

WORKING WITH VICTIMS OF SEXUAL VIOLENCE DURING ARMED CONFLICT:

A manual for Ukrainian
mental health and emergency
response professionals



Council of Europe Project
«Combating Violence Against Women in Ukraine»
(COVAW)

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

**WORKING WITH VICTIMS OF
SEXUAL VIOLENCE
DURING ARMED CONFLICT:
A manual for Ukrainian mental health
and emergency response professionals**

**Council of Europe Project
“Combatting Violence against Women in Ukraine” (COVAW)
2021-2022**

Document prepared by
Sareta Ashraph,
Barrister-at-law, specialised in international criminal law,
Garden Court Chambers (London)

with contributions from
Oksana Melnychenko,
Expert on domestic violence and
gender-based violence against women (Kyiv)
and

Oksana Stepaniuk,
Doctor-psychologist, child psychotherapist,
trauma therapist and mediator (Kyiv)

Council of Europe

The opinions expressed in this work are the responsibility of the authors and do not necessarily reflect the official policy of the Council of Europe.

The reproduction of extracts (up to 500 words) is authorised, except for commercial purposes as long as the integrity of the text is preserved, the excerpt is not used out of context, does not provide incomplete information or does not otherwise mislead the reader as to the nature, scope or content of the text.

The source text must always be acknowledged as follows “© Council of Europe, year of the publication”.

All other requests concerning the reproduction/ translation of all or part of the document, should be addressed to the Directorate of Communications, Council of Europe (F-67075 Strasbourg Cedex or publishing@coe.int).

All other correspondence concerning this document should be addressed to the Gender Equality Division, Directorate General of Democracy and Human Dignity.

Cover design and layout Anton Osmak,
Kyiv, Ukraine

Photo: Shutterstock

© Council of Europe, November 2022

Foreword

On 24 February 2022, a full-scale military invasion by the Russian Federation began, which led to a significant increase in the number of cases of sexual violence. Most often, the victims of sexual violence are women and girls.

In the context of growing evidence of sexual and gender based violence, the Independent International Commission of Inquiry on Ukraine has held that war crimes have been committed.

Conflict-related sexual violence has its own characteristics that distinguish it from other types of gender-based violence. In order to overcome the consequences of such violence, special approaches are needed in working with victims on the part of law enforcement bodies, psychologists, medical and social workers.

Prepared by the Council of Europe Project "Combatting Violence Against Women in Ukraine", the Manual discusses the concept and content of sexual violence related to the conflict, highlights the main principles of providing assistance to victims, and specifies the main legal principles of prevention and counter-measures against this type of violence. The guide will be useful for professionals who work directly with victims and anyone who encounters or may face conflict-related sexual violence in their daily lives.



Vladyslav Mashkin

Head
of the National Social
Service of Ukraine

TABLE OF CONTENTS

INTRODUCTION	11
I. UNDERSTANDING SEXUAL VIOLENCE	13
Defining Sexual Violence	13
Analysis of Incidents and Patterns of Sexual Violence	18
Structural inequalities underpinning sexual violence	19
The importance of an intersectional approach	20
Tactical uses of sexual violence	21
As a mechanism of social control	
As a means of dismantling social bonds	
As part of a coordinated strategy to destroy the group	
As a means of coercing confessions	
For humiliation and disempowerment	
For deliberate impregnation	
As a method of terror	
For a non-financial incentive (for recruitment and reward)	
As part of ritualistic practices	
II. WORKING WITH VICTIMS OF SEXUAL VIOLENCE IN UKRAINE	27
Enforcement Gap	35
Documentation of Sexual Violence	35
The Istanbul Protocol	37
What is the istanbul protocol?	
The 2022 update	
Role of health professionals in documentation: ethical and other considerations	
Principles of effective investigation and documentation	
Support to victims of sexual violence	
Physical and psychological smpacts of sexual violence	
Impact of stigma	
Impact of impunity	

The PEACE Model	44
Planning and preparation	
Engage and explain	
Account & clarification	
Closure	
Evaluation	
Particular challenges in documenting sexual violence against men and boys	56
Documentation of sexual violence committed against children	57
Documentation of sexual violence committed against sexual and gender minorities	58
Documentation of sexual violence committed against persons with disabilities	59
Recognising Trauma and Stress in the Interview Team	59
Secondary traumatic stress	
Burnout	
III. LEGAL FRAMEWORKS	65
Ukrainian domestic law	65
Criminal code of Ukraine	
Draft law No. 2689	
The impact of martial law	
International Human Rights Law	69
International Humanitarian Law	73
International Criminal Law	75
War crimes	
Crimes against humanity	
Genocide	
CONCLUSION	81
ANNEX A: ICC elements of crimes of sexual violence	83
ANNEX B: Baseline guidance for conducting interviews with adult survivors of sexual violence	87
ANNEX C: Template: Interviewing victims of sexual violence	107
SELECT BIBLIOGRAPHY	113
ENDNOTES	115

List of Abbreviations

Istanbul Convention

The Council of Europe Convention on preventing and combating violence against women and domestic violence

