institutional measures to prevent, punish and eradicate all forms of violence against women. While implementation of the Convention is generally insufficient, countries in the region are increasingly reforming their domestic legislation and institutional practices to give effect to the Convention. The Convention is reinforced by the Latin American Model Protocol for the investigation of gender-related killings of women, developed by several United Nations entities¹⁸ in response to the high number of women killed in the region.

RELATED: Gender-based violence and discrimination

— SOURCE: Learning Network. Tracing the roots of Femicide
– http://www.yawlearningnetwork.ca/our-work/issuebased-newsletters/issue-14/14-Femicide_Newsletter_Print.pdf

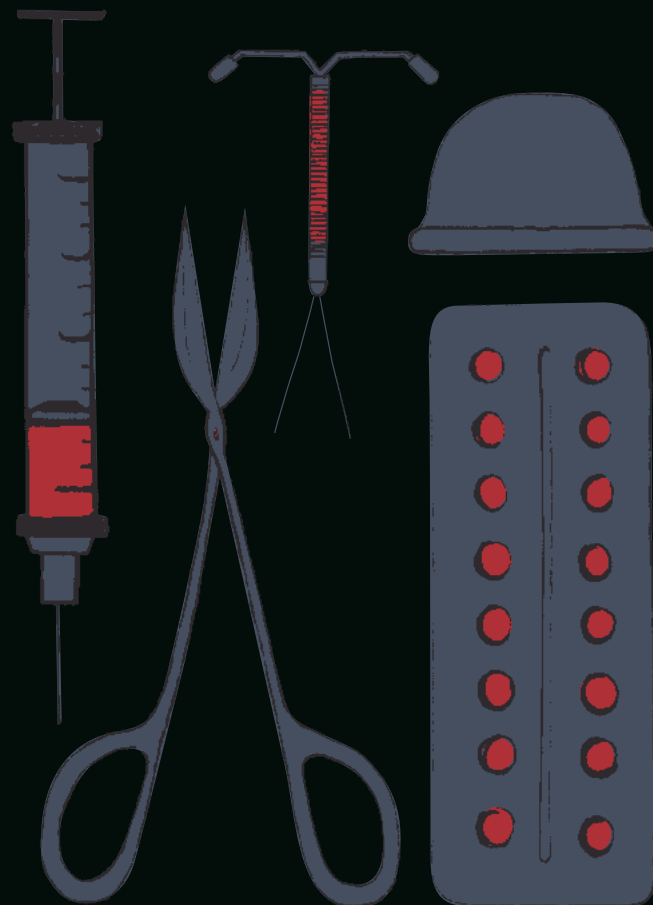
Forced contraception

Contraception refers to measures taken to prevent pregnancies either permanently (e.g. sterilisation) or temporarily (through reversible methods such as: birth-control pills, implants, injections, diaphragms, intrauterine devices, among others)¹⁹. The ability to freely decide whether or not to use contraception is a sexual, reproductive health and family right recognised under international law²⁰. As such, forced contraception is a human rights violation incurring State responsibility to prevent, punish and repair where it occurs²¹.

Forced contraception has been used, for example, to control population growth (e.g. the policies adopted in Northern Rakhine State against the Rohingya population²²), to ensure that women and girls stay “available” for sex and trafficking (e.g. in the case of the Yazidi women placed under the control of ISIS²³) or as a measure to ensure women and girls can perform duties within armed groups (e.g. in armed groups within the internal conflict in Colombia²⁴). In these contexts, as shown by the practice of the Revolutionary Armed Forces of Colombia (FARC), when contraception fails, victims are often subjected to forced abortion²⁵. Reflecting this reality, the Colombian Constitutional Court adopted a landmark decision in which judges found that victims of sexual and reproductive rights violations (including forced contraception), whether civilians or ex-combatants, should be recognised as “victims of the armed conflict” under the law and therefore access reparations²⁶.

RELATED: Sexual violence, Enforced sterilisation, Abortion, Reproductive rights, Gender-based violence and discrimination

Los objetivos de la contracepción forzada incluyen el control del crecimiento demográfico y la garantía de la “disponibilidad” de mujeres y niñas para el sexo, la trata y el desempeño de determinadas funciones dentro de los grupos armados.



Forced nudity

Forced nudity refers to the act of forcing another person to undress partially or completely, including to perform different sorts of movements while in a state of nudity²⁷. It is a form of sexual violence which does not require physical contact and is mainly led by a desire to humiliate the victims, make them feel vulnerable and violate their dignity²⁸.

Forced nudity has been recognised by several courts and tribunals, as well as human rights bodies, as an inhuman and degrading treatment²⁹, an outrage upon personal dignity³⁰, a violation of a person's integrity³¹, or a form of "sexual torture"³². This was particularly the case when the compulsory nudity involved an element of publicity, as in when the act was performed in front of others, such as accomplices of the perpetrator, members of the victim's family, or strangers³³.

Forced nudity often occurs in detention facilities and during armed conflict. It is committed against women, girls, men and boys alike³⁴. In detention settings, forced nudity often occurs in the context of strip searching³⁵. While not *per se* a violation of human rights if carried out in line with relevant standards (e.g. strip searches must be shown to be necessary to prevent crime), strip-searches often risk amounting to inhuman or degrading treatment and a violation of the detainee's right to privacy³⁶.

Although less recognised, forced nudity can also include exposing a person to nudity, by forcing the person to see and watch nude body parts or scenes involving nudity³⁷.

Forced pregnancy

Forced pregnancy is the act of forcibly making a woman or a girl pregnant, or when a woman or a girl is being denied the possibility to terminate a pregnancy³⁸. Judges

at the International Criminal Court (ICC) have clarified the meaning of forced pregnancy to be "unlawfully placing the victim in a position in which she cannot choose whether to continue the pregnancy"³⁹.

According to the Rome Statute, forced pregnancy can constitute a crime against humanity⁴⁰ and a war crime⁴¹ when the act is committed with "the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law"⁴². The case against Dominic Ongwen, an alleged Brigade Commander in the Lord's Resistance Army, which is currently before the ICC, is the first to include charges of forced pregnancy as a crime against humanity and a war crime⁴³. Forced pregnancy can also be used as a tool for ethnic cleansing or genocide as used in the "rape camps" in the former Yugoslavia⁴⁴.

Forced pregnancy is not limited to conflict settings and can be perpetrated in times of peace. Anti-abortion laws, for example, and particularly in cases where a pregnancy is a result of rape, impose a *de facto* forced pregnancy situation on the victim. Although these incidents do not entail the confinement of the victim during her pregnancy, nor an intent to change the ethnic composition of a population, the fact that the victim is forced to remain pregnant because she is denied access to abortion is a violation of internationally recognised reproductive rights and freedoms⁴⁵. The United Nations Committee on Economic, Social and Cultural Rights, for instance, condemned Italy in 2019 for a law that prevented a woman from withdrawing her consent after receiving a fertilising treatment, and found it to result in an act of forced pregnancy that violates the right to the enjoyment of the highest attainable standard of physical and mental health⁴⁶.

RELATED: Abortion, Crimes against humanity, War crimes, Rome Statute, Reproductive rights, Autonomy (personal)

ENDNOTES

- 1 See the explanation of the difference between these two terms here. UN Women, UniTE Campaign and UN High Commissioner for Refugees (UNCHR), *Latin American Model Protocol for the investigation of gender-related killings of women (femicide/feminicide)*, 2014, p. 13–14, at <https://www2.unwomen.org/-/media/field%20office%20caribbean/attachments/publications/latinamericanprotocolforinvestigationoffemicide.pdf?la=en&vs=5729>. It explains that while femicide refers particularly to the killing, feminicide implies a failure from the State to present and/or punish this crime. The Special Rapporteur on violence against women, its causes and consequences also raised that “the term femicide (“femicidio”) was particularly embraced in Latin America in the 1990s as a useful tool in response to an alarming escalation of very violent murders of women and girls. In parallel, the word “feminicidio” was introduced as the direct Spanish translation from the Latin origins of femicide, adding the element of impunity and institutional violence owing to the lack of accountability and adequate response of the State to such killings. The presentation underscored that femicide involved killings perpetrated or tolerated by both private and public actors by action or omission and that adopting feminicide in English could prove useful when State accountability was at stake”. Since then the term has been used more widely, especially by feminists, human rights activists, media. Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, Summary report on the expert group meeting on gender-motivated killings of women*, A/HRC/20/16/Add.4, 16 May 2012, para. 9.
- 2 D. Russell and J. Radford (Eds.), *Femicide: The Politics of Woman Killing*, New York: Open University Press, p.34, 1992; D. Russell and R. Harnes, *Femicide in Global Perspective*, New York: Teachers College Press, 2001, pp. 13–14, 77–78. According to Diana Russel, the killings are “motivated by a sense of entitlement to or superiority over women, by pleasure or sadistic desires toward them, or by an assumption of ownership of women”.
- 3 World Health Organization (WHO), *Understanding and addressing violence against women, Femicide*, at https://apps.who.int/iris/bitstream/handle/10665/77421/WHO_RHR_12.38_eng.pdf?sequence=1.
- 4 Summary report on the expert group meeting on gender-motivated killings of women 2012, op. cit, para. 9.
- 5 Ibid, para. 8.
- 6 WHO, Understanding and addressing violence against women: Femicide, op. cit.; UN Office of the High Commissioner for Human Rights (OHCHR), *Gender-Related Killings of Women and Girls*, 2013, at https://www.ohchr.org/Documents/Issues/Women/WRGS/OnePagers/Gender_motivated_killings.pdf.
- 7 According to the definition of the Committee on the Elimination of Discrimination against women (“CEDAW Committee”), “crimes committed in the name of so-called honour are acts of violence that are disproportionately, although not exclusively, committed against girls and women because family members consider that some suspected, perceived or actual behaviour will bring dishonour to the family or community. Crimes in the name of so-called honour may also be committed against girls and women because they have been victims of sexual violence.” CEDAW Committee and Committee on the Rights of the Child (“CRC Committee”), *Joint general recommendation N°31 of the Committee on the Elimination of Discrimination against Women/general comment N°18 of the Committee on the Rights of the Child on harmful practices*, CEDAW/C/GC/31/CRC/C/ GC/18, 14 November 2014, para. 29.
- 8 WHO, Understanding and addressing violence against women: Femicide, op. cit.
- 9 European Parliament, *Resolution on Gendercide: the missing women?*, 2012/2273(INI), 8 October 2013. On the practice of sex-selection, see WHO et al, *Preventing gender-biased sex selection, An interagency statement OHCHR, UNFPA, UNICEF, UN Women and WHO*, 2011, at https://www.unfpa.org/sites/default/files/resource-pdf/Preventing_gender-biased_sex_selection.pdf. Sex selection is particularly performed in societies, communities and families where there is a high pressure to produce sons rather than daughters, for various reasons. Sex-selective practices include the selection taking place “before a pregnancy is established, during pregnancy through prenatal sex detection and selective abortion, or following birth through infanticide or child neglect” (p. V).
- 10 Latin American Model Protocol for the investigation of gender-related killings of women (femicide/feminicide), op. cit., p. 14–15; European Institute for Gender Equality, “Femicide”, at <https://eige.europa.eu/thesaurus/terms/1128>.
- 11 Human Rights Council, *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston*, A/HRC/11/2, 27 May 2009, paras. 43–59. “In too many settings, being classified as a witch is tantamount to receiving a death sentence” (para. 43).
- 12 Inter-American Court of Human Rights (IACtHR), *González et al. (“Cotton Field”) v. Mexico*, Judgment (Preliminary Objection, Merits, Reparations and Costs), 16 November 2009, para. 133; Inter-American Commission of Human Rights (IACHR), *Situation of the Rights of Women in Ciudad Juárez*, Mexico, OEA/Ser.L/V/II.117 Doc. 44, 7 March 2003 (citing the letter from the Secretary of Government of Chihuahua to the Special Rapporteur on 11 February, 2002); CEDAW Committee, *Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention, and reply from the Government of Mexico*, CEDAW/C/2005/OP.8/MEXICO, 27 January 2005, para. 159; Summary report on the expert group meeting on gender-motivated killings of women 2012, op. cit., particularly paras. 3, 14, 20 and 23.
- 13 United Nations Office on Drugs and Crimes (UNODC), *Global Study on homicide*, 2019, p. 10, at https://www.unodc.org/documents/data-and-analysis/gsh/Booklet_5.pdf.
- 14 European Parliament, Resolution on Gendercide: the missing women?, op. cit., para. A. The Resolution “calls on government to specifically categorise feminicide or gendercide as a crime and to draw up and implement legislation so that feminicide cases are investigated, perpetrators tried and survivors ensured easy access to health care and long-term support” (para. 4).
- 15 CEDAW Committee, *General Recommendation No. 19 on Violence against women*, 1992; *UN Declaration on the Elimination of Violence against Women*, A/RES/48/104, 20 December 1993; CEDAW Committee, *General Recommendation No. 28: the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, CEDAW/C/GC/28, 16 December 2010; Human Rights Committee (HRC), *General Comment No. 28: Article 3 (The equality of rights between men and women)*, CCPR/C/21/Rev.1/Add.10, 29 March 2000; Summary report on the expert group meeting on gender-motivated killings of women, 2012, op. cit.

- 16 This affects the collection of data on femicide, classified as homicide without specific information on the existing relation between the victim and the perpetrator, whether is it gender driven or what were the motives. WHO, *Understanding and addressing violence against women: Femicide*, op. cit., p. 1, 5.
- 17 See the list of legislations at: Global Americans, “**Femicide and International Women’s Rights, An epidemic of violence in Latin America**”, at <https://theglobalamericans.org/reports/femicide-international-womens-rights>.
- 18 Latin American Model Protocol for the investigation of gender-related killings of women (femicide/feminicide), op. cit.
- 19 Encyclopedia of Children’s Health, “**Contraception**”, at <http://www.healthofchildren.com/C/Contraception.html>.
- 20 *UN Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), 18 December 1979 (entry into force 3 September 1981), Article 16(e).
- 21 Idem.
- 22 Human Rights Council, *Situation of human rights of Rohingya Muslims and other minorities in Myanmar, Report of the United Nations High Commissioner for Human Rights*, A/HRC/32/18, 29 June 2016, para. 43.
- 23 NY Times, “**To maintain supply of sex slaves, ISIS pushes Birth Control**”, 12 March 2016, at <https://www.nytimes.com/2016/03/13/world/middleeast/to-maintain-supply-of-sex-slaves-isis-pushes-birth-control.html>.
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- 28 S. Sivakumaran (2007), “**Sexual Violence Against Men in Armed Conflict**”, *European Journal of International Law*, Vol. 18(2), p. 253, 269; Human Rights Watch (J. Bjorken), “**Welcome to Hell: Arbitrary Detention, Torture, and Extortion in Chechnya**, 2000, p. 47-48, at https://www.hrw.org/sites/default/files/report_pdf/2000-chechnya-welcome-to-hell.pdf; M. Sjöholm, *Gender-sensitive norm interpretation by regional human rights law systems*, Brill, Martinus Nijhoff, 2017, p. 354.
- 29 African Commission on Human and Peoples’ Rights (ACHPR), *Commission nationale des droits de l’Homme et des libertés v. Chad*, Communication n°74/92, 11 October 1995. Special Court for Sierra Leone (SCSL), *Prosecutor v. Brima, Kamara and Kanu*, Appeals Judgment, SCSL-2004-16-A, 22 February 2008, para. 184.
- 30 International Criminal Tribunal for the former Yugoslavia (ICTY), *Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic*, Trial Judgment, IT-96-23-T&IT-96-23/1-T, 22 February 2001, paras. 766-774, 782, 88; International Criminal Tribunal for Rwanda (ICTR), *The Prosecutor v. Jean-Paul Akayesu*, Trial Judgment, ICTR-96-4-T, 2 September 1998, para. 697.
- 31 IACtHR, *Miguel Castro Castro Prison v. Peru*, Judgment (Merits, Reparations and Costs), 25 November 2006, paras. 304-308. Judges also noted that it constitutes sexual violence and, in some cases, a violation of the right to humane treatment.
- 32 Human Rights Council, *Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment on his mission to Mexico (21 April to 2 May 2014)*, A/HRC/28/68/Add.3, 29 December 2014, para. 28.
- 33 See all cases mentioned above.
- 34 F. Ní Aoláin, “**Forced Nudity: What International Law and Practice Tell Us**”, *Just Security*, 1 June 2016, at <https://www.justsecurity.org/31325/forced-nudity-international-law-practice/>.
- 35 M. Sjöholm, *Gender-sensitive norm interpretation by regional human rights law systems*, Leiden: Brill Nijhoff, 2018, p. 353; See also, Supremo Tribunal Federal (Brasil), *Bulletin on International case law, Intimate Body Search*, Vol. 7, December 2019, comparing different regional courts’ approaches to strip-searches, at <http://www.stf.jus.br/arquivo/cms/jurisprudenciaBoletim/anexo/BJI7INTIMATEBODYSEARCHreview.pdf>.
- 36 Idem.
- 37 Civil Society Declaration on Sexual Violence, op. cit., Part. 4(3)(c) and (d) (and commentary p. 23-24).
- 38 *Rome Statute of the International Criminal Court*, A/CON.183/9 (“Rome Statute”), 17 July 1998 (entry into force 1 July 2002), Article 7(2)(f).
- 39 International Criminal Court (ICC), Pre-Trial Chamber II, *Prosecutor v. Dominic Ongwen* Decision on the confirmation of charges against Dominic Ongwen, ICC-02/04-01/15, 23 March 2016, para. 99.
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- 42 Rome Statute, op. cit., Article 7(2)(f).
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- 45 Equality Now, “**Forced Pregnancy**”, at https://www.equalitynow.org/forced_pregnancy; Amnesty International (J. Todd-Gher and U. Mishra-Newbery), “**Anti-abortion laws are an attack on our right to live with dignity and decide what happens to our bodies**”, 28 September 2019, at <https://www.amnesty.org/en/latest/news/2019/09/anti-abortion-laws-are-an-attack-on-our-right-to-live-with-dignity-and-decide-what-happens-to-our-bodies/>.
- 46 Committee on Economic, Social and Cultural Rights (CESCR), *S.C. and G.P. (represented by counsel, Cesare Romano) v. Italy*, Communication N°22/2017, 28 March 2019.

G

Gender

Gender-based violence and discrimination

Gender bias

Genital mutilation

Genocide

Gratification (sexual)

Gender

Gender is a social construct based on the “roles, behaviours, activities, and attributes assigned to women and men, and to girls and boys”¹.

The gender of a person is based on a personal identification of being a man, a woman, or neither of these two, rather than on their biological sex². Most commonly, persons born with female reproductive organs identify as women, and persons born with male reproductive organs as men. This is a direct consequence of the choice of parents to raise their newborn in a gender-specific manner, according to their sex (e.g. how to dress, how to behave, which social roles to carry out)³.

Some individuals identify with neither the female nor the male gender, but with separate categories, irrespective of their biological sex, including: androgyne, genderqueer, pan-gender and transgender⁴. The latter category of gender identity refers to persons born with specific reproductive organs and raised accordingly, but who feel that they belong to another gender than the one assigned to them, and who in some cases, but not necessarily, take steps to bring their bodies in alignment with their gender choice through medical procedures or medication⁵.

The gender of a person is influenced by different internal and external factors, mainly physical, emotional and related to social interactions⁶. It is often a product of common expectations of society or closer communities in which a person lives⁷. When individuals fail to respect such expectations and what is considered as “normal”, they can become victims of gender-based violence or discrimination (see below).

RELATED: Gender-based violence and discrimination, Gender bias, Myths and stereotypes (gender)

Gender-based discrimination is often a consequence of gender myths and stereotypes that include: women are best fit for child bearing, cooking or cleaning, or jobs like secretarial work, teaching, or nursing, while men are leaders, good with finances and commerce.



Gender-based violence and discrimination

Gender-based violence, including discrimination, is violence perpetrated against a person because of their gender, real or perceived by the perpetrator⁸, or which affects a gender group disproportionately⁹. It is an umbrella term comprising a broad range of acts varying in nature, including sexual, physical, psychological, emotional, administrative, economic and structural¹⁰. Although women and girls are the primary victims of such violence, all genders are affected¹¹. It is therefore important not to use “gender-based violence” and “violence against women” interchangeably.

Gender-based discrimination refers to “any distinction, exclusion or restriction” made on the basis of a person’s gender (see above) with the effect or purpose of limiting, altering or nullifying the recognition, enjoyment or exercise of that person’s human rights¹². It is often a consequence of gender myths and stereotypes¹³ that include: women are best fit for child bearing, cooking or cleaning, or jobs like secretarial work, teaching, or nursing, while men are leaders, good with finances and commerce¹⁴. This has led to unequal access to the job market¹⁵ and to unequal pay for similar positions based on the argument that women perform less (well) than men¹⁶, and hence, to gender-based discrimination¹⁷.

Both gender-based violence and discrimination are prohibited under international law, particularly on the basis of the right of equality and non-discrimination¹⁸.

RELATED: Gender, Sexual violence, Stigmatisation

Gender bias

A gender bias is a difference in treatment and perception (through actions or thoughts) among genders, mainly discriminating between women and men¹⁹. It usually implies an inequality of rights and imposes the domination of one

gender over the other²⁰. The bias can be intentional or unconscious²¹.

Gender bias is a form of gender discrimination and leads to inequalities between genders in private and public spheres. One example often discussed is the inequality between men and women within the job market based on gender bias. For example, between two equally qualified people, one male and one female, statistics show that women will be less likely to access the same professional opportunities, positions, wages²² or career evolution²³. In some countries, women are even prohibited from working in certain industries due to gender discrimination and bias. For instance, according to ADC Memorial, an FIDH member organisation in Russia: "In Russia, Belarus, Azerbaijan, and the former Soviet countries of Central Asia, women are banned by law from hundreds of professions, including prestigious and lucrative ones"²⁴. This also includes jobs in the fields of agriculture, transportation, and production of products like wood or leather²⁵. These discriminatory employment practices are motivated by concerns over the "reproductive health"²⁶ of women, in particular concerning pregnancy and child rearing, but result in gender bias and discrimination. While many countries have amended their labour laws to lift such bans, barriers to accessing the same jobs continue to exist²⁷.

