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## Conflict-related sexual violence

### Report<sup>1</sup>

Committee on Equality and Non-Discrimination

Rapporteur: Ms Petra BAYR, Austria, Socialists, Democrats and Greens Group

### Summary

Conflict-related sexual violence is one of the worst atrocities of war, systematically used as a tactic to humiliate, violate and ruin the minds and bodies of victims with the intention of spreading fear and breaking the spirit of the oppressed. It is a war crime in international law and is also used as a means of ethnic cleansing, either to damage beyond repair the reproductive cycle of an “enemy” or to repopulate regions with the “true blood” of the would-be conqueror. Although the majority of victims are women and girls, they are far from being the only targets, and sexual violence in conflict is less gender-specific in the case of young children.

Today, conflict-related sexual violence is no longer seen as an inevitable and indissociable by-product of war but is identified as a preventable phenomenon which can be effectively combated. Preventing conflict-related sexual violence begins long before the outbreak of armed conflict. The Parliamentary Assembly calls on member States and national parliaments to work on prevention in peacetime and in situations of conflict alike by engaging in concerted international action, protective national policies, strictly enforced punishment for perpetrators, empowerment of vulnerable persons and survivor-centred reparation and rehabilitation programmes.

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## A. Draft resolution<sup>2</sup>

1. As well as devastating whole territories and destroying infrastructure, war inflicts lasting damage on the people around and over whom it is waged, whatever their role, leaving a trail of individual, collective and family trauma over decades and across generations. In 2022, war has returned to our continent, and Europe's leaders are again called upon to address, on a national and multilateral scale, not only the conflict itself, but also the far-reaching negative consequences for society of the aggression of one country against another.

2. So-called "conflict-related sexual violence", in fact unrelated to any real conception of sexuality, is one of the worst atrocities of war, systematically used as a tactic to humiliate, violate and ruin the minds and bodies of victims, and in most cases intended to leave them alive to tell their story, with the intention of spreading fear and breaking the spirit of the oppressed. Conflict-related sexual violence is a war crime in international law, can be a constitutive element of genocide and is certainly used as a means of ethnic cleansing, either to damage beyond repair the reproductive cycle of an "enemy" or to repopulate regions with the "true blood" of the would-be conqueror. Although the majority of victims are women and girls, they are not the only targets, and conflict-related sexual violence is less gender-specific in the case of young children.

3. Today, in particular thanks to the work of the United Nations and its successive Security Council resolutions, conflict-related sexual violence is no longer considered to be an inevitable and indissociable by-product of war, but is identified as a preventable phenomenon, which can be combated through concerted international action, protective national policies, strictly enforced punishment for perpetrators, empowerment of vulnerable persons and survivor-centred reparation and rehabilitation programmes.

4. The Parliamentary Assembly condemns conflict-related sexual violence with its utmost strength and reaffirms that its perpetrators must be brought to justice, both on the battlefield and in positions of leadership. Determined action is needed to eliminate the phenomenon and deal with its consequences. Referring to its Resolutions 2120 (2016) "Women in the armed forces: promoting equality, putting an end to gender-based violence", and 2450 (2022) "Justice and security for women in peace reconciliation," the Assembly calls on member States in peacetime to foster non-violent, resilient societies based on equality and equal access to rights for all, as a prerequisite for facing crises, reducing the tensions which risk escalating to open conflict and minimising its consequences. It urges States not yet having done so to ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210, "Istanbul Convention"), which under its Article 2.3 applies in times of peace and in situations of armed conflict, and which also contains specific provisions on migrant and asylum-seeking women who are victims of violence.

5. Preventing conflict-related sexual violence begins long before the outbreak of armed conflict. Therefore, the Assembly calls on member States and national parliaments to work on prevention in peacetime and in situations of conflict alike, in particular by:

5.1. encouraging inclusive recruitment to the armed forces and the police in order to attain more gender balance and thereby equality with a gender perspective in promotion, action and policies;

5.2. introducing or reinforcing training in police forces and the army on assistance to victims of gender-based violence, including the provision of safe spaces for survivors to recover and recount their experiences, as well as advice on access to legal assistance and to medical and psychological care. There must be co-ordination between the different services, including with civil society organisations;

5.3. implementing in places where conflict still has tangible effects on communities, notably in the territory of the former Yugoslavia, transitional justice measures in order to bring about real political transformation, and countering narratives glorifying war criminals, for instance;

5.4. celebrating survivors of conflict-related sexual violence like Nadia Murad, Václav Havel and Nobel Peace Prize winner, who as champions and ambassadors for peace and reparation can attract political and financial support, while raising public awareness of particularly affected regions and people and the need to help them and to give them a voice;

5.5. recognising the importance of culture as an agent of change: theatre, cinema, sport and other cultural activities can do much to change mentalities and promote peaceful living together.

6. The recognition of conflict-related sexual violence as a crime against humanity and a war crime under the Rome Statute of the International Criminal Court has allowed prosecution of its perpetrators on the ground and in command, in combination with other crimes. On the other hand, the national level is the most

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2. Draft resolution adopted unanimously by the committee on 1 December 2022.

appropriate for holding individual perpetrators to account. Universal jurisdiction is also an option, and the Assembly congratulates Estonia, Germany, Latvia, Lithuania, Norway, Poland, Romania, the Slovak Republic, Spain, Sweden and Switzerland for having initiated universal jurisdiction investigations of war crimes in the context of the Russian war of aggression against Ukraine, or for having declared their intention to do so, and French prosecutors for having opened a war crimes investigation under national jurisdiction in the same context, for cases in which French citizens or residents have been possible victims or suspected perpetrators. With respect to the prosecution of conflict-related sexual violence, the Assembly calls on member States to:

- 6.1. sign and ratify the Rome Statute as the legal basis for the work of the International Criminal Court, if they have not already done so;
  - 6.2. use universal jurisdiction as a means of prosecuting perpetrators wherever they have committed crimes of conflict-related sexual violence;
  - 6.3. use the international crime provisions under their respective national penal codes that explicitly and implicitly cover conduct of conflict-related sexual violence, whenever perpetrators or victims are present on their territory, or acts that have a nexus to the crime are committed on their territory;
  - 6.4. use the 2021 Model Legislative Provisions and Guidance on Investigation and Prosecution of Conflict-related Sexual Violence of the Office of the Special Representative of the United Nations Secretary-General on Sexual Violence in Conflict to ensure that efficient investigations are carried out for use in courts, and to the same end, encourage and support civil society organisations to follow the Guidelines of the Office of the Prosecutor of the International Criminal Court and Eurojust on Documenting international crimes and human rights violations for accountability purposes;
  - 6.5. work with international courts to ensure the efficient transfer of judgments to national prosecuting authorities, which includes sharing access to databases of evidence collection;
  - 6.6. support with the Assembly the setting up of a special (*ad hoc*) international tribunal to prosecute the crime of aggression against Ukraine, and ensure that investigations into conflict-related sexual violence are a priority.
7. Documentation, reporting, evidence collection and research are essential in uncovering crimes and prosecuting perpetrators of conflict-related sexual violence. These crimes are notoriously difficult to monitor due to under-reporting by survivors not wishing or not able to speak, because the harm done may be invisible and difficult to prove, and as infrastructure and services are often lacking in the conditions in which survivors find themselves, including war zones, regions of so-called “frozen conflicts”, etc.
8. Praising the work of NGOs such as Ukraine 5AM Coalition, finalist for the 2022 Václav Havel Prize, a collective of technology experts collecting data in Ukraine since the first bombardments by Russia, the Assembly urges member States to:
- 8.1. ensure that solid and safe procedures for reporting sexual violence are in place in peacetime, following the provisions of the Istanbul Convention, in order for these to be operational when applied to sexual violence in conflict-related situations;
  - 8.2. make sure that survivors of sexual violence are offered safe spaces for exchanging on their experiences, that witnesses are given adequate protection, that the different services involved in evidence collection use technological means admissible in courts to record evidence and are co-ordinated in order to avoiding obliging witnesses to repeat testimonies, thus avoiding re-traumatisation;
  - 8.3. support, including financially, the development of electronic tools for survivors to record evidence of gender-based violence themselves, in particular during conflict, for instance the “Backup” application developed and piloted by the We Are NOT Weapons Of War NGO;
  - 8.4. ensure that the police are trained and habilitated to receive evidence at local levels, without requiring higher levels of police and jurisdictional intervention at the first stages of judicial procedures.
9. Care for survivors must be immediate, holistic and centred on the needs of the persons concerned. In this respect the Assembly urges national authorities and international organisations to work together to:
- 9.1. support the International Criminal Court’s Trust Fund for Victims by financial contributions;
  - 9.2. transfer on request the frozen assets of perpetrators convicted by the International Criminal Court to the Trust Fund for Victims to fund reparations and programmes for survivors;
  - 9.3. building on principles of transitional justice, to adopt survivor-centred gender-specific practices and ensure reparations are tailored to the age and situation of victims;

