

Strategy for Prevention of and Response to Conflict Related Sexual Violence in Ukraine



The Strategy for Prevention of and Response to the Conflict Related Sexual Violence in Ukraine was developed with the technical and financial support of the UN Women Ukraine and UN Human Rights Monitoring Mission in Ukraine in consultation with the Office of the Deputy Prime Minister on European and Euro-Atlantic Integration, Ministry of Foreign Affairs and Ministry of Justice of Ukraine.

United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) is the UN organization dedicated to gender equality and the empowerment of women. A global champion for women and girls, UN Women was established to accelerate progress on meeting their needs worldwide.

UN Women supports UN Member States as they set global standards for achieving gender equality and works with governments and civil society to design laws, policies, programmes and services needed to implement these standards. It stands behind women's equal participation in all aspects of life, focusing on five priority areas: increasing women's leadership and participation; ending violence against women; engaging women in all aspects of peace and security processes; enhancing women's economic empowerment; and making gender equality central to national development planning and budgeting. UN Women also coordinates and promotes the UN system's work in advancing gender equality.

The Office of the High Commissioner for Human Rights (OHCHR) is the UN entity with a mandate to promote and protect the enjoyment and full realization, by all people, of all rights established in the Charter of the United Nations and in international human rights laws and treaties. On 14 March 2014, at the invitation of the Government of Ukraine, OHCHR deployed the United Nations Human Rights Monitoring Mission in Ukraine (HRMMU) to monitor the human rights situation in the country, and to provide public reports on the human rights situation and emerging concerns and risks. HRMMU is also mandated to recommend concrete follow-up actions to relevant authorities in Ukraine, the United Nations and the international community at large to address human rights concerns, prevent human rights violations and mitigate emerging risks.

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Acronyms:

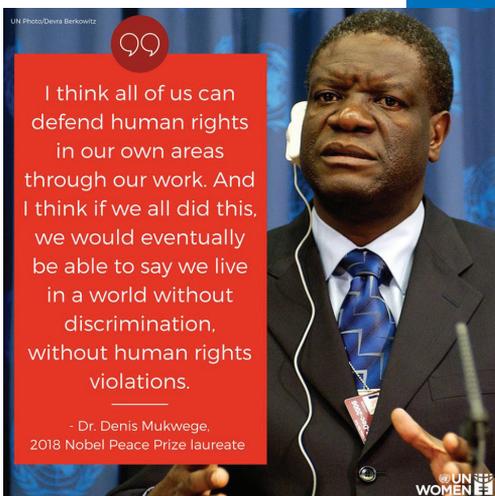
| | |
|----------|--|
| CRSV | Conflict-related sexual violence |
| GBV | Gender-based Violence |
| IASC | Inter-Agency Standing Committee |
| ICC | International Criminal Court |
| IDP | Internally displaced person |
| IHL | International Humanitarian Law |
| HRMMU | UN Human Rights Monitoring Mission in Ukraine |
| MARA | Monitoring and reporting arrangements (MARA) on conflict-related sexual violence |
| NAP 1325 | National Action Plan on the Implementation of the UNSCR 1325 |
| NATO | North Atlantic Treaty Organization |
| NGO | Non-governmental organization |
| OHCHR | Office of High Commissioner for Human Rights |
| SEA | Sexual Exploitation and Abuse |
| SGBV | Sexual and Gender-Based Violence |
| SOP | Standard Operating Procedure |
| SRSO-SVC | Special Representative of the Secretary-General on Sexual Violence in Conflict |
| UN | United Nations |
| UNSG | United Nations Secretary General |
| UNSCR | United Nations Security Council Resolution |
| UN Women | United Nations Entity for Gender Equality and the Empowerment of Women |
| WHO | World Health Organization |

In 2018 the Norwegian Nobel Committee made a decision to award the Nobel Peace Prize to Nadia Murad and Denis Mukwege for their efforts to end the use of sexual violence as a weapon of war and armed conflict. We celebrate these gender equality leaders, along with their care and trust of women.



Nadia Murad, a Yazidi human rights activist who was kidnapped by the Islamic State in Iraq and the Levant (ISIL; also called ISIS) in August 2014 and sold into sex slavery. She escaped three months later, and shortly thereafter she began speaking out about human trafficking and sexual violence, especially as these issues pertained to Yazidi women. She was appointed the United Nations' Goodwill Ambassador for the Dignity of Survivors of Human Trafficking in 2016 and received several accolades. She has changed the understanding of the ordeals faced by women and girls who are raped, tortured and exchanged among militants in war zones. Her voice has been unfaltering in telling her story, constructively helping others to bring to light the hidden picture of rights denied and lives ruined.

In 2018 she was a corecipient, with Congolese physician Denis Mukwege, of the Nobel Prize for Peace



Denis Mukwege, a Congolese physician noted for his work in treating victims of sexual violence in the Democratic Republic of the Congo (DRC).

He founded the Panzi Hospital, where he served as director and chief surgeon. The hospital received large numbers of sexual-assault victims, some as young as three years old and many with extreme injuries and mutilations. The "epidemic" of sexual violence in the conflict-ridden region was largely the result of combatants using the systematic rape of women and girls as a means of terrorizing and displacing the civilian population. In response to the crisis, Mukwege created a staff to specialize in the care of such patients, and since 1999 he and others have treated more than 50,000 women and children.

“Stronger action is the need of the hour, and sexual violence in conflict is a front line concern for us. Reparations are routinely left out of peace negotiations or sidelined in funding priorities, even though they are of utmost importance to survivors. We need to move this agenda forward in order to ensure real change in the lives of survivors who have seen the horrors of sexual violence in conflict up close”

UN Under-Secretary-General and Executive Director of UN Women
Phumzile Mlambo-Ngcuka

“The establishment of the rule of law and transitional justice processes are crucial to ensure accountability and to deliver justice, truth and reparations for violations suffered by women; they are also crucial to deter the continuation of such violations in the future.”

United Nations High Commissioner for Human Rights (2008-2014)
Navanethem Pillay

In February 2017, the Human Rights Monitoring Mission of the Office of the High Commissioner on Human Rights (HRMMU) in Ukraine released thematic report on conflict-related sexual violence in Ukraine, which covers the period from March 2014 to January 2017. Apart from its findings, OHCHR made a number of concrete recommendations to all parties to the conflict.¹ Acting upon recommendations of this report, the Government of Ukraine expressed interest in prevention of the conflict-related sexual violence (CRSV) and requested support from the United Nations (UN). This strategy is therefore developed to support Government in addressing the problems of CRSV.

¹ Based on the cases documented by OHCHR recommendations formulated include immediate and medium-term measures to prevent conflict-related sexual violence and respond to cases. Firstly, it recommends that the effects of the conflict on the rates of domestic violence and trafficking need to be further examined. Secondly, Access to services and justice is particularly limited to survivors living in the territory controlled by armed groups. Thirdly, It is critical to ensure that all allegations of human rights violations and abuses, including sexual violence, are effectively investigated by law-enforcement and prosecuted in domestic courts. For specific recommendations to the Government of Ukraine, all parties involved in the hostilities in Donetsk and Luhansk regions, including the armed groups of 'Donetsk people's republic' and 'Luhansk people's republic', to the Russian Federation and to international and donor community. Available at: http://www.ohchr.org/Documents/Countries/UA/ReportCRSV_EN.pdf, pp. 34- 38

Background and general context

In pre-conflict Ukraine, sexual and gender-based violence was under-reported due to stigma and a culture of silence; an inadequate legal framework to address SGBV; limited access to justice for victims and capacity of the authorities to investigate, prosecute and held accountable perpetrators; and, broken referral pathways, including limited medical and psychosocial support services for victims and survivors.

These issues have become more evident with the conflict. For example, the gaps in the legislation, particularly absence of clear definitions, along with the low capacity of law-enforcement to document and investigate cases of sexual violence and the limited forensic services, are affecting the possible future prosecution for sexual violence crimes related to the conflict.² Additionally, the interchangeable use of terms (conflict-related sexual violence, gender-based violence and domestic violence) by the Government of Ukraine, media, service providers contributes to confusion and makes it even more complex to determine the scale and scope of sexual violence linked to the conflict.