Istanbul Protocol

UN Human Rights Office Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

Genocide Convention

Convention for the Prevention and Punishment of the Crime of Genocide

Lanzarote Convention

The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse

List of Acronyms

ACHR	American Convention on Human Rights
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Convention on the Elimination of Racial Discrimination
CPT	European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CRC	Convention on the Rights of the Child
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms (more commonly known as the European Convention on Human Rights)
ECtHR	European Court of Human Rights
GREVIO	Group of Experts on Action against Violence against Women and Domestic Violence
IACHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICC	International Criminal Court
ICL	International Criminal Law
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IHRL	International Human Rights Law
IHL	International Humanitarian Law
OHCHR	Office of the High Commissioner for Human Rights
STS	Secondary Traumatic Stress
WHO	World Health Organization

Introduction

On 24 February 2022, Russia initiated a full-scale armed aggression against Ukraine. This marked a major escalation of a conflict that began in 2014 when, in quick succession, Ukraine's Crimean Peninsula was occupied and subsequently annexed by Russia, and an armed conflict commenced for control over eastern Ukraine. In its most recent incursions, Russia invaded Ukraine on multiple fronts.

In April 2022, concerns were raised of sexual violence – and particularly rape – being used as a weapon of war by Russia, as growing evidence of sexual violence emerged from areas retaken from retreating Russian forces.¹ In a joint statement released in June 2022, the EU High Representative for Foreign Affairs and Security Policy, Josep Borrell, and the UN Special Rapporteur for Sexual Violence in Armed Conflict, Pramila Patten, expressed grave concerns “about the harrowing personal testimonies and mounting allegations of sexual violence”² It is believed that the scale of sexual violence being committed in Ukraine during the most recent and ongoing iteration of the conflict is significantly underreported. Natalia Karbowska, Co-Founder and Director of Strategic Development for the Ukrainian Women's Fund, also speaking to the UN Security Council in June 2022, described sexual violence as “the most hidden crime” and noted that for every girl or woman who is willing to tell her story, there are many others who will be silent for years.³

In 2014, the Council of Europe Convention on preventing and combating violence against women and domestic violence, more commonly known as the **Istanbul Convention, entered into force**.⁴ This landmark treaty opened the path for creating a legal framework at pan-European level to protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence. It also establishes a specific monitoring mechanism to underpin the effective implementation of its provisions by the Parties.

In July 2022, Ukraine ratified the Istanbul Convention, becoming the 36th country to do so⁵. The Convention entered into force, as regards Ukraine, on 1 November 2022.

In July 2022, the Council of Europe designed and held a four-day training aimed at supporting professionals to ensure access to gender-sensitive and victim-centred social, psychological, medical, and legal assistance to the persons, including internally displaced persons, who have been affected by the sexual violence committed during the ongoing conflict in Ukraine. The professionals attending the training included psychologists, practising psychologists, medical psychologists, and social care professionals who will be directly engaged by the local self-government bodies in Ukraine to provide the services to victims of sexual violence during the conflict, with the special focus on women and girls in territorial communities. This Manual is based on the presentation, materials and issues discussed during the training, including materials and information provided by national and international consultants, and in line with the Istanbul Convention and existing Council of Europe guidance materials.

The Manual uses the term 'victim' to refer both to those who survived sexual violence, and to those who did not; and in recognition of the legal status afforded to victims under Ukrainian domestic law and international law. Furthermore, and in line with Article 3 of the Istanbul Convention, the term 'women' also encompasses women and girls while 'men' includes both men and boys. Where, however, crimes against children have been documented, the Manual applies an age-disaggregated approach, which explicitly highlights the experiences of girls and boys.

While it is generally accepted that the prevalence of sexual violence is under-reported – in Ukraine and elsewhere – it is also apparent that understanding of the natures of sexual violence and employing survivor-centred trauma-informed investigative and interviewing processes can overcome some, and perhaps many, of the barriers to documenting sexual violence. Informed analysis ensures that sexual violence is contextualised, and fully understood within a number of different legal frameworks. Finally, it is through insightful nuanced reporting that states, international bodies, civil society, and those charged with pursuing justice, can better rise to the responsibilities with which they are charged.

I. Understanding Sexual Violence

Defining Sexual Violence

Sexual violence has been a devastating feature of human society, committed in war and peacetime alike. Rooted in structural inequalities, and notably gender inequality, sexual violence forms part of a continuum of violence and discrimination that impacts women and men, boys and girls, throughout their lives. On a global scale those most at risk are women and girls.

The Preamble to the Istanbul Convention expressly underlines that violence against women is a manifestation of historically unequal power relations between women and men, which have led to domination over, and discrimination against, women by men and to the prevention of the full advancement of women's rights. The convention was preceded by Recommendation 1873 (2009) of the Council of Europe's Parliamentary Assembly, which reads in part,

The Assembly recalls that stopping sexual violence against women in armed conflict is intimately linked with empowering women and changing patriarchal societal models, as well as with ensuring justice is done each and every time a woman is raped in an armed conflict, be it close, on European soil, or far away on another continent. The key to eradicating sexual violence against women in armed conflict is gender equality.⁶

A facet of patriarchal societies, sexual violence relies on the enforcement of rigidly defined gender roles for its efficacy. Discriminatory attitudes against women and girls bolster, and are bolstered by, the commission of sexual violence, whether the victims are female or male. In turn, the impact of sexual violence often further

entrenches gender inequalities within a culture. Understanding these roots is integral to addressing, and to uprooting stigma around, sexual violence.