9.4. implement, with respect to all survivors, whether in national territories or having fled war in their country, the World Health Organisation's Clinical Management of Rape Guidelines to ensure that medical providers apply survivor-centred approaches and follow the necessary health protocols aimed to protect women from unwanted pregnancies and sexually transmitted diseases.

10. Survivor-centred measures must be tailored to the individual needs of survivors of conflict-related sexual violence wherever they find themselves, including access to information and abortion without barriers. States must ensure women's access to sexual and reproductive health and rights services by:

10.1. prioritising sexual and reproductive health services across the humanitarian and refugee response;

10.2. taking effective action to address and remove restrictions on and barriers to access to comprehensive sexual and reproductive healthcare, including time-sensitive and essential care;

10.3. ensuring that local experts and civil society organisations participate in the design of sexual and reproductive health and rights response efforts;

10.4. ensuring sustainable, long-term funding and flexible support to national health systems for sexual and reproductive health and rights programming, service provision and advocacy, to enable addressing systemic and structural barriers.

11. International organisations and non-governmental organisations working in peacekeeping operations have not been exempt from using their positions of domination over vulnerable people, in particular exiles and displaced persons, to commit atrocious crimes of sexual violence, including trafficking and sexual slavery. The Assembly calls on the United Nations to pursue its efforts to implement a zero-tolerance policy to eliminate sexual abuse and exploitation in its operations, including by locally recruited staff, and ensure that the NGOs working on programmes are covered by these policies.

12. Non-governmental organisations and civil society actors are key to accompanying survivors of conflict-related sexual violence, and act as early warning agents on the ground when tensions arise and situations deteriorate. Therefore, the Assembly calls upon national parliaments to ensure that civil society, and especially women's rights organisations, women-led organisations and organisations dealing with gender-based violence and sexual and reproductive health and rights, are supported in their work and are given sustainable, flexible, long-term institutional financial support and infrastructure to function efficiently.

13. Finally, the Assembly calls on member States to introduce laws that guarantee survivors of conflict-related sexual violence individual and collective access to lifelong measures of inclusion, reparation and rehabilitation without undue bureaucratic or psychological obstacles, and to devote the necessary financial and human resources to these programmes, in the knowledge that pecuniary compensation for the consequences of the damage done is almost impossible.

## B. Explanatory memorandum by Ms Petra Bayr, rapporteur

### 1. Background

1. With the war of aggression by the Russian Federation against Ukraine, open conflict has returned to the heart of Europe. And with the conflict, the European public is directly confronted with the horrors of wartime in its midst: violence, oppression, destruction, displacement, flight and exile. The war is sadly repeating patterns and forms of aggression between peoples as old as war itself, and which have continued in different parts of the world ever since. As the motion for a resolution recalls, as well as armed combat, torture and rape are being used to break, demoralise and destroy individuals, homes, families and peoples.
2. Globally, state and non-state entities are turning away from political and diplomatic solutions towards military force, within countries and across borders, increasing spending on armaments and reducing funding previously devoted to social and medical services, which in turn increases the vulnerabilities of parts of populations during tension and conflict, especially women, children, people with disabilities and minorities.
3. Thus whole countries are neglecting the education and training needed to address the root causes of gender-based violence, which is gender-based inequality. According to the UN, “Intersecting humanitarian, security and political crises exacerbated the root causes of conflict-related sexual violence, including militarisation, the proliferation of arms, impunity, institutional collapse, structural gender-based inequality and harmful social norms.”<sup>3</sup> In the same report the UN counted 18 countries affected by conflict-related sexual violence in 2021, committed by different actors including 12 national military and police forces and 49 credibly suspected bodies, mostly non-state actors.
4. Taking the previous [Resolution 1670 \(2009\)](#) of the Parliamentary Assembly “Sexual violence against women in armed conflict” as a starting point, this report re-examines the issue in the light of the current context and makes recommendations on preventive and dissuasive measures against conflict-related sexual violence, for urgent implementation by member States.

### 2. Working methods

5. The Assembly General Rapporteur on Violence against Women’s statement of 6 April 2022 denounces the horrifying sexual violence reportedly perpetrated on civilians by Russian military forces during the first month of the war in Ukraine, evidenced by the daily reports by journalists, international organisations and by medical staff and first-hand witnesses of rape and other atrocities. On 24 November 2022, on the occasion of the International Day on the elimination of violence against women, the Council of Europe Secretary General Marija Pejčinović Burić made a powerful statement on the need to assist Ukrainian women who are victims of sexual violence and trafficking at the hands of the Russian army.<sup>4</sup>
6. Sexual violence perpetrated in the context of the war against Ukraine is one of the key subjects examined, and the atrocities committed are given visibility in this report; in this perspective it was important both to find evidence of violence against women as well as to raise awareness of the fact that children, both girls and boys, are also victims of conflict-related sexual violence (CRSV). I have used testimonies gathered on a fact-finding mission in June 2022 by the European Parliamentary Forum for Sexual and Reproductive Health and Rights, which I have the honour of presiding, to illustrate how the international definitions of CRSV are played out to the letter in the tragic realities of war.<sup>5</sup>
7. On 22 June 2022, the committee held a joint hearing with the Parliamentary Network Women Free from Violence on a proposal by our colleague Maryna Bardina (Ukraine, ALDE), entitled “Developing mechanisms and concrete means to detect crimes of sexual violence of armed conflict and support the rehabilitation of survivors.” The meeting was chaired by the Assembly’s General Rapporteur on Violence against Women, Zita Gurmai (Hungary, SOC), and speakers were Council of Europe Commissioner for Human Rights, Dunja Mijatović, Deputy Minister of the Interior of Ukraine, Kateryna Pavlichenko (online), and Adrijana Hanušić Bećirović, Senior Legal Advisor, TRIAL International, Sarajevo (Bosnia and Herzegovina). The hearing provided essential input for my report, on the work of the Council of Europe, the situation in Ukraine and in particular on addressing the long-term consequences of CRSV.

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3. “Conflict-related sexual violence”, report of the UN Secretary General, S/2022/272, United Nations, 29 March 2022.

4. “Ukraine: We must help victims of sexual violence by Russian soldiers”, Statement by Marija Pejčinović Burić, Council of Europe Secretary General, Council of Europe, 24 November 2022.

5. “EPF mission to investigate sexual violence resulting from the Russian aggression against Ukraine – June 2022”, European Parliamentary Forum for Sexual and Reproductive Health and Rights (EPF), 12 September 2022.