Ukraine is going through an armed conflict since 2014 that continues with limited progress towards a lasting peace.³ Since the very inception of the conflict, allegations of sexual violence have regularly surfaced in media reports often presenting unverified facts, contributing to deepening the mistrust, divide and animosity among local communities.

In February 2017, Human Rights Monitoring Mission in Ukraine (OHCHR) published a thematic report on conflict-related sexual violence covering the period between 14 March 2014 and 31 January 2017⁴. The report highlighted the trends and patterns of sexual violence committed in the context of the conflict in the east and some cases in the Autonomous Republic of Crimea.

The majority of CRSV cases documented⁵ by OHCHR in Ukraine occurred in the context of the deprivation of liberty on both sides of the contact line. In these cases, both men and women detained on conflict-related charges⁶, were subjected to sexual violence to extract confession or information. Similar findings are contained in the reports released by Kharkiv Human Rights Protection Group (2015) and the Coalition “Justice for Peace in Donbas” (2017).⁷ However, this is only one pattern and more documentation efforts are needed to make visible other contexts in which CRSV might be occurring.

NGO La Strada that provides psycho-social support to victims through inter alia the National Toll-Free Hot Line on Prevention of Domestic Violence, Human Trafficking and Gender Discrimination noted that since the beginning of the conflict the number of calls from territory controlled by armed groups, or from the areas near the contact line have been high. La Strada also noted that sometimes survivors do not articulate whatever happens to them as violence.

² DCAF and La Strada-Ukraine, Criminal Justice Practice and Violence Against Women (Kyiv, 2017). Available at: http://www.dcaf.ch/sites/default/files/publications/documents/Criminal%20justice%20practice%20and%20violence%20against%20women_engl.pdf

³ International armed conflicts, opposing two or more states, non-international armed conflict is between governmental forces and nongovernmental armed groups or between such groups only. International Humanitarian law establishes a distinction between non international armed conflicts in the meaning of common Article 3 of Geneva conventions of 1949 and non-international armed conflict falling within the definition provided in Article 1 of additional protocol 2[1] See <https://www.icrc.org/eng/assets/files/other/opinion-paper-armed-conflict.pdf>

⁴ Office of the United Nations High Commissioner for Human Rights, Conflict-Related Sexual Violence in Ukraine 14 March 2014 to 31 January 2017. Available at: http://www.ohchr.org/Documents/Countries/UA/ReportCRSV_EN.pdf

⁵ For other cases documented in HRMMU, which were not reflected in the thematic report see quarterly reports by OHCHR on the human rights situation in Ukraine, which are available at: http://www.ohchr.org/Documents/Countries/UA/ReportCRSV_EN.pdf

⁶ The parties to the conflict most often detained the members of armed forces of the other side or those who were perceived to be otherwise affiliated to the other party of the conflict.

⁷ Two NGO reports have referred to it. For details see <http://library.khpg.org/files/docs/1451396610.pdf> and <https://reliefweb.int/report/ukraine/unspoken-pain-gender-based-violence-conflict-zone-eastern-ukraine>

The deterioration of the economic situation, particularly in conflict-affected regions, combined with the breakdown of community ties caused by the armed conflict and displacement, have compelled some people to use harmful survival strategies and coping mechanisms (sex for food or money) that may increase the risk of sexual violence and trafficking.

Trafficking in women and girls is exacerbated during and after conflict owing to the breakdown of political, economic and social structures especially due to high levels of violence and increased militarism. Conflict and post-conflict situations can create war-related demand structures for women's sexual, economic exploitation. Conflict-affected regions can be areas of origin, transit and destination about trafficking in women and girls, with the forms of trafficking varying by region, specific economic and political context and State and non-State actors involved. In Ukraine, it has been an ongoing problem and possibilities of its exacerbation exist. Therefore, it is important to include it all stages and in every component of the strategy.

Finally, it is important to underline that conflict exacerbates gender-based violence, in particular against women and girls due to pre-existing discrimination and power imbalances in society. Discrimination based on gender is deeply rooted and ingrained and it is often over looked and accepted as the norm. Also, sexual minorities, especially in a conflict setting are particularly vulnerable. Therefore, to combat conflict related sexual violence, it is essential to recognize gender-based violence and develop strategies to combat discrimination and unequal treatment based on gender. If structural inequalities are not addressed, all attempts to tackle gender-based violence will remain superficial and service driven.

Existing gaps

Since most actors do not really understand what CRSV is, it is difficult to estimate its scale and scope. Until now there is no official data available.

National legislation and legal practice regarding the prosecution of sexual violence is limited and is not fully in line with international standards and practice. For example, rape is defined only as sexual intercourse between male and female. Other forms of sexual violence, such as forced pregnancy, forced sterilization are not criminalized. Sexual violence is rarely considered as torture. Due to a number of gaps in legislation and a lack of capacity, acts of sexual violence are often recorded by law enforcement officers as other crimes such as bodily injury. Therefore, the number of cases registered by law enforcement agencies cannot determine its prevalence. Detailed analysis of legal applicable framework both international and national is attached as annex 3.

Understanding of coercive environment (instead of consent) is not common, which makes it difficult to investigate conflict-related sexual violence⁸. Current legal system adds to the societal views since proving rape is difficult. Overall gender stereotypes strengthen the notion of victim blaming, which deters victim from reporting.

The conflict has significantly affected service provision. There is still a lack of a comprehensive programme to ensure that all survivors receive prompt and adequate access to an effective remedy, including gender sensitive rehabilitation, restitution, compensation, satisfaction and guarantees of no recurrence.

⁸ In international criminal law and jurisprudence applicable to conflict-related sexual violence, the issue of consent is not inferior. Instead it is necessary to prove that the crime took place in a coercive environment, in which such consent is not possible.

Framework and definitions

In 2000, the United Nations Security Council (UNSC) adopted resolution 1325, which calls for the increased participation of women and the incorporation of gender perspectives in all UN peace and security efforts (including participation of women in decision-making and peace processes, gender perspectives in training and peacekeeping and gender mainstreaming in UN reporting systems). Since then, the UN SC has adopted eight more resolutions on women, peace and security, six of which also focus on conflict-related sexual violence.⁹

In 2008, it adopted landmark Resolution 1820 (2008)¹⁰, the first devoted to addressing sexual violence in conflict situations. The subsequent follow-up resolutions 1888 (2009), 1889 (2009), 1960 (2010), 2106 (2013) have focused on preventing and responding to conflict-related sexual violence, and have established the United Nations architecture¹¹ to this end, including the appointment of the special representative on sexual violence in conflict to provide leadership, strengthen existing UN coordination mechanisms and advocate on ending sexual violence against women with governments. Resolution 2106 requests the Secretary-General to report annually to the Security Council on the implementation of this mandate.

Most of the resolutions call on parties to a conflict to take immediate measures to prevent and respond to CRSV, including measures to end impunity for CRSV and to provide timely assistance to survivors. In June 2014, UN Guidance Note of the Secretary General on Reparations for Conflict Related Sexual Violence providing policy and operational guidance to establish effective and transformative reparation programmes for the victims of conflict related sexual violence was published.¹²

Historically,
sexual and gender-based violence
was considered an inevitable by-
product of war — not a crime to be
prosecuted.

After World War II, the charters of the International Military Tribunals at Nuremberg and Tokyo, which were established to prosecute wartime atrocities, did not explicitly recognize sexual and gender-based crimes.

Today,
sexual and gender-based
crimes are considered especially
grave violations of international
law.

They can be categorized as war crimes, crimes against humanity, or acts of genocide depending on how the crimes are committed and in what context. The same crime can also fall into multiple categories.

⁹ SCR 1325 (2000), 1820 (2008), 1888 (2009), 1889 (2009), 1960 (2010), 2106 (2013), 2122 (2013), 2242 (2015), 2331 (2016).

¹⁰ S/Res/1820 (2008). Available at: <http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/CAC%20S%20RES%201820.pdf>

¹¹ Other mechanisms include the establishment of a Team of Experts on the Rule of Law and Sexual Violence in Conflict, who works with the UN on the ground and assist national authorities to strengthen the rule of law; the identification and deployment of women's protection advisers (WPAs); and the establishment of the monitoring, analysis and reporting mechanisms).