This Manual, and the training upon which it is based, defines sexual violence, including rape, in accordance with the Istanbul Convention, to which Ukraine has most recently become a party.

Article 36 of the Istanbul Convention, in setting out the obligations of states Parties to take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised, provides the following definition of sexual violence:

1. Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised:
 - a. engaging in non-consensual vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object;
 - b. engaging in other non-consensual acts of a sexual nature with a person;
 - c. causing another person to engage in non-consensual acts of a sexual nature with a third person.
2. Consent must be given voluntarily as the result of the person's free will assessed in the context of the surrounding circumstances.
3. Parties shall take the necessary legislative or other measures to ensure that the provisions of paragraph 1 also apply to acts committed against former or current spouses or partners as recognised by internal law.

The definition offered by the Istanbul Convention is used in the following Council of Europe manuals and reports:

- ▶ *Effectively investigating, prosecuting and adjudicating sexual violence cases: a manual for practitioners in Georgia*, (Council of Europe, UN Women and Equality Now), September 2021.⁷
- ▶ *The Administration of Justice on Sexual Violence Crimes against Women*, Research Study, (Council of Europe and Public Defender (Ombudsperson) of Georgia), December 2020.⁸
- ▶ *Preventing and combating violence against women and domestic violence in Ukraine: Good International Practices and Standards on Violence against women and domestic violence*, Report, (Council of Europe), May 2015.⁹

Although many states party to the Istanbul Convention may have incorporated the convention's definition of sexual violence into national law, this is not always the case. It is important, therefore, during the documentation and analytical process to consider how acts of sexual violence have or have not been criminalised in the country where the violence has taken place.

Similar standards to that established by the Istanbul Convention have been developed by the European Court of Human Rights (ECtHR),¹⁰ the Committee on the Elimination of Discrimination against Women (CEDAW Committee),¹¹ and other international and regional criminal justice and human rights mechanisms.¹² The definition of sexual violence used by the UN Office of the High Commissioner for Human Rights in the work of its Commissions of Inquiry and Fact-Finding Missions also aligns with that of the Istanbul Convention.¹³

Forms of sexual violence include, but are not limited to, rape, attempted rape, forced prostitution, trafficking for the purpose of sexual exploitation, sexual slavery, forced marriage, forced pregnancy, forced abortion, and forced public nudity. In addition to being a crime in most national legal systems, sexual violence is a serious violation of human rights, and, depending on the context in which it takes place, may be a constituent act of genocide and/or a violation of international humanitarian law. Where acts have been criminalised under international criminal law and codified in the Rome Statute of the International Criminal Court (ICC), those definitions are set out in Annex A.

Particularly (but not solely) in conflict settings, sexual violence is often committed as part of a broad pattern of violations against individuals and communities – a pattern that includes both sexual and non-sexual crimes. Regardless of the form it takes, where it takes place, or the identity of its victims or its perpetrators, sexual violence is not an expression of sexual desire. At its core, it is an expression of power, and a violent means of conveying dominance over the victims and the communities to which the victims belong.

Uprooting our assumptions about perpetrators and victims of sexual violence

- a. *Sexual violence may be committed by a variety of perpetrators, depending on the context in which the violence has occurred. This includes state forces (including police, armed forces, and militia), members of organised non-state armed groups, peacekeepers, members of private military and security companies, criminal gangs and/or individuals.*

Although the vast majority of perpetrators of documented sexual violence are male, females have also been found to have committed and/or incited sexual violence.¹⁴ Minors associated with armed forces who commit acts of sexual violence may have been indoctrinated or otherwise manipulated or forced to commit such acts. In accordance with the UN Guidelines on Justice Matters Involving Child Victims and Child Witnesses of Crime¹⁵ and the UN Convention on the Rights of the Child,¹⁶ children should be treated as survivors or witnesses and not as perpetrators.

- b. *Sexual violence can be committed against and by individuals of any gender. The definition provided by the Istanbul Convention, the Istanbul Protocol by the Office of the High Commissioner of Human Rights and in the ICC Elements of Crime are all gender neutral. They include same-sex penetration and encompasses both male and/or female perpetrators and victims.*
- c. *An individual can be liable for a crime of sexual violence even if they are not directly involved in the conduct. For example, a perpetrator would include someone who forces another to commit the crime. It can also include someone who orders, plans, instigates, encourages, and aids the crime.*

Understanding the role of consent when it comes to rape or other acts of sexual violence

It is generally accepted that a person may be incapable of giving genuine consent if affected by natural, induced, or age-related incapacity.

The European Court of Human Rights – echoing Article 36(2) of the Istanbul Convention – has found that, relating to prosecution of rape require that, for sexual contact to be legal, “Consent must be given voluntarily, as a result of the person's free will, assessed in the context of the surrounding circumstances.”¹⁷

But what does this mean in practice? The jurisprudence of the European Court of Human Rights has been illuminating.