RELATED: Gender-based violence and discrimination, Gender

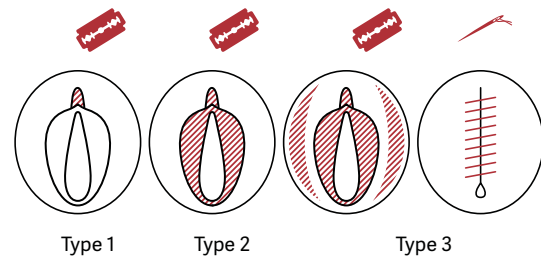
Genital mutilation

Genital mutilation is a form of amputation or physical injury to the genital organs²⁸. Although it affects women disproportionately (female genital mutilation), men and boys are also affected (forced male circumcision).

Female Genital Mutilation (FGM – or Female Sexual Mutilation – FSM)

Female genital mutilation is widespread around the world²⁹. It is a harmful practice entailing the "partial or total removal of the external female genitalia"³⁰. This procedure is often performed on the basis of ancestral, discriminatory, sexist and patriarchal cultural norms, which associate such harmful practice with concepts of femininity, such as virtue and purity, or the belief that the mutilation will increase desire and ability for marriage. There is no medical necessity or benefit to this practice. To the contrary, irreversible health damage is frequently caused to the women and girls subjected to it³¹.

Due to its invasive nature and the severe physical and mental long-lasting consequences³², FGM constitutes a violation of women's and girls' human rights³³ amounting to ill-treatment or torture³⁴. According to the United Nations



General Assembly, “female genital mutilations are an irreparable, irreversible abuse that impacts negatively on the human rights of women and girls” and “a harmful practice that constitutes a serious threat to the health of women and girls, including their psychological, sexual and reproductive health”³⁵.

Male Genital Mutilation³⁶

Male genital mutilation comprises all procedures involving partial or total removal of external male genitalia or other injury to male genital organs. It often refers, but is not limited to, male circumcision.

The circumcision is a procedure of removal of the foreskin of the penis (the skin that covers the external extremity of the organ)³⁷. It can be practised for various reasons, including medical (as prevention of HIV and other diseases or infections³⁸), cultural, religious and social³⁹. Circumcision has been less criticised by the international community. This can be explained by the fact that male circumcision is, according to the World Health Organization, “one of the oldest and most common surgical procedures worldwide”, considered as a significantly safer practice than female mutilation⁴⁰. According to the United Nations, male circumcision should only be performed where a) participants (including, as appropriate, parents or guardians) are fully informed; b) participants give their fully informed consent; and c) the procedure can be performed under fully hygienic conditions.⁴¹

Male genital mutilation can also be perpetrated in conflict settings through, for example, the total or partial ablation of the penis and/or the testicles⁴². Mutilation of male detainees/prisoners can also occur and “is often carried out to attack and destroy their sense of masculinity or manhood”⁴³.

Female and male mutilation can both be prosecuted

as acts of sexual violence⁴⁴ or, depending on the circumstances, as ill-treatment or torture⁴⁵ under international law, including as constituting an international crime⁴⁶. States have a duty to prevent and protect against these harmful practices, abolish legislation and customs allowing them to perpetuate, prosecute perpetrators and provide reparation to victims⁴⁷.

RELATED: Sexual violence, Child abuse, Torture, Cruel, inhuman or degrading acts, treatments and punishments

Genocide

Genocide is among the most serious and grave international crimes, together with war crimes and crimes against humanity, that can be prosecuted under international criminal law⁴⁸.

According to the Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the United Nations General Assembly in 1948 following World War II, five categories of acts can constitute genocide if committed with an “intent to destroy, in whole or in part, a national, ethnical, racial or religious group”⁴⁹. These categories are: “(a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; and (e) Forcibly transferring children of the group to another group”⁵⁰.

Different acts contained in this list can be of a sexual nature. Preventing births within a group, including through forced abortion, forced impregnation, or forced sterilisation, can amount to genocide if carried out with an intent to destroy a group in whole or in part. Widespread use of sexual violence, particularly of rape, against a group can cause

“serious bodily or mental harm”⁵¹ or constitute “conditions of life calculated to bring [...] physical destruction in whole or in part”⁵². In the case of Jean-Paul Akayesu, mayor of the Taba Commune in Rwanda, judges of the International Criminal Tribunal for Rwanda noted that “sexual violence was an integral part of the process of destruction, specifically targeting Tutsi women and specifically contributing to their destruction and to the destruction of the Tutsi group as a whole”⁵³. Acts prosecuted in this case include Tutsi women being subjected to acts of sexual violence committed to achieve “the worst public humiliation, mutilated, and raped several times, often in public, in the Bureau Communal premises or in other public spaces, and often by more than one assailant”⁵⁴. In response to the widespread use of sexual violence during the genocide, judges further recognised, in another case, the existence of “genocidal rape”⁵⁵.

The prohibition of genocide is enshrined in both written and customary international law and is considered as a peremptory norm of *Jus Cogens*⁵⁶. As such, all States have the obligation to prevent genocide and to adopt adequate legislation to prosecute and punish any act that can constitute genocide, including on the basis of universal jurisdiction.

In 2019, The Gambia brought a case against Myanmar before the International Court of Justice alleging a breach of the Genocide Convention and seeking to prevent genocidal acts, including rape and sexual violence, committed against Rohingya Muslims in Myanmar. The case is unprecedented in that it is the first instance in which a State brought a case against another State for violations committed by the latter against its own population⁵⁷.

RELATED: Rome Statute, Rape, International Criminal Law

Gratification (sexual)

Gratification implies a sense of pleasure and satisfaction⁵⁸. It can be used in different contexts, especially in relation to sexual activity. Sexual activity, with oneself or between two or more persons, if consented to by all, can bring sexual gratification to the persons involved, and is meant to do so⁵⁹.

However, although coerced/forced sex may lead to sexual gratification of the perpetrator, “its underlying purpose is frequently the expression of power and dominance over the person assaulted”⁶⁰. Hence, the presence of sexual gratification, or the intent to obtain sexual gratification, should not be taken into consideration to deliberate on whether or not sexual violence was committed. The “sexual” nature of the violence does not imply a requirement of pleasure – as in consensual sexual activity – in order for the sexual violence to be characterised as such⁶¹. Moreover, sexual gratification can also arise from the feeling of power over the victim and not only from the sexual nature of the act.

RELATED: Evidence (non-admissible)

ENDNOTES

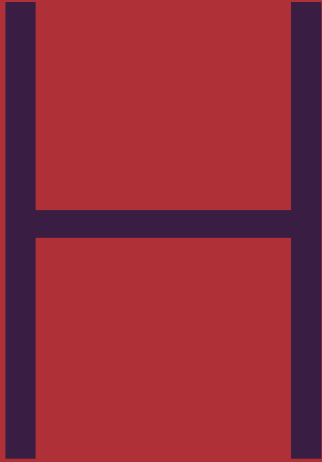
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Human rights

Human rights

Human rights are a set of rights and freedoms inherent to all human beings, regardless of one's sex, gender, nationality, ethnicity, language, religion or other¹. Human Rights are "universal, indivisible and interdependent and interrelated"². In human rights law, non-discrimination is a cross-cutting principle present in all major regional and international human rights treaties, including in particular the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)³.

Since 1945, and particularly following the adoption of the United Nations (UN) Charter emphasising respect for human rights and fundamental freedoms, the idea of promulgating an international bill of right started to materialise. This led to the adoption by the UN General Assembly of the Universal Declaration of Human Rights (1948)⁴, followed in 1966 by the legally binding International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights (1996)⁵.

The international human rights framework continued to develop in subsequent decades, and today the Covenants are part of nine core international human rights treaties, each establishing a mechanism to monitor implementation of the treaty provisions by its States parties⁶. Several of these mechanisms are mandated to receive individual complaints from victims alleging a violation of their rights under the relevant treaty, including the Committee on the Elimination of Discrimination against *Women* ("**CEDAW Committee**"). Human rights treaties have additionally been developed at the regional level; these include the European Convention on Human Rights⁷, the American Convention on Human Rights⁸, and the African Charter on Human Rights and Peoples' Rights⁹. These regional

treaties have established mechanisms to render legally binding judgments against States parties found to be in violation of their treaty obligations, namely, the European Court of Human Rights, the Inter-American Court of Rights (complemented by the Inter-American Commission on Human Rights), and the African Court on Human and Peoples' Rights (complemented by the African Commission on Human and Peoples' Rights -ACHPR).

It is important to note that in exceptional circumstances, such as armed conflict, suspension or suppression of some human rights by the government may be permitted under certain limited and temporary conditions, where a derogation clause is present in the relevant human rights treaty and where the situation at hand risks the safety of a nation. However, a set of rights also referred to as non-derogable rights cannot be suspended or restricted regardless the circumstance. These include the rights set out in Article 4 of the International Covenant on Civil and Political Rights¹⁰, but may also be extended to include additional rights¹¹. Furthermore, legitimate derogation should not involve any discrimination on the basis of race, colour, sex, language, religion or social origin.

Human rights instruments offering protection specifically against sexual and/or gender-based violence include the CEDAW¹²; the Council of Europe Convention on preventing and combating violence against women and domestic violence¹³; the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against women¹⁴; and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa¹⁵. Declaratory instruments, such as general recommendations from the CEDAW Committee, General Comments from the UN Human Rights Committee, and Guidelines and Resolutions, also constitute an important part of the human rights framework as they provide general guidance to States


on the fulfilment of their relevant treaty obligations. One key example is the ACHPR *Guidelines on combating sexual violence and its consequences in Africa*, adopted in 2017 to support States in respecting their international obligations to prevent, protect against and respond to sexual violence¹⁶.

International human rights law obliges States to respect and protect human rights, to prevent and punish any violation committed by their officials or by private individuals and to provide redress to the victims¹⁷. Although regional, historical or religious particularities can be taken into account when implementing these rights, allowing States a certain margin of appreciation, States have an obligation to protect all human beings from any violation of their rights and freedoms¹⁸.

RELATED: Women's rights, Reproductive rights

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- 6 See Office of the High Commissioner on Human Rights (OHCHR), “**Human Rights Treaty Bodies**”, at <https://www.ohchr.org/en/hrbodies/Pages/HumanRightsBodies.aspx>.
- 7 Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, Rome, 4 November 1950 (entry into force 3 September 1953).
- 8 Inter-American Specialized Conference on Human Rights, *American Convention on Human Rights*, San José, 22 November 1969 (entry into force 18 July 1978).
- 9 Organization of African Unity, *African Charter on Human and Peoples’ Rights*, Banjul, 27 June 1981 (entry into force 21 October 1986).
- 10 Article 4 of the ICCPR sets out the following rights from which States can never derogate, even in times of public emergency that threatens the life of the nation: Right to life (Article 6); Prohibition of torture, cruel, inhuman and degrading treatment (Article 7); Prohibition of medical or scientific experimentation without consent (Article 7); Prohibition of slavery, slave trade and servitude (Article 8); Prohibition of imprisonment because of inability to fulfil contractual obligation (Article 11); Principle of legality in criminal law, i.e. the requirement that criminal liability and punishment is limited to clear and precise provisions in the law, that was in force at the time the act or omission took place, except in cases where a later law imposes a lighter penalty (Article 15); Recognition everywhere as a person before the law (Article 16); Freedom of thought, conscience and religion (Article 18). ICCPR, *op. cit*.
- 11 UN Office of the High Commissioner for Human Rights (OHCHR), *Core human rights in the two covenants*, 2013, at <https://nhri.ohchr.org/EN/IHRS/TreatyBodies/Page%20Documents/Core%20Human%20Rights.pdf>.
- 12 *UN Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), 18 December 1979 (entry into force 3 September 1981).
- 13 Council of Europe, *Convention on preventing and combating violence against women and domestic violence*, Istanbul (“Istanbul Convention”), 11 May 2011.
- 14 Organization of American States, *Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará)*, 9 June 1994 (entry into force 5 March 1995).
- 15 African Union, *Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa* (“Maputo Protocol”), 11 July 2003.
- 16 African Commission on Human and Peoples’ Rights (ACHPR), *Guidelines on combating sexual violence and its consequences in Africa*, 60th Ordinary Session, Niamey, 2017.
- 17 See provisions of all above-mentioned human rights instruments.
- 18 Vienna Declaration and Programme of Action, *op. cit.*, para. 5: “while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms”.



Impunity
International Criminal Law
International Humanitarian
Law

Impunity

Persons (or entities) who may be responsible for committing, contributing to or failing to prevent or punish a crime or a violation of a law or a rule, be it criminal, civil, administrative, disciplinary, national or international, must be held to account¹. Failure to do so will create a situation of impunity where perpetrators of crimes or violations do not have to face any consequences for their conduct, thereby contributing to the repetition of these crimes and violations and denying victims their rights to redress. Impunity is not limited to the lack of punishment *per se* and includes the lack of investigation, arrest, prosecution, proportionate sentencing and reparations to victims². States are obliged to ensure accountability, implying an obligation to combat impunity³. The United Nations “Impunity Principles” set out a range of principles to assist States in this respect, centred around three categories: the right to know, the right to justice and the right to reparation⁴.

Impunity for sexual and gender-based violence is more often the norm than an exception in all countries⁵. This is often due to a number of legislative, institutional, personal and cultural obstacles to reporting these violations.

Legislative obstacles include inadequate and/or discriminatory legal and procedural frameworks with no or inadequate definitions of sexual and gender-based crimes, statutes of limitation for such crimes, immunities or pardons, allowing perpetrators to evade punishment by marrying the victim of rape or through settlements, reducing punishments if a crime was committed by a family member, or placing a very high burden of proof on the victim (such as requiring corroboration in cases of rape⁶).

Institutional obstacles fostering impunity include a lack of emergency help lines, inadequate or discriminatory complaint procedures, lack of information on reporting services, absence of protection measures including state-

established shelters, the absence of independent and impartial law enforcement mechanisms, lack of (adequate) training of investigators, prosecutors, judges and lawyers, and corruption.

At the individual level, victims of sexual and gender-based violence may not report an incident for fear of reprisals or stigma, or for lack of trust in the justice system, particularly if support is not provided in the reporting process and/or if the process itself is traumatising, as when the victim is not believed or is made to testify multiple times⁷.

Social barriers include social stigma where reporting may lead to the rejection of the victim and often her family members, and may escalate to reprisals. Cultural barriers to reporting arise when the violence itself is culturally related or is rooted in cultural stereotypes, or when the family is complicit in the violence, for instance in forced marriage.

These obstacles have created and fostered a climate and culture of impunity that encourages and perpetuates sexual and gender-based violence⁸.

RELATED: Accountability

International Criminal Law

International criminal law (ICL) is a branch of international law that deals with the criminal responsibility of individuals for the most serious crimes under international law. It can be distinguished from international human rights law in the sense that it targets the responsibility of individuals, rather than States. The main categories of international crimes included in ICL are crimes against humanity, war crimes, genocide and the crime of aggression⁹. ICL provides for criminal sanctions that should apply to all perpetrators, including those who are involved in the planning and authorisation of such acts as well as those who directly commit the crimes. As such, political and military leaders

can be held to account for international crimes¹⁰.

According to international law, all states are obliged to prosecute perpetrators of genocide, crimes against humanity or war crimes in their own national courts. ICL, as codified in the Rome Statute, provides a valuable reference for domesticating sexual and gender-based crimes as genocide, crimes against humanity and war crimes¹¹. At the time of writing, the Rome Statute had been ratified by 123 States and (at times, partially) implemented domestically by more than half of the States parties¹². Also significant are its standards in terms of procedure and evidence in relation to sexual and gender-based crimes¹³, as well as the provision of protection measures for victims and witnesses¹⁴.

RELATED: Accountability, Rome Statute, Crimes against humanity, War crimes, Genocide, Evidence (non-admissible), Universal jurisdiction

International Humanitarian Law

Also known as “the law of war” or “the law of armed conflict”, international humanitarian law (IHL) is a branch of international law that regulates the use of force in armed conflicts by imposing a set of rules that all parties to the conflict must respect¹⁵. It is essentially codified in the four Geneva Conventions adopted in 1949 and their two Additional Protocols of 1977¹⁶.

The main purpose of IHL is to limit the effects of armed conflicts by protecting persons who are not taking part in hostilities. These include the civilian population and those who, by choice or circumstance, are no longer participating in hostilities, including combatants who surrender or intend to do so or who are injured or are captured as prisoners of war¹⁷. IHL also seeks to restrict the means and methods of war¹⁸ through its set of protections and prohibitions. One example is the prohibition under IHL on using weapons that will cause unnecessary suffering or long-term damage to the

environment and weapons that are not able to distinguish between civilians and combatants and might therefore target civilians¹⁹.

The Geneva Conventions contain only a few references to protections against sexual and gender-based violations²⁰. For instance, the Conventions highlight that “women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault”²¹. While significant at the time of their adoption, these provisions have since been considered insufficient in the protection they provide. Individuals should not be protected against sexual violence to preserve their honour, but to respect their fundamental rights, particularly their physical, psychological and sexual integrity and autonomy. Moreover, this protection should not be limited to women and should be extended to all persons, given that men can also become victims of sexual and gender-based crimes, particularly in situations of armed conflicts²².

While these protection gaps identify a need for reform, IHL still provides an important general prohibition on sexual and gender-based crimes in times of international and non-international conflict, which must be respected by all parties to the conflict²³. As highlighted by the International Committee of the Red Cross, sexual and gender-based violence committed in times of conflict is also prohibited under customary law²⁴.

RELATED: Armed conflict

ENDNOTES

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- 2 Commission on Human Rights, *Promotion and Protection of Human Rights, Impunity, Report of the independent expert to update the Set of principles to combat Impunity, Diane Orentlicher, Addendum, Updated Set of principles for the protection and promotion of human rights through action to combat impunity*, E/CN.4/2005/102/Add.1, 8 February 2005 (“UN Impunity Principles 2005”). See also the key document prepared by the International Commission of Jurists on the fight against impunity: International Commission of Jurists, *International Law and the Fight Against Impunity, A practitioners Guide*, 2015, at <https://www.icj.org/wp-content/uploads/2015/12/Universal-Fight-against-impunity-PG-no7-comp-Publications-Practitioners-guide-series-2015-ENG.pdf>;
- 3 UN Impunity Principles 2005, op. cit; specifically in the context of sexual and gender-based violence, see United Nations Security Council (UNSC), *Resolution 2467(2019)*, S/RS/2467(2019), 23 April 2019, Preamble, paras. 3, 15, 17.
- 4 Idem.
- 5 UNSC, *Report of the United Nations Secretary-General on Conflict-related sexual violence*, S/2019/280, 29 March 2019, para. 8; African Commission on Human and Peoples’ Rights (ACHPR), *Guidelines on combating sexual violence and its consequences in Africa*, Niamey, 2017, p. 9.
- 6 Equality Now, *The World’s Shame: The Global Rape Epidemic: How laws around the world are failing to protect women and girls from sexual violence*, 2017, at https://d3n8a8pro7vhmx.cloudfront.net/equalitynow/pages/308/attachments/original/1527599090/EqualityNowRapeLawReport2017_Single_Pages_0.pdf?1527599090; See, in the case of Sierra Leone, Human Rights Watch, *We’ll kill you if you cry. Sexual Violence in the Sierra Leone Conflict*, 2003, at <https://reliefweb.int/sites/reliefweb.int/files/resources/0EEEF2A6AC9668FC49256CB000CA02C-hrw-srl-15jan.pdf>; for instance, to fight against impunity and promote access to justice for the victims, the ACHPR Guidelines on combating sexual violence and its consequences recommend States to conduct awareness-raising campaigns on “the negative effects of settlements between the family of the victim and the attacker, and on the dramatic consequences of having the victim marry the perpetrator of the violence”. The Guidelines also state that, “for offences involving sexual violence, States must provide for a reversal of the burden of proof such that the victims are not obliged to provide any evidence other than their own statement”. ACHPR Guidelines on combating sexual violence and its consequences in Africa, op. cit.
- 7 M. Keenan, “Criminal Justice, Restorative Justice, Sexual Violence and the Rule of Law, Restorative Responses to Sexual Violence”, in E. Zinsstag, and M. Keenan (Eds.), *Restorative Responses to Sexual Violence: Legal, Social and Therapeutic Dimensions*, Routledge, 2017.
- 8 The World’s Shame: The Global Rape Epidemic 2017, op. cit; UNSC, Resolution 2467 (2019), op. cit.
- 9 Geneva Academy (RULAC), “International criminal law”, at <http://www.rulac.org/legal-framework/international-criminal-law#collapse1accord>; B. S. Brown, “International criminal law: nature, origins and a few key issues”, in B. S. Brown (ed.), *Research Handbook on International Criminal Law*, 2011, Edward Elgar Publishing Limited, pp.