¹² Guidance Note of the Secretary-General. Reparations for Conflict-Related Sexual Violence (June 2014). Available at: <http://www.ohchr.org/Documents/Press/GuidanceNoteReparationsJune-2014.pdf>

Definitions

CRSV refers to incidents or patterns of rape, sexual slavery, forced prostitution, forced pregnancy, enforced sterilization and other forms of sexual violence of comparable gravity (forced nudity, forced marriage, forced conjugation, forced abortion, indecent assault, trafficking, inappropriate medical examinations) against women, men, girls and boys. Such incidents or patterns occur in conflict or post-conflict settings or other situations of concern (e.g., political strife). They may have a direct or indirect nexus with the conflict or political strife itself, i.e. a temporal, geographical or causal link. The link with the conflict may be evident in the profile and motivations of the perpetrator(s), the profile of the victim(s), the climate of impunity/weakened state capacity, cross-border dimensions or the fact that it violates the terms of a ceasefire agreement. The term also encompasses trafficking in persons when committed in situations of conflict for the purpose of sexual violence/exploitation.

Victims of CSRV include those who, individually or collectively, were subjected to such violence but also their family members, such as children, parents or partners, children born as a result of a pregnancy from rape, and other people who depend on the victim.¹³

Sexual violence is a serious human rights violation and abuse that may involve international crimes, particularly when committed in conflict. It is a specific subset of broader term of sexual and other forms of gender-based violence¹⁴.



¹³ Ibid

¹⁴ The term «sexual and other forms of gender-based violence» comprises not only rape and attempted rape, but also sexual abuse, sexual exploitation, forced early marriage, domestic violence, marital rape, trafficking and female genital mutilation.

Purpose, scope, objectives and development process of the Strategy

Acting upon recommendations of the OHCHR thematic report on CRSV, the Government of Ukraine expressed interest in prevention and addressing CRSV.

To support the Government of Ukraine, UN Women and HRMMU commissioned the development of the strategy based on the interest of Government of Ukraine.

1. Purpose and scope of the Strategy

The present strategy provides guidance and recommendations on how governmental institutions of Ukraine, civil society organizations, international organizations and UN system can join efforts to effectively prevent and respond to CRSV. The document has a narrative part, which sets out the general context, mandate and scope of the strategy, implementation mechanism, coordination mechanism and tools. Second part of the document is a roadmap matrix that suggests specific objectives, actions for specific actors to carry out to accomplish those objectives, leading to a more targeted approach. The strategy is currently being developed at the initiative of government of Ukraine, applicable to whole of Ukraine.¹⁵ All incidents of CRSV on Ukrainian territory within the scope of the strategy, include temporarily occupied territories by armed groups as self-proclaimed 'Donetsk people's republic' and self-proclaimed 'Luhansk people's republic' as well as Autonomous Republic of Crimea, which is currently occupied by Russian Federation.

It is proposed that the strategy or relevant aspects of the strategy are integrated in the National Action Plan on the Implementation of the UNSCR 1325 in Ukraine as it stems from UN Security Council agenda on Women, Peace and Security and involves a number of actors who are already engaged in the implementation of NAP 1325. The coming mid-term evaluation of the NAP 1325 may represent an entry point for this integration.

2. Objectives of the Strategy

- Provide strategic, technical and policy advice to support institutions of the Government of Ukraine to understand and integrate better measures to prevent CSRV within existing mechanisms as well as through new mechanisms if required.
- Systematic monitoring, documentation and investigation of CRSV, collecting evidence which will pave the way for transitional justice processes, including access to justice and reparations for survivors.
- Enhanced capacity of service providers, effective referral mechanisms and strengthened coordination system on CSRV for improved response.
- Increased awareness among communities and vulnerable groups about CRSV, available mechanisms for assistance and reporting.

¹⁵ A/Res/71/205 (2016). Available at: <https://undocs.org/A/RES/71/205>

3. Process of Strategy Development

The strategy has been developed through a consultative process with very broad range of actors from the government, NGO's and international organizations in Kyiv, Kramatorsk, and Sieverodonetsk.

These consultations were structured in a manner to learn about the experiences of the actors and getting their inputs on the strategy. Upon completion of initial consultations, a workshop of key interlocutors was organized on 10 November 2017 in Kyiv in collaboration with Ministry of Justice to present the strategy and get their feedback before finalization.

Over sixty participants attended the workshop from relevant government ministries, educational institutions for prosecutors, judges and Ministry of Defence. Content of the strategy was presented and participants worked in working groups to discuss the pillars of the strategy and gave their inputs.

The strategy is accompanied by a roadmap with more specific actions, for example, the names of potential actors responsible to carry out the recommendations. The strategy is perceived as a multi-faceted, living document, which will influence several interconnected plans and policies.

Description of the Strategy

1. Four components of the Strategy

Through consultation process, needs and gaps were identified in prevention and response to conflict related sexual violence. Lack of knowledge and understanding emerged as one of the key gaps. Prevention of CRSV and protection from CRSV are key to any conflict context. They were recognized as the critical areas in Ukraine too. Most interlocutors identified that it is not recognized and is under reported because most victims do not think they can get justice.

Based on the priorities identified during the consultation process, four components have been identified for the strategy.

1. Understanding CRSV and gathering information
2. Prevention
3. Protection
4. Access to Justice

Component 1: Understanding CRSV and information gathering.

There is little understanding currently on conflict related sexual violence among specialists as well as the public in general. Most people are not aware of what amounts to CRSV and why it is considered a separate category. Most people use terms like gender-based violence, domestic violence and conflict related sexual violence interchangeably including service providers, law enforcement agencies, NGO's and international organizations. Therefore, it is not surprising that there is no reporting of CRSV. Even if it is reported, it is hardly recognized and documented as CRSV.

To tackle this problem, the following action is suggested:

- Proposed Strategy should be presented and discussed in a broad circle of stakeholders - government authorities NGO's and international organizations. It would be also beneficial for the Government to endorse the Strategy, ideally in the frame of existing mechanism, e.g. National Action Plan for the Implementation of the UNSCR 1325. Demonstrating its commitment, the government will allocate some resources for this work and seek support from international organizations and donors.
- Standard Operating Procedure for identification, engagement and documentation. Development of standard operating procedure for engagement with survivor of CRSV should be initiated. The purpose of this should be to empower and encourage survivors to report such violation without discrimination, stigmatization and secondary victimization,

without being forced to cooperate with law enforcement agencies.¹⁶ This will be essential to encourage victims of CRSV to report in confidential manner without the fear that reporting sexual violence will mean obligatory collaboration with law enforcement agencies. These discussions will lead to some policy guidelines for all relevant actors to be able to adapt their role and services to make them more conducive to reporting of CRSV. It is recommended that standard operating procedures be based on already existing documents. The International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, the Inter-Agency Standing Committee (IASC) Guidelines for Integrating Gender-Based Violence Interventions in Humanitarian Action (2015)¹⁷; and the World Health Organization (WHO) (2007) are to be consulted.¹⁸

- Material production. It is suggested that after endorsement of the strategy, a multi-disciplinary working group is formed to work on the material for education and information campaign and material developed by the working group should form the basis of all the educational programmes, trainings of different target groups and information campaigns. This material should be based on existing international documents mentioned above, which are to be adapted to Ukraine's context. This will help in keeping the precise understanding of the subject matter. It is important to understand in the process of identifying action, gathering information and developing materials that CRSV is a specific form of GBV which has distinct implications for the survivor psychologically, physically and legally, therefore needs to be recognized and dealt with in comprehensive manner. Sexual violence is also prohibited under IHL.
- Multi-sectoral education programmes. Education programmes should be designed to train relevant actors and CRSV education should become part of ongoing training and education programmes of military, police, border guards, national guards, prosecutors and judges through integration in their curriculum.
- Undertaking research activities to generate for information on CRSV. It is recommended that government, civil society partners and international organizations undertake research to understand CRSV better. It is also important to highlight that studying the linkages with trafficking are of crucial importance given high prevalence of trafficking in the region.