In the *M.C. v. Bulgaria* judgment of 4 December 2003, the Court stated that it was “persuaded that any rigid approach to the prosecution of sexual offences, such as requiring proof of physical resistance in all circumstances, risks leaving certain types of rape unpunished and thus jeopardising the effective protection of the individual's sexual autonomy. In accordance with contemporary standards and trends in that area, the member states' positive obligations under Articles 3 and 8 of the Convention must be seen as requiring the penalisation and effective prosecution of any non-consensual sexual act, including in the absence of physical resistance by the victim.”¹⁸ The Court also noted as follows: “Regardless of the specific wording chosen by the legislature, in a number of countries the prosecution of non-consensual sexual acts in all circumstances is sought in practice by means of interpretation of the relevant statutory terms (“coercion”, “violence”, “duress”, “threat”, “ruse”, “surprise” or others) and through a context-sensitive assessment of the evidence.”

International criminal law has a similar focus on threat of force or coercion, including “taking advantage of a coercive environment”. In the ICC Trial Judgment in the case of the Prosecutor v. Jean-Paul Bemba Gombo, delivered in March 2016, the Trial Chamber considered the facts which may contribute towards a coercive environment, holding “[t]he Chamber does not exclude the possibility that, in addition to the military presence of hostile forces among the civilian population, there are other coercive environments of which a perpetrator may take advantage to commit rape.”¹⁹ It also considered that several factors may contribute to create coercive environment. It may include, for instance,

1. the number of people involved in the commission of the crime, or
2. whether the rape is committed during or immediately after a combat situation, or
3. is committed together with other crimes.

Both the jurisprudence of the European Court of Human Rights and of the International Criminal Court emphasise the significance of the surrounding circumstances, the context, in which sexual violence occurs.

The Explanatory Report to the Istanbul Convention set this out most clearly:

Prosecution of this offence will require a context-sensitive assessment of the evidence in order to establish on a case-by-case basis whether the victim has freely consented to the sexual act performed. Such an assessment must recognise the wide range of behavioural responses to sexual violence and rape which victims exhibit and shall not be based on assumptions of typical behaviour in such situations. It is equally important to ensure that interpretations of rape legislation and the prosecution of rape cases are not influenced by gender stereotypes and myths about male and female sexuality.²⁰

Use of the term “victim”

This Manual uses the term “victim” to refer both to those who survived sexual violence, and to those who did not, recognising that some victims of sexual violence may have died as a result of their injuries or have been murdered as part of or after the attack. Further, the term ‘victim’ recognises that those who have been subjected to crimes (including but not limited to sexual violence) under international law, as well as under Ukrainian domestic law, have the legal status of victims. Nevertheless, it is acknowledged the term “survivor” more accurately captured the agency, autonomy and resilience of individuals who been subjected to sexual violence.

Analysis of Incidents and Patterns of Sexual Violence

To analyse sexual violence is to contextualise sexual violence. It is through understanding how and why sexual violence is employed against particular individuals and communities that one can grasp the role it plays in achieving the perpetrators’ wider aims. Understanding the rationale behind the commission of sexual violence is essential for a nuanced and probing understanding not only of this violation, but also of the larger pattern of violations in which sexual violence often forms part.

Sexual violence – regardless of the form its takes, where it takes place, or the identity of its victims or its perpetrator – is not an expression of sexual desire. At its core, it is an expression of power, and a violent means of conveying dominance over the victims and the communities to which the victims belong.

Structural inequalities underpinning sexual violence

The Preamble to the Istanbul Convention sets out the strong link between violence against women and gender inequalities. It states, in part,

Recognising that violence against women is a manifestation of historically unequal power relations between women and men, which have led to domination over, and discrimination against, women by men and to the prevention of the full advancement of women;

Recognising the structural nature of violence against women as gender-based violence, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men

...[the state parties have agreed to the Articles of the Istanbul Convention]

The commission of sexual violence reveals the pre-existing historical and structural inequalities in the society to which the perpetrators of the sexual violence belong. Communities (and in the individuals who belong to them) most at risk are those where the political, social, economic, and cultural systems of perpetrator society support violence against them, whether by act or omission.

As noted in the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, "Understanding how gender norms are manifested in any given society is key to understanding these variations in how sexual violence is committed, against whom, by whom, and to what effect."²¹ Indeed, regardless of the idiosyncratic political and/or military objectives of perpetrators, they are often united in their rigid adherence to gender stereotypes based upon on domination and inequality of women and girls.

This does not mean that men and boys are only perpetrators and women and girls are only victims. Discriminatory attitudes against women and girls bolster and are bolstered by the commission of sexual violence, whether the victims are female or male.²² This includes attitudes reflective of societal discourses in which women and girls are viewed as the objects of men, where virginity is tightly bound to notions of familial honour, and regarded as weaker and less worthy of respect. The objectification of women and girls underpins systems of sexual enslavement and forced prostitution. This motivates using the spectre of commission of sexual violence against women as an incentive to recruitment and to a reward to serving fighters. Sexual violence may be committed because it may tear asunder a community that prizes female virginity, leaving survivors at risk of being killed

by their communities, or otherwise cast out as unmarriageable. Perpetrators may use rape as both a physical and psychological attack on male victims, causing them and their communities to regard them as “weak” – or rather, as “feminised”.