- 3-16, p.3; W. A. Schabas, *International Criminal Law*, Vol. 1, Edward Elgar Publishing Limited, 2012.
- 10 Diakonia, “Q&A on International Criminal Law”, at <https://www.diakonia.se/en/IHL/The-Law/International-Criminal-Law1/>.
- 11 Idem. See *Rome Statute of the International Criminal Court*, A/CON.183/9 (“Rome Statute”), 17 July 1998 (entry into force 1 July 2002), Articles 6, 7 and 8. See also the definitions above and below of “War crimes”, “Crimes against humanity” and “Genocide”, and specific explanations regarding “Sexual and gender-based violence and discrimination”.
- 12 Parliamentarians for Global Action, “Implementing legislation on the Rome Statute”, at <https://www.pgaction.org/ilhr/rome-statute/implementing-legislation.html>.
- 13 See above the terms “Evidence (non-admissible)” and “Consent to sexual activity”.
- 14 See below the term “Protective measures (for victims and witnesses)”.
- 15 International Committee of the Red Cross (ICRC), *What is International Humanitarian Law?*, 2004, at https://www.icrc.org/en/doc/assets/files/other/what_is_ihl.pdf.
- 16 *Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (“Geneva Convention I”); *Convention (II) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea* (“Geneva Convention II”); *Convention (III) Relative to the Treatment of Prisoners of War* (“Geneva Convention III”); *Convention (IV) Relative to the Protection of Civilians in Time of War* (“Geneva Convention IV”), Geneva, 12 August 1949 (together “Geneva Conventions”); *Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts* (“Protocol I to the Geneva Conventions”), 8 June 1977; *Protocol Additional (II) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts* (“Protocol II to the Geneva Conventions”), 8 June 1977; see further, ICRC, “The Geneva Conventions of 1949 and their Additional Protocols”, at <https://www.icrc.org/en/document/geneva-conventions-1949-additional-protocols>.
- 17 J. Pictet, *Development and Principles of International Humanitarian Law*, Martinus Nijhoff Publishers and Henry Dunant Institute, 1985.
- 18 ICRC, *What is International Humanitarian Law?*, 2004, at https://www.icrc.org/en/doc/assets/files/other/what_is_ihl.pdf.
- 19 See for example Geneva Conventions, op. cit.; *UN Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction*, 10 April 1972 (entry into force 26 March 1975); *UN Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their destruction*, 13 January 1993 (entry into force 29 April 1997); *UN 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*, 10 October 1980 (entry into force 2 December 1983); *UN Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction*, 18 September 1997 (entry into force 1 March 1999); Dublin Diplomatic Conference on Cluster Munitions, *Convention on Cluster Munitions*, 30 May 2008 (entry into force 1 August 2010).
- 20 Geneva Conventions, op. cit., Common Article 3(1)(c); Protocol I to the Geneva Conventions, op. cit., Article 75(2)(b): “outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault”; Protocol II to the Geneva Conventions, op. cit., Article 4(2)(e). For a list of all relevant provisions, see ICRC, *Prevention and Criminal Repression of Rape and Other forms of Sexual Violence during Armed conflicts*, 2015, at <https://reliefweb.int/sites/reliefweb.int/files/resources/prevention-criminal-repression-rape-sexual-violence-armed-conflicts-icrc-eng.pdf>.
- 21 Geneva Convention IV, op. cit., Article 27; Protocol I to the Geneva Conventions, op. cit., Article 76(1).
- 22 J. Gardam (1998), “Women, Human Rights and International Humanitarian Law”, *International Review of the Red Cross*, No. 324, pp. 421–432; J. Gardam and M. Jarvis, *Women, Armed Conflict and International Law*, Kluwer Law International, 2001.
- 23 G. Gaggioli (2014), “Sexual violence in armed conflicts: A violation of international humanitarian law and human rights law”, *International Review of the Red Cross*, Vol. 96(894), pp. 503–538.
- 24 J-M. Henckaerts and L. Doswald-Beck, *Customary International Humanitarian Law, Volume I: Rules*, Cambridge: Cambridge University Press and International Committee of the Red Cross, 2005, Rule 93 “Rape and other forms of sexual violence are prohibited”, p. 323-327: “State practice establishes this rule as a norm of customary international law applicable in both international and non-international armed conflicts”. See, for the practice attached to this Rule, J-M. Henckaerts and L. Doswald-Beck, *Customary International Humanitarian Law, Volume II: Practice*, Cambridge: Cambridge University Press and International Committee of the Red Cross, 2005, Practice related to Rule 93, p. 2190-2225.



Liability (modes of)

Liability (modes of)

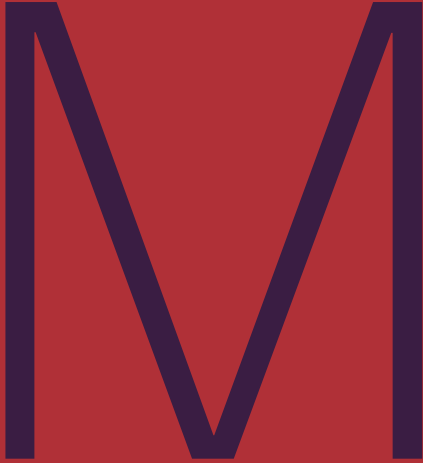
Under international criminal law, individuals can be held accountable for their own criminal conduct as well as for crimes committed by their subordinates or persons placed under their control¹. The Rome Statute of the International Criminal Court (ICC) includes different forms of individual criminal responsibility to hold accountable any person who commits, orders, solicits, induces, facilitates, contributes to, attempts, or in the case of genocide, induces a crime under the Statute. It also deals with the responsibility of commanders and other superiors for the conduct of their subordinates². An accused can be prosecuted for either his individual or command responsibility³, or both⁴, based on the role played by the individual in relation to the alleged crimes.

In prosecuting sexual and gender-based crimes as war crimes, crimes against humanity or genocide, the modes of liability of alleged perpetrators will depend on the circumstances of each case and the level and scope of participation in the crimes by the accused. Identifying the mode of liability on which to prosecute an alleged perpetrator can have an important impact on the outcome of a case, as the prosecution will have to present evidence in support of the selected mode of liability. This is illustrated in the case against Jean-Pierre Bemba, who was prosecuted at the ICC for his alleged command responsibility for war crimes and crimes against humanity, including the crime of rape, committed by troops under his command in the *Mouvement de Libération du Congo* (Movement for the Liberation of Congo). The Appeals Chamber ultimately acquitted Mr. Bemba, finding that he could not be held liable as commander for the crimes of his troops. The Appeals Chamber was not convinced by the evidence presented that he did not take all necessary measures to prevent the rapes (as well as murder and pillages) committed by

his troops⁵. According to the Chamber, this was partly due to Mr. Bemba's limited capacity to control his troops while being in a foreign country⁶. This case demonstrates a difficulty observed at the ICC and other international tribunals in holding commanders or leaders responsible for acts of sexual and gender-based violence committed by their troops, given that they are not direct perpetrators of the crime⁷.

ENDNOTES

- 1 ICRC Casebook, "Individual Criminal Responsibility", at <https://casebook.icrc.org/glossary/individual-criminal-responsibility>. For individual criminal responsibility and its different forms, see E. van Sliedregt, *Individual Criminal Responsibility in International Law*, Oxford Scholarship Online, 2012.
- 2 *Rome Statute of the International Criminal Court*, A/CON.183/9 ("Rome Statute"), 17 July 1998 (entry into force 1 July 2002), Articles 25 and 28.
- 3 This is true for most of the cases. See e.g. International Criminal Court (ICC), Pre-Trial Chamber I, *Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Rectificatif à la Décision relative à la confirmation des charges portées contre Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, ICC-01/12-01/18, 30 September 2019, rectified on 8 November 2019, published 13 November 2019; ICC, Trial Chamber VI, *Prosecutor v. Jean-Bosco Ntaganda*, Judgment, ICC-01/04-02/06, 8 July 2019; ICC, *Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Corrected version of 'Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona', ICC-01/14-01/18, 11 December 2019, published 20 December 2019, corrected 14 May 2020.
- 4 ICC, Pre-Trial Chamber II, *Prosecutor v. Dominic Ongwen*, Decision in the confirmation of charges against Dominic Ongwen, ICC-02/04-01/15, 23 March 2016.
- 5 Article 28 of the Rome Statute provides that: "(a) A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where: (i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and (ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution." Rome Statute, *op. cit.*
- 6 ICC, Appeals Chamber, *Prosecutor v. Jean-Pierre Bemba Gombo*, Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against Trial Chamber III's 'Judgment pursuant to Article 74 of the Statute', ICC-01/05-01/08A, 8 June 2018; S. Sacouto and P. Viseur Sellers (2019), "The Bemba Appeals Chamber Judgment: Impunity for Sexual and Gender-Based Crimes?", William & Mary Bill of Rights Journal, Vol. 27; FIDH, "Acquittal of Jean-Pierre Bemba on appeal: an affront to thousands of victims", 8 June 2018, at <https://www.fidh.org/en/region/Africa/central-african-republic/acquittal-of-jean-pierre-bemba-on-appeal-an-affront-to-thousands-of>.
- 7 See the acquittal of Germain Katanga for charges of sexual violence in part due to lack of effective control over the direct perpetrators as requested by Article 25. ICC, Trial Chamber II, *Prosecutor v. Germain Katanga*, Judgment pursuant to Article 74 of the Statute, ICC-01/04-01/07, 7 March 2014. On the involvement of senior military commanders and leaders in acts of sexual violence, see P. Wildermuth and P. Kneuer, "Addressing the Challenges to Prosecution of Sexual Violence Crimes before International Tribunals and Courts", in M. Bergsmo and A. Butenschon Skyr (Eds.), *Understanding and Proving International Sex Crimes*, Torkel Opsahl Academic Publisher, 2012, p. 126.



Marriage

Myths and stereotypes (gender)

Marriage

A marriage is a legally recognised relationship between two persons of any gender who consented to the union¹.

Child, early and forced marriages

Forced marriage occurs when at least one of the parties has not fully, freely and genuinely consented to this legal union² or is unable to end it, “including as a result of duress or intense social or family pressure”³. There are many different forms of forced marriage, including marriage that is forced by the partner, parents, family, or community⁴. Forced marriage also occurs when domestic laws or practices allow or encourage a rapist to marry the victims in order to escape criminal sanctions, usually with the consent of her family⁵.

Child marriage and early marriage both cover situations in which at least one of the parties is a child under eighteen years old⁶. Early marriage also refers to situations in which the age of majority in the domestic legal framework is attained below eighteen⁷, as well as when a person is over eighteen years old but is not deemed to be capable of giving an informed consent due to his/her “level of physical, emotional, sexual and psychosocial development, or a lack of information regarding the person’s life options”⁸. Child and early marriages are characterised as forced marriages⁹ as children are not legally considered capable of consenting to enter into such a union¹⁰.

Factors leading to or increasing the risk of child, early and forced marriages (CEFM) are numerous, may be cumulative or overlap, and include:

- Poverty, particularly when money and/or goods are offered in exchange for marriage, with the marriage being a way to subsidise the needs of the rest of the family¹¹;
- Other socio-economic factors, including when CEFM allow families or clans to forge an alliance, strengthen

At least

15,000,000

girls are subjected to forced marriage every year.



solidarity and bonds between groups, or preserve property and inheritance rights;

- Inadequate and harmful laws and/or customary, traditional, religious or tribal practices and rules¹²;
- Need for protection and security, in many cases with the idea that CEFM are “in the best interest” of the girl, in particular in areas where girls are at high risk of harassment and physical or sexual assault¹³, and in conflict settings and humanitarian emergencies¹⁴;
- Migration¹⁵;
- So-called pride and honour of the family, for example in cases of rape or of pregnancy out of wedlock;
- Lack of education and sensibilisation¹⁶.

While CEFM affect all genders, the practice is particularly widespread against women and girls, and is inherently linked to deep-rooted patriarchal values and gender norms, inequalities, discrimination and stereotypes. According to the UN, “girls are disproportionately affected by the practice – about five time more than boys”¹⁷ and at least 15 million girls are subjected to forced marriage every year¹⁸. By 2030, “over 150 million more girls [may be] marr[ied] before their 18th birthday”, according to UNICEF and the United Nations Population Fund¹⁹.

CEFM are a form of sexual and gender-based violence that leads to additional acts of physical, psychological, sexual and economic violence and discrimination²⁰. For instance, CEFM almost automatically result in sexual violence, in particular marital rape, and possibly forced or early pregnancies. They may also arise from or lead to sexual slavery²¹. CEFM also prevent the forced parties, mainly women and girls, from making free choices regarding key aspects of their lives such as education, work, health, parenthood, sexuality and social interactions²² and lead to violations of many fundamental rights.

SOURCE: OHCHR, Recommendations for action against Child and forced marriages, 2017 <https://www.ohchr.org/Documents/Issues/Women/WRGS/CEFM/RecommendationsForActionEbook.pdf>

M

Temporary marriages

Temporary marriage, also referred to as “contractual marriage”, “summer marriage”²³, “mut’ah marriage” (“pleasure marriage”)²⁴ or “tourist marriage”²⁵, refers to situations in which a family sells into a short-term marriage a member of its household, particularly a girl, in order to ensure a financial gain to the family²⁶. Temporary marriage is a form of child and forced marriage. The practice is particularly known in countries in the MENA region (Middle East and North Africa), such as in Egypt where girls are reportedly sold for marriage to wealthy men who exploit them during their holiday before returning them to their family, to be re-married again²⁷. Some girls have reportedly been married about sixty times before they even turn eighteen years old²⁸.

The duration of the marriage between the girls and the visitors is usually agreed upon by the parties in accordance with their travel plans²⁹. During this time, the girls can be forced to travel to other countries where they will be exploited, particularly subjected to forced prostitution³⁰, or sold into sexual slavery³¹.

CEFM is prohibited under international law. As such, the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage, adopted in 1964, notes that “no marriage shall be legally entered into without the full and free consent of both parties”³². This is in line with the human right recognised in the Universal Declaration of Human Rights, and additional international instruments³³, to marry and found a family based on free and full consent.³⁴ States have an obligation to prevent and eliminate CEFM and to bring perpetrators to justice³⁵. The prohibition is also covered by international and regional instruments prohibiting related violence, such as sexual exploitation, human trafficking (including sex trafficking), forced prostitution, child abuse and gender-based violence and discrimination³⁶.

As shown by the jurisprudence of hybrid tribunals,

whenever the necessary contextual elements are met, all forms of forced marriage can be prosecuted under international criminal law as a crime against humanity of “other inhumane acts”³⁷.

RELATED: Consent (informed), Consent to sexual activity, Gender-based violence and discrimination, Slavery (sexual), Cruel, inhuman or degrading treatments and punishments, Trafficking (human/sex), Forced prostitution, Child abuse, Exploitation (sexual)

Myths and stereotypes (gender)

Gender myths and stereotypes can have devastating effects. They often lead to discrimination, stigmatisation, ostracism and violence, including sexual and gender-based violence. Gender stereotypes, in particular sexist stereotypes, are one of the root causes of gender inequality and sexual and gender-based violence³⁸. They contribute to the lack of recognition and criminalisation of some forms of violence. This is for example the case when, according to ancestral stereotypes, women become the property of men after marriage, resulting in impunity for conjugal rape³⁹.

Gender myths and stereotypes considerably impact the way societies deal with sexual and gender-based violence (media, laws, justice systems, health services, among others)⁴⁰. Several UN entities have raised the negative effect that myths and stereotypes can have on judicial objectivity and impartiality, and on the accountability of perpetrators, particularly in such cases⁴¹. In its General Recommendation 33, the Committee on the Elimination of Discrimination against Women notes that stereotypes in the judiciary and in law enforcement affect the credence given to the victims of such violence, particularly women, the interpretation of the law as well as the expectations of what a victim should or should not do⁴². In general, States have the obligation under international law to prevent

discrimination and harmful practices, and therefore to protect individuals against the effects of stereotyping in the law and its implementation⁴³.

Gender myths play a central role in sexual and gender-based violence. Examples of harmful myths include the belief that when women say “no”, they are just playing a game and they actually mean “yes”, which leads the perpetrators to ignore rejection by the victims and to commit sexual violence⁴⁴. The organisation Women’s Initiatives for Gender Justice developed in 2005 the MIVSEP framework (Myth, Implication, Value Statement, Effect, Patterns) which provides a tool to analyse how myths operate and their consequences⁴⁵.

Gender stereotypes are a “generalised view or preconception about attributes or characteristics, or the roles that are or ought to be possessed by, or performed”⁴⁶ by individuals or groups based on their gender or alleged gender. These stereotypes arise from and perpetuate normative notions of women and men, of femininity and masculinity⁴⁷, and the idea that each gender and associated behaviours/attitudes/roles are binary⁴⁸. Gender stereotypes shape and influence all societies and individuals, and are strongly ingrained within wider culture and social institutions.

Gender stereotypes are “used to justify and maintain the historical relations of power of men over women” and reinforce sexist and patriarchal attitudes, ideas and beliefs that are harmful to women, as well as to transgender and non-binary people⁴⁹.

RELATED: Gender-based violence and discrimination, Gender, Gender bias, Stigmatisation

ENDNOTES

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P

Polygamy

Protective measures

(for victims and witnesses)

Polygamy

Polygamy is a form of marriage involving more than two spouses¹. There are two types of polygamous marriages: polyandry, in which the woman takes more than one husband², and polygyny, in which the man takes several wives³. While the use of the broader term “polygamy” is very common in international and domestic discourses about women’s rights, such discourse is in fact an effort to address polygyny, which is considered a consequence of deep-rooted patriarchal practices, cultural beliefs and stereotypes and discriminatory customs⁴.

In several countries, polygamy is recognised in civil law and, in some cases, couples have the option to choose between polygamous and monogamous marriage⁵. In some countries, polygamy is allowed but a man is formally required to present the consent of his wife/wives as a pre-condition to marrying another woman⁶. In other countries, such as Jordan for instance, consent of the wife is not required; however the husband must demonstrate financial ability to support more than one wife, in addition to informing an existing wife of his intention to take an additional wife⁷. That said, most countries where polygamy, and in particular polygyny, is allowed, do not require the consent of the existing wife⁸. Polygamy also takes place at the margins of formal legal frameworks and under customary and religious rules⁹.

Concerns over polygamy and its effects have been raised at the international, regional and domestic levels¹⁰. Various United Nations bodies have qualified these marriages as harmful practices and a violation of women’s rights, particularly as a violation of the right to equality between women and men¹¹. It is “contrary to the dignity of women and girls and infringes on their human rights and freedoms, including equality and protection within the family. [...] [I]ts impact includes harm to the health of wives, understood

as physical, mental and social well-being, the material harm and deprivation that wives are liable to suffer and emotional and material harm to children, often with serious consequences for their welfare¹².

RELATED: Women's rights, Marriage

Protective measures (for victims and witnesses)

Protective measures are steps taken to protect victims and witnesses, and, where required, their families, from harm, including intimidation, abuse, threats, violence and reprisals in response to judicial or quasi-judicial (e.g. fact-finding missions, missions of inquiry, human rights cases submitted to quasi-judicial mechanisms) proceedings¹³. In the context of sexual and gender-based violence, these measures are to additionally protect victims and witnesses from stigma and rejection from their families and communities, should their identity and/or testimony be disclosed to the public. Prior, informed consent to the disclosure of identities or identifying information must always be sought and obtained from victims and witnesses. Protective measures “must guarantee the security, dignity, privacy and well-being of victims and witnesses, while respecting the rights of the accused and the rules of a fair trial”¹⁴.

Protective measures should be available in the various phases of the justice process, particularly where the alleged crimes, such as sexual and gender-based violence, pose high security risks to victims and witnesses, and where a risk of secondary victimisation is high¹⁵.

Protective measures may have consequences on the rights of defendants, and potentially on fair trial guarantees, as well as on victims and witnesses themselves with implications to their lives and that of their families and third parties. As such, it is important that protective measures are grounded in legislation and policy¹⁶. Often, protective

measures are provided in the criminal procedure code, police law, special legislation or even the constitution, and it is recommended that these measures are regulated under flexible provisions to meet the needs of any case¹⁷. Protection programmes can be put in place by police forces or, where they lack capacity or willingness to do so, by national programs¹⁸. They can range from temporary day-to-day physical protection to, where warranted, complete relocation or identity change¹⁹.

Protective measures must be tailored to the individual needs of victims and witnesses, based on an expert assessment by professionals with specialised training on the crimes at hand. This is particularly important in cases of sexual and gender-based violence²⁰, where risk of re-traumatisation is high. Protection against re-traumatisation therefore needs to form part and parcel of protective measures at the outset of each case²¹.

International and regional tribunals and courts have established special units to provide various protection services to witnesses and victims, including those of sexual and gender-based violence²². The International Criminal Court's Rules of Procedure and Evidence provide that victims, witnesses or any other “person at risk on account of testimony given by a witness” can be protected²³. Witnesses can testify in closed sessions, with voice and/or face distortion, or use a pseudonym so they cannot be identified. In these cases names should also be redacted in public records and accessible documents²⁴. In order to respect the fairness of the trial, these measures apply to all witnesses (called by the Prosecutor, the Defence, legal representatives of victims or the Judges)²⁵.

The African Commission on Human and Peoples' Rights provides in its Guidelines on combating sexual violence that a secure environment for victims and witnesses to intervene in a proceeding include: the use of separate waiting rooms

for victims and perpetrators; the option to testify in a protective cubicle; being escorted by police officers where necessary; the option to testify remotely (e.g. by video-conference); a sensitive approach to questioning that avoids further traumatising of the victim; and the possibility to provide safe accommodation during the proceedings and afterwards, if necessary²⁶.

RELATED: Confidentiality, “Do no Harm” principle

ENDNOTES

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R

Rape

Redress (Remedy; Reparation)

Reproductive rights

Rome Statute (ICC Statute)

Rape

Rape is prevalent, both in times of peace and in conflict. In most cases, it is committed by men against women and girls, although men and boys can also be victims of rape¹. Rape globally remains under-reported and inadequately investigated and prosecuted, and frequently perpetrators are not held to account². Several factors contribute to this, including barriers to reporting at the individual, societal, cultural or structural levels, as well as inadequate definitions of rape in domestic law (see Impunity definition above).

In most countries, rape is considered a crime and defined as an act of penetration occurring with coercion, or in a coercive context such as detention and/or without the consent of one or more individuals involved³. What constitutes penetration, the gender of the victim(s) and perpetrator(s) and the context in which this penetration occurs are the elements that often vary between domestic and international legal frameworks⁴.

In some countries, the relevant legislation restrictively defines rape as the penetration of the vagina by the penis. This is restrictive as it excludes other acts that under international standards constitute rape, including anal and oral penetration, and it excludes penetration of the vagina by objects, such as sticks or guns, or by other body parts other than the penis, including for instance the hands⁵. Such legislation additionally fails to recognise men and boys as potential victims of rape⁶. Criminalisation of homosexuality also impedes access to justice for men and boys as, should the rape charge not be proven, victims might be at risk of being charged with homosexuality themselves⁷.

With regard to the context in which rape is committed, for instance under coercion or without consent, domestic legislation should, when defining rape committed in times of peace, focus on the existence and validity of expressed consent, and criminalise sexual intercourse without the

consent of one or more of the persons engaged in the sexual activity. The definition should not be such that prosecution of rape requires evidence of violence, coercion, threat, or other similar circumstances as proof of lack of consent⁸. While coercive circumstances imply that the consent of the victim is unlikely, the focus should be placed on the lack of consent in itself. This would avoid interpretative judgments on what constitutes coercion and its limitations related to the use of physical force⁹. In the vast majority of countries, however, the characterisation of violence, coercion or threat is central to the definition of rape. These “circumstances” are deemed to reveal the lack of consent of the victim and the intention of the perpetrator. Conversely, only a limited number of countries centre the definition of rape around victim’s consent¹⁰.

When rapes are perpetrated in a context of generalised violence and mass atrocities or amount to international crimes, consent should not be invoked. In these circumstances it is considered to be impossible for the victims of sexual violence to give their consent, and the victim should not be questioned about consent¹¹.

Both International Criminal Tribunals for the former Yugoslavia¹² and for Rwanda¹³ adopted definitions of rape focusing on the context of coercion, in light of the impossibility of genuine consent in such circumstances. The Elements of Crimes of the International Criminal Court (ICC) provide that rape occurs when “the invasion was committed by force, or by 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 another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent”¹⁴.

If the necessary contextual elements are met, rape can be prosecuted before the ICC and at national level, depending

on relevant domestic legislation, as a crime against humanity¹⁵, a war crime, both in international and non-international armed conflicts¹⁶ and as genocide¹⁷. Rape can also be prosecuted as torture as a distinct crime, which can provide countries with the necessary universal jurisdiction to prosecute rape committed abroad by and against a non-national¹⁸.