Component 2: Prevention

Prevention of CRSV is closely linked to two aspects in Ukraine. One is absence of knowledge and information regarding what is CRSV and what potential harm it can cause to the survivor, second is lack of faith regarding getting justice through existing mechanisms. Prejudices and stereotypical notions regarding victims of sexual violence, which speculate about their 'morality', discourages them to report this crime as they fear being blamed for it. Many do not understand it and blame themselves for it. Potential perpetrators are not aware of the seriousness of the crime and

¹⁶ Sara Ferro Ribeiro and Danaé van der Straten Ponthoz on behalf of the UK Foreign & Commonwealth Office. International Protocol on Documentation and Investigation of Sexual Violence in Conflict. 2nd edition: March 2017. P.85, available at: https://iici.global/0.5/wp-content/uploads/2017/08/International_Protocol_2017_2nd_Edition.pdf

¹⁷ Inter-Agency Standing Committee. 2015. Guidelines for Integrating Gender-Based Violence Interventions in Humanitarian Action: Reducing risk, promoting resilience and aiding recovery. Available at https://gbvguidelines.org/wp/wp-content/uploads/2015/09/2015-IASC-Gender-based-Violence-Guidelines_lo-res.pdf

¹⁸ World Health Organization. Ethical and Safety Recommendations for Researching, Documenting and Monitoring Sexual Violence in Emergencies (2007, Switzerland). Available at: http://www.who.int/gender/documents/OMS_Ethics&Safety10Aug07.pdf



somewhere have a sense of privilege that they will not be punished for it. General frustration with justice institutions prevails which adds to the ongoing sense of impunity.

Heavy military presence on combat duties in civilian areas creates an environment susceptible for CRSV. Dire economic condition of local population combined with collapse of social structures and lack of options makes very easy for young women and girls finding themselves in situation of sex work. This may seem voluntary on the surface but a close review of situation considering extreme vulnerabilities and dependence of local populations and heavy imbalance of power towards armed personnel may highlight presence of potential coercive elements as identified in international law. Therefore, the problem is at two levels, acknowledgement and awareness. Once the problem of CRSV is acknowledged, the next step is to dissemination of this information as everywhere as possible.

Given the situation, following steps are recommended:

- Inclusion of “sexual violence” in code of conduct of all security agencies and armed forces. Sexual violence should be included as prohibited conduct in the code of conduct of all security agencies and armed forces. With clear definition, the code of conduct will inform what such conduct amounts to and state the prohibition for all service men and women. I-Strategic Command Directive 040-001 of NATO, appropriate conduct is described with the purpose of integrating UNSCR 1325 and other relevant resolutions. With regards to sexual conduct it suggests “Sexual relationships when based on inherently unequal

power dynamics are strongly discouraged and may not only undermine the credibility and integrity of the work of the Alliance but also be prohibited under national regulations or local law”¹⁹. It will be of significant importance to consider NATO standards while reviewing code of conduct.

- Clear administrative instructions on CRSV. All agencies in security and defence sector should have clear administrative orders specifying what may amount to CRSV, what procedure will be followed for investigation and upon being found guilty what administrative punishment may follow. It is important to understand that currently Criminal Code of Ukraine does not criminalise all types of conflict related sexual violence. Even definition of rape in national legislation is not in line with international standards and practice. Only referring the case for criminal investigation may not lead to a conclusion. Therefore, until the law is amended to adhere to international standards, it will be important to set administrative measures in security forces to prevent and address CRSV. As clear from the term itself, the measures will be administrative in nature and so will be the punishment. Punishment may amount to dismissal from service, suspension from service, fine, no promotion or removal from position of responsibility depending on the seriousness of the offence. This should not be linked to criminal trial, which may or may not lead to conviction.
- Standard Operating Procedure (SOP) for implementation of administrative instructions. For implementation of above-mentioned administrative instructions, clear SOP should be developed. This will outline how the investigation will be conducted, the threshold of evidence, confidentiality of the process, link between the gravity of offence and suggested measure and protection of complainant.
- Revision of curriculum of security sector, social protection sector and Law enforcement. Ukraine has dedicated institutions to train police, military, national guard, border guard, prosecutors, judges, social workers and health personnel. It is important that all these education institutions integrate CRSV in a holistic manner. Therefore, it is recommended that the curriculum be reviewed in thorough manner for including prevention, protection and response aspects.
- Educating personnel in security forces about CRSV and its implications. Sufficient education will be provided to security personnel to ensure that they are well aware of individual responsibility as well as command responsibility in relation to CRSV. It is part of command responsibility to not only put a mechanism in place but to ensure that all personnel are aware of the mechanism. It is extremely important to educate security personnel on consent and how it is viewed in international law between civilians and military during conflict. NATO standards of education in relation to gender and UNSCR 1325 will provide required standards and methodology.
- Information campaign on CRSV. An important component of prevention is adequate information for all including those who may become potential victims as well as potential perpetrators. An information campaign on CRSV should be launched particularly in the conflict area and among IDP communities who are moving from these areas to other areas. From experience in other places, it has been established that those providing health

¹⁹ Integrating UNSCR1325 and gender perspective in to NATO command structure, BI-STRATEGIC COMMAND DIRECTIVE 040-001 (PUBLIC VERSION), October 17, 2017

care and psychological support are first point of contact for survivors, it is essential that all civilian populations in the conflict area as well as IDP's are aware of these contacts. Population affected by the conflict should be aware of actions that may amount to CRSV. Information campaign will be designed in a manner that it reaches all sections of the society. Mainstreaming the campaign through social media, television and print media will be important. Celebrities, Ukrainian or foreign, promoting CRSV will help dissociating stigma from reporting. Partnerships with business houses can be considered for expanding the scope of campaign. It will be useful to dedicate sixteen days of activism campaign in 2018 to CRSV. It will provide an opportunity to highlight the issue across different sectors and will open possibilities for learning. District level media should also be used to information campaign.

- Livelihood programmes for the communities affected by conflict. Targeted livelihood programmes should be started for the communities that have been pushed to poverty and unemployment due to the conflict including those who have moved from the other side of the contact line. A number of coercive sexual contacts can take place when the civilian population's economic situation is desperate. As a long-term intervention, it is important to start livelihood programmes for the communities as a preventive measure to CRSV.
- Adaptation of early warning indicators to Ukraine's context and dissemination. UN Action, in collaboration with UN Women, OHCHR the Office of the SRSG-SVC and the Office of the Special Advisor on the Prevention of Genocide has developed Early Warning Early Response indicators²⁰. These indicators can be adapted to Ukrainian context and widely disseminated among service providers, civil military units and local administration in affected areas to be able to use them.
- Capacity building of NGO's and international organizations. NGO's play an important role in educating communities. Therefore, it is important that UN agencies, and other thematic expert groups take this responsibility to train NGOs, international organizations and social workers to ensure prevention.

Component 3: Protection and response

In the absence of recognition of the problem, there are hardly any specific protection and response mechanisms in place for CRSV and its survivors. Most services available are developed for domestic violence survivors. The services are few for the broad categories that they cover. There are hardly any services available on the other side of the contact line and little information is available regarding the situation of overall gender-based violence. The problem is at two levels, first one is related services provided for gender-based violence are not sufficient and secondly, those that exist do not sufficiently factor in sexual violence. Available services operate on the assumption that all survivors are women and it is very difficult for men to approach these services. Referral pathways are not fully in place.

In these situations, following actions are recommended:

²⁰ Matrix: Early-Warning Indicators of Conflict-Related Sexual Violence. Available at: https://peacemaker.un.org/sites/peacemaker.un.org/files/MatrixEarlyWarningIndicatorsCSV_UNAction2011.pdf



- Formal acknowledgement of the problem. It is important that the government of Ukraine adopts through the process of colloquium, agreed definitions and instructions, CRSV as a specific category of violation, committed on either side of contact line. Referral pathways should be established in the conflict areas and where IDP populations are located. It should be made possible for survivors and victims to access assistance without fear and stigmatization.
- Medical assistance. Medical assistance should be made available for all victims without linking it to reporting. As explained earlier, fear of mandatory reporting may discourage victims from reporting it. The victim should also have the choice to either approach a governmental service provider or NGO; confidential medical assistance must be made available to all survivors. WHO's clinical management guidelines for rape survivors highlight that the survivor has a right to privacy and self-determination and no measures should be taken without the consent of the survivor.²¹

²¹ World Health Organization/United Nations High Commissioner for Refugees. Clinical management of rape survivors-Developing protocols for use with refugees and IDP's. Revised edition, 2004. Available at: <https://www.unhcr.org/403a0b7f4.pdf>