8. A second hearing took place on 16 September 2022 in Paris, with the participation of Ajna Jusić, President of the Bosnian NGO “Forgotten Children of War”, herself a child born of rape, and Céline Bardet, international lawyer, founder and President of the NGO “We Are NOT Weapons of War”.<sup>6</sup> I was also able to meet in Vienna with Pramilla Patten, United Nations Special Representative of the Secretary-General on Sexual Violence in Conflict, and took the opportunity of a visit to New York to meet with Letitia Anderson, Advocacy and Women’s Rights Specialist with the Special Representative’s Office. Finally, I held online interviews with Patricia Viseur Sellers, international criminal lawyer and International Criminal Court Special Advisor on Slavery Crimes, and with experts from the NGO Nadia’s Initiative,<sup>7</sup> founded by Yezidi survivor and international activist, Václav Havel, Sakharov and Nobel Peace Prize winner Nadia Murad. During a conference of Parliamentarians for Global Action in November 2022 in Buenos Aires, I spoke at length with Minerva Tavarez Mirabal, chair of the International Criminal Court victims’ fund, and later had a video conference with Urszula Grycuk, International Advocacy Coordinator with FEDERA, the Polish Foundation for Women and Family Planning. All of these exchanges enabled me to acquire good knowledge of the issues and challenges involved in protection against CRSV.

### 3. Scope of the report

9. The examination of cases of CRSV and their processing beyond Europe enabled further dimensions to be explored and, I hope, may serve to gain a better vision of long-term consequences, as well as to identify best and most effective means of assisting survivors, providing redress and enabling rehabilitation. In Europe itself, the war in the former Yugoslavia has shown in particular how violence and trauma persist over decades after conflict, fuelled by repressed and untreated psychological damage, weakness of state-led measures to re-create a space for peaceful coexistence, lack of proper recognition of victims, stigmatisation of rape victims and their children, and in some cases “social rehabilitation” of the convicted war criminals who oversaw, ordered or tolerated the gender-based violence.

10. The Balkan war also shows how ideology may provide strong motivation for committing sexual violence, and specifically rape, used as a means of either repopulating a country or region by the aggressor or removing by destruction enemy populations’ sexual and reproductive health and rights, in two opposing forms of ethnic cleansing using the same crimes and with the same ultimate intention. Violence can also be part of a plan to extinguish a whole people, which amounts to genocide.<sup>8</sup> These aggravating factors are added to the concept of corporal humiliation, which is the playing out of the “domination” of one nation or ethnic group over another.

11. In recent years there have been several shocking revelations about international organisations active in military (peacekeeping) operations, notably in the African continent, where the position of dependency of local populations has led to abuses committed by their members, manifested in particular in the form of sexual abuse and exploitation. It is also relevant to look at sexual violence perpetrated during different types of conflict, for instance in the case of sporadic flare-ups in so-called “frozen” border conflicts and in regions where conflict – and the sexual violence which it perpetuates – have become the way of life of generations.

12. My aim in this report is to describe the contours of CRSV and its consequences, to raise awareness of the lasting damage to survivors, to identify good practices and measures of prevention, protection and reparation that can be promoted and taken up in Europe, by legislators, international organisations, NGOs and individuals. I would particularly like to make a contribution to the promotion of justice, assistance and remedies for women and other victims and survivors of conflict-related sexual violence in Ukraine.

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6. [www.notaweaponofwar.org/en/](http://www.notaweaponofwar.org/en/).

7. [www.nadiasinitiative.org/](http://www.nadiasinitiative.org/).

8. This was the case for the Srebrenica massacre, for instance, during which more than 8 000 Bosniak Muslim men and boys were killed by units of the Bosnian Serb Army of Republika Srpska (VRS) under the command of Ratko Mladić, with the participation of a Serbian paramilitary unit. In 2004 the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY) ruled that the massacre of the enclave’s male inhabitants constituted genocide, ruling upheld by the International Court of Justice (ICJ) in 2007. The forcible transfer and abuse of between 25 000 and 30 000 Bosniak Muslim women, children and elderly people during the massacre was found to constitute genocide, when accompanied with the killings and separation of the men.

## 4. What is conflict-related sexual violence?

### 4.1. Definition of conflict-related sexual violence in international law

13. Rape and other forms of sexual violence are constituent elements of genocide, which is defined in the Convention on the Prevention and Punishment of the Crime of Genocide as “acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group”. Genocide has attained *jus cogens* status (a norm that pre-empts other norms) and is prohibited both in its own right and as a crime against humanity. The Convention on the Prevention and Punishment of the Crime of Genocide, adopted on 9 December 1948, entered into force on 12 January 1951.<sup>9</sup> Referring to this early definition helps to see how sexual violence can be used as part of a plan, sometimes as a tool of ethnic cleansing through impregnation, always as a demonstration of male domination, humiliation and cruelty. However, the convention falls short on some provisions, such as the obligation of measures to prevent genocide.

14. Article 7 of the Rome Statute of the International Criminal Court on crimes against humanity qualifies rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence of comparable gravity as crimes against humanity, when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. Both the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda have played a critical role in setting precedents in the prosecution of CRSV, including articulating definitions and elements of many gender-related crimes.<sup>10</sup>

15. Crimes against humanity, as serious international atrocities, are also subject to universal jurisdiction, meaning that national courts can be given jurisdiction to try a person suspected of a crime against humanity even if neither the suspect nor the victim are nationals of the country where the court is located and the crime took place outside that country. The existence and scope of universal jurisdiction depends on national legislation. As an example, universal jurisdiction investigations of war crimes in the 2022 Russian invasion of Ukraine have been started in several individual States, including Germany, Lithuania, Spain and Sweden.

16. In 2008, the United Nations recognised in Security Council Resolution 1820 (2008) on women, peace and security that rape and other forms of sexual violence can constitute war crimes, crimes against humanity and constitutive acts with respect to genocide.

17. As the motion for a resolution points out, the Council of Europe Convention on combating and preventing violence against women and domestic violence (CETS No. 210, “Istanbul Convention”) criminalises rape and other forms of violence and provides for the protection of women in conflict as well as women seeking asylum.

18. Women are not the only victims of CRSV. In all conflict situations a (usually much smaller) proportion of crimes are perpetrated against men, and especially against children regardless of gender. In particular cases, such as the sexual exploitation and abuse perpetrated by peacekeepers described in chapter 4.3 below, the proportion of men and children affected is higher, and in a few cases such as in Sierra Leone, boy children were the main victims.<sup>11</sup>

19. In this report I have chosen to retain “conflict-related sexual violence” as the legally and generally recognised term for the different types of gender-based violence in conflict,<sup>12</sup> despite my reluctance to associate the idea of sexuality with this type of deliberate, despicable conduct fuelled by tactical and political intentions. I also refer to the persons subjected to CRSV as “survivors” rather than as “victims” in most occurrences, which is generally accepted as the more positive term, encompassing the processes of healing and reparation, and implying an active rather than passive role. However, it should be noted that many legal provisions require a person to be recognised as a victim in order to be eligible for assistance and support.

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9. The [text](http://www.un.org/en/genocideprevention/genocide-convention.shtml) of the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) is available at the website of the United Nations Office on Genocide Prevention and the Responsibility to Protect: [www.un.org/en/genocideprevention/genocide-convention.shtml](http://www.un.org/en/genocideprevention/genocide-convention.shtml).

10. Cases from the International Criminal Tribunals for the former Yugoslavia and Rwanda, and the Special Court for Sierra Leone and Extraordinary Chambers of the Courts of Cambodia, have also rendered significant jurisprudence about CRSV as they related to war crimes, crimes against humanity and genocide. Such cases include, the *Akayesu*, *Kunarac*, *Furundzija*, *Delalic*, *Karemera*, *Taylor* cases.

11. See for instance “[Conflict-related sexual violence and sexual exploitation and abuse](#)”, Literature review, Independent Commission for Aid Impact (ICAI), 30 September 2020.

12. The original title of the report was “Sexual violence and conflict”; my proposal to change to “Conflict-related sexual violence” was approved by the committee in June 2022.