RELATED: Consent to sexual activity, Crimes against humanity, War crimes, Genocide, Child abuse, Rome Statute, Sexual violence, Sexual crime

Redress (Remedy; Reparation)

The right to redress for victims of human rights violations, including sexual and gender-based violence, is firmly enshrined in international law¹⁹. Redress is the right to an effective remedy and to adequate reparation for the harm suffered²⁰. States are obliged to put in place the necessary legal and institutional frameworks to realise victims’ right to redress.²¹

Remedy

Remedies for victims include their right to “equal and effective access to justice, adequate, effective and prompt reparation for the harm suffered and access to relevant information concerning violations and reparation mechanisms.”²² For remedies to be effective, they must be accessible without impediment, have a prospect of success and result in adequate reparation. Remedies for sexual and gender-based violence need to be judicial in nature. Purely administrative remedies, such as complaints submitted to an ombudswoman or a national human rights commission, or disciplinary actions, are not sufficient, though they can complement judicial remedies²³. States’ obligation to investigate and prosecute sexual and gender-based violence

also means that remedies need to be criminal, as opposed to purely civil, proceedings²⁴. To give effect to their obligation to provide victims with a right to an effective remedy, States must provide victims with legal aid, which can be understood as encompassing “legal representation, legal assistance, legal advice, legal education and information”²⁵.

Reparation

Reparation should be integral, accessible, “adequate, effective, prompt”²⁶ reflect the gravity of the violation, and be designed to remedy the harm suffered²⁷. As provided for by the African Commission on Human and Peoples’ Rights, “States must grant reparation to the victims for acts or omissions for which the States are responsible or for which a physical person or entity is responsible in cases where the latter are not able to or do not agree to repair the injury”²⁸.

Five types of reparations have broadly been identified in international and regional instruments, enumerated in the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. These include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition²⁹.

As reparation needs to be tailored to repair the harm suffered, in sexual and gender-based violence cases, these types of reparation can take specific forms.

- “Restitution should, whenever possible, restore the victim to the original situation before the [violations] occurred”³⁰. This measure is central in all processes. However, when it comes to physical and psychological violence, such as sexual and gender-based violence, as opposed to material violence, there cannot be a full restitution. In addition, putting victims in the same situation as they were prior to the sexual violence they



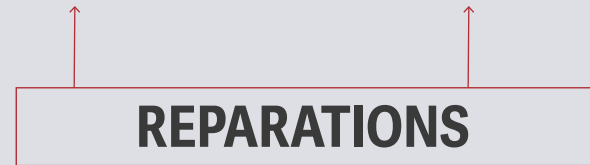
Restitution

Restoration to the former state before violations e.g. of property, employment, safety, liberty.



Compensation

Monetary payment for economic losses including lost opportunities, employment, education, costs incurred.



Non-repetition

Guarantee that the violations shall never happen again; prevention of the same crimes.



Rehabilitation

Care to address physical and psychological harm.



Satisfaction

Symbolic assurance that the matter is being dealt with e.g. disclosure of truth, public apology, commemoration.

SOURCE: Amnesty International – <https://www.amnesty.org/en/latest/news/2017/07/south-sudan-sexual-violence-on-a-massive-scale-leaves-thousands-in-mental-distress-amid-raging-conflict/>

suffered may risk a repetition of the violence as this situation may be one of root causes³¹. In cases of sexual violence, restitution may include the following: “the exercise and enjoyment of human rights, particularly the rights to dignity, security, and health, including sexual and reproductive rights; enjoyment of family life and return to employment and education”³².

- “Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law”³³. Financial compensation is the most common measures of all, including in cases of sexual and gender-based violence. It can be ordered by most international and regional institutions³⁴. The extensive jurisprudence of the Inter-American Court on Human Rights on sexual and gender-based violence shows that judges can determine the amount of the compensation by taking into account pecuniary damages (including the loss of income resulting from the prejudice and other relevant costs incurred), non-pecuniary damages (emotional and psychological impact) and other costs and expenses that do not fall under these two categories³⁵.
- “Rehabilitation should include medical and psychological care as well as legal and social services”³⁶. This measure is particularly important in cases of sexual and gender-based violence where victims are often ostracised and in need of additional support³⁷.
- *Satisfaction* refers to different measures of a symbolic character, such as public apologies, search for the truth and commemorations³⁸. These, although not sufficient in themselves, can help victims to feel that the society recognises their suffering and the gravity

of the violence, and, particularly when it comes to sexual and gender-based violence, does not blame them for it and build social acceptance³⁹. Measures of satisfaction are an important step toward a society free from impunity for such acts. Because of their public nature, they should however be adopted only with a careful consideration of the wishes and needs of the victims in order to avoid re-traumatisation and risk of stigmatisation⁴⁰.

- Guarantees of non-repetition include broader measures that will help prevent the commission of new crimes by reforming the society which allowed them to happen in the first place⁴¹. This is particularly important in the context of sexual and gender-based violence, and can include training relevant stakeholders, particularly the military and police forces, and reforming the judicial system, ensuring that there is no impunity for the crimes committed⁴². This category of measures is less directly beneficial for the individual victim but will have a broader and necessary transformative impact on the entire society⁴³. These measures, where acts of sexual and gender-based violence have been committed, will address discriminatory laws and systems that played a role in their commission.

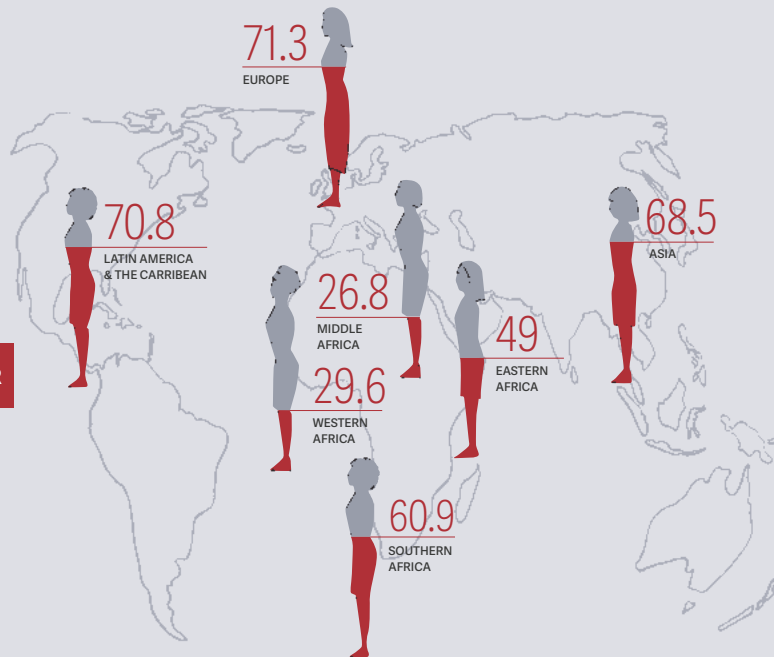
As highlighted by the United Nations Secretary General in 2014 in the Guidance Note on Reparations for Conflict-Related Sexual Violence, “adequate reparation [...] entails a combination of different forms of reparations”⁴⁴. The different categories should therefore be complementary rather than adopted on a “pick-and-choose” basis. All together, they offer victims and survivors a broad range of measures and services which will help them overcome their suffering⁴⁵.

Overall, reparations for sexual and gender-based violence must be transformative⁴⁶ and gender-sensitive in order

Only 52% of women married or in a union freely make their own decisions about consensual sexual relations, contraceptive use and health care.



Percentage of women aged 15–49 years married or in a union who make their own informed decisions regarding sexual relations, contraceptive use and health care.



to avoid repetition and to allow the victims and survivors to overcome tragic experiences and reintegrate into a society that they can trust that is free from discrimination, inequality and impunity and that has addressed the root causes of the violence⁴⁷. Measures have to be adopted on a case-by-case basis depending on the needs of the victims and survivors and on the society in which they are living. To do so, victims and survivors need to be involved at all stages (identification, implementation, monitoring) of any reparation process⁴⁸.

Procedures for delivery of reparations should be conducted with respect for confidentiality and be led by the “Do no Harm” principle (see above)⁴⁹.

RELATED: Transitional justice, Confidentiality, “Do no Harm” principle, Victim-centred approach

Reproductive rights

Reproductive rights or “sexual and reproductive rights” are human rights recognising and ensuring individuals’ freedom to reproduction and access to reproductive health⁵⁰. As highlighted by the International Conference on Population and Development, these rights allow “all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes the right to make decisions concerning reproduction free of discrimination, coercion and violence, as expressed in human rights documents”⁵¹. Sexual and reproductive rights include free access to a whole range of health services, goods and facilities which ensure the full enjoyment of the rights to sexual and reproductive health⁵².

Violation of these rights, as in making decisions on the sexual and reproductive health of an individual without her

SOURCE: UN Women – <https://www.unwomen.org/-/media/headquarters/attachments/sections/multimedia/2017/infographic-spotlight-sdgs-all-data-cards-web-en.pdf?la=en&vs=4644>

or his informed consent, constitutes sexual and gender-based violence.⁵³ For different reasons, including biological, social, cultural and religious⁵⁴, violation of sexual and reproductive rights impacts mostly and disproportionately women and girls.⁵⁵ Harmful gender stereotypes as well as multiple and intersecting forms of discrimination and violence based on sex or gender lead to the violation of women's rights to sexual and reproductive health⁵⁶. In fact, preventing women and girls from fully enjoying their sexual and reproductive rights constitutes gender-based violence because this amounts to limiting access to services that only women and girls need. On the other hand, certain violations of sexual and reproductive rights and health are sexual violence⁵⁷. It is however important to note that men and boys can also be affected⁵⁸ and should be involved in the respect and implementation of reproductive rights⁵⁹.

The International Conference on Population and Development marked a new step in the recognition of States' responsibility to ensure the respect of sexual and reproductive rights by incorporating international commitments into domestic legislation. This will help to prevent their violation, to punish perpetrators⁶⁰ and to make sure that relevant services are available to all individuals, regardless of their sex, gender, or any other ground of discrimination⁶¹.

Some States, due to various factors such as cultural or religious influence and entrenched discrimination and inequalities, are reluctant to implement their international obligations to guarantee sexual and reproductive rights⁶². This is for instance the case when States prohibit abortion⁶³, or subject individuals to enforced sterilisation⁶⁴.

RELATED: Abortion, Enforced sterilisation, Forced contraception

Rome Statute (ICC statute)

The Rome Statute is the founding treaty of the International Criminal Court (ICC)⁶⁵. It was adopted on 17 July 1998 by State Parties that wished "to put an end to impunity for the perpetrators of [the most serious crimes] and thus to contribute to the prevention of such crimes"⁶⁶. It entered into force in 2002 and, at the time of writing, 123 States have ratified the Statute.

The Rome Statute, together with its accompanying document, the Elements of Crimes (detailing which constitutive elements of each crime must be fulfilled⁶⁷), is considered one of the most advanced tools in terms of defining and prohibiting sexual and gender-based violence as international crimes⁶⁸. These crimes lists explicitly rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation and other form of sexual violence as crimes against humanity⁶⁹ and war crimes⁷⁰. It can also be prosecuted as genocide, as a physical destruction in whole or in part of a national, ethnical, racial or religious group⁷¹.

For States Parties, the ratification of the Rome Statute not only triggered the jurisdiction of the ICC over crimes committed on their territory or by their nationals⁷², it also obligates them to implement these provisions domestically. This has significantly reinforced/built domestic capacity to investigate and prosecute international crimes⁷³. Similarly, the Rome Statute's provisions promoting gender justice at procedural, substantive and institutional levels contribute significantly to the fight against impunity of sexual and gender-based violence globally.

RELATED: International Criminal Law, War crimes, Crimes against humanity, Genocide

ENDNOTES

- 1 African Commission on Human and Peoples' Rights (ACHPR), *Guidelines on combating sexual violence and its consequences in Africa*, Niamey, 2017. The Guidelines emphasise that "Sexual violence [including rape] also affects men and boys, and may take specific forms intended to affect the masculinity or virility of the victim as perceived by the perpetrator. Like sexual violence against women and girls, sexual violence against men and boys is often used as a means of dominating, subordinating or humiliating the victim and/or the group to which the victim belongs. Due to stereotypes associated with masculinity, men and boys who are victims of sexual violence face particular challenges in reporting such violence and receiving appropriate assistance. This phenomenon remains largely under-documented" (para. 3(2)(c)).
- 2 In France, for instance, a study published in 2016 revealed that one in five women is a victim of rape or attempted rape. Approximately 1 in 10 women victims of rape lodge complaint, and only 1% of these complaints lead to the conviction of the perpetrator. N. Bajos, D. Rahib and N. Lydié, *Baromètre santé 2016, Genre et sexualité*, 2018, at <https://www.santepubliquefrance.fr/determinants-de-sante/sante-sexuelle/documents/enquetes-etudes/barometre-sante-2016-genre-et-sexualite>; Haut Conseil à l'égalité entre les femmes et les hommes, *Avis pour une juste condamnation sociétale et judiciaire du viol et autres agressions sexuelles*, Avis n°2016-09-30-VIO-022, 5 October 2016, p. 10, at http://www.haut-conseil-egalite.gouv.fr/IMG/pdf/hce_avis_viol_2016_10_05-2.pdf.
- 3 See the comparative study realised in 2019 in D. Llanta, *La protection de l'individu contre les violences sexuelles : de la prévention à la réparation au sein de l'ordre juridique international et des systèmes nationaux*, PhD Thesis defended 22 November 2019, University of Perpignan Via Domitia (France), pp. 318-336.
- 4 Idem.
- 5 Ibid, p. 320-323. To date, this is for example the case for France, Belgium, Senegal, the Central African Republic, Tunisia, Spain, Guatemala, Ecuador, the Philippines, or South Africa. See also for a definition of the crime of rape, the Elements of Crimes of the International Criminal Court (ICC), which defines rape as: "The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body. The invasion was committed by force, or by the threat of force or coercion, such as that was caused by fear of violence, duress, detention, psychological oppression, or abuse of power, against such a person or another person or by taking advantage of a coercive environment or the invasion was committed against a person incapable of giving genuine consent". ICC, *Elements of Crimes*, 3-10 September 2002 (reviewed in 2010), Article 7(1)(g)-1.
- 6 See the analysis conducted by the Refugee Law Project on domestic legislation on rape against men and women: Refugee Law Project, Plan UK, War Child (Chris Dolan), *Into the mainstream : addressing sexual violence against men and boys in conflict, A briefing paper prepared for the workshop held at the Overseas Development Institute*, 2014, p. 5-6, at http://www.refugeelawproject.org/files/briefing_papers/.
- 7 Idem.
- 8 For example, see Amnesty International, "Let's talk about yes", February 2020, at <https://www.amnesty.org/en/latest/campaigns/2018/11/rape-in-europe/>; Office of the High Commissioner for Human Rights (OHCHR), "International Day on the Elimination of Violence against Women: Absence of consent must become the global standard for definition of rape", 25 November 2019, at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25340&LangID=E>; For instance, regarding consent, the Swedish authorities adopted in 2018 a new law providing that: "A person who performs sexual intercourse, or some other sexual act that in view of the seriousness of the violation is comparable to sexual intercourse, with a person who is not participating voluntarily is guilty of rape". Swedish Penal Code, Chapter 6, section 1, at <https://www.government.se/498621/contentassets/7a2dcae0787e465e9a2431554b5e-ab03/the-swedish-criminal-code.pdf>. See above the term "consent to sexual activity".
- 9 See above the explanation on "Myths and stereotypes" and their impact on judicial proceedings.
- 10 C. Le Magueresse (2012), "Viol et consentement en droit pénal français. Réflexions à partir du droit pénal canadien", Archives de politique criminelle, N° 34, pp. 223 à 240.
- 11 ACHPR, Guidelines on combating sexual violence and its consequences in Africa, op. cit, p. 38.
- 12 In the case of Anto Furundzija: "(i) the sexual penetration, however slight: (a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or (b) of the mouth of the victim by the penis of the perpetrator; (ii) by coercion or force or threat of force against the victim or a third person". International Criminal Tribunal for the former Yugoslavia (ICTY), *Prosecutor v. Anto Furundzija*, Trial Judgment, IT-95-17/1-T, 10 December 1998, para. 185.
- 13 In the case of Jean-Paul Akayesu, Trial judges of the International Criminal Tribunal for Rwanda (ICTR) adopted the very first definition of rape before an international tribunal: "a physical invasion of a sexual nature, committed on a person under circumstances which are coercive". ICTR, *Prosecutor v. Jean-Paul Akayesu* Trial Judgment, ICTR-96-4-T, 2 September 1998, para. 598.
- 14 Ibid, Element 2.
- 15 *Rome Statute of the International Criminal Court*, A/CON.183/9 ("Rome Statute"), 17 July 1998 (entry into force 1 July 2002), Article 7(1)(g).
- 16 Ibid. In international armed conflict, Article 8(2)(b)(xxii). In non-international armed conflict, Article 8(2)(e)(vi).
- 17 See ICTR Akayesu Trial Judgment, op. cit., paras. 732-734. See as well C. A. MacKinnon, *The Recognition of Rape as an Act of Genocide – Prosecutor v. Akayesu*, Guest Lecture Series of the Office of the Prosecutor of the International Criminal Court, The Hague, 27 October 2008, at <https://www.icc-cpi.int/NR/rdonlyres/AF3FA255-B1D9-4FA4-992F-56079A2DCC63/279736/ICCOTP20081027MacKinnon.pdf>.
- 18 See further, REDRESS, *REDRESS for Rape – Using international jurisprudence on rape as a form of torture or other ill-treatment*, 2013, at <https://redress.org/wp-content/uploads/2017/12/final-rape-as-torture1.pdf>.
- 19 See e.g. *UN Universal Declaration of Human Rights* (UDHR), Paris, 10 December 1948, Article 8; *UN International Covenant on Civil and Political Rights* (ICCPR), 16 December 1966 (entry into force 23 March 1976), Article 2; *UN International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965 (entry into force 4 January 1969), Article 6; *UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984 (entry into force 26 June 1987), Article 14; *UN Convention on the Rights of the Child*, 20 November 1989 (entry into force 2 September 1990), Article 39. See as well, in international

humanitarian and criminal law: *Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land*, The Hague, 18 October 1907, Article 3; *Protocol Additional (II) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts* (“Geneva Conventions Additional Protocol II”), 8 June 1977, Article 91; Rome Statute, op. cit., Articles 68 and 75. At regional level: Organization of African Unity, *African Charter on Human and Peoples Rights*, Banjul, 27 June 1981 (entry into force 21 October 1986), Articles 1 and 7; Inter-American Specialized Conference on Human Rights, *American Convention on Human Rights*, San José, 22 November 1969 (entry into force 18 July 1978), Article 25; Council of Europe, *European Convention on Human Rights* (ECHR), Rome, 5 November 1950 (entry into force 3 September 1953), Article 13. See also the United Nations General Assembly (UNGA), *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, 16 December 2005; UN Committee against Torture, *General Comment No. 3 – Implementation of Article 14 by States parties*, CAT/C/GC/3, 19 November 2012; ACHPR, *General Comment No. 4: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5)*, 4 March 2017.

20 Idem.

21 UN Basic Principles and Guidelines on the Right to a Remedy and Reparation 2005, op. cit., Sections I and II.

22 Ibid, para. 11.

23 Ibid, para. 12; See also CAT Committee, General Comment No. 3, op. cit., para. 26.

24 CAT Committee, General Comment No. 3, Ibid, paras. 25-26.

25 ACHPR, General Comment No. 4, op. cit., paras. 24-25.

26 UN Basic Principles and Guidelines on the Right to a Remedy and Reparation 2005, op. cit., Principle I.2.c.

27 UK Foreign & Commonwealth Office, *International Protocol on the Documentation and Investigation of Sexual Violence in Conflict*, Second edition (“PSVI Protocol”), March 2017, p. 77.

28 ACHPR Guidelines on combatting sexual violence and its consequences in Africa, op. cit., p. 42.

29 UN Basic Principles and Guidelines on the Right to a Remedy and Reparation 2005, op. cit., paras. 19-23.

30 Ibid, para. 19.

31 Inter-American Court of Human Rights (IACtHR), *Women Victims of Sexual Torture in Atenco v. Mexico*, Judgment (Preliminary Objections, Merits, Reparations and Costs), 28 November 2018, para. 326; IACtHR, *Velásquez-Rodríguez v. Honduras*, Judgment (Reparations and Costs), 17 August 1990, para. 27.

32 Idem.

33 2005 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims, op. cit., para. 20.

34 See for example ECHR, Article 41; Rome Statute, Article 75; American Convention on Human Rights, Article 63.1; *Protocol on the Statute of the African Court of Justice*

and Human Rights, 1 July 2008, Article 45.

35 See for example IACtHR, *Caso Rosendo Cantú y otra vs. México*, Sentencia (Excepción Preliminar, Fondo, Reparaciones y Costas), 31 august 2010; IACtHR, *Caso López Soto y otros vs. Venezuela*, Sentencia (Fondo, Reparaciones y Costas), 26 september 2018; Karine Bonneau, « La jurisprudence innovante de la Cour interaméricaine des droits de l’Homme ne matière de droit à réparation des victimes de violations des droits de l’Homme », in Ludovic Hennebel and Hélène Tigroudja (dir.), *Le particularisme interaméricain des droits de l’Homme, En l’honneur du 40ème anniversaire de la Convention américaine des droits de l’homme*, Pedone, 2009, pp. 347-382.

36 UN Basic Principles and Guidelines on the Right to a Remedy and Reparation 2005, op. cit., para. 21. The PSVI Protocol specifies that compensation should take into consideration “(i) physical and mental harm, (ii) lost opportunities including employment, education, marriage, family life, and social benefits, (iii) material damages, loss of earning and earning potential, (iv) moral damage, (v) medical expenses and cost of future rehabilitative services and fees for legal and other expert assistance”. PSVI Protocol, op. cit., p. 79.

37 See an analysis of different application of this measure of reparation in C. Correo (ICTJ), *Getting to Full Restitution, Guidelines for Court-Ordered Reparations in Cases Involving Sexual Violence Committed during Armed Conflict, Political Violence, or State Repression*, 2017, p. 8-11, at <https://www.ictj.org/sites/default/files/ICTJ-Briefing-Court-Reparations-2017.pdf>.

38 UN Basic Principles and Guidelines on the Right to a Remedy and Reparation 2005, op. cit., para. 22.

39 See examples of satisfaction measures and the role of social acceptance in ICTJ Guidelines for Court-Ordered Reparations in Cases Involving Sexual Violence, op. cit., p. 15-17.