- Psychological assistance. It is crucial for supporting survivors of CRSV. It should be made available in confidential manner through variety of service providers, including government and NGO's. These services should be sensitive enough to receive both male and female clients. Psychological assistance that is provided to torture victims and those who have been detained should be sensitive to the possibility of sexual abuse.
- Legal assistance. It should be made available to survivors of CRSV free of cost through government's free legal aid system. Such survivors should be included in the list of those who are eligible free legal assistance by the government.
- Civilian military contact. There are many efforts being made to build relationship of trust between military and civilians, which is commendable. Along with these efforts, the norms under IHL should be strictly observed. It should be ensured that mandatory distance from schools and hospitals is observed and armed personnel should not enter either school or hospital in any condition.
- Protecting youth and children through education. It is suggested that Ministry of education improves sex education for teenaged children and young adults and develops creative and non-judgmental curriculum. They should be able to learn the risks as well as measures to protect themselves in case of sexual contacts. It is important that the education helps children and young adults understand consent and to be able to recognize abuse. There should also be possibility of referral for teenaged children for psychological support.
- Rehabilitation programmes for survivors. It is important to have a comprehensive programme in pace for survivors of CRSV irrespective of legal action. This programme should include short-term support like medical assistance, psychological assistance, legal assistance, shelter and support in employment and reintegration in society.
- Strengthening of existing hotlines and act on patterns. Hotlines are being used in Ukraine as a method of providing for assistance to victims of different forms of violence, abuse and threats including domestic violence, violence against women, trafficking and sometimes also for intra departmental abuse of power and other types of harassment. It is extremely important to sensitize the providers of these hotline services whether they belong to government or NGO's.
- Coordination. This is a key to effective protection strategies and to utilize resources in best possible manner. Coordination mechanisms are essential at national as well as oblast level to ensure effective implementation. As mentioned above, such mechanism goals are integral to formal endorsement of the strategy.
- Effective referral mechanism. Effective referral mechanism is a key to adequate response to any form of gender-based violence which is confidential, non-judgmental and easily available to survivors of such violence. Such referral pathways in traditional humanitarian emergencies are under GBV sub cluster of protection cluster. GBV sub-clusters are present in conflict-affected areas however they are targeted at women only, while men can also be a victim of sexual violence in conflict. Using existing mechanisms is a proficient way to developing response without having to set in place additional mechanism. It is recommended that referral mechanism for CRSV be developed within the framework of GBV sub cluster or any other existing referral mechanism.

Component 4: Access to justice for victims and survivors



At present, since there is no acknowledgement of CRSV as a problem and it is only understood as rape, there is hardly any provision for seeking justice and accountability. Existing legal system is not suited to prosecute the different types of CRSV and is not adapted to the situation of conflict. Reporting gender-based violence of any type is considered a taboo and legal system does not support victims in a manner to enable them to report. General trust in judiciary is low and not many people access the justice system for their problems. Problems of attitude also restrict law enforcement agencies from taking forward cases of gender-based violence. The system lacks technical capacities and requires better resources to be able to meet the workload it has. It is not perceived free from corruption by the ordinary people.

As described in the section earlier on legal scope, the laws are not equipped to deal with the situation of conflict given the limited scope of the definition and evidentiary requirements. Medical evidence is considered essential for prosecution of rape, which makes it impossible for victims to prosecute in situation of conflict, displacement and deprivation of liberty. Understanding of justice and accountability is limited to prosecution only.

Given the situation, the following action is suggested:

- **Documentation of cases of CRSV.** It is extremely important that CRSV is addressed and documented in a comprehensive manner with as much detail as possible, using the same methodology. As discussed earlier, it must be based on survivor's informed consent. It is important to note here that it is NOT necessary to build a database of information but encourage reporting and allowing survivors to choose the actor they feel most comfortable with to report. More than centralization of information, it is important to follow common understanding of the concept and use the same methodology.
- **Request for voluntary submission of cases for legal action.** As suggested earlier that it is not possible to prosecute various types of CRSV in current circumstances however information will be gathered by several entities. Once there is amendment in the law and necessary measures are in place, a public announcement will be made asking those who wish to pursue legal recourse to come forward. This will be voluntary process. The information will be disseminated at large scale and a confidential system will be set up for survivors to approach.
- **Reparations programme for victims and communities.** In the process of implementation of the strategy, it is important to discuss and design reparation programmes for victims and communities.

- Based on principles outlined in SG's guidance note on reparations, a discussion should be initiated to design reparations programmes for victims of CRSV. It may be linked to broader process of transitional justice and other forms of violations suffered during conflict or otherwise. Reparations programmes are often initiated through truth commissions which go through detailed discussions and gather information in the process of truth seeking (South Africa, Guatemala, Peru) however in many instances this has not been the responsibility of truth commissions (Argentina, Brazil and Germany).
- It will be beneficial for Ukraine to hold consultations with affected communities, civil society and experts before deciding on the format and reach the best possible solution for the Ukrainian context. It is important to note that it is recommended that reparation programmes be initiated as soon as possible to support survivors before the harm becomes irreparable. End of the conflict or peace agreements are not a pre-condition for reparations programmes. It is recommended that the Government of Ukraine initiate the programme for survivors of CRSV along with survivors of other forms of violations. Prosecution of the crime is also not essential for reparations and survivor's will must be respected in this context. It is important for Ukraine to consider a comprehensive programme that clearly defines the process of identification and verification of beneficiaries of such programmes.
- **Amendment of national legislation in line with international law.** As mentioned above, Ukraine's legislation is not compatible to international law and is not equipped to investigate sexual violence effectively, especially in conflict. It is essential that existing legislation be amended to ensure that cases of CRSV can be prosecuted without unrealistic expectations in terms of evidence and definition. It is also an obligation under Ukraine's international commitments. Expediting the process will facilitate the quest for justice for victims of sexual violence. OHCHR report provides specific recommendations for articles of criminal code and evidence law that require amendment to ensure effective prosecution of sexual violence, including in conflict. Law reform process will benefit from referring to these recommendations. It is important to define rape as per international definition, include the element of coercion and encourage courts to use other forms of evidence like victim and witness testimonies, physical evidence from the site of crime and documentary evidence than only relying on immune - biological test and forensic examination of victim's body²².
- **Building capacity of law enforcement agencies to work on CRSV.** From amendment in the law to change in attitudes of law enforcement machinery is a process and experience shows that it takes significant amount of time to change the biases and stereotypes that hamper the access for survivors. It is useful that the work of capacity development is started and specific attention is paid changing stereotypes. Instructions should be issued to all law enforcement agencies on how to investigate CRSV, ill treatment and torture based on Istanbul protocol and protocol on documentation and investigation of CRSV²³.
- **Prosecution of CRSV.** With the specific focus and CRSV, upon amendment in the legislation, it should be discussed whether there is need for specialized courts to prosecute CRSV or it can be done within the existing court system. Gender sensitive measures should be included in the proceedings like testifying through video, presence of a trusted person during cross-examination.

²² Some of these recommendations were considered during when amendments were introduced to the Criminal Code in December 2017

²³ The Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, commonly known as the Istanbul Protocol, is the first set of international guidelines for documentation of torture and its consequences. It became an official United Nations document in 1999. For details see: <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>. For the International Protocol on the Documentation and Investigation of Sexual Violence in conflict see: http://www.president-ksgov.net/repository/docs/PSVI_protocol_web_3_.pdf

Survivors have a right to justice under international law

The path to justice can take many forms:

Criminal Prosecutions

National, regional and international courts can hold individuals criminally responsible for their actions, and sentence them to punishment.

Case Example

In 2016, a Guatemalan court convicted two former military officers of sexual and gender-based crimes against humanity against indigenous Q'eqchi' women. This was the first prosecution of sexual slavery in a national court using international criminal law.

Truth Comissions

Truth commissions report on past human rights violations, often by taking statements and holding public hearings with both victims and perpetrators of atrocities.

Case Example

In 2015, a truth commission in Canada reported on the country's residential school system for indigenous children, which separated children from their families to destroy indigenous cultures. The report linked present-day violence against indigenous women to risk factors including racism and poverty — the legacy of the residential schools.

Reparations

Reparations include compensation, restitution of property, physical and psychological rehabilitation for victims, and reforms to ensure violations do not recur.