## 4.2. Realities on the ground

*And then... (silence) 'A friend', Svetlana gasps and thinks for a moment. Suddenly she seems to realise what exactly she is saying. She swallows her tears, clears her voice, and continues. Suddenly her story is no longer about herself, but about 'a friend'. She tells how that 'friend' in the basement in Mariupol was raped by the Russian soldier, while the other soldier held her son and forced him to watch. Svetlana also says that the soldiers then turned to rape another woman in the air-raid shelter, and that her 'friend' saw the Russian soldier push a gun into the woman's vagina and fire after the rape. He said he wanted to make sure she would never give birth to "new Ukrainians" again.<sup>13</sup>*

20. Sexual violence have serious consequences for women's reproductive systems. The physical and psychological violence of rape on women who are already pregnant causes miscarriages, and the tendency not to report often leads in these cases to further medical complications from injuries during the rape. Depression, insomnia, anxiety, and other forms of emotional distress are also common among survivors, as well as family members who witnessed the abuses. Another consequence, notably observed in the Sierra Leone civil war, is a sharp rise in cases of HIV/AIDS and other STIs due to the prevalence of rape and sexual violence. In Rwanda, many HIV-positive militiamen purposefully raped Tutsi women to infect them with the disease. A study conducted by the Association of Genocide Widows of Rwanda in 2 000 gathered testimony from 1 000 genocide sexual violence survivors. 67% were HIV-positive.

21. Evidence of rape and other forms of sexual violence committed by Russian forces in Ukraine has been present since the occupation of Crimea and installation of Russian-controlled forces in Donbas in 2014.<sup>14</sup> The United Nations Office of the High Commissioner for Human Rights documented multiple examples of CRSV between 2014-21 against both women and men. Before the open war of aggression began, most incidents occurred while the victims were in detention or otherwise deprived of their freedom by armed groups and government forces. Perpetrators used beatings and electrocution of the genitals, rape, threats of rape and forced nudity to torture, punish, humiliate or extract confessions from the victims. To further pressure the victims, the perpetrators threatened also to detain, abduct, rape, injure or kill the victims' children and other relatives.

22. Sexual violence against women was also documented outside of detention, including in residential areas close to military positions. Female victims reported being subjected to forced nudity, sexual touching and sexual assault in exchange for passage through checkpoints. In 2019, the Prosecutor of the International Criminal Court (ICC) concluded that there was reasonable basis to believe that the war crimes of rape and other forms of sexual violence had been committed in eastern Ukraine.

23. Russia's war of aggression in Ukraine from February 2022 and the subsequent occupation of Ukrainian towns and cities have significantly magnified the risk factors for CRSV, with the presence of armed forces in populated areas, internal displacement, destruction of homes and infrastructure, deprivation of liberty, restrictions on freedom of movement and the collapse of law and order. In April 2022, following the attacks by Russian forces in Bucha, Ukraine's human rights Ombudsperson documented cases of approximately 25 girls and young women aged 14 to 24 who were detained, raped and impregnated by occupying Russian soldiers in a basement. The UN High Commissioner for Human Rights, the UN Secretary-General's Special Representative on Sexual Violence in Conflict, the Organization for Security and Co-operation in Europe and others have reported cases of CRSV, particularly rape and forced nudity, across the country.

24. Challenges to investigation of these crimes include difficult access to Russian-occupied areas and areas of live warfare, physical insecurity of survivors who could also be subjected to an atmosphere of impunity, fearing retaliation and stigma and may be suffering from physical and psychological trauma. Survivors may be focused on providing for their and their families' immediate needs and may not have access to health care or other assistance. Investigations of CRSV by the ICC, the Government of Ukraine and others require a co-ordinated, survivor-centred and trauma-informed approach.

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13. [EPF mission to investigate sexual violence resulting from the Russian aggression against Ukraine – June 2022](#), op. cit.

14. See "[Report on the human rights situation in Ukraine](#)", 16 August to 15 November 2016, Office of the United Nations High Commissioner for Human Rights (OHCHR).

### 4.3. Sexual exploitation and abuse perpetrated by peacekeepers

25. In his annual report to the UN Security Council, António Guterres underlined that for the organisation, incidents of sexual exploitation and abuse (SEA) committed by peace-keeping and humanitarian personnel in “complex operating environments” are not defined as CRSV. But the very mention of SEA in the report on CRSV, and the similarity of characteristics (abuse of positions of vulnerability, power and trust for sexual purposes in an environment of fear; systematised acts of a sexual nature committed by a dominant group of individuals, by force or under coercion; low accountability and relative impunity) point to the inclusion of this form of sexual violence, related to conflict situations, in the present report.

26. Allegations of SEA in the context of peace-keeping emerged during the UN Transitional Authority in Cambodia (UNTAC) in 1992, when the number of prostitutes rose from 6 000 before the mission to more than 25 000 in 1993.<sup>15</sup> In 1995, evidence in Bosnia and Herzegovina showed that women and girls were being trafficked to work as sex slaves in brothels frequented by UN personnel, and later, that interveners were complicit in sex trafficking.<sup>16</sup> In 2002, independent consultants reported that UN and NGO staff were abusing and exploiting local women and girls in refugee camps in Guinea, Liberia and Sierra Leone. From 2004 to 2007, Sri Lankan peacekeepers exploited nine children in a sex ring in Haiti, according to an investigation from the Associated Press,<sup>17</sup> based on an internal UN report. Although 114 soldiers were sent back to Sri Lanka as a result, none faced criminal charges. Similar cases occurred in the Central African Republic (Burundian and Gabonese peacekeepers), and during the 2018-2020 Ebola crisis in the Democratic Republic of Congo, more than 50 women accused aid workers (from WHO, UNICEF, Oxfam, Médecins Sans Frontières, World Vision, ALIMA and the International Organisation for Migration) of SEA.<sup>18</sup>

27. Sexual exploitation and abuse by peacekeeping staff and NGOs has taken different forms:<sup>19</sup> opportunistic sexual abuse (namely, perpetrated for private reasons, as a “practice of war”); planned, sadistic abuse; transactional sex (“survival sex”, which represents the vast majority of SEA allegations and is not necessarily criminalised depending on the country, eg. the exchange of sex for money or a job); networked SEA by peacekeepers implicated in criminal networks through use of prostitution, sex trafficking, purchasing sex slaves and covering up illegal activities, for instance the involvement of peacekeepers in trafficking of women in the Balkans, driving a rapid expansion of the exploitative sex industry, which outlasted the operation and engendered long-term consequences on the post-war economy.

28. The lack of data on SEA has always been problematic; and countries keeping the names of those found guilty confidential makes accountability impossible. Under-reporting through fear or ignorance of procedures also makes the number of perpetrators very difficult to estimate.<sup>20</sup> In addition, under the international agreements governing UN peacekeeping forces, military forces remain under the exclusive jurisdiction of their own governments. Therefore, any allegations against soldiers are referred to the troop-contributing country.<sup>21</sup>

29. A 50-page internal UN report obtained by *The New Humanitarian* from a former UN agent details mistakes and problems in investigations, in particular interviews with the alleged victims: UNICEF failed to take accurate victim testimonies and waited weeks before informing the UN’s investigatory and oversight body of the allegations; the atmosphere for women and girls making the allegations was described as “threatening”, with investigators asking “humiliating” and “irrelevant” questions; the system of DNA collection and storage allowed samples that could have identified perpetrators to decay. As a result, the majority of allegations were dismissed.<sup>22</sup>

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15. Westendorf, J-K and Searle, L, “Sexual exploitation and abuse in peace operations: trends, policy responses and future directions”, *International Affairs*, Volume 93, Issue 2, 1 March 2017, pp 365–387.

16. Ibid.

17. Dodds, P, “AP Exclusive: UN child sex ring left victims but no arrests”, *AP News*, 12 April 2017.

18. Flummerfelt, R, “More than 50 women accuse aid workers of sex abuse in Congo Ebola crisis”, *The New Humanitarian*, 29 September 2020.

19. Westendorf, J-K and Searle, L, “Sexual exploitation and abuse in peace operations: trends, policy responses and future directions”, *International Affairs*, Volume 93, Issue 2, 1 March 2017, pp 365–387.

20. “AP Exclusive: UN child sex ring left victims but no arrests”, op. cit.

21. “Sexual exploitation and abuse by international peacekeepers”, an accompanying report to the ICAI review of the Preventing Sexual Violence in Conflict Initiative, op. cit.