40 ICTJ Guidelines for Court-Ordered Reparations in Cases Involving Sexual Violence, op. cit., p. 13.

41 UN Basic Principles and Guidelines on the Right to a Remedy and Reparation, op. cit., para. 23.

42 Idem.

43 Human Rights Council, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Rashida Manjoo*, A/HRC/14/22, 23 April 2010, para. 31; IACtHR, *González et al. (“Cotton Field”) v. Mexico*, Judgment (Preliminary Objection, Merits, Reparations and Costs), 16 November 2009, para. 450; *Nairobi Declaration on Women’s and Girls’ Right to a Remedy and Reparation*, Nairobi, 2007, Principle 3.H, at https://www.fidh.org/IMG/pdf/NAIROBI_DECLARATIONeng.pdf; ICC, Trial Chamber I, *Prosecutor v. Thomas Lubanga Dyilo*, Decision establishing the principles and procedures to be applied to reparations, ICC-01/04-01/06-2904, 7 August 2012, para. 222.

44 UN, *Guidance Note of the Secretary-General, Reparations for Conflict-Related Sexual Violence*, June 2014, p. 5.

45 PSVI Protocol, op. cit., p.81.

46 See particularly Impunity Watch, *Guidelines on Transformative Reparations for Survivors of Sexual Violence*, 2019, at https://www.impunitywatch.nl/docs/ResearchReport_Guidelines-Transformative_Reparations_2019_eng.pdf; For a specific example of the necessity of transformative reparation, see L. Chappell (2017), “The

Gender Injustice Cascade: ‘Transformative’ Reparations for Victims of Sexual and Gender-Based Crimes in the Lubanga Case at the International Criminal Court, *International Journal of Human Rights*, Vol. 21(9), pp. 1223–1242.

- 47 S. Gilmore, J. Guillerot and C. Sandoval (Reparations, Responsibility & Victimhood in Transitional Societies), *Beyond silence and stigma: Crafting a Gender-Sensitive Approach for Victims of Sexual Violence in Domestic Reparation Programmes*, 2020, p. 14-18, 60, at https://reparations.qub.ac.uk/assets/uploads/QUB-SGBV_Report_English_Web.pdf.
- 48 *Ibid.*, p. 22-24, 60; PSVI Protocol, op. cit., p. 78; R. Killean (2019), “Procedural Justice in International Criminal Courts: Assessing Civil Parties’ Perceptions of Justice at the Extraordinary Chambers in the Courts of Cambodia”, *International Criminal Law Review*, Vol. 16(1), pp. 1-38.
- 49 *Idem.*
- 50 According to the World Health Organization (WHO), sexual and reproductive health include five different aspects: (1) freedom to choose contraception and access infertility services; (2) maternal and newborn health; (3) services related to sexually transmitted infections and other reproductive deadly risks; (4) safe abortion and related care; and (5) healthy sexuality. United Nations Population Fund (UNFPA), *Sexual and Reproductive Health for All*, 2010, p. 13, at https://www.unfpa.org/sites/default/files/pub-pdf/uarh_report_2010.pdf.
- 51 UNFPA, *Programme of action adopted at the International Conference on Population and Development*, Cairo, 5-13 September 1994, paras. 72-73, at https://www.unfpa.org/sites/default/files/event-pdf/PoA_en.pdf; See as well UNFPA, The Danish Institute for Human Rights and the UN Office of the High Commissioner for Human Rights (OHCHR), *Reproductive Rights are Human Rights, A Handbook for National Human Rights Institutions*, 2014, p. 22-23, at <https://www.ohchr.org/Documents/Publications/NHRIHandbook.pdf>.
- 52 Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 22 on the Right to Sexual and Reproductive Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)*, E/C12/GC/22, 2 May 2016, particularly paras. 2, 5-6, 11-21.
- 53 Women’s Initiatives for Gender Justice (WIGJ), *Civil Society Declaration on Sexual Violence*, 2019, Part 2(4)(c), Part 4(2)(b).
- 54 European Parliament, *Motion for a European Parliament Resolution on Sexual and Reproductive Health and Rights*, 2013/2040(INI), 3 December 2013, paras. F, J.
- 55 Reproductive Rights are Human Rights, A Handbook for National Human Rights Institutions, op. cit., p. 26.
- 56 OHCHR, *Déclaration conjointe des experts des droits de l’homme des Nations Unies*, du Rapporteur sur les droits des femmes de la Commission Interaméricaine des Droits de l’Homme et des Rapporteurs Spéciaux sur les droits des femmes et des défenseurs des droits de l’homme de la Commission Africaine des Droits de l’Homme et des Peuples*, 24 Septembre 2015, at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16490&LangID=F>.
- 57 For instance, obstetrical and gynaecological violence is a form of gender-based violence that violates women and girls’ sexual and reproductive rights and may be of a sexual nature. Obstetrical and gynaecological violence can include inappropriate or non-consensual acts carried out by practitioners, such as vaginal palpation or episiotomies performed without consent. Parliamentary Assembly of the Council of Europe, *Resolution 2306 (2019) on Obstetrical and gynaecological violence*, Doc. 14965, 3 October 2019.
- 58 Reproductive Rights are Human Rights, A Handbook for National Human Rights Institutions, op. cit., p. 27.
- 59 *Ibid.*, p. 26.
- 60 J. Cottingham, E. Kismodi, A. M. Hilber, O. Lincetto, M. Stahlhofer and S. Gruskin (2010), “Using human rights for sexual and reproductive health: improving legal and regulatory frameworks”, *Bulletin of the World Health Organization*, Vol. 88(7), pp. 481-560.
- 61 European Parliament, Motion for a European Parliament Resolution on Sexual and Reproductive Health and Rights, op. cit., paras. 5, 7, 14; African Union, *Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa* (“Maputo Protocol”), 11 July 2003, Article 14.
- 62 See for example the debate around the inclusion of sexual and reproductive rights in the UNSC Resolution 2467 (2019) on sexual violence in conflict and the strong pushback from the United States. What’s in Blue, “In Hindsight: Negotiations on Resolution 2467 on Sexual Violence in Conflict”, 2 May 2019, at <https://www.whatsinblue.org/2019/05/in-hindsight-negotiations-on-resolution-2467-on-sexual-violence-in-conflict.php>; Global Justice Center, “UN Security Council Adopts Resolution 2467”, 23 April 2019, at <http://www.globaljusticecenter.net/press-center/press-releases/1117-un-security-council-adopts-resolution-2467>.
- 63 FIDH, Observatorio Ciudadano, “Abortion in Chile: Women face countless obstacles”, 2018, at <https://www.fidh.org/en/region/americas/chile/abortion-in-chile-women-face-countless-obstacles>; FIDH, RADDHO, “I don’t want this child, I want to go to school”, *The prohibition of abortion in Senegal*, 2014, at <https://www.fidh.org/en/region/Africa/senegal/report-senegal-i-don-t-want-this-child-i-want-to-go-to-school>. See above the term “Abortion”.
- 64 See above the term “Enforced Sterilisation”.
- 65 The ICC was established after the Statute entered into force on 1 July 2002. To learn more about the Court, visit the Court’s website at <https://www.icc-cpi.int/about>.
- 66 Rome Statute, op. cit., Preamble.
- 67 See for example the elements of the crime against humanity of rape: “1. The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body. 2. The invasion was committed by force, or by 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 another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent. 3. The conduct was committed as part of a widespread or systematic attack directed against a civilian population. 4. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.” ICC Elements of Crimes, op. cit., Article (7)(1)(g)-1).

- ⁶⁸ C. Stahn, *A Critical Introduction to International Criminal Law*, Cambridge: Cambridge University Press, 2019, p. 63-64.
- ⁶⁹ Rome Statute, op. cit., Article 7(1)(g).
- ⁷⁰ Ibid, Article 8(2)(b)(xxii) and 8(2)(e)(vi).
- ⁷¹ Ibid, Article 6(c)
- ⁷² Ibid, Article 12(1).
- ⁷³ FIDH, *Unheard, Unaccounted: Towards Accountability for Sexual and Gender Based Violence at the ICC and Beyond*, 2018, p. 9, at https://www.fidh.org/IMG/pdf/sgb-v_721a_eng_au_20_nov_2018_13h_web.pdf.



Sexual crimes

Sexual violence

Slavery (sexual)

SOGI (sexual orientation
and gender identity) rights

Stigmatisation

Survivor

Sexual crimes

The term sexual crimes usually refers to specific acts of sexual violence (see below) prohibited under criminal law¹. Several examples of sexual crimes are mentioned in this A to Z, such as rape, sexual slavery, sexual exploitation, enforced sterilisation and enforced prostitution. There is no universal and exhaustive list of such crimes since they vary among legal frameworks and can evolve over time². For sexual crimes to amount to crimes under international criminal law they must have been committed in a specific context that meets the relevant criteria for these crimes to amount to genocide, crimes against humanity, or war crimes³.

RELATED: Sexual violence, Rape, Slavery (Sexual), Exploitation (Sexual), Enforced prostitution, Enforced sterilisation

Sexual violence

Sexual violence is to be understood as a broad category of acts of a sexual nature⁴. As such it is often defined by reference to a non-exhaustive list of examples of acts that can constitute sexual violence, such as rape, sexual slavery, forced prostitution, forced marriage, forced nudity⁵ and any other acts that are sexual in nature⁶, committed without genuine consent and/or by using force or under coercive circumstances. Any act of sexual violence is a violation of an individual's physical and psychological integrity and personal autonomy⁷, and a form of gender-based violence⁸.

In 2019, a group of more than 50 civil society organisations adopted the Civil Society Declaration on Sexual Violence which analyses what "sexual" means, especially from the perspective of the victims and survivors themselves⁹. The Declaration lists general principles that suggest that an act is sexual in nature and examples of sexual violence, all of it being non-exhaustive and allowing for a better

understanding of sexual violence¹⁰.

Among the general principles, the Declaration recognises that “sexual violence involves singular, multiple, continuous, or intermittent acts which, in context, are perceived by the victim, the perpetrator, and/or their respective communities as sexual in nature. Such acts are to be characterised as sexually violent if they violate a person’s sexual autonomy or sexual integrity”¹¹. These acts can be committed by and against any person, at any time (peace or conflict) and in any environment (public or private) and do not necessarily involve physical contact or sexual gratification¹².

Sexual violence can have serious, multiple, immediate or delayed and sometimes long-term consequences for the health and lives of survivors, including medical, psychological, social and material consequences such as vaginal and anal tears, unwanted pregnancies, early and forced marriage, sexually transmitted infections such as HIV/AIDS, stigma and shame, post-traumatic stress disorder, depression, risky behaviour including suicidal behaviour, school drop-out, loss of employment, “honour” crimes, death and community destruction in the case of violence related to crises and conflicts¹³.

States have an obligation to prevent and protect individuals against any sort of sexual violence, and to punish its perpetrators and provide reparation to victims where it occurs¹⁴. The implementation of this obligation in practice, however, usually depends on which acts are considered as sexual violence under domestic legislation. For instance, acts such as female genital mutilation or conjugal rape will be prohibited in some countries while other countries will



SOURCE: *Call it what it is* campaign, Women’s Initiatives for Gender Justice, <https://4genderjustice.org/home/campaigns/>

stay silent, thus allowing the practice to continue¹⁵.

Notwithstanding States’ obligations, sexual violence remains prevalent not only in all conflicts but also in peacetime around the world. It mainly affects women and girls, but men and boys are also victims of sexual violence¹⁶.

RELATED: Sexual crimes, Sexual and gender-based violence and discrimination

Slavery (sexual)

Slavery refers to a situation in which one person exercises ownership over another person¹⁷. Sexual slavery is a particular form of slavery involving acts of sexual violence and the deprivation of sexual autonomy of the victim¹⁸. It does not require any financial gain for the perpetrator¹⁹.

Slavery is absolutely prohibited under international law²⁰. The prohibition is not limited to the situation where a person is keeping another human being at her or his disposal, but also includes all the different steps that have contributed to this situation²¹.

Sexual slavery is also an international crime and can, whenever the necessary contextual elements are met, be prosecuted as a crime against humanity²² and as a war crime, both in international and non-international armed conflicts²³. According to the Elements of Crimes to the Rome Statute of the International Criminal Court (ICC), the crime of sexual slavery is characterised by two main elements: (1) The perpetrator exercised any or all of the powers attached to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty; and (2) The perpetrator caused such person or persons to engage in one or more acts of a sexual nature²⁴.

With regard to the power of ownership, the ICC found

that there is no exhaustive list of situations covered by this specific term²⁵. However, some factors can be taken into consideration to assess whether or not this power was exercised, “such as control of the victim’s movement, the nature of the physical environment, psychological control, measures taken to prevent or deter escape, use of force or threats of use of force or other forms of physical or mental coercion, duration, assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality, forced labour, and the victim’s vulnerability”²⁶.

Sexual slavery is also a serious human rights violation and has been recognised as such by the United Nations, which set up a special procedures mandate and mechanisms to tackle the widespread nature of slavery, including sexual slavery²⁷. The then Special Rapporteur on Contemporary Forms of Slavery confirmed in 1998 the absolute prohibition of sexual slavery, stating that “sexual slavery is slavery and its prohibition is a jus cogens norm”²⁸, meaning that there cannot be any exception to its prohibition, and that is applicable whether or not States are parties to relevant conventions and treaties.

Finally, it is important to note that the crime of sexual slavery is often committed together with the crime of slave trade²⁹. Slave trade is a separate international crime that must be clearly distinguished from enslavement. The crime of slave trade can be defined as “acquir[ing] and intend[ing] to reduce males or females, into slavery, or, as importantly, [to] further exchange or transport a person already enslaved to other slavery situations”³⁰. Even though the crime of slave trade is found in international conventions³¹ and is part of customary international law³², international courts and tribunals, including the ICC, have typically failed to recognize and condemn slave trade as a separate violation from the crime of slavery³³. However, it should be underscored that acts committed before and with the intention of reducing

a person into slavery – through, for instance, the “abductions, captures, kidnappings, or exchanges”³⁴ of the victims – should be charged as slave trading, and thus prosecuted separately from the crime of slavery. The crime of slave trade should also be distinguished from “human trafficking”³⁵. While there is some overlap between the two crimes, human trafficking is a transnational crime³⁶ which seeks to condemn any form of exploitation of a person³⁷, as opposed to slave trading, which focuses solely on criminalizing the enslavement³⁸. Additionally, unlike in the case of human trafficking, there is no need for the victims to establish whether slave trading resulted in their enslavement or to prove their lack of consent³⁹.

RELATED: Crime against humanity, War crime, Rome Statute, Sexual crimes, Sexual violence, Autonomy (personal), Exploitation (sexual), Weapon of war (sexual violence as)

SOGI (sexual orientation and gender identity) rights

Human rights have to be respected for all individuals, regardless of their sexual orientation and gender identity⁴⁰. For those whose sexual orientation and gender identity (SOGI) vary from the dominant norms of their society or regions (e.g. lesbians, gays, bisexuals, queer, transgender, intersex and other LGBTIQA+⁴¹), however, violations of their basic rights, violence and discrimination are widespread⁴².

SOGI rights aim at enhancing the enjoyment of universal human rights by the LGBTIQA+ community. In order to monitor the situation and ensure that these rights are respected and implemented among States parties, the United Nations (UN) Human Rights Council appointed in 2016 an Independent Expert on Sexual orientation and gender identity⁴³. In his 2018 report, the Independent Expert noted that acts of violence against SOGI considered as non-conforming “are committed in all corners of the world, and victims are presumed to be in the millions, every year. These acts extend from daily exclusion and

Gender Expression

The way a person communicates their gender identity to others such as how they dress, act or refer to themselves.



Gender Identity

A person's internal sense of being a man or a woman or anything in between.

Orientation/Attraction

The sexual and/or romantic attractions to others.

Sex

The label, male, female or intersex, given to someone at birth based on their body parts.

SOURCE: Terminology, <https://understandingtheguidelines.ca/fags/terminology/>

discrimination to the most heinous acts, including torture and arbitrary killings⁴⁴. He recommended that States reform discriminatory laws and take all measures to prevent, investigate and punish violations⁴⁵.

Today, human rights advocates call on the recognition of more explicit SOGI rights⁴⁶. Although some efforts have been made within the past decade, such as the adoption of the UN Declaration on Sexual Orientation and Gender Identity in 2008⁴⁷, and the Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity in 2007 (updated in 2017)⁴⁸, a proper framework is still lacking⁴⁹.

RELATED: Human rights

Stigmatisation

Stigmatisation is an inherent consequence of almost every incident of sexual violence⁵⁰. Victims are often blamed, shamed, excluded or rejected by their family, friends, community or the entire society⁵¹, instead of being protected and assisted to recover from the harm suffered. The stigmatisation can be extended to other members of the victims' families, such as to children born as the result of a rape⁵².

Stigmatisation often prevents victims from seeking emotional, medical, psychological, social and/or legal assistance. As affirmed by Adama Dieng, former Special Representative of the Secretary-General on Sexual Violence in Conflict, "victims who might survive rape often [do] not survive its social repercussions", adding that "simply stated, stigma kills"⁵³.

Stigmatisation of victims of sexual violence arises from deep-rooted patriarchal and sexist norms, values and attitudes, and is reinforced by rape culture⁵⁴. It is based on the assumption that, because of the sexual nature, victims

play a certain role contributing to the commission of the act, and can therefore be blamed for its occurrence and consequences⁵⁵.

The stigma of sexual violence should be redirected from victim to perpetrator in order to enable survivors to access the support they deserve, to advance the prevention and fight against sexual violence and to curb impunity.

RELATED: Myths and stereotypes, Victim-blaming

Survivor

The terms “victims” and “survivors” of sexual and gender-based violence are both appropriate but may be used in different contexts or serve different purposes. The word “victim” is commonly used in a legal context, for instance when referring to judicial proceedings, to confer a specific status that provides rights under the law (see the definition of “Victims” below). The word “survivor” often refers to someone who has gone or is going through a recovery process, and is used as a “term of empowerment”, and when considering the short- and long-term consequences of sexual violence⁵⁶.

There is no rule as to whether it is best to use the term “survivor” or “victim” to refer to individuals who have suffered sexual violence and gender-based violence⁵⁷. When engaging with survivors or victims, the most appropriate thing is to consult them on their preference and to respect it, unless a specific situation imposes the use of one term or the other, such as in criminal institutions and proceedings where the term “victim” is most commonly used⁵⁸. However, the impact of sexual and gender-based violence and how individuals feel about their experience go beyond these terminologies and some people may identify as neither “survivor” nor “victim”.

RELATED: Victims

ENDNOTES

- For instance, the sexual crimes falling under the jurisdiction of the International Criminal Court (ICC) include rape, enforced prostitution and sexual violence. ICC, Office of the Prosecutor, *Policy Paper on Sexual and Gender-Based Crimes*, June 2014, p. 3.
- For instance, while some States have integrated in their national jurisdictions the definitions of the sexual crimes found in the Rome Statute, others have adapted them to their own criminal frameworks, while others are simply not parties to the Rome Statute. UK Foreign & Commonwealth Office, *International Protocol on the Documentation and Investigation of Sexual Violence in Conflict*, Second edition (“PSVI Protocol”), March 2017, p. 42.
- See the terms “Crimes against humanity” (above), “Genocide” (above) and “War crimes” (below).
- On the importance of understanding the term broadly to better seize the experience of the victims and to enact efficient policies and laws, see as well PSVI Protocol, op. cit., p. 18.
- See for instance the definition given by the UN Secretary-General in United Nations Security Council (UNSC), *Conflict-Related Sexual Violence, Report of the United Nations Secretary-General*, S/2019/280, 29 March 2019, p. 3; International Criminal Tribunal for Rwanda (ICTR), *Prosecution of Sexual Violence: Best Practices Manual for the Investigation and Prosecution of Sexual Violence Crimes in Post-Conflict Regions: Lessons Learned from the Office of the Prosecutor for the ICTR* (“ICTR Best Practices Manual”), 2014, p. 8; see also the definition in the African Commission on Human and Peoples’ Rights (ACHPR) Guidelines on combating sexual violence and its consequences in Africa, defining sexual violence as “any non-consensual sexual act” and then providing a non-exhaustive list of acts that constitute sexual violence, with or without physical contact: “Sexual violence means any non-consensual sexual act, a threat or attempt to perform such an act, or compelling someone else to perform such an act on a third person. These acts are considered as non-consensual when they involve violence, the threat of violence, or coercion. Coercion can be the result of psychological pressure, undue influence, detention, abuse of power or someone taking advantage of a coercive environment, or the inability of an individual to freely consent”. ACHPR, *Guidelines on combating sexual violence and its consequences in Africa*, Niamey, 2017, para. 3(1)(a) and 3(1)(b). See as well the definition of the World Health Organization (WHO): “any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person’s sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work”. WHO, *World report on violence and health, Chapter 6 “Sexual Violence”*, 2002, p. 149, at https://www.who.int/violence_injury_prevention/violence/global_campaign/en/chap6.pdf.
- ICC, *Elements of Crimes*, 3–10 September 2002 (reviewed in 2010), Article 7(1)(g)-6. The Elements of Crimes provide that the crime of “other acts of sexual violence” (as a crime against humanity) has to be understood as when a “perpetrator committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion [...] or by taking advantage of a coercive environment or such person’s or persons’ incapacity to give genuine consent”. Element 1.
- UN Women, “Definition of sexual assault and other elements”, last updated 8 January