Case Example

Colombia's Victims and Land Restitution Law provides assistance and reparations to victims of the country's decades-long conflict. The 2011 law includes special measures to protect women's rights and gives female heads of household priority access to land restitution, credit, education, training and subsidies.



2. Timeframe for the strategy implementation

Given the objectives, which are a combination of short term and long-term goals, the strategy looks at proposed action in three phases and with four key components for a period of seven year sustained and systematic action. This process will enable comprehensive and meaningful action to prevent and address CRSV.

The strategy is in favour of sticking with the following timeline, divided in three phases:

- **Phase one: Preparation and paving the way**

First phase will focus on increased understanding of the issue across sectors and identification of appropriate actors to prevent and respond to CRSV. During this period, it is expected that different sectors will be able to discuss, understand the issue, identify actors within every sector, and define clear roles and responsibilities. During this phase mapping of resources that are available should also take place to capitalize on all the available resources.

- **Phase two: Implementation and action, 3 years**

During this phase, it is expected that both government and civil society will be able to integrate CRSV in their response systems. Security sector will put in place administrative action against those responsible for CRSV. Preventive measures will focus on raising awareness of all sections of society especially in the conflict zone.

- **Phase three: Consolidation, 2 Years**

This phase will build upon the last two phases and it is envisaged that Ukraine will have sufficient judicial mechanisms to ensure accountability for past crimes of CRSV. This phase will design and implement comprehensive reparations programmes for survivors of CRSV.

It is important to understand that the phases are not strictly going to focus on one specific component of the strategy, but all components are interconnected and working on one is bound to feed to and link to the other.

Annex 1. Roadmap

| Pillar CRSV | Activity | NAP 1325 pillar |
|--------------------|--|--|
| Understanding CRSV | Adoption of definition and acknowledging CRSV | Peace keeping & peace protecting activities |
| | Standard operating procedure on identification and documentation of CRSV | Protection of women and girls affected by conflict |
| | Informational material production | Prevention of conflict and violence |
| | Multi sector education and training programme | Prevention of conflict and violence |
| | Undertaking research activities | Prevention of conflict and violence |
| Prevention | Administrative instructions for armed forces and security agencies on CRSV | Prevention of conflict and violence |
| | SOP for administrative instruction | Prevention of conflict and violence |
| | Inclusion of CRSV in code of conduct of security sector | Prevention of conflict and violence |
| | Revision of curriculum to include CRSV | Prevention of conflict and violence |
| | Education of security personnel on CRSV | Prevention of conflict and violence |
| | Information campaign | Prevention of conflict and violence |
| | Capacity building of NGO's and international organizations | Prevention of conflict and violence |
| | Adaptation of early warning indicators | Prevention of conflict and violence |
| | Livelihood programmes for communities near contact line and IDP's | Prevention of conflict and violence |

| | | |
|---------------------------------|--|--|
| Protection and response | Effective referral mechanism | Protection of women and girls affected by conflict** |
| | Medical assistance | Protection of women and girls affected by conflict |
| | Psychological assistance | Protection of women and girls affected by conflict |
| | Legal assistance | Protection of women and girls affected by conflict |
| | Civil military coordination | Protection of women and girls affected by conflict |
| | Strengthening existing hotlines and take action on emerging patterns | Protection of women and girls affected by conflict |
| | Protecting youth and children through proper sex education | Protection of women and girls affected by conflict |
| | Rehabilitation programmes for survivors | Protection of women and girls affected by conflict |
| | Coordination mechanism | Protection of women and girls affected by conflict |
| Access to Justice for survivors | Documentation of cases | Protection of women and girls affected by conflict |
| | Legal assistance to victims | Protection of women and girls affected by conflict |
| | Open process for voluntary submission of cases | Protection of women and girls affected by conflict |
| | Reparations programme | Peacekeeping and peace building activities |
| | Amendment to national legislation | Prevention of conflict and violence/ protection |
| | Building capacity of law enforcement and judges | Prevention of conflict and violence |
| | Prosecution of CRSV | Protection of women and girls affected by conflict |

Stakeholders for the Strategy implementation:

- Ministry of Interior State Border Guard Service
- National Guard
- Ministry of Defence
- General Staff of Ukrainian Armed Forces
- Ministry of Social Policy
- Ministry of Justice
- Coordination Centre for Legal Aid Provision
- Ministry of Healthcare
- Ministry of Temporarily Occupied Territories and Internally Displaced Persons
- Ministry of Education and Science
- Ministry of Foreign Affairs
- Ministry of Youth and Sport
- Ministry of Information Policy
- Security Service of Ukraine
- Prosecutor General's Office
- National Academy of Prosecutors
- Judiciary of Ukraine
- Verkhovna Rada of Ukraine
- Ukrainian Parliament Commissioner for Human Rights
- Commissioner of the President for Children's Rights
- State Judicial Administration
- National School of Judges
- Regional State Administrations
- Local Authorities
- Civil society organizations

** Since there are both men and women affected, a revision of language using gender-based violence may be required.

Annex 2. Relevant documents:

This is a list of documents that were widely consulted during preparation of the strategy and will be useful for its implementation.

1. Applicable Legal Framework-national and international.
2. IASC (2005) Guidelines for Gender-Based Violence Intervention in Humanitarian Settings.
3. Focusing on the Prevention of and Response to Sexual Violence in Emergencies, the World Health Organization – WHO (2007).
4. Ethical and Safety Recommendations for Researching, Documenting and Monitoring Sexual Violence in Emergencies.
5. International Protocols on the Documentation and Investigation of Sexual Violence in Conflict–two editions.
6. UN Action Early-warning indicators of conflict related sexual violence prepared by UN action against sexual violence in armed conflict.
7. Ministry of Defence order No 164.
8. Concluding observations on the eighth periodic report of Ukraine 3 March 2017-Committee on Elimination of all forms of discrimination against Women.
9. National Action Plan for implementation of UN Security Council Resolution 1325 of Ukraine.
10. Sectoral Action plan on UNSCR1325 - Ministry of Defence.
11. Sectoral Action Plan on UNSCR 1325 - Ministry of Interior.

Annex 3. Detailed analysis of legal applicable international and national legal framework. (Extract from OHCHR report²⁴)

Sexual and gender-based violence is a pervasive human rights violation

While anyone can experience violence, unequal power relationships and entrenched gender inequalities have a disparate impact on women and girls.

This violence is especially prevalent in times of insecurity or conflict and under regimes with no recourse to justice.



2 billion
People
in **35**

Countries
and territories are
affected by fragility,
conflict and violence.

Source: World Bank

²⁴ Office of the United Nations High Commissioner for Human Rights, Conflict-Related Sexual Violence in Ukraine 14 March 2014 to 31 January 2017. Available at: http://www.ohchr.org/Documents/Countries/UA/ReportCRSV_EN.pdf

Under international law, acts of sexual violence incur State responsibility, the responsibility of the parties to the conflict, as well as individual criminal liability.²⁵ Under customary international law,²⁶ rape and other forms of sexual violence are prohibited in both international and non-international armed conflicts.²⁷ Article 3, common to the four Geneva Conventions prohibits “violence to life and person”, including cruel treatment and torture and “outrages upon personal dignity”, which includes sexual violence.²⁸

The Rome Statute of the International Criminal Court is the first international instrument to expressly define various forms of sexual violence as underlying acts of both crimes against humanity and war crimes committed during international and non-international armed conflicts. These acts include rape²⁹, sexual slavery³⁰, enforced prostitution³¹, forced pregnancy³², enforced sterilization³³, and other forms of sexual violence of comparable gravity³⁴. In these cases, a perpetrator commits an act of a sexual nature against a person, or causes another to engage in such an act, 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, or by taking advantage of a coercive environment or a person’s incapacity to give genuine consent.³⁵ An act of sexual nature is not limited to physical violence, and may even not involve any physical contact, for example forced nudity or forcing to observe an act of sexual violence.³⁶

In accordance with international jurisprudence, sexual and gender-based crimes may constitute acts of genocide or other acts of crimes against humanity or war crimes, such as torture, mutilation, persecution, inhuman acts, and outrages upon personal dignity.³⁷

For committing the crimes within the jurisdiction of the International Criminal Court, the Rome Statute envisages various forms of responsibility, including that of commanders and superiors.³⁸ Under article 25, a person shall

²⁵ International Criminal Court (ICC) Statute, Article 25(3) (Individual criminal responsibility) and Article 28 (Responsibility of commanders and other superiors).