Unlike survivors of other violations, survivors of sexual violence risk being twice traumatised: first by the actions of the perpetrator, then again by the reaction of society and the state, which is often unresponsive or even punitive and discriminatory.

The importance of an intersectional approach

An understanding of how gender functions in a particular society is integral to understanding the use of sexual violence. Gender, however, is not the sole prism through which to analyse the commission of sexual violence in a society. Multiple forces interact to reinforce conditions of inequality and social exclusion, the roots of violence and stigma. There are varying and often intersecting forms of discrimination that affect the commission of sexual violence during unrest and war. These include ethnicity/race, indigenous or minority status, colour, socioeconomic status and/or caste, language, religion or belief, political opinion, national origin, marital and/or maternal status, age, urban/rural location, health status, disability, property ownership, being gay, lesbian, bisexual, transgender or intersex, statelessness, being involved in sex work, living with HIV/AIDS, being a detainee, and being a refugee or internally displaced. This list is not exhaustive.

Even a cursory glance at the documentation of sexual violence will illuminate the targeting of individuals and communities subjected to overlapping and interdependent systems of discrimination or disadvantage. For example, indigenous women and women of colour have been documented as being especially singled out for sexual violence during unrest and conflict. In an analysis of conflict-related sexual violence committed against women in Colombia, it was determined

In addition to factors impacting on all women, indigenous and afro-Colombian women have to deal with a history of slavery and years of condoned violence against them. This is coupled with racist perceptions that include a series of stereotypes about women's bodies. This has resulted in even higher rates of violence against afro-Colombian and indigenous women.²³

A study of sexual violence against members of the Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) community in the United States found that 47% of transgender people are sexually assaulted at some point in their lifetime, and of that group, people of colour (American Indian (65%), multiracial (59%), Middle

Eastern (58%), and Black (53%)) were most likely to have been sexually assaulted in their lifetime.²⁴

During the Rwandan genocide, the particularly brutal manner in which the rapes were committed betrayed pre-existing suspicions within Rwandan culture toward Tutsi women and girls. A remnant of Rwanda's colonial past, Tutsi women were seen as (and were believed to see themselves as) an elite group, superior to Hutu women in beauty, intelligence, and charm. These prejudices filtered into fixations of nascent Hutu supremacists. Four of the infamous "Hutu Ten Commandments," published in the December 1990 edition of *Kangura* (a Hutu supremacist newspaper), fixated on the supposed duplicity of Tutsi women.²⁵ The followers of Hutu Power ideology, and particularly its male followers, swung between concern that the charms of the Tutsi women would undermine Hutu advancement and a perceived transgressive attraction towards Tutsi women, and humiliation in the face of a seemingly internalised belief in Tutsi superiority.²⁶ Once the Rwandan genocide was underway, this manifested itself in the massive scale and barbarity of the sexual violence meted out to Tutsi women and girls. Men and boys belonging to the Interahamwe militia gang-raped Tutsi women and girls. They also raped them with objects, including bottles, stones, and tree branches. Some victims had boiling water poured on their genitals, or their breasts cut off.²⁷ Interahamwe militia members afforded no respect for pregnant women, cutting open their wombs and killing the foetuses before killing the mother.²⁸ Female survivors reported their rapists calling them "arrogant" and explaining that the rapes were a punishment for their perceived contempt for Hutu men.²⁹

Documentation, both as a recognition of the crimes and as a path to accountability, is particularly important for crimes of sexual violence. Impunity for these crimes acts to reinforce, rather than challenge, these pre-existing norms and patterns of discrimination against women and other marginalised groups, both inside and outside of the context of unrest or war. Accountability for crimes of sexual violence, whether classified as domestic or international crimes, is of the utmost importance as it breaks the underlying acceptance of this arguably routine abuse. It also combats the stigma which so often attaches to survivors, and which is enforced by the society in which they live, including the community of which they are a part.

Tactical uses of sexual violence

While sexual violence has a common foundation, the way in which it is used depends greatly on the perpetrators' strategic objectives. Often sexual violence serves more than one tactical use. Depending on the particular situation, sexual violence may be used tactically for many purposes, including:

As a mechanism of social control

Sexual violence, and threats of sexual violence, can serve as powerful warning to individuals and groups to curb any behaviour that challenges the de facto authorities in a particular area. In 2011 pre-conflict Syria, for example, sexual violence and threats of sexual violence were unsuccessfully used as a tool to tamper down opposition by State Security forces against detained protesters, including threats to female families of protesters. Female bodies were seen by perpetrators as a means of sending a message to their male relatives (in the perceived roles of “protectors”) not to challenge the Government. Women who are seen as standing up to the authorities, such as human rights defenders, have been targeted with sexual violence.³⁰

As a means of dismantling social bonds

Sexual violence is a particularly cogent way of destroying the social bonds of communities under attack. It is especially effective when employed in more strongly patriarchal cultures where women and girls carry the burden of the family's honour and where their protection is believed to be the ultimate responsibility of their male relatives. In such contexts, female survivors of sexual violence are more likely to be cast out by their own community, left unable to marry, abandoned by their husbands, or—in the extreme—killed in order to remove the stain of the family's “lost honour.” Sexual violence may also act as a measure preventing births, where the women and girls are so traumatised that they develop anxieties around any contact with men, and/or an unwillingness to procreate.³¹

Sexual violence against a community's women and girls is also often perpetrated and understood as a means of deliberate attack on the community's men or more specifically on the gender roles that men are expected to play - as the example from Syria demonstrates. Where men are expected to act as protectors of their female relatives, and women and girls from their community more generally, the rape of “their” women and girls may be interpreted as evidence of their own powerlessness, and thus, as an assault on their masculinity, as they define it.