- 2018, at <https://www.endvawnow.org/en/articles/453-dfinition-de-lagression-sexuelle-et-autres-liments.html>; Inter-American Court of Human Rights (IACtHR), *López Soto y otros v. Venezuela*, Judgment (Merits, Reparations and Costs), 26 September 2018, note 206, p. 44, para. 152; Human Rights Council, *Report of the Office of the United Nations High Commissioner for Human Rights, Conflict-Related Sexual Violence in Ukraine (14 March 2014 to 31 January 2017)*, A/HRC/34/CRP.4, 16 March 2017, paras. 8, 33 et 144; International Criminal Tribunal for the former Yugoslavia (ICTY), *Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic*, Trial Judgment, IT-96-23-T&IT-96-23/1-T, 22 February 2001, para. 457; European Court of Human Rights (ECtHR), *M.C. v. Bulgarie*, Application N°39272/98, 4 December 2003; Conférence internationale sur la Région des Grands Lacs, *Protocole sur la prévention et la répression de la violence sexuelle contre les femmes et les enfants*, 30 novembre 2006, Article 1.
- 8 Sexual violence has been recognised as the “most immediate and dangerous type of gender-based violence occurring in acute emergencies”. UN High Commissioner for Refugees (UNHCR), Inter-Agency Standing Committee, *Guidelines for Gender-based Violence Interventions in Humanitarian Settings: Focusing on Prevention of and Response to Sexual Violence in Emergencies*, 2005, p. 1, at <https://www.unhcr.org/453492294.pdf>. Often, because of the interconnexion between sexual violence and gender-based violence, the term “sexual and gender-based violence” is used as a broad category of violence, particularly when it affects women. It is important to note, however, that it is not a synonym for “violence against women”, and that while all sexual violence is gendered, not all gender-based violence is sexual. See the definition of “gender-based violence and discrimination” above.
- 9 Women’s Initiatives for Gender Justice (WIGJ), *Civil Society Declaration on Sexual Violence*, 2019, at <https://4genderjustice.org/wp-content/uploads/2019/11/English-Civil-Society-Declaration-on-Sexual-Violence.pdf>. Learn more about the “Call it what it is” Campaign at the origin of the Declaration on the WIGJ’s Website at <https://4genderjustice.org/home/campaigns/defining-sexualviolence/>.
- 10 Ibid.
- 11 Ibid, Part. 1(1), and associated commentary p. 12.
- 12 Ibid, Part. 1(3), (4), (5) and (6), and associated commentary p. 12-14.
- 13 FIDH, Statement adopted in the margins of FIDH’s 40th Congress on 18 November 2019 on “**Sexual and sexist violence against women**”, at <https://www.fidh.org/en/issues/women-s-rights/sexual-and-sexist-violence-against-women>.
- 14 Idem. See States’ obligations as highlighted in terms “Autonomy (personal)” and “gender-based violence and discrimination” above.
- 15 For example, see the study conducted in 2018 on a group of African countries: Thomson Reuters Foundation and 28TOOMANY, *The law and FGM, An overview of 28 African Countries*, 2018, at [https://www.28toomany.org/static/media/uploads/Law%20Reports/the_law_and_fgm_v1_\(september_2018\).pdf](https://www.28toomany.org/static/media/uploads/Law%20Reports/the_law_and_fgm_v1_(september_2018).pdf); See as well the updated analysis of Equality Now, “**FGM and the law around the world**”, 19 June 2019, at https://www.equalitynow.org/the_law_and_fgm.
- 16 FIDH Congress Statement 2019 on sexual and sexist violence against women, op. cit.
- 17 *UN Convention to suppress the slave trade and Slavery* (“Slavery Convention”), 25 September 1926 (entry into force 9 March 1927), Article 1(1): “Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”.
- 18 I. Bantekas, “Chapter 7.3.3 Sexual Slavery”, in *International Criminal Law*, Hart Publishing, 2010.
- 19 UN Office of the High Commissioner for Human Rights (OHCHR), *Abolishing Slavery and its Contemporary Forms*, 2002, at <https://www.ohchr.org/Documents/publications/slaveryen.pdf>.
- 20 Slavery Convention, op. cit., Article 1(2).
- 21 ICTY, Kunarac et al Trial Judgment, op. cit., paras. 540-543. The ICTY accepted a broad definition of slavery which is the “exercise of any or all of the powers attaching to the right of ownership over a person.”
- 22 *Rome Statute of the International Criminal Court*, A/CON.183/9 (“Rome Statute”), 17 July 1998 (entry into force 1 July 2002), Articles 7(1)(c) and 7(1)(g).
- 23 Ibid. In international armed conflict, Article 8(2)(b)(xxii). In non-international armed conflict, Article 8(2)(e)(vi).
- 24 ICC Elements of Crimes, op. cit., Article 7(1)(g)-2, Crime against humanity of sexual slavery.
- 25 ICC, Trial Chamber VI, *Prosecutor v. Bosco Ntaganda* Judgment, ICC-01/04-02/06, 8 July 2019, para. 952.
- 26 Idem. In this case, victims were kept in captivity, forced to perform various tasks, including cooking, and were subjected to continuous acts of sexual violence, particularly rapes. See paras. 954-961.
- 27 Human Rights Council, *Resolution 6/14 on Special Rapporteur on Contemporary Forms of Slavery*, 28 September 2007; UN Working Group on Contemporary Forms of Slavery, established in 2007, at <https://www.ohchr.org/EN/Issues/Slavery/WGSlavery/Pages/WGSlaveryIndex.aspx>; UN Voluntary Fund on Contemporary Forms of Slavery, at <https://www.ohchr.org/EN/Issues/Slavery/UNVTFCS/Pages/WhattheFundis.aspx>; Slavery is also expressly prohibited as a human rights violation in various human rights instruments, see for instance Organization of African Unity, *African Charter on Human and Peoples’ Rights*, 1 June 1981 (entry into force 21 October 1986), Article 5.
- 28 Commission on Human Rights, *Contemporary Forms of Slavery, Systematic Rape, Sexual Slavery and Slavery-like Practices during armed conflict, Final report submitted by Ms. Gay J. McDougal Special Rapporteur*, E/CN.4/Sub.2/1998/13, 22 June 1998, para. 30.
- 29 P. V. Sellers and J. Kestenbaum (2020), “Missing in Action: The International Crime of the Slave Trade”, *Journal of International Criminal Justice*, Vol. 18, p. 12.
- 30 Ibid.
- 31 See UN Slavery Convention, op. cit., Article 1 and 2. See also: *Supplementary Convention on the Abolition of Slavery, the Slave Trade*, and Institutions and Practices Similar to Slavery, 30 April 1956, Article 3.
- 32 J-M. Henckaerts and L. Doswald-Beck, *Customary International Humanitarian Law, Volume I: Rules*, Cambridge: Cambridge University Press and International Committee of the Red Cross, 2005, Rule 94 “Slavery and the Slave Trade”, p. 327-330. See as well M.C. Bassiouni (1991), “Enslavement as an International Crime”, *NYU Journal of International Law and Policy*, Vol. 23(2), p. 454; P. V. Sellers and J. Kestenbaum, op. cit., p. 2 and p.16.
- 33 P. V. Sellers and J. Kestenbaum, op. cit., p. 19.
- 34 Ibid, p. 4.

- 35 See “Trafficking (human/sex)” below. See also *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, op.cit.
- 36 Office of the Prosecutor, *Strategic Plan 2016–2018*, 6 July 2015, para. 30, p. 14, at <http://www.pgaction.org/pdf/OTP-Draft-Strategic-Plan-2016-2018.pdf>. See “Trafficking (human/sex)” below.
- 37 P. V. Sellers and J. Kestenbaum, op. cit., p. 19.
- 38 Ibid. See also H. van der Wilt (2014), “Trafficking in Human Beings, Enslavement, Crimes against Humanity: Unravelling the Concepts”, *Chinese Journal of International Law*, Vol. 13, p. 303.
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- 40 FIDH, “LGBTI rights”, at <https://www.fidh.org/en/issues/lgbti-rights/>.
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- 54 UNSC, *Report of the Secretary-General on Conflict-Related Sexual Violence*, S/2017/249, 15 April 2017, p. 6; OHCHR, *Protection of Victims of Sexual Violence: Lessons Learned, Workshop Report*, 2019, p. 19, at <https://www.ohchr.org/Documents/Issues/Women/WRGS/ReportLessonsLearned.pdf>.
- 55 For instance, inquiries during judicial proceedings on the sex life of the victim or her behavior only aggravate stigmatization. OHCHR, *Protection of Victims of Sexual Violence: Lessons Learned*, op. cit., p. 13.
- 56 RTI International, Sexual Assault Kit Initiative, “Victim or Survivor: Terminology from investigation through prosecution”, at <https://sakitta.org/toolkit/docs/Victim-or-Survivor-Terminology-from-Investigation-Through-Prosecution.pdf>.
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Torture

Torture is the intentional infliction of severe pain or suffering, whether physical or mental, on an individual for a specific purpose, “by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”¹.

Sexual and gender-based violence can constitute torture as a human rights violation, and as an international crime². Various human rights mechanisms and courts for instance have recognised that rape constitutes torture³. In 1998, judges of the International Criminal Tribunal for the former Yugoslavia found that conflict-related rape committed by, or at the instigation of, a public official, or with the consent or acquiescence of an official, is mostly for a purpose that, in some way, involves punishment, coercion, discrimination or intimidation. The judges found that when these elements are met, rape constitutes torture⁴. For the first time in international criminal justice, judges held that rape can constitute torture which is prohibited under customary international law⁵.

Torture is an international crime and a human rights violation, prohibited regionally and internationally, with no exception⁶. It is prohibited under various treaties and under customary law, and is a *jus cogens* norm⁷. This means the prohibition of torture is a fundamental principle of international law, regardless of whether a state is party to a treaty that prohibits it, and that the prevention and punishment of torture is an obligation upon all states⁸. States are obliged to prosecute torture, including on the basis of universal jurisdiction (see the term “Universal jurisdiction” below). Accordingly, torture can be prosecuted in domestic, regional and international jurisdictions, including, if contextual elements are met, before the International Criminal Court as a crime against

Torture

Trafficking (human/sex)

Transitional justice

Trauma

(psycho-traumatic disorder)

In 2020,

171

States have ratified the Convention Against Torture.

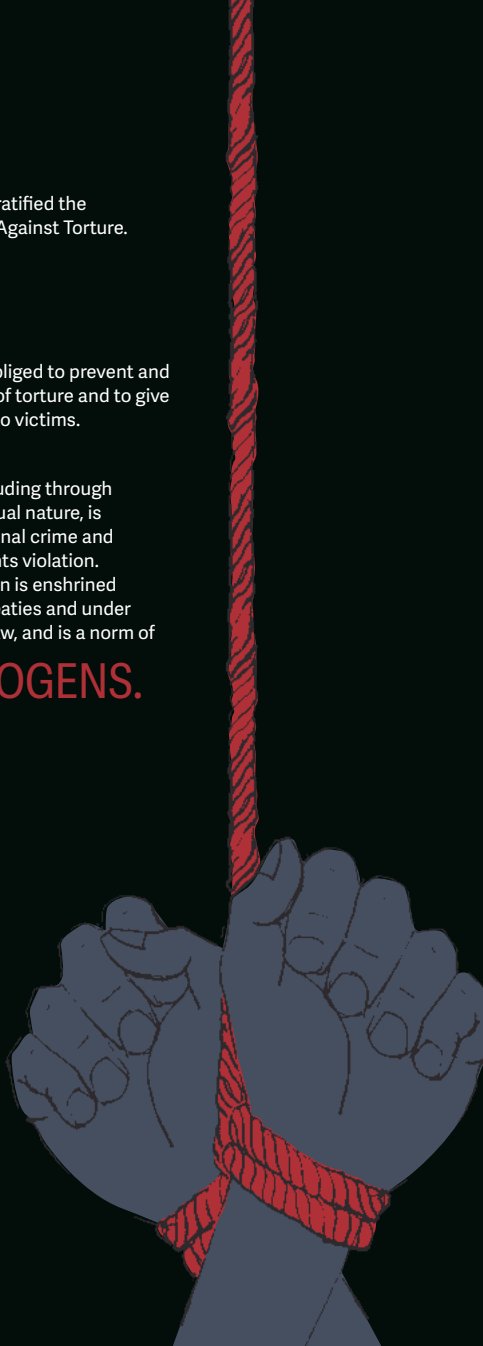
However,

ALL

States are obliged to prevent and punish acts of torture and to give reparations to victims.

Torture, including through acts of a sexual nature, is an international crime and a human rights violation. Its prohibition is enshrined in various treaties and under customary law, and is a norm of

JUS COGENS.



humanity⁹ and a war crime¹⁰.

RELATED: Rape, Cruel, inhuman or degrading acts, Treatments and punishments, Crimes against humanity, War crimes

Trafficking (human/sex)

Human trafficking, or “trafficking in persons”, is “the recruitment, transportation, transfer, harbouring or receipt of persons [...] for the purpose of exploitation”¹¹. Sex trafficking, a subcategory of human trafficking, is when persons are trafficked for sexual exploitation¹², including for forced prostitution or sexual slavery. It is the most prevalent form of trafficking, particularly in the Americas, Europe and East Asia and the Pacific¹³. Trafficking in persons is defined as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”¹⁴. In human trafficking cases, the consent of the victim is irrelevant¹⁵. In situations involving children (under the age of eighteen), it is not necessary for the act to involve the means of force, threat, coercion, abduction, fraud, deception or abuse of power for it to qualify as trafficking¹⁶.

Women and girls together represent about 70% of the victims of human trafficking¹⁷; among these victims, with more than four women out of five and nearly three girls out of four are trafficked for sexual exploitation¹⁸. Human and sex trafficking is particularly prevalent in times of armed conflict due to the higher vulnerability of individuals, the fragmentation of justice and security institutions, and the movement of populations¹⁹. Migrants, refugees and asylum seekers are at great risk of being victims of human and

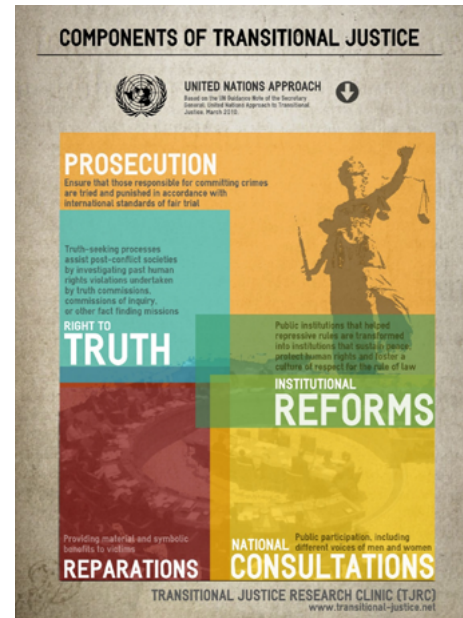
sex trafficking²⁰. Under international law, as stated by the Palermo Protocol²¹, States have a duty to take all measures to prevent, suppress and punish the trafficking in persons, including sex trafficking²², namely by establishing clear prevention policies²³, by adopting adequate criminalising legislation²⁴, by offering comprehensive protection and assistance to victims²⁵ and by cooperating among member states in repatriating victims and offering them the best possible care²⁶.

Under international criminal law, the Rome Statute of the International Criminal Court does not prohibit trafficking as a stand-alone crime. It does, however, refer to “trafficking in persons” under the crime against humanity of enslavement²⁷.

RELATED: Exploitation (sexual), Slavery (sexual), Forced prostitution, Marriage

Transitional justice

Transitional justice is a process that deals with large-scale or systematic human rights violations in countries emerging from conflict or repression, to redress legacies of violations and abuses²⁸. It includes judicial and non-judicial measures and generally encompasses four pillars: criminal prosecutions for at least those most responsible for human rights violations; truth-seeking of human rights violations through non-judicial processes; individual, collective, material or symbolic reparations for victims; and reforms necessary to avoid repetition of crimes and to restore confidence in the domestic structure²⁹. Each of these pillars has its own purpose and impact, and they can be pursued in parallel³⁰. These processes are particularly important as they offer a holistic approach that takes into account States’ obligations under international law and victims’ rights and needs for truth, justice and reparation³¹.



SOURCE: Transitional Justice Research Clinic, Infographic, <http://transitional-justice.net>

In transitional justice processes, States and other relevant stakeholders should take measures to ensure that the particular needs of victims of sexual and gender-based violence are adequately addressed³². Transitional justice bodies should investigate and shed light on the causes, motives, circumstances under which the violence was committed, and consequences of such violence. Silencing victims of such prevalent violence would be a gap in the transition to a more inclusive and protective society.³³ With sexual and gender-based violence often a result of structural gender discrimination or other sexist norms³⁴, transitional justice can be a catalyst for change in addressing the deep-rooted causes of such violence.³⁵

Several truth commissions, as part of transitional justice

processes, have addressed prevalent sexual and gender-based allowing a more in-depth analysis of the crimes and a tailored response. These includes truth commissions in Guatemala, South Africa, Peru, Kenya, Liberia, Morocco, Sierra Leone, Timor Leste and the Solomon Islands³⁶. At the conclusion of their work, the reports published including recommendations in the published reports can provide paths towards accountability and reparations³⁷. Some commissions have dedicated entire chapters to sexual and gender-based violence³⁸.

RELATED: Accountability

Trauma (psycho-traumatic disorder)

The term “trauma” refers to physical or psychological harm that results from an extremely negative experience, an experience sometimes described as a “traumatic experience”³⁹. It takes various forms depending on the person affected, their social environment and support, any pre-existing psychological conditions, including depression or anxiety, past life experiences, and the traumatic experience itself. Trauma can be individual or collective⁴⁰.

Psycho-traumatic disorders are universal consequences of sexual violence, and result from neuro-biological and psychic survival mechanisms in response to extreme stress (e.g., “stupor effect” or dissociation)⁴¹. These survival mechanisms lead not only to psychological consequences, but also to neurological harm that can result in serious dysfunctions of the emotional and memory circuits (e.g., traumatic memory or traumatic amnesia)⁴². Experts and practitioners sometimes refer to a “Rape Trauma Syndrome”⁴³.

The consequences of trauma vary from one person to another but often include a lasting impact on the physical, mental, sexual and reproductive health of the

victims in the short, medium or long term⁴⁴. For instance, international studies have shown that psycho-traumatic disorders can have a major impact on the mental health of victims of sexual violence through “anxiety disorders, depression, sleep disorders, cognitive disorders, eating disorders, addictions”⁴⁵. Trauma also affects physical health through disorders such as “stress and survival strategies, cardiovascular and respiratory diseases, diabetes, obesity, epilepsy, immunity disorders, gynecological disorders, sexually transmitted infections, digestive disorders, fatigue and chronic pain”⁴⁶. Furthermore, psycho-trauma may also have serious consequences for the emotional, social, professional, cultural, educational, and sexual life of victims⁴⁷. Without adequate care and support, psycho-traumatic disorders can last for years, decades, and even a lifetime.

Traumatic experiences can go beyond the individual victim and affect the entire community. As highlighted by the United Nations Secretary General, quoting the findings of the Commission on Human Rights in South Sudan, “sexual violence has become so prevalent [that] women and girls [are] ‘collectively traumatised’”⁴⁸.

The trauma associated with sexual violence is often not limited to the traumatising experience itself but is often aggravated by stigmatisation and social ostracisation that victims may experience⁴⁹.

The prevalence of trauma among victims and survivors of sexual and gender-based violence, and the risk of re-traumatisation, requires that all practitioners working with victims and survivors be adequately trained on how to operate in respect of the “Do no harm” principle specifically in the context of sexual and gender-based violence⁵⁰.

RELATED: Aggravating circumstances, Confidentiality, “Do no Harm” principle

ENDNOTES

- 1 *UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (“Convention against Torture”), 10 December 1984 (entry into force 26 June 1987), Article 1(1).
- 2 Women’s Initiatives for Gender Justice (WIGJ), *Civil Society Declaration on Sexual Violence*, 2019, p. 53, at <https://genderjustice.org/wp-content/uploads/2019/11/English-Civil-Society-Declaration-on-Sexual-Violence.pdf>; See the case before the Inter-American Court of Human Rights (IACtHR), *Women Victims of Sexual Torture in Atenco v. Mexico*, Judgment (Preliminary Objections, Merits, Reparations and Costs), 28 November 2018; See as well in Mexico, Centro Prodh, *Sexual Torture of women in Mexico, Alternative report presented in June 2018 to the CEDAW Committee*, at https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MEX/INT_CEDAW_NGO_MEX_31419_E.pdf; For an example against men, see P. Oosterhoff, P. Zwanikken and E. Ketting, “Sexual Torture of Men in Croatia and Other Conflict Situations: An Open Secret”, *Reproductive Health Matters*, 2004, Vol.12(23), pp. 68-77.
- 3 Inter-American Commission on Human Rights (IACHR), *Fernando y Raquel Mejia v. Peru*, OEA/Ser.L/V/II.91 Doc. 7, 1 March 1996; European Court of Human Rights (ECtHR), *Aydin v. Turkey*, 25 September 1997. In 1986, the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment already recognised some forms of sexual violence as constituting torture. Commission on Human Rights, *Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Report by the Special Rapporteur Mr. P. Kooijmans*, appointed pursuant to Commission on Human Rights resolution 1985/33, E/CN.4/1986/15, 19 February 1986, para. 119.
- 4 International Criminal Tribunal for the former Yugoslavia (ICTY), *Prosecutor v. Zejnil Delalic, Zdravko Mucic, Hazim Delic and Esad Landzo*, Trial Judgment, IT-96-21-T, 16 November 1998, paras. 495-496.
- 5 *Ibid.*, paras. 452, 454, 495-496; ICTY, *Prosecutor v. Kunarac, Kovac and Vukovic*, Trial Judgment, IT-96-23-T, 22 February 2001.
- 6 *Convention against Torture*, op. cit., Article 2(2): “No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture”.
- 7 Committee against Torture (“CAT Committee”), *General Comment No. 2: Implementation of Article 2 by States Parties*, CAT/C/GC/2, 24 January 2008, para. 1; ICTY, *Prosecutor v. Anto Furundžija*, Trial Judgment, IT-95-17/1-T, 10 December 1998, paras. 153–154. The Tribunal expressly linked the status of the prohibition of torture as a peremptory norm of general international law (*jus cogens*) to the “importance of the values it protects”, noting that “[c]learly, the *jus cogens* nature of the prohibition against torture articulates the notion that the prohibition has now become one of the most fundamental standards of the international community”.
- 8 *UN Report of the International Law Commission*, A/74/10, 20 August 2019, p. 150-157, particularly para 12-15.
- 9 *Rome Statute of the International Criminal Court*, A/CON.183/9 (“Rome Statute”), 17 July 1998 (entry into force 1 July 2002), Article 7(1)(f).
- 10 *Ibid.* In international armed conflict, Article 8(2)(a)(ii). In non-international armed conflict, Article 8(2)(c)(i).
- 11 *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000 (“Palermo Protocol”), Article 3(a).
- 12 See the definition of the term “Exploitation (sexual)” above.
- 13 United Nations Office on Drugs and Crimes (UNODC), *Global Report on Trafficking in Persons*, 2018, p. 10, at https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTIP_2018_BOOK_web_small.pdf.
- 14 Palermo Protocol, op. cit., Article 3(a).
- 15 *Ibid.*, Article 3(b).
- 16 *Ibid.*, Article 3(c).
- 17 UNODC, *Global Report on Trafficking in Persons 2018*, op. cit., p.10.
- 18 *Ibid.*, p. 25, 28.
- 19 *Ibid.*, p. 12.
- 20 *Idem.*
- 21 Palermo Protocol, op. cit.
- 22 See as well *UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, 2 December 1949 (entry into force 25 July 1951); *UN Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979 (entry into force 3 September 1981) (CEDAW), Article 6; Committee on the Elimination of Discrimination against Women (“CEDAW Committee”), *General Recommendation No. 19 on Violence against Women*, 1992, Article 6, paras. 13-16; *UN Convention on the Rights of the Child*, 20 November 1989 (entry into force 2 September 1990), Article 35; *UN Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*, 25 May 2000 (entry into force 18 January 2002); UN Office of the High Commissioner for Human Rights (OHCHR), *Recommended Principles and Guidelines on Human Rights and Human Trafficking, Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council*, E/2002/68/Add.1, 20 May 2002. See as well the commentary of such guidelines at OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, 2010, at https://www.ohchr.org/Documents/Publications/Commentary_Human_Trafficking_en.pdf. At the regional level, see particularly the Council of Europe *Convention on Action against Trafficking in Human Beings*, Warsaw (Warsaw Convention), 16 May 2005.
- 23 Palermo Protocol, op. cit., Article 9; Warsaw Convention, *Ibid.*, Article 5.
- 24 Palermo Protocol, *Ibid.*, Article 5; Recommended Principles and Guidelines on Human Rights and Human Trafficking, op. cit., Recommended Principles 12 to 17; Warsaw Convention, op. cit., Articles 18 to 26.
- 25 Palermo Protocol, *Ibid.*, Article 6; Recommended Principles and Guidelines on Human Rights and Human Trafficking, *Ibid.*, Recommended Principles 7 to 11; Warsaw Convention, *Ibid.*, particularly Articles 12, 15.
- 26 Palermo Protocol, *Ibid.*, Article 8; Warsaw Convention, *Ibid.*, Article 16.
- 27 Rome Statute, op. cit., Article 7(2)(c). The Statute defines enslavement as “the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children”.