22. Kleinfeld, P and Dodds, P, “Blunders in Central African Republic sex abuse probe detailed in internal UN review”, *The New Humanitarian*, 31 October 2019.

30. Between 2003 and 2006 various bulletins and strategies were adopted, outlining strict rules for staff, including staff of organisations entering into “co-operative arrangements” with the UN, and later consultants and contractors, stipulating a ban on paying for sex and strongly discouraging relations between UN staff and “beneficiaries of assistance”. A “zero tolerance” policy was announced by then Secretary-General, Kofi Annan.

31. 2008 saw the launch of an online global Misconduct Tracking System to confidentially track and compile allegations of SEA, and the UN General Assembly introduced the first Comprehensive Strategy on Assistance and Support to Victims of SEA by UN Staff and Related Personnel, aimed to ensure that complainants, survivors and children receive appropriate medical, legal, psycho-social and other assistance. In 2015, the allegations of abuse in the Central African Republic prompted the removal of UN mission chief Babacar Gaye ordered by former UN Secretary-General Ban Ki-moon.

32. A global review of protection from SEA was commissioned by the Inter-Agency Standing Committee in 2010. It concluded that despite years of policy implementation, understanding and acceptance of policies by staff and managers remained low or even absent, policies and guidance had generally not been communicated to the field, and implementation was “patchy, poor or non-existent”.<sup>23</sup> SEA continues to occur across all peace-keeping operations, perpetrators are rarely held accountable, and actual rates of SEA are probably much higher than reported. The advancement of SEA policies has been largely reactive, occurring in response to public outcry at incidents reported in the international media, raising criticism about whether the Organisation was more concerned with image control than with protecting civilians. The UN has nevertheless taken various measures to better train and oversee the work of peacekeeping missions in the field.<sup>24</sup>

#### **4.4. The specific case of the Yazidi women**

33. In August 2014, over a period of two weeks the Sinjar massacre marked the beginning of a strategised campaign by the so-called Islamic State of Iraq and the Levant (ISIL) of ethnic cleansing aimed to annihilate the Yazidi people (recognised as genocide), with the killing and abduction of thousands of Yazidi men, women and children in and around the Kurdish Iraqi town of Sinjar. Approximately 400 000 Yazidis fled to a neighbouring region and tens of thousands took refuge on Mount Sinjar. The others were killed or taken prisoner and subjected to violence including enslavement, forced labour, torture, and rape. Men were ordered to convert or die, and women were taken captive, married off to the highest bidder, sexually enslaved, and forced to convert. More than 6 000 women and children were taken captive and nearly 2 800 are still missing today. Sexual violence was strategically used as a weapon of war and ISIS (“Islamic State of Iraq and Syria”) manuals have been revealed, codifying how to traffic Yazidi women, in the belief that violating women would destroy the community from within.

34. ISIL lost control of the region in December of the same year, following responses by Kurdish Peshmerga, Kurdistan Workers Party and People's Defense Units forces, supported by American and British airstrikes. Since then, efforts have been made to rehabilitate survivors in and around Sinjar and create the conditions for return. During my discussion with members of the NGO Nadia's Initiative, founded in 2018 by Yazidi survivor Nadia Murad, I heard how international contributions have improved living conditions and prepared the safe return of 150 000 internally displaced persons. Work is carried out by and with Yazidi people themselves, and centres around education, healthcare (in particular obstetrical and gynaecological care including in rural areas), clean water supply, rebuilding livelihoods, culture and memorialisation and women's empowerment.<sup>25</sup>

35. The example of Yazidi reconstruction is a very positive one and helped me to form several recommendations. One is that the expression “nothing about me without me” applies everywhere: no supportive action for survivors of violence can be successful without their participation at all stages from design to implementation. Another important feature is the power of “champions”; the work of Nadia Murad (and that of her Nobel co-laureate Denis Mukwege in Democratic Republic of Congo) has given great visibility to the cause of Yazidi women and attracted substantial funding; this model can be taken up in many other circumstances. On the other hand, the situation in Iraq is very different from other cases, not only because of the geo-political context: for instance, the Iraqi Government recognises the usefulness of the rehabilitation and infrastructure programmes for the country and does not intervene in programmes.

23. Westendorf, J-K and Searle, L, “Sexual exploitation and abuse in peace operations: trends, policy responses and future directions”, *International Affairs*, Volume 93, Issue 2, 1 March 2017, pp 365-387.

24. See “Conflict-Related Sexual Violence”, United Nations Peacekeeping.

25. [www.nadiasinitiative.org/](http://www.nadiasinitiative.org/).

## **5. Legal provisions for prevention, protection, prosecution and reparation for sexual violence in conflict situations**

### **5.1. United Nations**

36. The UN Secretary General presents an annual report to the Security Council on conflict-related sexual violence,<sup>26</sup> on the implementation of the provisions of Security Council Resolutions 1820 (2008), 1888 (2009), 1960 (2010), 2106 (2013) and 2467 (2019). Within the UN system, the Special Representative on Sexual Violence in Conflict is the highest responsible authority, backed up by a UN Action against Sexual Violence in Conflict Network, which works on prevention, responding to the needs of survivors and enhancing accountability.

37. For Special Representative Pramila Patten, the founding vision of the creation, in 2007, of the interagency network was to bring political, peacekeeping, peacebuilding, and human rights actors together with humanitarian responders and programmatic specialists, in a mutually reinforcing manner, to amplify action to address sexual violence as a political, rather than exclusively technical challenge. Prevention was the driving impetus behind this agenda, which aimed to avoid perpetually reacting to the consequences of sexual violence downstream, in the absence of concerted upstream preventive diplomacy.

38. Against that backdrop, the above-mentioned UN resolutions required zero tolerance and “credible consequences” for CRSV. Cumulatively, they represent a political commitment to lift the veil of silence and bring the full repertoire of diplomatic and enforcement tools to bear to convert the vicious cycle of violence and impunity into a virtuous cycle of recognition, reporting, and real-time response. Resolution 2467 (2019) set up a CRSV multipartner trust fund, enabling the network to support survivor-centred national projects in conflict-affected regions.

39. In June 2021, the Office of the Special Representative published extremely detailed and comprehensive “Model legislative provisions and guidance on investigation and prosecution of conflict-related sexual violence”<sup>27</sup>, drafted by Partners in Justice International in consultation with experts, practitioners and litigators, as well as directly with victims and survivors. It is an impressive volume of recommendations and model provisions, based on assessments of existing legislation and seeking to remove barriers to access to justice for victims, survivors, and their families. They represent a victim and survivor-centric codification of both substantive and procedural criminal law on CRSV. Legislators should be strongly encouraged to make use of these models, aimed to support them to enact or review and revise – within their national law – the legal provisions codifying CRSV crimes as international crimes at the national level.

40. In March 2016, the Secretary-General created the Trust Fund in Support of Victims of Sexual Exploitation and Abuse, to support United Nations and non-UN entities and organisations providing victim assistance and support services. Most recently, in September 2022, the UN Action Against Sexual Violence in Conflict programme (UN Action and Stop Rape Now campaign) published a unique and globally applicable tool entitled a Framework for the Prevention of Conflict-Related Sexual Violence.<sup>28</sup>

### **5.2. International tribunals: the International Criminal Court**

41. Ukraine is not a State Party to the Rome Statute, but it has twice accepted the Court's jurisdiction over alleged crimes under the Rome Statute occurring on its territory, firstly with respect to alleged crimes committed on Ukrainian territory from 21 November 2013 to 22 February 2014, and secondly on an open-ended basis to encompass ongoing alleged crimes committed throughout the territory of Ukraine from 20 February 2014 onwards. On 28 February 2022, the ICC Prosecutor announced he would seek authorisation to open an investigation into the situation in Ukraine on the basis of the Office's earlier conclusions arising from its preliminary examination and encompassing any new alleged crimes falling within the jurisdiction of the Court. This authorisation has now been given. Since then, State Party referrals have also been made by 43 States Parties either separately or as a group.