That sexual violence is a source of shame and stigma to the survivors, and sometimes their communities, means perpetrators can use it as an effective strategy of social destruction. The ostracisation of survivors of sexual violence has the potential to unravel communities at scale, breaking family and community bonds. It generates an ongoing cycle: widening the sphere of impact on survivors who have been ‘shamed’ and perpetuating the social process by which they become marginalised.

As part of a coordinated strategy to destroy the group

Many genocidal campaigns have explicitly and implicitly sanctioned sexual violence, as is the case of the sexual enslavement of Yazidii women and girls by ISIS. Sexual violence, while not as efficient a strategy of group annihilation as killing, is a shockingly effective means of both destroying the individual victim and tearing apart the community from which s/he comes.

The ICTR case of *Akayesu* first found that rape and sexual violence constitute serious harm on both a physical and mental level – and consequently, if carried out with specific intent to destroy, in whole or in part, a protected group, constitute genocide:

Rape and sexual violence certainly constitute infliction of serious bodily and mental harm on the victims and are even, according to the Chamber, one of the worst ways of inflicting harm on the victim as s/he suffers both bodily and mental harm... The rapes resulted in the physical and psychological destruction of the Tutsi women, their families and their communities. Sexual violence was an integral part of the process of destruction, specifically targeting Tutsi women and specifically contributing to their destruction and to the destruction of the Tutsi group as a whole.³²

In 2016, the Commission of Inquiry on Syria determined that sexual violence against Yazidi women and girls formed part of ISIS's continuum of genocidal violence against the Yazidi religious group, noting that "[r]ape and sexual violence, when committed against women and girls as part of a genocide, is a crime against a wider protected group, but it is equally a crime committed against a female, as an individual, on the basis of her sex."³³ Not specific to ISIS, the view of women and girls as objects finds a horrific, though logical, extreme in the terrorist group's conduct, when backed by radical religious interpretation and territorial control affording dominance over women and girls.³⁴

As a means of coercing confessions

Sexual violence, including rape and sexual torture are routinely used to force confessions in detention centres run by states and armed groups.

In June 2016, an investigation by Amnesty International of 100 women arrested in Mexico revealed that women are routinely sexually abused by security forces that want to secure confessions and boost figures in an attempt to show that they are tackling rampant organised crime. Amnesty noted the "sexual violence used as a form of torture seems to have become a routine part of interrogations," with

women from marginalised backgrounds being the most vulnerable.³⁵ The NGO Freedom from Torture, reporting on “Rape as Torture in the DRC”, determined that “rape is being used as torture by state security forces in prisons across the country to stop women speaking out about politics, human rights and, in some cases, rape itself.”³⁶

The Commission of Inquiry on Syria has repeatedly reported on the Government’s use of rape and sexual torture – including electrocution of genitals – on male and female detainees.³⁷ There are increasingly reports that gay men held in Syrian Government detention have been particularly targeted for sexual violence, including rape.³⁸

For Humiliation and Disempowerment

Sexual violence, and in particular rape, carries with it masculinist connotations of dominance. Humiliation is not therefore only a consequence of sexual violence, but it can be a deliberate objective of its commission. This is particularly so when rapes are perpetrated in public, as occurred in Guinea in September 2009 when several hundred members of Guinea’s security forces burst into the stadium in the capital, Conakry, and killed 150 people and publicly raped dozens of women, including individual and gang rape and sexual assault with objects such as sticks, batons, rifle butts, and bayonets.³⁹ It is also seen in recording, in videos and photographs of sexual assaults and the later circulation. With easy access to smartphones and social media, such recordings have become increasingly common.

Sexual violence committed men is used a tool of emasculation and disempowerment (which again relies on gender stereotypes lining masculinity with strength). As examined by Sandesh Sivakumaran in the European Journal of International Law, sexual violence committed against men and boys serves not only to inflict pain but also to humiliate and disempower the men, challenge both their masculinity and heterosexuality, and assert the supremacy of those directing the sexual violence.⁴⁰

For Deliberate impregnation

If the bodies of women and girls are socially constructed as the carriers of purity, of honour and as the possessions of their fathers, brothers and husbands, violations of those bodies carry specific implications. The deliberate impregnation of women or girls, in such a context, is simultaneously an assault on that woman, an assault

on her social identity and a message to the men in her community that she has been 'contaminated' and claimed by the opposing force. Women and girls may be forced to marry perpetrators to 'legitimate' both their children and their so-called sexual contamination. Children born to abducted women and girls face ostracism and guilt by association.