- 28 International Center for Transitional Justice (ICTJ), “What is transitional justice?”, at <https://www.ictj.org/about/transitional-justice>; To learn more about transitional justice, read C. Lawther, L. Moffett and D. Jacobs (Eds.), *Research Handbook on Transitional Justice*, Edward Elgar Publishing, 2017. Read as well our A to Z on transitional justice: FIDH and Open Asia/Armanshahr Foundation, *A Handbook of Transitional Justice*, Second Edition, 2012, at <https://frcalameo.com/read/0015316380668518336f9>.
- 29 United Nations, *Guidance note of the Secretary General, United Nations Approach to Transitional Justice*, March 2010, p. 2.
- 30 *Ibid.*, p. 3 and 5.
- 31 J. E. Méndez (2016), “Victims as Protagonists in Transitional Justice”, *International Journal of Transitional Justice*, Vol. 10(1), p. 1-2.
- 32 United Nations Approach to Transitional Justice 2010, *op. cit.*, p. 4-5.
- 33 Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo*, A/HRC/14/22, 23 April 2010, paras. 26-29.
- 34 *Ibid.*, para. 31. On the importance of addressing the “structural discrimination that enables gender-based and sexual violence, and contributing to a more gender-equal society”, see Human Rights Council, *Analytical study focusing on gender-based and sexual violence in relation to transitional justice*, A/HRC/27/21, 30 June 2014, para. 51.
- 35 L. Arbour (2006), “Economic and Social Justice for Societies in Transition”, Center for Human Rights and Global Justice Working Paper N°10, p. 14-15, at https://chrgj.org/wp-content/uploads/2016/09/WPS_NYU_CHRGJ_Arbour_Final.pdf; OHCHR, *Sexual and Gender-Based Violence in the Context of Transitional Justice*, 2014, p. 1, at https://www.ohchr.org/Documents/Issues/Women/WRGS/OnePagere/Sexual_and_gender-based_violence.pdf.
- 36 Human Rights Council, *Analytical study focusing on gender-based and sexual violence in relation to transitional justice, Report of the Office of the United Nations High Commissioner for Human Rights*, A/HRC/27/21, 30 June 2014, paras. 15-17.
- 37 ICTJ, *Truth Seeking: Elements of Creating an Effective Truth Commission*, 2013, p. 65, at <https://www.ictj.org/sites/default/files/ICTJ-Book-Truth-Seeking-2013-English.pdf>.
- 38 For instance, see the work of the Truth Commission established for Peru, *Comisión de la Verdad y Reconciliación: Informe Final*, 28 August 2003, Vol. VI, chap.1, and Vol. VIII, chap. 2, at <https://www.cverdad.org.pe/ingles/ifinal/index.php>.
- 39 After Trauma, “What is Trauma?”, at <https://www.aftertrauma.org/what-is-trauma/what-is-trauma>; Collins Dictionary, “Trauma”, at <https://www.collinsdictionary.com/dictionary/english/trauma>.
- 40 UK Foreign & Commonwealth Office, *International Protocol on the Documentation and Investigation of Sexual Violence in Conflict*, Second edition (“PSVI Protocol”), March 2017, p. 231-242.
- 41 A.C. McFarlane (2010), “The long-term costs of traumatic stress: intertwined physical and psychological consequences”, *World Psychiatry*, Vol. 9(1), pp. 3-10.
- 42 M. Salmona, *Impact of sexual violence on victims' health: traumatic memory at work*, 2016, at https://www.memoiretraumatique.org/assets/files/v1/Articles-Dr-MSalmona/2016_impact_of_sexual_violence_on_victim_s_health.pdf
- 43 PSVI Protocol, *op. cit.*, p. 234.
- 44 WHO, *World report on violence and health*, 2002, p. 162-163, at https://apps.who.int/iris/bitstream/handle/10665/42495/9241545615_eng.pdf;jsessionid=D-3C257AF440282F730B393420064F7AF?sequence=1 WHO et al., *Mental Health and Psychological Support for Conflict-Related Sexual Violence: Principles and Interventions*, 2012, p. 2, at <https://apps.who.int/iris/rest/bitstreams/104266/retrieve>.
- 45 *Idem*; Impact of sexual violence on victims' health 2016, *op. cit.*; PSVI Protocol, *op. cit.*, p. 233.
- 46 *Idem.*
- 47 This has been recognised by judges at the International Criminal Court (ICC) as aggravating circumstances. ICC, Trial Chamber VI, *Prosecutor v. Bosco Ntaganda* Sentencing Judgment, ICC-01/04-02/06, 7 November 2019, para. 130.
- 48 United Nations Security Council (UNSC), *Report of the Secretary-General on Conflict-Related Sexual Violence*, S/2018/250, 16 April 2018, para. 14.
- 49 World report on violence and health 2002, *op. cit.*, p. 163.
- 50 *Ibid.*, p. 85-86. See as well the term “Do no Harm’ principle” above.



Universal jurisdiction

Universal jurisdiction

Universal jurisdiction allows and at times obliges States to exercise their jurisdiction over serious international crimes - including war crimes, crimes against humanity, genocide, torture, enforced disappearance and extrajudicial executions¹ - irrespective of where the crimes were committed and the nationalities of the perpetrator and the victim.² It is therefore a key tool against impunity, including in cases involving sexual and gender-based violence³. For instance, victims who do not have access to justice in their own country may seek justice elsewhere on the basis of universal jurisdiction.

The conditions for an exercise of universal jurisdiction vary according to the crime and the legislation of the relevant country, though often States require some form of presence (anticipated presence, actual presence residence) of the alleged perpetrator on their territory to trigger universal jurisdiction (even if such presence is not required under international law, such as in regard to grave breaches of the Geneva Conventions)⁴.

Victims of international crimes, including sexual and gender-based violence - often together with non-governmental organisations - are increasingly using universal jurisdiction in cases where no other avenue to justice is available. This is the case for instance in regard to crimes committed in Rwanda, Syria, Afghanistan, the Democratic Republic of the Congo, Liberia, Chile, Argentina, the United States of America, Spain and elsewhere⁵.

ENDNOTES

- 1 Trial International, FIDH, REDRESS, ECCHR and FIBGAR, **Evidentiary challenges in universal jurisdiction cases**, *Universal Jurisdiction Annual Review*, 2019, p. 9, at https://www.fidh.org/IMG/pdf/trialinternational_ujar5_final_digital.pdf; To read more about universal jurisdiction, see UN **Report of the International Law Commission**, A/73/10, 2018, Annex 1 'Universal Criminal Jurisdiction', p. 307.
- 2 *Idem*.
- 3 TRIAL International, **"What is universal jurisdiction?"**, at <https://trialinternational.org/topics-post/universal-jurisdiction/>; Human Rights Watch, **"Basic Facts on Universal Jurisdiction"**, last updated 19 October 2009, at <https://www.hrw.org/news/2009/10/19/basic-facts-universal-jurisdiction>.
- 4 United Nations General Assembly (UNGA), **"Tackling Scope, Application of Universal Jurisdiction, Sixth Committee Speakers Debate Best Venue for Further Discussions on Principles Definition"**, 11 October 2017, at <https://www.un.org/press/en/2017/ga3549.doc.htm>; For an overview of legislations on universal jurisdiction, see J-M. Henckaerts and L. Doswald-Beck, **Customary International Humanitarian Law, Volume II: Practice**, Cambridge: Cambridge University Press and International Committee of the Red Cross, 2005, Practice relating to Rule 157: Jurisdiction over War Crime, p. 3883-3940; See as well some key examples in practice from 2018 in *Universal Jurisdiction Annual Review 2019*, *op. cit.*
- 5 *Ibid*; see also Trial International, FIDH, REDRESS, ECCHR and FIBGAR, **Universal Jurisdiction Annual Review 2020**, at https://redress.org/wp-content/uploads/2020/03/UJAR_2020_WEB.pdf.

Victim

Within human rights and criminal justice systems, the term victim refers to persons who individually or collectively have suffered harm as a result of (a) violation(s) of their human rights¹. This includes persons who have experienced any form of sexual and gender-based violence, who might be referred to as “victims” as well as “survivors”². In law, the status of “victim” provides certain rights (e.g., to file a complaint, to participate in proceedings or to obtain reparation). For example, at the International Criminal Court, victims who have suffered harm as a result of the commission of a war crime, crime against humanity, genocide or crime of aggression are to be recognised as “victims” and, subject to the charges prosecuted in a specific case, are entitled to participate in proceedings and to request reparation³.

Victims can be direct or indirect⁴. Direct victims have directly suffered the harm, whereas indirect victims have not directly been subjected to the harm, but have nevertheless suffered as a result of the violation committed against the direct victim⁵. For instance, in a case of rape, the direct victims includes the individual who has been raped and an individual who has been forced to witness the rape, while indirect victims can refer to close family members and to “persons in whose care the victim is”, especially to children born from rape⁶. The community or those “who suffered harm in intervening to assist victims in distress or to prevent victimisation” can also constitute indirect victims⁷.

Victims of sexual violence may refer to themselves, and prefer to be called, survivors (see above).

RELATED: Survivor

Victim

Victim-blaming

Victim-centred approach

Virginity testing

Victim-blaming

Blaming the victim instead of the perpetrator is common in situations of sexual and gender-based violence⁸. Victims are often overtly accused or perceived as partially or fully bearing the responsibility for what was done to them and the resulting stigmatisation against the family⁹. As such, victim-blaming¹⁰ is a central component of rape culture¹¹. It is prevalent at all levels of society, prevents victims from reporting sexual violence, and therefore contributes to a culture of impunity for such crimes¹².

A classic example is when women and girls are being interrogated or criticised for the way they dressed or their conduct before being raped, often leading to the conclusion that they are in fact responsible for what happened¹³.

It is important to recall that victims of sexual and gender-based violence are never to blame or to be deemed responsible for the violence they were subjected to. All factors contributing to or aiming at reversing the responsibility of the violence are irrelevant and only inflict additional harm on the victims. The responsibility and the blame should only and fully lie on the perpetrators (and accomplice(s), if any)¹⁴.

RELATED: Stigmatisation

Victim-centred approach

A victim-centred approach is a process, led by trained service providers and practitioners, in which victims have ownership of the process and their needs and concerns are considered a priority¹⁵. With this approach, victims play an active and participatory role, and their interests, safety and well-being are placed at the centre¹⁶. Practitioners adopting a victim-centred approach should ensure that comprehensive assistance is provided to victims to minimise risks of re-traumatisation, such as protective

measures and medical, psychological, legal and economic support¹⁷.

Adopting a victim-centred approach is particularly necessary in cases of sexual and gender-based violence, where the risks of inflicting additional harm and trauma on victims are particularly high. A victim-centred approach should ensure that the specificities of their experience and the consequences of the violation(s) are taken into consideration, and that specific measures are put in place to respond to the victims' specific needs.

Over the years, numerous agencies (e.g., States, civil society and intergovernmental organisations) have advocated the adoption of a victim-centred approach to interact with victims of sexual and gender-based violence¹⁸.

RELATED: "Do no Harm" principle

Virginity testing

Virginity testing aims at determining whether a girl or woman is still a virgin. It is practiced in many countries, often forcibly, in a number of contexts, including in detention places¹⁹; on women who allege rape; on women who are about to get married²⁰; on women who are accused by authorities of prostitution; and as part of public or social policies to control sexuality. Virginity testing amounts to sexual and gender-based violence²¹ and is a violation of the rights of women and girls. It is a humiliating and traumatic practice that can have serious detrimental impact on women and girls' physical and psychological health²².

The most common virginity testing is the so-called "two-fingers test".²³ This test is still used in various countries in order to determine whether or not a woman is a virgin, depending on the presence of her hymen, and whether or not she is used to having sexual intercourse, based on the size and elasticity of her vagina²⁴. Under international

human rights law, such a “finger vaginal examination” can amount to rape²⁵.

In some countries, virginity testing is performed on victims of rape, supposedly to ascertain whether or not rape occurred. The results are then used in court, mostly against the victim and to undermine her credibility, based on her alleged sexual conduct²⁶. Indeed, according to this harmful and sexist interpretation, the victims may be considered as consenting if the virginity testing supposedly proves that she was sexually active and “impure”.

In 2018, several United Nations entities called for a ban on the practice and affirmed that these tests are “unscientific”²⁷. According to UN Women, the Office of the High Commissioner for Human Rights and the World Health Organisation, virginity testing lacks medical utility, has harmful consequences and violates a great number of human rights, such as the rights to privacy and physical integrity, to the highest attainable standard of health, to be protected from discrimination based on sex, to life, to be free from torture or cruel, inhuman and degrading treatment and the rights of the child²⁸. The Independent Forensic Expert Group considers that not only are virginity examinations medically unreliable and inherently discriminatory, but, where “conducted forcibly, they constitute cruel, inhuman and degrading treatment, and may amount to torture depending on the individual circumstances”²⁹.

RELATED: Evidence (non-admissible)



SOURCE: WHO – <https://www.who.int/reproductivehealth/publications/infographics-end-virginity-testing/en/>

ENDNOTES

- 1 UN *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law*, 16 December 2005, para. 8; see also Committee against Torture, *General Comment No. 3 – Implementation of Article 14 by States Parties*, CAT/C/GC/3, 19 November 2012, para. 3; African Commission on Human and Peoples' Rights (ACHPR), *Guidelines on combating sexual violence and its consequences in Africa*, Niamey, 2017, para. 3.2. (a). The Guidelines define victims of sexual violence as “persons who individually or collectively have been harmed or injured, through physical, psychological or economic loss, or serious infringements to their fundamental rights, caused by an act of sexual violence”.
- 2 See for instance how the United Nations uses both terms interchangeably. UN Women et al., *Essential Services Packages for Women and Girls Subject to Violence, Module 3: Justice and Policing*, 2015, p. 10, at <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2015/essential-services-package-module-3-en.pdf?la=en&vs=3520>; see also RTI International, Sexual Assault Kit Initiative, *Victim or Survivor: Terminology from investigation through prosecution*, p.1, at <https://sakitta.org/toolkit/docs/Victim-or-Survivor-Terminology-from-Investigation-Through-Prosecution.pdf>; Rape, Abuse & Incest National Network (RAINN), “Key Terms and Phrases”, at <https://www.rainn.org/articles/key-terms-and-phrases>; United Nations General Assembly (UNGA), *Report of the Secretary-General: In-depth study on all forms of violence against women*, A/61/122/Add.1, 6 July 2006, para. 21.
- 3 International Criminal Court (ICC), *Rules of Procedure and Evidence* ICC-ASP/1/3 and Corr.1, part II.A (“ICC Rule of Procedure and Evidence”), 3-10 September 2002, Rule 85(a). Before the ICC, the following can also be considered as victims: “organizations or institutions that have sustained direct harm to any of their property which is dedicated to religion, education, art or science or charitable purpose, and to their historic monuments, hospitals and other places and objects for humanitarian purposes”. Rule 85(b).
- 4 K. Matison Hess, C. Hess Orthmann and H. Lim Cho, *Introduction to Law Enforcement and Criminal Justice*, 12th Edition, Cengage Learning, 2018, p. 107. While most definitions of “victims” in legal frameworks recognize “direct” and “indirect” victims, the status of “secondary victim” has been used for instance in ACHPR, *Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa*, Banjul, 2015, p. 35.
- 5 Including the “immediate family or dependent of the direct victim”. UNGA, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, 29 November 1985, Principle A, para. 2.
- 6 The status of “victim” for children born as a result of rape has known some debates. They are now usually recognised as indirect victims in the international arena. J. Mantilla Falcon, “The Peruvian case, Gender and transitional justice”, in L. Yarwood (ed.), *Women and Transitional Justice, The experience of women as participants*, Routledge, 2013, pp. 184-197, p. 194.
- 7 United Nations Secretary-General, *Guidance Note of the Secretary-General: Reparations for Conflict-Related Sexual Violence*, 2014, p. 3; UN Basic Principles and Guidelines on the Right to a Remedy and Reparation 2005, op. cit., para. 8; Reparation is also in the interest of the community, as shown in JdD. Sikulibo, *Sexual Violence and Effective Redress for Victims in Post-Conflict Situations: Emerging Research and Opportunities*, Research Insights, 2019, p. 135-136.
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War crimes

Weapon of war
(sexual violence as)

Women's rights

War crimes

War crimes are serious violations of international humanitarian law (written or customary) when committed in both international and non-international armed conflict.¹ They cover a broad range of acts constituting a violation of the laws of war as determined by the Lieber Code (1863)², the Hague Conventions of 1899 and 1907³ and of the Geneva Conventions adopted in 1949⁴ and their additional protocols I and II⁵.

The first known international war crimes trial was held by the Holy Roman Empire against the knight Peter von Hagenbach. It was followed in the twentieth century by the Leipzig War Crimes Trial for the crimes committed during the First World War and by the trials held by the Tokyo and Nuremberg Tribunals after the Second World War⁶.

War crimes can be prosecuted before the International Criminal Court (ICC)⁷. The Rome Statute recognises the jurisdiction of the Court over crimes described as “grave breaches of the Geneva Conventions of 12 August 1949”, “other serious violations of the laws and customs against the civilian population in international armed conflict, within the established framework of international law” and “in the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949”⁸.

The Rome Statute, one of the most recent key references in terms of war crimes, offers a list of acts that can amount to war crimes, including committing several forms of sexual violence (rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation or any other forms of sexual violence violating the laws of war either of international or non-international character)⁹.

In order to constitute a war crime, the acts must take place in the context of and be associated with an armed conflict (either international or non-international)¹⁰. The

perpetrator has to be aware of the existence of an armed conflict¹¹. This means that incidental acts committed during a conflict cannot be prosecuted as war crimes.

This has been a key issue in terms of sexual and gender-based violence. For a long period of time and up until the work of the International Criminal Tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR), acts of sexual violence were considered as incidental to the conflicts and not as a strategic tool used by the parties to the conflict¹². They were therefore not prosecuted as war crimes due to the perceived lack of nexus with the conflict.

In several cases before the ad hoc Tribunals and before the ICC, judges have recognised this nexus when acts of sexual violence were committed in parallel with military operations¹³ and beyond. In the case against Dragoljub Kunarac, ICTY judges found that “a violation of the laws or customs of war may [...] occur at a time when and in a place where no fighting is actually taking place”¹⁴, and that “the armed conflict need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator’s ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed”¹⁵. They found that rapes and other abuses were committed “as a direct result of the armed conflict and because the armed conflict apparently offered blanket impunity to the perpetrators”¹⁶.

RELATED: Armed conflict, International Humanitarian Law, International Criminal Law, Rome Statute



SOURCE: Peace Women –
<https://www.peacewomen.org/SCR-1820>

Weapon of war (sexual violence as)

Rape is frequently referred to as a “weapon of war”. It is not seen anymore as incidental, accidental or as a result of uncontrolled excess of confidence and testosterone or uncontrolled sexual desire, but as a strategic tool used to destroy individuals and communities¹⁷.

Beyond rape, all forms of conflict-related sexual violence can be recognised as weapons of war. In 2008, the United Nations Security Council noted in its Resolution 1820 that sexual violence is used “as a tactic of war to humiliate, dominate, instil fear in, disperse and/or forcibly relocate civilian members of a community or ethnic group”¹⁸. In its Resolution 2467 adopted in 2019, the Security Council confirmed the use of sexual violence as a tactic of war, as “strategic objectives”, and add that this can also be used as a tactic of terrorism¹⁹.

RELATED: Sexual violence, War crimes, Sexual crimes, International Humanitarian Law, International Criminal Law

Women's rights

Women's rights comprise all human rights²⁰. Advocacy for the respect of these rights has significantly increased in response to widespread inequalities and discrimination in recognising and implementing these rights²¹. Women's rights do not translate to additional rights for women and girls, but rather seek an equal enjoyment of the broader fundamental human rights²².

Human rights violations that disproportionately affect women and girls include the right to live free from violence and discrimination²³; the freedom to choose in personal aspects of their lives²⁴, especially reproductive health²⁵ (marriage, pregnancy and sexual activities) and the rights to be educated, to access justice²⁶, to be hired for different categories of employment²⁷, to have fair and equal pay²⁸ and to participate in social, public and political life.

In all countries of the world, violations of women's and girls' rights are structural, widespread and very often sexist. Sexual and gender-based violence against women and girls constitute a particularly blatant violation of many women's and girls' rights.

At the international level, key instruments in protecting women's rights include the Beijing Declaration and Platform for Action²⁹ and the Convention on the Elimination of All Forms of Discrimination against Women and related general recommendations³⁰. Other instruments have been adopted at the regional level, such as the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (known as the Convention of Belém do Pará)³¹, the Council of Europe Convention on preventing and combating violence against women and domestic violence³², the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa,³³ the Declaration on the Elimination of Violence Against Women in the ASEAN region³⁴.