²⁶ Henckaerts, Doswald-Beck, Customary International Law, Volume II Rules 93, 94, 134, and 156.

²⁷ The prohibition of “outrages upon personal dignity”, “violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture” is recognized in Additional Protocols I and II, as well as Article 3 of the Fourth Geneva Convention, as a fundamental guarantee for civilians and persons hors de combat. Article 75 of Additional Protocol I specifies that this prohibition covers in particular “humiliating and degrading treatment, enforced prostitution and any form of indecent assault”, while article 4 of Additional Protocol II specifically adds “rape” to this list. Article 27 of the Fourth Geneva Convention states that all protected persons “shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity. Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault”.

²⁸ Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Geneva, 12 August 1949. Commentary of 2016 Article 3: Conflicts not of an international character para.696. For details, see: <https://ihl.databases.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?action=openDocument&documentId=4825657B0C7E6BF0C12563CD002D6B0B>.

²⁹ Rome Statute, Article 8(2)(e)(vi) war crime of rape, whose elements are defined as: (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.

³⁰ Rome Statute, Article 7(1)(g)-2.

³¹ Rome Statute, Article 7(1)(g)-3.

³² Rome Statute, Article 7(1)(g)-4.

³³ Rome Statute, Article 7(1)(g)-5.

³⁴ Rome Statute, Article 7(1)(g)-6 States crime against humanity of sexual violence that includes. 1. The 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 such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person’s or persons’ incapacity to give genuine consent. 2. Such conduct was of gravity comparable to the other offences in article 7, paragraph 1(g), of the Statute. 3. The perpetrator was aware of the factual circumstances that established the gravity of the conduct.

³⁵ Rule 70 of the Rules of Procedure and Evidence of the ICC outlines the principles of evidence in cases of sexual violence. Consent cannot be inferred due to any words or conduct of a victim where force, threat of force or coercion, or taking advantage of a coercive environment, undermined the victim’s ability to give voluntary and genuine consent. Similarly, consent cannot be inferred by reason of any words or conduct of a victim where the victim was incapable of giving genuine consent, or by reason of silence or lack of resistance. This includes, for example, where the victim engages in an act of a sexual nature as a result of fear of violence, duress, detention, psychological oppression or abuse of power.

³⁶ International Criminal Court. Policy Paper in Sexual and Gender-Based Crimes (June 2014). Available at: <https://www.icc-cpi.int/iccdocs/otp/OTP-Policy-Paper-on-Sexual-and-Gender-Based-Crimes--June-2014.pdf>

³⁷ See articles 7(1)(f), 7(1)(h), 7(1)(k), 8(2)(a)(ii), 8(2)(b)(x), 8(2)(b)(xxi), 8(2)(c)(i), and 8(2)(c)(ii) of the Rome Statute.

³⁸ Article 25 (3) of the Rome Statute and Article 28 of the Rome Statute

be criminally responsible if a person commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible, orders, solicits or induces the commission of such a crime which in fact occurs or is attempted; aids, abets or otherwise assists or contributes in a commission. Under article 28, a military commander or person effectively acting as a military commander, shall be criminally responsible for crimes where they either knew or should have known that the forces were committing or about to commit such crimes; and the commander 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. This applies to all parties to the conflict in Ukraine.

Ukraine is party to a number of international human rights instruments, which explicitly prohibit sexual violence, namely International Covenant on Civil and Political rights (Article 7,9,10) and Convention on Rights of the Child. General Recommendation 30 by the Committee on All Forms of Discrimination against Women explicitly highlights the obligation of the state to prevent, investigate and punish sexual violence. Apart from these Ukraine is also party to several conventions of Council of Europe, which are relevant. They are Council of Europe Convention for Protection of Human Rights and Fundamental Freedoms (1950), ratified in 1997 Council of Europe Convention on Action Against Trafficking in Human Beings (CET197) ratified in 2010, Council of Europe Convention on Combating Sexual Violence and Sexual Exploitation of Children (CET201) ratified in 2012 and Council of Europe Convention on Prevention and Combating Violence Against Women and Domestic Violence (CET210) signed by Ukraine in 2011 but not ratified yet.³⁹

Ukraine signed the Rome Statute of the International Criminal Court in 2000, but has not yet ratified it. In 2001, Ukraine's Constitutional Court found the Statute incompatible with its Constitution.⁴⁰ On 9 April 2014, however, the Government made a declaration recognizing the jurisdiction of the International Criminal Court over alleged crimes committed on its territory from 21 November 2013 to 22 February 2014 (the Maidan events). On 8 September 2015, the Government accepted the jurisdiction of the Court with respect to the alleged crimes committed on its territory since 20 February 2014. The related declarations were submitted under article 12(3) of the Rome Statute that enables a State, not party to the Statute, to accept and exercise of jurisdiction of the Court. Following the declarations, the Office of the Prosecutor of the International Criminal Court is conducting a preliminary examination covering all crimes committed after 20 February 2014.⁴¹

National laws and legal practice for prosecution of sexual violence is limited in Ukraine and not in accordance with international law.⁴² There is no explicit definition of gender-based and/or sexual violence in Ukrainian legislation. Article 1 of the Law of Ukraine "On Ensuring Equal Rights and Opportunities for Women and Men" defines sexual harassment as sexual acts expressed verbally (threats, intimidation, indecent remarks) or physically (touching, slapping) which humiliate or insult persons who are subordinate in labor, work, financially, or otherwise. A victim of sexual harassment may claim compensation for civil damages through court, but the offence is not penalized as a criminal offence.

National law and jurisprudence defines rape as sexual intercourse between individuals of different sex against the will of a victim, combined with violence, threats of violence, or committed by taking advantage

³⁹ For more details see: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>

⁴⁰ On 2 June 2016, the Parliament of Ukraine adopted the amendments to the Constitution of Ukraine regarding the judiciary. The amendments (article 124(6)) allow for ratification by Ukraine of the Rome Statute of the International Criminal Court, although it led to the postponement of the entry into force of this provision for three years. The amendments entered into force on 30 September 2016.

⁴¹ On 25 April 2014, the Prosecutor of the International Criminal Court opened a preliminary examination into the Maidan events. The preliminary findings suggest that the crimes that occurred during those events may not fall under the Court's jurisdiction. See International Criminal Court. For more details, see Report on Preliminary Examination Activities (2015), para.97, 98 and 101.

⁴² Office of the United Nations High Commissioner for Human Rights, Conflict-Related Sexual Violence in Ukraine 14 March 2014 to 31 January 2017. Available at: http://www.ohchr.org/Documents/Countries/UA/ReportCRSV_EN.pdf

of the victim's helpless condition.⁴³ This definition does not cover same-sex rape. Therefore, unless the perpetrator is a woman, men and boys will not be considered as victims of rape. Furthermore, investigators and courts interpret the "helpless condition" in a restrictive manner, lacking any notion of coercive circumstances or inability to give genuine consent, which is of particular importance in contexts of armed conflict.⁴⁴

The Criminal Code of Ukraine includes five articles pertaining to sexual violence: on rape (Article 152), on violent unnatural gratification of sexual desire (Article 153), on compulsion to sexual intercourse (Article 154), on sexual intercourse with a sexually immature person (Article 155), and on corruption of minors (Article 156). Articles 152, 153, 155, and 156 may be applicable regardless of the relation of the victim to the perpetrator. Article 154 applies only to situations where a victim is financially dependent on a perpetrator, or is subordinate to the perpetrator; this is rarely applied to sexual violence in conflict setting. The Article 156 can be applied only if the victim is younger than 16 years. The Criminal Code includes the crimes of sexual exploitation and forced pregnancy but only in connection with human trafficking (Article 149), thereby limiting the application. Depending on the circumstances, the above-mentioned crimes may be punishable from three to 15 years of imprisonment.

The Criminal Code contains two articles, which could be applied specifically to cases of conflict-related sexual violence. Paragraph 1 of article 433 envisages criminal responsibility for violence against the civilian population in a conflict area, which may include sexual violence, and is punishable with three to eight years of imprisonment. Article 438 foresees criminal responsibility for the violation of laws and customs of war, which includes cruel treatment of prisoners of war or civilians (and thus may include sexual violence), and shall be punishable by imprisonment from 8 to 12 years.