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26. Under Resolution 2467 (2019), the Secretary General presents a report on the implementation of resolutions 1820 (2008), 1888 (2009), 1960 (2010), 2106 (2013) and 2467 (2019).

27. “Model legislative provisions and guidance on investigation and prosecution of conflict-related sexual violence”, Office of the Special Representative of the Secretary General on Sexual Violence in Conflict, United Nations, 18 June 2021.

28. “Stop Rape Now”, UN Action Against Sexual Violence in Conflict, [www.stoprapenow.org](http://www.stoprapenow.org).

42. The ICC has developed comprehensive programmes for witness protection which apply in particular to survivors of CRSV who come forward to testify. It has also created a Trust Fund for Victims (see Chapter 8 below) which not only provides funding for individuals but organises individual and collective programmes for care and rehabilitation.

### 5.3. Council of Europe

43. The Preamble to the Istanbul Convention recognises “the ongoing human rights violations during armed conflicts that affect the civilian population, especially women in the form of widespread or systematic rape and sexual violence and the potential for increased gender-based violence both during and after conflicts”. Its Article 2 on scope specifies that the convention applies in peacetime and in situations of armed conflict, without any further particular provisions, which means that they should be implemented in their entirety in all circumstances.

44. At the hearing on 22 June 2022, Council of Europe Commissioner for Human Rights, Dunja Mijatović, stressed that sexual violence in conflict had been placed high on the agenda of the Council of Europe by the developments in Ukraine. Preventing and combating violence against women and domestic violence, especially through the promotion of the ratification and implementation of the Istanbul Convention, remained an essential component of her work in this field. Conflict and displacement had shown once again how women and girls were at even greater risk of violence during times of crisis.

### 5.4. National legal provisions

45. Developing national capacities to prosecute CRSV is seen by international humanitarian organisations and courts alike as essential, as the most effective and appropriate means of achieving individual accountability for these crimes.<sup>29</sup> The United Nations Team of Experts on the Rule of Law and Sexual Violence in Conflict, set up under Security Council Resolution 1888 (2009), assists national authorities in strengthening rule of law institutions to enhance accountability for CRSV. Its work has so far been concentrated in the African continent, (Central African Republic, Democratic Republic of Congo, Mali, South Sudan) but it has also worked in Iraq, working to support the finalisation of the Law on Support to Female Yazidi Survivors (2021).

46. In this respect, the example of Bosnia and Herzegovina is worth noting. At the hearing on 22 June 2022, TRIAL International lawyer, Adrijana Hanušić Bećirović, explained that Bosnia was known for its solid CRSV prosecution rate, but it had taken a long time, involving the alignment of domestic definitions of sexual violence and Criminal Procedure Code provisions with international standards, the setting up of a full system of special protection measures and specialised training of legal professionals. She recommended that parliamentarians start working on this by looking into legal loopholes in national legislation, especially in criminal codes and criminal procedure codes.<sup>30</sup> It was of utmost importance to start devising administrative reparation frameworks and related policies early. She also stressed the need for survivor-centred approaches including broad consultation and diversified needs assessments.

47. In May 2015, Croatia adopted a law awarding a one-off payment of 100 000 kuna (US\$14,504) and a monthly allowance of 2 500 kuna to survivors of rape in the conflict in former Yugoslavia in the 90s, as well as free legal advice and medical aid. The law took effect in January 2016.<sup>31</sup> Although coming very late as a post-conflict measure, the law may be seen as a model for other countries in this context. At the same time, it is necessary to accompany any legislation in favour of survivors by recognition of the crimes committed even without an identified perpetrator. According to one beneficiary: “The law and the compensation are worth nothing if the perpetrators continue to walk free. I want them to answer for their crimes, to say why they came to Vukovar to kill and rape.”

48. During the above-mentioned hearing on this report, Deputy Minister of the Interior of Ukraine, Kateryna Pavlichenko, insisted that the war in Ukraine had already been going on for eight years, since the illegal occupation of Crimea by the Russian Federation. The Ukrainian Government, the law-enforcement system and the public sector were devoting all their efforts to documenting and investigating war crimes and assisting the victims. At the initiative of the Ministry of Internal Affairs, special mobile police units had been established

29. See, *inter alia*, “Prosecuting Conflict-Related Sexual Violence at the ICTY”, ed. Serge Brammertz and Michelle Jarvis, Oxford University Press, 2016 (see [here](#) for a summary).

30. In this respect the model legislative provisions and guidance on investigation and prosecution of conflict-related sexual violence referred to in paragraph 39 and the previous footnote could provide substantial material.

31. See for instance “Croatia Passes Law to Compensate War Rape Victims”, *Voice of America*, 29 May 2015.

to identify criminal offences committed by military personnel of the Russian Federation, encourage victims to report cases to law-enforcement authorities, taking into account the need to address both physical and psychological factors.

49. The Deputy Minister insisted that Ukraine's institutions for the prevention of sexual violence were committed to co-operating with international partners in preventing and investigating war crimes, as well as providing comprehensive assistance to victims. The government has signed a Memorandum of Co-operation with the UN on Combating and Responding to Sexual Violence in Conflict, building on the engagement between the Government of Ukraine and the United Nations Special Representative of the Secretary-General on Sexual Violence in Conflict, as well as Ukraine's National Action Plan for the implementation of Security Council Resolution 1325 on Women, Peace and Security (2020-2025). The National Action Plan specifically outlines measures to prevent and respond to conflict-related sexual violence, present in the Russian occupied regions since 2014.

### **5.5. Using universal jurisdiction**

50. Universal jurisdiction is an extremely important and effective means for States to demonstrate their determination to pursue and prosecute perpetrators of CRSV which has proved its usefulness in other contexts. It is possible in countries where the law recognises universal jurisdiction over certain of the most serious crimes under international law. That allows for the investigation and prosecution of these crimes, no matter where they were committed and regardless of the nationality of the suspects or victims. Universal jurisdiction remains one of the only options for bringing the perpetrators of crimes committed in Syria to justice, for example.<sup>32</sup>

51. As of 11 July 2022, Estonia, Germany,<sup>33</sup> Latvia, Lithuania,<sup>34</sup> Norway, Poland, Romania, the Slovak Republic, Spain, Sweden and Switzerland had all declared their intentions of using universal jurisdiction investigations of war crimes committed during the Russian invasion of Ukraine. In France, where the law does not allow for universal jurisdiction, prosecutors have opened a war crimes investigation under national jurisdiction, for cases in which French citizens or residents were possible victims or suspects. These initiatives must be supported and multiplied.

## **6. Preventing sexual violence as a systematic tactic of war**

*Mariya wipes her tears and tells how one Russian soldier commanded his younger colleagues. "He told them to rape the women in the basement again, and then again, and again. Until they were completely mentally destroyed. It's not about a 'pull out' by one Russian soldier on the loose, but about clear orders from the Kremlin — even though they vehemently deny it there".<sup>35</sup>*

52. The acts of "individual aggressors" committing sexual violence, apart from responding to the basest of human behaviours, result both from a culture of impunity within state and non-state belligerent forces, and from deliberate tactics of war makers to include rape, sexual slavery and torture as part of the indicators of success in conflict. Every effort must be made to put an end to this glorification of physical domination and psychological ascendance, which persists at various levels in many societies and traditions and translates at wartime into blatantly inhuman treatment. In the Balkans, one of the obstacles to lasting reparation and transitional justice is the renewed glorification of certain war criminals, which the authorities must make significant efforts to stop.<sup>36</sup>

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32. See for instance "Germany: Conviction for State Torture in Syria", Human Rights Watch, 13 January 2022. The trial of Anwar R., a former member of Syria's general intelligence directorate, is seen as "ground-breaking step toward justice for serious crimes in Syria".

33. Investigations into indiscriminate attacks on civilians and on civilian infrastructure, the use of cluster munitions and reports of Russian forces having death lists for killing Ukrainian activists, politicians etc.