RELATED: Human rights, Gender-based violence and discrimination

ENDNOTES

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- 12 "Sexual violence in conflict needs to be treated as the war crime that it is; it can no longer be treated as an unfortunate collateral damage of war". Quote from former UN Special Representative on Sexual Violence in Conflict Ms. Zainab Hawa Bangura, in United Nations, *Sexual Violence: a Tool of War, Background note*, 2014, at <https://www.un.org/en/preventgenocide/rwanda/assets/pdf/Backgrounder%20Sexual%20Violence%202014.pdf>. See the term "Weapon of war (Sexual violence as)".
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- 30 CEDAW, op. cit.
- 31 Organization of American States, *Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará)*, 9 June 1994 (entry into force 5 March 1995).
- 32 Council of Europe, *Convention on preventing and combating violence against women and domestic violence* ("Istanbul Convention"), 11 May 2011.
- 33 *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*, Maputo, 11 July 2003.
- 34 *Declaration on the Elimination of Violence Against Women in the ASEAN region*, Jakarta, 30 June 2004.



Zero tolerance policy

Zero tolerance policy

A zero tolerance policy has been adopted by the United Nations to prevent sexual exploitation and abuse committed by United Nations (UN) personnel during their missions in affected countries and situations¹. It was established following the adoption, in 2003, of “special measures for protection from sexual exploitation and sexual abuse” applicable to all UN staff². In this document, the Secretary-General found that “sexual exploitation and sexual abuse violate universally recognised international legal norms and standards and have always been unacceptable behaviour and prohibited conduct for United Nations staff”³.



SOURCE: UN – <https://www.un.org/preventing-sexual-exploitation-and-abuse/content/response>

The UN continues to seriously struggle to implement its policy. For the past decade, allegations against peacekeepers and civilian personnel of the UN have been continually reported in different countries. After the allegations in Haiti⁴, victims raised their voices in the Central African Republic⁵ and the Democratic Republic of the Congo⁶. The data on reported allegations can be found on the United Nations Website⁷, although, as is often the case with sexual violence, this tool to monitor abuses represents only a small percentage of the problem, the “tip of the iceberg”.

On its website related to peacekeeping missions, the UN provides a chart explaining how to report allegations involving UN personnel in peacekeeping and special political missions⁸.

RELATED: Exploitation (sexual), Child abuse

ENDNOTES

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- 4 The New York Times, "U.N. Peacekeepers in Haiti Said to Have Fathered Hundreds of Children", 18 December 2019, at <https://www.nytimes.com/2019/12/18/world/americas/haiti-un-peacekeepers.html>; United Nations Integrated Office in Haiti, "U.N. is committed to addressing its peacekeepers' sexual abuse of women in Haiti, Opinion", 22 January 2020, at <https://binuh.unmissions.org/en/un-committed-addressing-its-peacekeepers%E2%80%99-sexual-abuse-women-haiti-opinion>; Bureau des avocats internationaux, "Sexual exploitation and abuse (SEA)", at <http://www.ijdh.org/sexual-exploitation-and-abuse-sea/>; S. Prosper, "Haiti: A theatre project to prevent sexual exploitation and abuse", 29 March 2019, at <https://minujsth.unmissions.org/en/haiti-theatre-project-prevent-sexual-exploitation-and-abuse>.
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- 6 N. Gilliard (2010-2011), "Peacekeepers or Perpetrators? An analysis of Sexual Exploitation and Abuse (SEA) by UN personnel in the Democratic Republic of Congo", Mapping Politics, Vol. 3.
- 7 Conduct in UN Field Missions, "Sexual exploitation and abuse", at <https://conduct.unmissions.org/table-of-allegations>. The United Nations offer many charts and tables of allegations, sorted by alleged perpetrators, victims, investigations or actions taken.
- 8 United Nations Peacekeeping, "Standards of conduct", at <https://peacekeeping.un.org/en/standards-of-conduct>; United Nations Peacekeeping, "Combating Sexual Exploitation and Abuse", at <https://peacekeeping.un.org/sites/default/files/sginitativessea.pdf>.

Annex: Relevant international and regional instruments

To date, there is no universal, binding treaty that focuses explicitly on the prohibition and prevention of, and accountability for, sexual and gender-based violence. What is available, however, are provisions in numerous existing international, regional and national instruments that cover various aspects of the prevention of and accountability for such violence, dealing with a range of issues, from justice processes to the rights of victims. A wealth of knowledge on this topic has also accumulated over the years through academic writing and other forms of publications.

This annex aims to list key instruments, frameworks and other sources important for stakeholders working on issues relating to sexual and gender-based violence. It is important to note that this list is not exhaustive.

International binding instruments

- *Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (1949) [Grave breaches under Article 50 have been interpreted to include rape and other forms of sexual violence]
- *Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea* (1949) [Grave breaches under Article 51 have been interpreted to include rape and other forms of sexual violence]
- *Convention (III) relative to the Treatment of Prisoners of War* (1949) [Grave breaches under Article 129 have been interpreted to include rape and other forms of sexual violence]
- *Convention (IV) relative to the Protection of Civilian Persons in Time of War* (1949) [Article 27(2) expressly prohibits ‘any attack on [women’s] honour, in particular [...] rape, enforced prostitution, or any form of indecent assault’].
- *International Covenant on Civil and Political Rights* (1966) [The Human Rights Committee recognised that rape and other forms of sexual violence violate Articles 2(1), 7, 17, 23 (1), 24 (1) and 26 of the Covenant, and that an improper definition of rape and accompanying statutes of limitations under domestic laws violate Articles 2(3) of the Covenant, in conjunction with Articles 3, 7, 9, 24 and 26]
- *Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I)* (1977) [Articles 75(2) offers general protection, including against sexual and gender-based violence, and Article 76(1) explicitly protect women against ‘rape, forced prostitution and any other form of indecent assault’]
- *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)* (1977) [Article 4(2)(e) offers general protection, including against sexual and gender-based violence]
- *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1984) [The Committee against Torture found in various instances that rape and other acts of sexual violence constitute torture under the Convention]
- *Convention on the Rights of the Child* (1989) [Articles 19 and 34 explicitly protect children from SGBV, particularly sexual exploitation and abuse]
- *Rome Statute of the International Criminal Court* (1998) [Prosecution of SGBC as genocide (Article 6), crimes against humanity (Article 7) and war crimes (Article 8), including rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, other forms of sexual violence and trafficking of women and children]
- *Convention on the Elimination of All Forms of Discrimination against Women* (1979) and its *Optional Protocol* (1999)
- *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* (2000) [Prosecution of SGBC, including sexual exploitation, under Article 3(a)]

Regional instruments

Europe

- *European Convention on Human Rights (1950)* [The European Court of Human Rights has recognised that rape is a form of torture prohibited under Article 3]
- *Council of Europe Convention on Action against Trafficking in Human Beings (2005)*
- *Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007)*
- *Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) (2011)*

The Americas

- *American Convention on Human Rights (1969)* [The Inter-American Court of Human Rights interpreted Article 5 as providing protection from sexual abuses]
- *Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará) (1994)*

Africa

- *African Charter on Human and Peoples' Rights (1981)* [A range of Articles in the African Charter touch upon, and have been interpreted by the African Commission on Human and Peoples' Rights as relevant to the fight against impunity for sexual and gender-based violence, including Articles 5 (torture and other ill-treatment), Article 18 (3) (elimination of discrimination against women)]
- *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) (2003)*
- *African Commission on Human and Peoples' Rights, Guidelines on Combating Sexual Violence and its Consequences in Africa (2017)*

Asia-Pacific

- *Declaration on the Elimination of Violence Against Women in the ASEAN Region (2013)*
- *Revised Pacific Platform for Action on Advancement of Women and Gender Equality (2005-2015)* [Regional Charter to address

emerging challenges, including sexual violence, through the collection of data, adoption of policies and programs]

UN Resolutions, Declarations and Recommendations

United National General Assembly (UNGA) Declarations

- *Declaration on the Elimination of Discrimination Against Women (1967)* [Article 8 explicitly includes the combating of all forms of traffic in women and exploitation of prostitution]
- *Declaration on the Elimination of Violence Against Women (1993)* [Prohibiting all forms of violence including sexual violence]

United Nations Security Council (UNSC) Resolutions

- *UNSC Resolution 1325 (2000)* [Addresses the impact of armed conflicts on women and girls and declares the need for specific protection against sexual and gender-based violence]
- *UNSC Resolution 1820 (2008)* [Calls for special measures to protect women and girls from SGBV in armed conflicts and declares that rape and other forms of sexual violence can constitute war crimes, crimes against humanity or genocide]
- *UNSC Resolution 1888 (2009)* [Calls on all parties to an armed conflict to take measures to protect civilians from SGBV and to deploy of Women Protection Advisors to facilitate the implementation of UNSC Resolutions on women, peace and security]
- *UNSC 1889 (2009)* [Women, Peace and Security: Declares it the states' responsibility to put an end to impunity and to prosecute those responsible for all forms of sexual and gender-based violence in armed conflict]
- *UNSC Resolution 1960 (2010)* [Encourages parties to armed conflict to make and implement specific commitments to combat sexual violence, and member states to provide police and military personnel with adequate training on sexual and gender-based violence]
- *UNSC Resolution 2106 (2013)* [Calls for the further deployment of Women Protection Advisors and urges sanction committees to apply targeted sanctions on those who perpetrate and direct sexual and gender-based violence in conflict]

- UNSC Resolution 2467 (2019) [Calls for a strengthened justice system and accountability for sexual and gender-based violence and addresses the need to adopt a survivor-centred approach when it comes to preventing and responding to these crimes]

CEDAW Recommendations

- *UN Committee on the Elimination of Discrimination Against Women, General Recommendation No. 19: Violence against women (1992)*
- *UN Committee on the Elimination of Discrimination Against Women, General Recommendation No. 35: Gender-based violence against women, updating general recommendation No. 19 (2017)*

Other Declaratory Instruments and Tools

- *Beijing Platform for Action (1995)* [States commit to provide gender-sensitive human rights education and training for law enforcement bodies and to create and/or strengthen institutional mechanisms to report acts of sexual and gender-based violence]
- *Cairo-Arusha Principles on Universal Jurisdiction in Respect of Gross Human Rights Offences (2002)* [Recognizes that wartime gender crimes, such as rape, constitute human rights offences, and seeks accountability for gender-based violence, in both wartime and peacetime]
- *ICRC's Study on Customary International Humanitarian Law (2005)* [Rules 93, 94, 134 and 156 explicitly prohibit sexual and gender-based violence]
- *UNGA, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (2005)* [Provides detailed information on remedy and reparation, applicable to sexual and gender-based violence]
- *UN Commission on Human Rights, Updated Set of principles for the protection and promotion of human rights through action to combat impunity (Report of the independent expert to update the Set of principles to combat impunity, Diane Orentlicher) (2005)*
- *UNDOC, Handbook on Effective Prosecution Responses to Violence Against Women and Girls (2010)* [Assists prosecutors in their duty to uphold the rule of law in cases involving violence against women

- and girls including sexual and gender-based violence]
- *G7, Declaration on Preventing Sexual Violence in Conflict (2013)*
- *Policy Paper on Sexual and Gender-Based Crimes by the Office of the Prosecutor of the International Criminal Court (2014)*
- *IICI, Guidelines for Investigating Conflict-Related Sexual and Gender-Based Violence against Men and Boys (2016)*
- *Case Matrix Network, 'Legal requirements, Sexual and Gender-Based Violence Crimes' (2017)*
- *Preventing Sexual Violence in Conflict Initiative, International Protocol on the Documentation and Investigation of Sexual Violence in Conflict (Second Ed. 2017)*
- *The Hague Principles on Sexual Violence (2019)*

FIDH Reports on SGBV

- [A Handbook of Transitional Justice, A to Z \(2012\)](#)
- [DRC victims of sexual violence rarely obtain justice and never receive reparation \(2013\)](#)
- [Egypt: Keeping Women Out – Sexual violence in the public sphere \(2014\)](#)
- [Exposing state hypocrisy: sexual violence by security forces in Egypt \(2015\)](#)
- ["All I want is reparation", Views of victims of sexual violence about reparation in the Bemba case before the International Criminal Court \(2017\)](#)
- [Unheard, Unaccounted: Towards Accountability for Sexual and Gender-Based Violence at the ICC and Beyond \(2018\)](#)
- [IRAQ - Sexual and gender-based crimes against the Yazidi Community: the role of ISIL foreign fighters \(2018\)](#)
- [In Central Mali, Civilian Population Are Caught Between Terrorism and Counterterrorism \(2018\)](#)
- [Accountability for Conflict-Related Sexual Crimes committed in Eastern Ukraine, Q&A \(2018\)](#)
- [The Impact of Litigation on Combating Sexual Violence and its Consequences in Africa \(2019\)](#)
- [Will There Be Justice For Darfur ? Persisting impunity in the face of political change, Fact-finding mission report \(2019\)](#)

KENYA KENYA HUMAN RIGHTS COMMISSION (KHRC) | **KUWAIT** HUMAN LINE ORGANISATION (HLO)
KYRGYZSTAN CENTRE OF HUMAN RIGHTS "KYLIM SHAMY", HUMAN RIGHTS MOVEMENT "BIR DUINO-KYRGYZSTAN", LEGAL CLINIC "ADILET" | **LAOS** MOUVEMENT LAO POUR LES DROITS DE L'HOMME (MLDH)
LATVIA LATVIAN HUMAN RIGHTS COMMITTEE (LHRC) | **LEBANON** CENTRE LIBANAIS DES DROITS HUMAINS (CLDH), PALESTINIAN HUMAN RIGHTS ORGANIZATION (PHRO) | **LIBERIA** REGIONAL WATCH FOR HUMAN RIGHTS (LWHR) | **LIBYA** HUMAN RIGHTS ASSOCIATION FOR RECORDING AND DOCUMENTING WAR CRIMES AND CRIMES AGAINST HUMANITY, LIBYAN LEAGUE FOR HUMAN RIGHTS (LLHR) | **LITHUANIA** LITHUANIAN HUMAN RIGHTS ASSOCIATION (LHRA) | **MALAYSIA** SUARA RAKYAT MALAYSIA (SUARAM) | **MALDIVES** MALDIVIAN DEMOCRACY NETWORK (MDN) | **MALI** ASSOCIATION MALIENNE DES DROITS DE L'HOMME (AMDH)
MAURITANIA ASSOCIATION MAURITANIENNE DES DROITS DE L'HOMME (AMDH) | **MEXICO** COMISIÓN MEXICANA DE DEFENSA Y PROMOCIÓN DE LOS DERECHOS HUMANOS (CMDPDH), IDHEAS—LITIGIO ESTRATÉGICO EN DERECHOS HUMANOS, LIGA MEXICANA POR LA DEFENSA DE LOS DERECHOS HUMANOS (LIMEDDH) | **MOLDOVA** PROMO-LEX ASSOCIATION | **MOROCCO** ASSOCIATION DÉMOCRATIQUE DES FEMMES DU MAROC (ADFM), ASSOCIATION MAROCAINE DES DROITS HUMAINS (AMDH), ORGANISATION MAROCAINE DES DROITS HUMAINS (OMDH) | **MOZAMBIQUE** LIGA MOÇAMBICANA DOS DIREITOS HUMANOS (LMDDH)
MYANMAR ALTSEAN BURMA, MYANMAR ALLIANCE FOR TRANSPARENCY AND ACCOUNTABILITY (MATA), WOMEN PEACE NETWORK (WPN) | **NEW CALEDONIA** LIGUE DES DROITS ET DU CITOYEN DE NOUVELLE CALÉDONIE (LDHNC) | **NICARAGUA** CENTRO NICARAGUENSE DE DERECHOS HUMANOS (CENIDH)
NIGER ASSOCIATION NIGÉRIENNE POUR LA DÉFENSE DES DROITS DE L'HOMME (ANDDH) | **NIGERIA** CIVIL LIBERTIES ORGANISATION (CLO) | **NORWAY** NORWEGIAN HELSINKI COMMITTEE (NHC) | **PAKISTAN** HUMAN RIGHTS COMMISSION OF PAKISTAN (HRCP) | **PALESTINE** AL-HAQ, AL MEZAN CENTER FOR HUMAN RIGHTS (AL MEZAN), PALESTINIAN CENTRE FOR HUMAN RIGHTS (PCHR), RAMALLAH CENTRE FOR HUMAN RIGHTS STUDIES (RCHRS) | **PANAMA** CENTRO DE CAPACITACIÓN SOCIAL DE PANAMÁ (CCS) | **PERU** ASOCIACIÓN PRO DERECHOS HUMANOS (APRODEH), CENTRO DE DERECHOS Y DESARROLLO (CEDAL), EQUIDAD—CENTRO DE POLÍTICAS PÚBLICAS Y DERECHOS HUMANOS | **PHILIPPINES** PHILIPPINE ALLIANCE OF HUMAN RIGHTS ADVOCATES (PAHRA) | **POLAND** HELSINKI FOUNDATION FOR HUMAN RIGHTS (HFHR), POLISH SOCIETY OF ANTI-DISCRIMINATION LAW (PSAL) | **PORTUGAL** LIGA PORTUGUESA DOS DIREITOS HUMANOS—CIVITAS
ROMANIA THE LEAGUE FOR THE DEFENSE OF HUMAN RIGHTS (LADO) | **RUSSIA** ANTI-DISCRIMINATION CENTRE "MEMORIAL" (ADC MEMORIAL), CITIZENS' WATCH (CW), HUMAN RIGHTS CENTRE "MEMORIAL" (MHRC)
RWANDA ASSOCIATION RWANDAISE POUR LA DÉFENSE DES DROITS DE LA PERSONNE ET DES LIBERTÉS PUBLIQUES (ADL), LIGUE RWANDAISE POUR LA PROMOTION ET LA DÉFENSE DES DROITS DE L'HOMME (LIPRODHOR) | **SAUDI ARABIA** ALQST | **SENEGAL** LIGUE SÉNÉGALAISE DES DROITS HUMAINS (LSDH), ORGANISATION NATIONALE DES DROITS DE L'HOMME (ONDH), RENCONTRE AFRICAINE POUR LA DÉFENSE DES DROITS DE L'HOMME (RADDHO) | **SOUTH AFRICA** LAWYERS FOR HUMAN RIGHTS (LHR) | **SOUTH KOREA** PEOPLE'S SOLIDARITY FOR PARTICIPATORY DEMOCRACY (PSPD) | **SPAIN** ASOCIACIÓN PRO DERECHOS HUMANOS DE ESPAÑA (APDHE), FEDERACIÓN DE ASOCIACIONES DE DEFENSA Y PROMOCIÓN DE LOS DERECHOS HUMANOS (FADPDH) | **SUDAN** AFRICAN CENTRE FOR JUSTICE AND PEACE STUDIES (ACJPS), SUDAN HUMAN RIGHTS MONITOR (SUHRM) | **SWITZERLAND** LIGUE SUISSE DES DROITS DE L'HOMME (LSDH) | **SYRIA** AL-MARSAD, DAMASCUS CENTER FOR HUMAN RIGHTS STUDIES (DCHRS), SYRIAN CENTER FOR MEDIA AND FREEDOM OF EXPRESSION (SCM) | **TAIWAN** COVENANTS WATCH TAIWAN (CWT), TAIWAN ASSOCIATION FOR HUMAN RIGHTS (TAHR) | **TAJIKISTAN** BUREAU OF HUMAN RIGHTS AND RULE OF LAW (BHR) | **TANZANIA** THE LEGAL AND HUMAN RIGHTS CENTRE (LHRC) | **THAILAND** INTERNET LAW REFORM DIALOGUE (ILAW), THAI LAWYERS FOR HUMAN RIGHTS (TLHR), MANUSHYA FOUNDATION, UNION FOR CIVIL LIBERTY (UCL) | **THE NETHERLANDS** LIGA VOOR DE RECHTEN VAN DE MENS (LVRM) | **TIBET** INTERNATIONAL CAMPAIGN FOR TIBET (ICT) | **TOGO** LIGUE TOGOLAISE DES DROITS DE L'HOMME (LTDH) | **TUNISIA** ASSOCIATION TUNISIENNE DES FEMMES DÉMOCRATES (ATFD), DOUSTOURNA, FORUM TUNISIEN POUR LES DROITS ÉCONOMIQUES ET SOCIAUX (FTDES), LIGUE TUNISIENNE DES DROITS DE L'HOMME (LTDH) | **TURKEY** HUMAN RIGHTS FOUNDATION OF TURKEY (HRFT), INSAN HAKLARI DERNEGI (IHD)—ANKARA, INSAN HAKLARI DERNEGI (IHD)—DIYARBAKIR | **UGANDA** FOUNDATION FOR HUMAN RIGHTS INITIATIVE (FHRI) | **UKRAINE** CENTER FOR CIVIL LIBERTIES (CCL) | **UNITED KINGDOM (NORTHERN IRELAND)** COMMITTEE ON THE ADMINISTRATION OF JUSTICE (CAJ) | **UNITED STATES OF AMERICA** CENTER FOR CONSTITUTIONAL RIGHTS (CCR), CENTER FOR JUSTICE & ACCOUNTABILITY (CJA) | **UZBEKISTAN** HUMAN RIGHTS SOCIETY OF UZBEKISTAN (HRSU), LEGAL AID SOCIETY (LAS) | **VENEZUELA** PROGRAMA VENEZOLANO DE EDUCACIÓN—ACCIÓN EN DERECHOS HUMANOS (PROVEA) | **VIETNAM** COMITÉ VIETNAM POUR LA DÉFENSE DES DROITS DE L'HOMME (VIETNAM COMMITTEE ON HUMAN RIGHTS) (VCHR) | **YEMEN** MWATANÀ FOR HUMAN RIGHTS, SISTERS' ARAB FORUM FOR HUMAN RIGHTS (SAF) | **ZIMBABWE** ZIMBABWE HUMAN RIGHTS ASSOCIATION (ZIMRIGHTS)

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Sexual and gender-based violence: A glossary from A to Z

Sexual and gender-based violence affects millions of people around the world. As more people strive to understand the nature, scope and consequences of sexual and gender-based violence, it is important to recognise that words are powerful.

They can give visibility, truth and justice. But can also discriminate, revictimize and destroy. It's crucial to use the right words, in the right way, at the right time.

For those who document, litigate, raise awareness or conduct advocacy on this issue, this resource identifies and clarifies the key definitions they should be well-acquainted with.

Take a moment, read the glossary, learn the terminology and make sure to reflect it in your work on sexual and gender-based violence.

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