The 1994 Final Report of the United Nations Commission of Experts, which reported on evidence of grave breaches of the Geneva Conventions and other violations of international humanitarian law committed in the territory of the former Yugoslavia, found that women and girls who became pregnant were denied abortions and forced to carry the pregnancies to term.⁴¹

As a method of terror

Sexual violence has been used as a tactic of terror and has been recounted by Yazidi women held captive by Islamic State extremists in Iraq, girls who fled from Boko Haram, Somali women liberated from the al-Shabab extremist group, and women living under al-Qaeda linked militants in northern Mali.

Caution must be exercised here as the definition of "terrorism" has not been used consistently. It is more likely to be used in related to armed groups, that to states even where both use sexual violence to terrorise communities. Within the category of armed groups, it is currently more likely to be applied to Salafi jihadist movements. While Charles Taylor's National Patriotic Front of Liberia both engaged in widespread and systematic rapes, including public gang rapes, of areas controlled by the Government and other armed groups, it did not tend to attract the moniker of "terrorism". As such the term tends to be used to describe who the perpetrators are, rather than how they behave – a political rather than a legal distinction.

Additionally, recognised terrorist groups that employ sexual violence – for a variety of tactical purposes, including terrorism – also exhibit very rigid social constructions of gender, within a framework of the domination and discrimination of women and girls. The same is also true of white supremacist and other nationalist groups.

For a non-financial incentive (for recruitment and reward)

Some perpetrators, state and non-state, have used sexual violence against women and girls as an incentive to increase recruitment into their ranks, and as a reward to their fighting forces. Both Boko Haram and ISIS have used the prospect

of forced marriage to Sunni women and girls, and the holding of non-Muslim women in sexual enslavement, to entice young men to join their ranks. However, the promise of (non-consensual) sexual access to women and girls has not been shown to be a major plank of recruitment.

During the Rwandan genocide, Interahamwe militia members were presented with Tutsi women and girls to rape as a reward for their commitment to the genocide.⁴² During the Balkans war, Serbian soldiers and paramilitary fighters were encouraged to carry out rapes, including at camps established across Bosnia and Herzegovina where women were held and raped repeatedly for months on end.

In some instances, some perpetrator entities use sexual violence as a method of initiation or induction through which younger members recently recruited to the group become complicit in the crime and are less able to leave, particularly where they have been coerced into participating in acts of sexual violence against their own community.

As part of ritualistic practices

Sexual violence may be committed as part of ritualistic or harmful communal practices, for example in the belief that sexual intercourse — often with virgins and/or children — provides fighters with special powers, invincibility, or a cure for diseases.

II. Working with Victims of Sexual Violence in Ukraine

After the armed aggression of the Russian Federation against Ukraine commenced, reports emerged in the media concerning rape and other acts of sexual violence committed by the Russian Forces. Women, men, the elderly, children and even infants have been subjected to sexual violence.

In Ukraine, sexual violence is being used as a weapon of war. It is a tactic of how the war is being waged and so should not be treated or understood as an inevitable “side effect” of the war. These crimes can be prevented, and the guilty can be punished. When sexual violence is committed as part of hostilities and armed conflict, it is not merely a criminal offence under Ukrainian domestic law; it also violates international humanitarian, human rights, and criminal law.

As discussed in Section III (Legal Frameworks), perpetrators may be individually criminally liable for crimes of sexual violence as other criminalised violations of the international law.

Cases against perpetrators can take place before courts that have jurisdiction over crimes committed in Ukraine. Currently these include the national courts of Ukraine and the International Criminal Court in The Hague. National courts of third states, where their domestic law permits, may try cases of sexual violence and other international crimes under universal jurisdiction, which provides the basis for a third state to investigate and prosecute certain crimes (including war crimes, crimes against humanity, and genocide), even if they were not committed on its territory, by one of its nationals, or against one of its nationals. It is important, therefore, to record the crimes where a person has been a victim or witness, and to collect as much evidence as possible in order to hold the perpetrators liable.

- ▶ If you or another person are a victim of sexual violence:⁴³
 - Make sure you are safe.
 - Leave the crime scene
 - Protect your physical and psychological safety as much as possible.
 - Get medical aid.
 - Get medical aid to record any bodily injuries and your overall health condition at available and appropriate health care facilities (such as a hospital emergency room).
 - You must not take a shower or a bath or brush your teeth before having a forensic medical examination or being examined by doctors.
 - Under domestic law, health care facilities shall perform medical examination of victims of sexual violence who have contacted them, and are required to record the results.
 - You must obtain from doctors and keep original copies of medical certificates, forensic medical examination opinions, prescriptions, referrals, recommendations, etc. Necessary information on medical aid is provided upon the victim's request, as certificate No. 028/o or No. 027/o.⁴⁴
 - Inform the authorities of the crime.
 - National Police of Ukraine. If you have been a victim of sexual violence, call the police call centre at 102 or 0 800 500 202. When you call the police, make sure that your statement to the law enforcement authorities has been registered (the information has been entered into the Unified Register of Pre-Trial Investigation, and the criminal proceedings have been initiated).
 - Prosecutor's office⁴⁵
 - Military administration at the location of the crime, or at your location.