34. The Ministry of Justice asked the Prosecutor General's Office to launch a pre-trial investigation against Vladimir Putin and Aleksandr Lukashenko, and in April, the office stated that it would investigate the death of film-maker Mantas Kvedaravičius, who was killed during an attack by Russian forces near Mariupol while it was under siege, as part of the overall investigation.

35. EPF mission to investigate sexual violence resulting from the Russian aggression against Ukraine – June 2022, op. cit.

36. See for instance in Serbia: Stojanovic, M, "Why a Ratko Mladic Mural is So Hard to Remove in Serbia", *Balkan Transitional Justice*, 12 November 2021. The mural is cleaned and repainted each time activists try to remove it.

53. For the UN Special Representative on conflict-related sexual violence, a paradigm shift is necessary to dispel the myth of rape as mere “collateral damage” or an “inevitable by-product of war”, implying that rape would always be pervasive in wartime and could not be prevented. According to Pramilla Patten, “in international relations, the framing of a phenomenon as inevitable generally reflects a lack of political will to change it, and is code for complacency and acceptance, which in turn breed fatalism and passivity.”<sup>37</sup>

54. It is self-evident that individual rapists must be held legally accountable, as must their superiors in the chain of command who supervised, tolerated, or even encouraged or ordered rape. In this context, deterrent punishment must reply to both individual and general prevention requirements. Patricia Viseur Sellers explained during our meeting that the UN framework for international justice provides for criminal accountability for “aiding and abetting” in the commission of war crimes, which means that leaders, who have a duty to prevent and punish crime, can be held responsible for perpetrating war crimes, including CRSV, without their physical presence and without a direct order having been given (for instance, in the case of Charles Taylor in Liberia).

55. In order to have a deterrent effect and prevent sexual violence in conflict, it is essential that courts – be they *ad hoc* tribunals, the ICC or national courts – are able to present evidence in proceedings against perpetrators and instigators alike. In order to secure the necessary evidence, it is important that well before the outbreak of conflict, hospitals and gynaecologists, for instance, have the knowledge and equipment to secure forensically correct evidence using the appropriate means.

56. The 2016 report by Maryvonne Blondin, “Women in the armed forces: promoting equality, putting an end to gender-based violence”<sup>38</sup> provides a useful basis for studying how violence within the armed forces creates an atmosphere of impunity and probably of normalcy in the face of violent behaviour in the military.

## 7. How can survivors obtain the lasting justice they seek?

### 7.1. Under-reporting, stigma and impunity

*I am not a child of rape, I am the child of my mother*

Anja Jusić

57. At the hearing in June 2022, Adrijana Hanušić Bećirović, from TRIAL International, underlined that one of the main hurdles in dealing with and prosecuting CRSV and supporting the victims was the social stigmas surrounding those crimes. It was necessary to provide safe spaces for victims enabling them to open up, those usually being victims’ associations and local NGOs. In her opinion, governments should remain the primary duty-bearers in providing support services, but they should do so in partnership with NGOs. Prosecutions had a deterrent effect and were important to victims because they provided them with an opportunity for a measure of satisfaction as well as support during the healing process. These comments have been backed up by my research into the requirements for assisting survivors of CRSV and for achieving closure for all the communities concerned by conflict.

58. In many countries and regions, victims of sexual violence, in particular rape, are stigmatised as a result of social and cultural contexts. In the Democratic Republic of Congo, victims of sexual violence are ostracised from their families and villages. Whole communities are disrupted, and this results in a lack of respect for all women. Since Sierra Leone’s civil war in the 1990s, victims of rape are marginalised because of the social stigma still widely attached to it, shunned by their husbands, families and communities, or reduced to silence to avoid ostracisation.

59. In particular women who have become pregnant as a result of rape are most likely to suffer further trauma and abuses of their rights, as the child will be considered as a child of the enemy. As a result, survivors of rape and their children are most likely to be ostracised by their community and married women rejected by their husbands. Married women can be disowned by their husbands, and unmarried women may never be able to marry because they are considered “spoiled” by their communities, becoming at the same time socially and economically even more vulnerable.

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37. Pramilla Patten, Foreword to the [Framework for the Prevention of Conflict-Related Sexual Violence](#), Stop Rape Now – United Nations Action Against Sexual Violence in Conflict, United Nations, 2022, pp 4-6.

38. [Doc. 14073](#).

60. Our exchange with Forgotten Children of War President, Anja Jusić, was an immensely touching, as well as instructive look into the harm done by CRSV over several generations. She recounted how she had carried the stigma of being born as a consequence of a war crime at every moment of her young life, from birth to school and employment, in societies where the absence of a father's name on identity documents could only point to one thing, where the reminder of the crime that caused a child's birth showed in a mother's eyes, and where breaking the silence between mother and child was almost too much to bear. Psychological support was essential for families to overcome the consequences of the crimes committed on them.

61. Among much advice for helping survivors, Ms Jusić underlined that a survivor-centred approach was essential, but that it was also essential to turn public attention away from the victims/survivors towards finding and naming the perpetrators. Too often, survivors were judged as having in some way attracted and brought rape on themselves. There was no excuse for CRSV, but society was still suspicious and blamed many young women and girls for bringing violence upon themselves.

## **7.2. Data collection**

62. Fear of stigmatisation and ostracism is also instrumental in provoking under-reporting and thus complicating data collection. In all these conflicts, it seems that only a fraction of the reality of violence against women can be presented. In Kosovo<sup>\*39</sup>, for instance, victims only started opening up 20 years after the war. Women, survivors of sexual violence in Bosnia and Herzegovina, for instance, had used silence as a coping strategy and only began to reflect on what they had experienced and the resulting trauma when their parental occupations had become less pressing.

63. In September 2022, the Office of the ICC Prosecutor and Eurojust launched practical guidelines for documenting and preserving information on international crimes, aimed to assist civil society organisations in documenting core international crimes, such as war crimes and crimes against humanity and intended to empower and support civil society organisations seeking to collect and preserve information in order to contribute to investigations.

64. French lawyer Céline Bardet has used both her substantial experience with survivors of CRSV worldwide and her academic knowledge to develop practical programmes and tools for assisting survivors both in submitting proof of the sexual crimes committed against them and in coming to terms with their experiences, in order to rebuild their lives.<sup>40</sup> She founded the NGO We Are NOT Weapons of War (WWoW) with the threefold aim of raising awareness of the crime of rape during conflict, of fighting impunity as the main reason of war rape's spreading and of helping victims to access the medical and psychological care they need and to foster their empowerment through access to legal redress. The mobile application "Backup" developed by the organisation uses an encrypted (blockchain) system which enables the reporting of victims of war rape, the co-ordination of professionals involved and the collection of reliable data on the phenomenon. Currently at the end of successful pilot phases in the Central African Republic, Libya, and Iraq, the application will soon be available in any regions where war is being waged.

65. At the Assembly's Autumn 2022 session, the NGO Ukraine 5AM Coalition (named after the hour at which the bombing of Ukraine by Russia began) was one of the three shortlisted candidates for the Václav Havel Human Rights Prize. It is a group of Ukrainian human rights organisations whose aim is to uncover, document, collect and preserve evidence, while raising awareness of alleged war crimes and crimes against humanity committed during the war. This type of initiative must be encouraged as a bridge between the crimes committed on the ground and the national and international courts.

66. A global in-depth study of CRSV using all available data is also lacking, and would be essential in seeking to understand the systematic nature and extent of conflict-related sexual violence, to co-ordinate efforts to eradicate and prevent it in future and to raise public awareness.

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39. \* Throughout this text, all reference to Kosovo, whether to the territory, institutions or population shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

40. [WeAreNOTWeaponofWar](#).



## 8. Dealing with the consequences of sexual violence during conflict

### 8.1. International measures

67. As well as working on prevention, the United Nations has produced guidelines on reparations for conflict-related sexual violence. A guidance note by the UN Secretary General published in 2014<sup>41</sup> states that “all victims, including those of conflict-related sexual violence, shall be treated with humanity and respect for their dignity and human rights, always avoiding further harm and trauma. Their right to a remedy and reparation should be fulfilled without discrimination on the basis of sex, gender identity, ethnicity, race, age, political affiliation, class, marital status, sexual orientation, nationality, religion and disability, or any other status”.