The Criminal Code of Ukraine mainly focuses on individual criminal responsibility for physical commission of a crime or aiding, abetting or otherwise assisting the commission of the crime. Articles 426 (omission of military authority – failure to prevent or refer a case to investigation, or other failure to act by a person in authority which caused significant harm) and 426¹(actions in excess of military authority) also foresee command responsibility, which includes elements of omission liability, and is of particular importance in the context of armed conflict. These articles however are mainly applied in cases when commanders commit crimes against their subordinates, and are rarely applied to conduct against civilians.

⁴³ Criminal Code of Ukraine, article 152 and Resolution of the Plenum of the Supreme Court of Ukraine Nr.5 from 30 May 2008 "On the Court Practice in Cases about Crimes against Sexual Freedom and Sexual Inviolability of a Person", paragraph 1.

⁴⁴ Resolution of the Plenum of the Supreme Court of Ukraine Nr.5 from 30 May 2008 "On the Court Practice in cases about crimes against Sexual Freedom and Sexual Inviolability of a Person", paragraph 5. State of the victim should be recognized as helpless if because of their minor or elderly age, physical or mental disability, being ill or unconscious or other reasons could not understand the nature and meaning of the actions committed against them or could not fight back.

Annex 4. List of the UN Security Council Resolutions on Prevention of and Response to Conflict-related Sexual Violence⁴⁵

Prevention of and Response to Conflict-related Sexual Violence

| 1820 (2008) | 1888 (2009) | 1960 (2010) | 2106 (2013) |
|---|---|--|---|
| Overview | | | |
| Recognizes sexual violence as a tactic of war and a matter of international peace and security that necessitates a security response. | Strengthens efforts to end sexual violence in conflict by establishing a Special Representative of the Secretary-General and team of experts on rule of law and sexual violence in conflict, deploying expertise and improving coordination among stakeholders involved in addressing conflict-related sexual violence. | Establishes a monitoring and reporting mechanism on sexual violence in conflict. | Focuses on accountability for perpetrators of sexual violence in conflict; stresses women's political and economic empowerment. |

⁴⁵ The full list of UNSC resolutions on Women, Peace and Security can be found here: <http://wps.unwomen.org/resolution/>

Key Provisions

| | | | |
|--|--|--|---|
| <ul style="list-style-type: none"> Stresses that sexual violence as a tactic of war can exacerbate conflict, and may impede the restoration of international peace and security Affirms that sexual violence in conflict can constitute a war crime, a crime against humanity and a constituent act of genocide Strengthens the prohibition on amnesty for such crimes Calls for stronger and clearer guidelines to UN peacekeepers to prevent sexual violence against civilians Calls for more systematic and regular reporting on the issue Asserts the importance of women's participation in all processes related to stopping sexual violence in conflict, including their participation in peace talks <p>Presented by the USA, 2008</p> | <ul style="list-style-type: none"> Calls for the appointment of a Special Representative of the Secretary-General on sexual violence in conflict, to provide leadership and coordination on UN response to sexual violence Encourages UN Action to support the work of the Special Representative Calls for Women's Protection Advisors (WPAs) to be present in peacekeeping missions in contexts with high levels of sexual violence Establishes a rapid response team of rule-of-law experts meant to rapidly deploy to situations of sexual violence in order to address impunity Requests the Secretary-General to urgently devise specific proposals for improved monitoring and reporting on conflict-related sexual violence Mandates an annual report from the Secretary-General on the implementation of resolution 1820, including information on parties to armed conflict credibly suspected of perpetrating patterns of sexual violence <p>Presented by the USA, 2009</p> | <ul style="list-style-type: none"> Encourages the Secretary-General to list and include detailed information on parties to armed conflict suspected of committing or being responsible for acts of rape or other forms of sexual violence, in his annual reports submitted pursuant to resolutions 1820 and 1888 Requests the Secretary-General to establish monitoring, analysis and reporting arrangements on conflict-related sexual violence Reiterates the Council's intention to consider including designation criteria pertaining to acts of rape and other forms of sexual violence in targeted sanctions Calls upon parties to armed conflict to make and implement specific and time-bound commitments to combat sexual violence Encourages Member States to deploy greater numbers of female military and police personnel to peacekeeping operations, and to provide all military and police personnel with adequate training on preventing and responding to sexual and gender-based violence <p>Presented by the USA, 2010</p> | <ul style="list-style-type: none"> Affirms that sexual violence can significantly exacerbate and prolong situations of armed conflict and may impede restoration of peace and security Stresses women's participation as essential to prevention, protection and response Draws attention to comprehensive transitional justice, including judicial and non-judicial measures Calls for systematic monitoring of situation, investigation and application of targeted sanctions Requests the Secretary-General and UN entities assist national authorities in increasing women's effective participation across post-conflict processes, including DDR processes, SSR, and justice sector reform <p>Presented by UK, 2013</p> |
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Resources:

- UN Women IN FOCUS – Women, Peace and Security (<http://www.unwomen.org/en/news/in-focus/women-peace-security>)
- UN Women's Sourcebook on Women, Peace and Security (<http://www.unwomen.org/ru/digital-library/publications/2012/10/un-women-sourcebook-on-women-peace-and-security>)
- www.stoprapenow.org
- <http://wps.unwomen.org/about/>

Annex 5. Glossary of Terms⁴⁶

* Disclaimer

The glossary does not have any legal effects and will serve as a reference tool in connection with the Strategy for Prevention of and Response to the Conflict Related Sexual Violence (CRSV). The term victim and survivor are used interchangeably based on the context and consequences to the individuals affected.

Conflict-related sexual violence

Conflict-related sexual violence refers to incidents or (for SCR 1960 listing purposes) patterns of sexual violence, that is rape, sexual slavery, forced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity, against women, men, girls or boys. Such incidents or patterns occur in conflict or post-conflict settings or other situations of concern (e.g., political strife). They also have a direct or indirect nexus with the conflict or political strife itself, i.e. a temporal, geographical and/or causal link. In addition to the international character of the suspected crimes (that can, depending on the circumstances, constitute war crimes, crimes against humanity, acts of torture or genocide), the link with conflict may be evident in the profile and motivations of the perpetrator(s), the profile of the victim(s), the climate of impunity/weakened State capacity, cross-border dimensions and/or the fact that it violates the terms of a ceasefire agreement.⁴⁷

Gender-based violence

An umbrella term for violence directed toward or disproportionately affecting someone because of their actual or perceived gender identity. The term 'gender-based violence' is primarily used to underscore the fact that structural, gender-based power differentials around the world place women and girls at risk for multiple forms of violence. This includes acts that inflict physical, sexual or mental harm or suffering, threats of such acts, coercion, and other deprivations of liberty, whether occurring in public or in private life. While women and girls suffer disproportionately from GBV, men and boys can also be targeted. The term is also used by some actors to describe targeted violence against lesbian, gay, bisexual, transgender, and intersex (LGBTI) populations, in these cases when referencing violence related to norms of masculinity/femininity and/or gender norms.

Victim

Commonly understood, a person who is, or has been, sexually exploited or abused.

Comment: Different definitions of victim trigger different consequences; therefore, it is important to use them contextually.

⁴⁶ Based on the United Nations Thematic Glossary of current terminology related to Sexual Exploitation and Abuse (SEA) in the context of United Nations, second edition, 24 July 2017. Available at: https://hr.un.org/sites/hr.un.org/files/SEA%20Glossary%20%20%5BSecond%20Edition%20-%202017%5D%20-%20English_0.pdf

⁴⁷ Based on the Analytical & Conceptual Framing of Conflict-Related Sexual Violence. Available at: http://repository.un.org/bitstream/handle/11176/400575/CRSV.Strategic_Module.pdf?sequence=88&isAllowed=y

Survivor

Reference is made to the term “victim” above. ‘Victim’ is a term often used in the legal and medical sectors, while the term ‘survivor’ is generally preferred in the psychological and social support sectors to a person who has experienced sexual or gender-based violence because it implies resilience.

Violence against women

Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. Violence against women shall be understood to encompass, but not be limited to, the following: (a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation; (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution; (c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

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