68. In 2002 the Assembly of State Parties to the Rome Statute of the ICC established a Trust Fund for Victims with a two-fold mandate. Firstly for reparations in implementation of Court rulings against a convicted person, either through distribution of sums from the sentence or by using voluntary contributions upon decision by the Board of Directors, with the aim of helping survivors towards healing and reintegration. Secondly, the Trust Fund for Victims assistance mandate provides reparative value to the most vulnerable victims and those having suffered the gravest forms of violence, their families and communities. The Trust Fund for Victims teams work in collaboration with local partners to deliver life-changing programmes including mental health, medical care, and material support programmes.<sup>42</sup>

69. Eligibility for the assistance mandate depends on quite restrictive, special criteria for identification. Besides collective reparations, individual victims may receive additional support. Survivors of gender-based violence (for instance in the case of Mali) have access to both collective and individual reparation. I was informed by Minerva Tavez Mirabal, Chairperson of the Board of Directors of the Trust Fund for Victims, during my interview with her, that only 14 countries of the 123 States Parties to the Rome Statute contribute regularly and sustainably to the Fund (while 48 make occasional payments), therefore an increase in these payments is essential.

70. In her speech at the 12th Consultative Assembly of Parliamentarians on the International Criminal Court and the Rule of Law on 4th November 2022 in Buenos Aires, Ms Tavez Mirabal reported that since the Court issued its first reparations order in 2012 (modified on appeal in 2015) the judges had awarded reparations to victims in each of the four convictions handed down. In all four cases, reparations were ordered through the Trust Fund and a fifth case is pending, where reparations proceedings have already taken place while the conviction is still being appealed. In order of value, the convicted persons were ordered, respectively, to award reparations of US\$ 1 million (Katanga), € 2.7 million (Al Mahdi), US\$ 10 million (Lubanga) and US\$ 30 million (Ntaganda).

71. Around 900 beneficiaries in Ituri province (Democratic Republic of Congo) and 800 in Mali have so far received compensation or rehabilitation measures through seven implementing partners or directly from the Trust Fund itself. In addition, in line with the assistance mandate, the Trust Fund has been implementing programmes since 2008 in Uganda and the Democratic Republic of Congo, and since 2020 in the Central African Republic and Côte d'Ivoire. In 2021 alone, these programs have benefited some 17 000 victims. Trust Fund for Victims programmes outside of court-ordered reparations have laid the foundations for court-ordered reparations programmes and can build up victim support for the ICC's work even in situations where accused persons have been acquitted or arrests have proved difficult.

72. Reparation orders to date have amounted to almost € 38 million, only € 330 000 of which came from fines, forfeiture proceeds or reparations payments. The number of survivors means that financial reparations from the fund, even in low-income countries, are in most cases symbolic, but as a sign of recognition of suffering, rehabilitation and status, both for individuals and whole communities, they represent much more than cash compensation. Health and infrastructure programmes also help to rehabilitate victims both economically and socially.

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41. See for instance “Guidance Note of the Secretary-General: Reparations for Conflict-Related Sexual Violence”, United Nations, June 2014.

42. [Our mandate: The Trust Fund for Victims.](#)

## **8.2. National measures: governments and civil society**

73. Medical and psychological care is vital for persons who are survivors of sexual violence. In the present European context of backlash against women's rights, wartime displacement can have serious consequences for the extent and quality of care they may receive. Women's access to their rights (among them to their sexual and reproductive rights) and to appropriate care vary from country to country according to law and policies. Highly restrictive abortion rights in Poland are problematic for women who find themselves pregnant after being raped in Ukraine. The socio-economic resources of the host country also count in the quality of professional help provided.<sup>43</sup> See in relation to the Republic of Moldova, for instance, the statement by the Council of Europe's Special Representative on Migration and Refugees: "Moldova needs more resources and expertise to welcome refugees fleeing the war in Ukraine", 17 June 2022.

74. According to Urszula Grycuk International Advocacy Coordinator of the Polish Foundation for Women and Family Planning (FEDERA), it is very hard for these women to understand the structures of a State in which they have just arrived, and they are often not provided with sufficient accessible information. For an abortion to be legal in Poland a certificate from a judge is required, stating that the pregnancy is the result of rape. For exiles in the country this is an almost insurmountable obstacle, especially in an environment prone to stigma around reporting of any kind of sexual violence. Ukrainian women seeking abortion care in Poland after surviving CRSV are dependent on FEDERA and other NGOs that provide them with information on access to medical abortion or abortion care abroad. From another source I was also informed that registration of possible pregnancy is becoming mandatory on entry into the country as a refugee, so even these existing limited possibilities are becoming less and less feasible.

75. More generally, States must ensure that women fleeing conflict have access to sexual and reproductive health and rights (SRHR) services which should be prioritised across the humanitarian and refugee response. All restrictions and barriers to SRHR, including time-sensitive and essential care, must be removed, and civil society organisations should be consulted and participate in the design of SRHR response efforts. Sustainable, long-term funding and flexible support needs to be provided in national health systems for SRHR programming, service provision and advocacy.

76. For the Council of Europe's Human Rights Commissioner,<sup>44</sup> psycho-social and psychological support to survivors of CRSV is not an issue that NGOs could manage alone – there is a need for experts, medical doctors and people with professional experience to address this brutal and humiliating crime, even if many of these competencies are present within NGOs themselves. She had seen the extraordinary work Ukraine was doing with international partners in documenting and prosecuting perpetrators, and the ratification by Ukraine of the Istanbul Convention is "a great and important step taken by the country". The Council of Europe could also play a role in supporting medical rehabilitation and psycho-social support in different member States, including Ukraine.

77. Adrijana Hanušić Bećirović, Senior Legal Advisor with TRIAL International in Sarajevo, Bosnia and Herzegovina, explained that the NGO fights against impunity and supports victims in seeking justice and access to reparations, mainly helping victims of conflict-related sexual violence. The work consists in influencing case law and policies and helping to improve legal texts, from criminal codes and criminal procedure codes to administrative reparation, striving for systemic solutions. In Bosnia and Herzegovina, sexual violence was widespread during the war. It had long-lasting consequences for victims and their families. It was necessary to undertake a wide area of reparation measures, ranging from rehabilitation to compensation, restitution, measures of satisfaction and guarantees of non-repetition.

## **9. Conclusions and recommendations**

78. Conflict-related sexual violence is a chain of events beginning with fundamental inequalities in a struggle for power and ending in war crimes and crimes against humanity. Recommendations must therefore start with the need to empower individuals, especially women and girls, physically, psychologically and socially through a real and measurable change in policies, education and mentalities.

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43. "Moldova needs more resources and expertise to welcome refugees fleeing the war in Ukraine", Special Representative of the Secretary General on Migration and Refugees, Newsroom, Council of Europe, 17 June 2022.

44. Hearing of 22 June 2022.

79. Specific measures concern early warning and self-protection tools, prevention through training of police and military forces, but also of international staff as well as NGOs working in the humanitarian programme framework with exiles and oppressed populations in positions of vulnerability, all susceptible to find themselves in positions of domination during periods of conflict.

80. Reliable data collection is vital in crimes of CRSV, although jurisdictions now lean towards witness and survivor testimony as sufficient to bring perpetrators to justice. Data collected should also be drawn together in a global study of the phenomenon.

81. Mechanisms for redress, reparation and reconstruction of survivors' lives must avoid retraumatising, stigmatisation and marginalisation. There is a need for safe spaces where survivors can speak freely, or choose not to speak. I was struck by international lawyer Céline Bardet's comments that survivors should be understood and be able to avail themselves of recognition and reparation for the crimes committed against them without necessarily being obliged to go before the courts. This can only be the case in societies where transitional justice has enabled political and societal change to come about.