- ▶ If you are in the occupied territory, or if you are unable to contact the competent authorities of Ukraine, you may report the crime to:
 - General Prosecutor’s Office (<https://www.gp.gov.ua>) (hotline for the crimes committed during the armed conflict: **+38 096 755-02-40** (Viber, WhatsApp, Telegram, Signal); e-mail: *conflict2022.ua@gmail.com*). If information is sent by e-mail, specify your full name and communication details.
 - Ukrainian Parliament Commissioner for Human Rights (<https://www.ombudsman.gov.ua>) (**+38 044 253-75-89** or **0800 501 720** or by e-mail: *hotline@ombudsman.gov.ua*) If information is sent by e-mail, specify your full name and communication details.
- Keep as complete records of the crime as possible.
 - Where possible, take photo/video records and record possible witnesses.
 - Keep photo and video records, and the clothes the victim was wearing. The clothes may contain traces of the crime.
 - The proper collection and storage of evidence are integral to holding the criminals liable for crimes against sexual freedom.
 - Traces of biological materials (DNA traces of the perpetrator on the victim’s body, under the nails etc.) must be collected.
 - If there are active hostilities in the area of the crime, and it is impossible to contact law enforcement authorities or a health care facility to record the crime, you will need to collect and store the evidence on your own.
- How to collect and keep the evidence on your own:
 - Biological material from the perpetrator can be collected with a clean gauze or cotton tampon, which must be moistened with water before; then the tampon must be rolled in clean dry paper and placed into a ziplock bag, or another plastic bag sealed reliably.
 - You must write on the bag, specifying where the sample has been taken from (i.e., from which part of the body or surface) as well as the date and time of collection.

- The same procedure must be performed with the physical evidence (clothes and other items containing traces of the crime).
 - The evidence must be sealed, with two neighbours or other persons signing each bag. Where possible, this collection of evidence should be photo or video recorded.
 - Make a statement that specifies the following in a free format: date of evidence collection, location of evidence collection, full names of the persons involved, their contact details, a description of what has happened, what evidence has been collected, where it has been placed, and how it has been sealed.
 - The collected evidence must be kept in dry conditions, shielded from direct sun rays. When possible, transfer them to the law enforcement authorities promptly together with the description you have made. The description must be made in two copies. One will be given the stamp of acceptance, which you must retain until the investigation is completed.
- Record the information on the criminal offence committed.
 - Record the circumstances of the case with a detailed description. (It is important that you record the most important circumstances of the case since the investigation of international crimes can take a long time, and some details may be forgotten);
 - location of the crime (specific address / place on the map); date and time of the crime;
 - full name, birth date, contact details of the victim;
 - information on witnesses to the crime (full name, birth date, contact details);
 - detailed information on the offender(s) (number of the offenders; their names and ranks, if known; the uniform they wore; whether they had weapons and if they did, which weapons; vehicles; themes of their conversations with each other, their commanders, and what exactly they said; what relations the offenders had; whether they were common soldiers or commanders; whether their ranks, names etc. were mentioned in your presence);

- information on other similar crimes in this area;
 - damage sustained (of a pecuniary, non-pecuniary, psychological nature).
- How to get psychological and legal aid
 - Victims of sexual violence during hostilities or armed conflict are entitled to free medical, social and psychological aid, other social services, and free legal aid.
- How to get legal aid

The free legal aid system offers secondary legal aid without charge to victims of sexual violence in the time of war, including:

 - consultations and explanations on legal matters
 - assistance in drawing up statements and complaints (in particular, statements of the crime to the police)
 - representation in criminal proceedings on the crime
 - assistance in forwarding information on the facts of sexual violence to the International Criminal Court, and other services.

To get legal aid

- Call: **0 800 213 103** contact centre of the free legal aid system.
- Contact a legal aid bureau⁴⁶.
- Use remote services⁴⁷.
- You can also get legal aid from the following organisations:
 - Ukrainian Women Lawyers Association “JurFem”:
+38 (068) 145 55 90 (Monday to Friday, 9 a.m. to 6 p.m.).
 - Human rights defence initiative Euromaidan SOS:
Telegram @ESOSdoc or evromaidansos@gmail.com

- How to get psychological aid

Organisations that can be contacted for psychological aid:

- National Hotline on Prevention of Domestic Violence:
0800 500 335 or **116 123**.
 - Forpost Non-Governmental Organisation – psychological assistance and consultations by psychiatrists: **+38 (096) 839 76 17** or the same number on Telegram: *@forpostcenter*
 - Break the Circle Project: **8 0800 500 335**
 - Psychological assistance “Tell Me”: *tellmecomua@gmail.com*
- The victim’s right to compensation for the damage resulting from a criminal offence

Victims can claim different forms of compensation via various remedies at the national and international levels, including without limitation:

- via the civil procedure, by filing a civil claim for compensation against the person or group of persons who have been found guilty of the crime (sexual violence) in accordance with the criminal laws at the national level, i.e., by the national courts;
- via the Trust Fund for Victims of the International Criminal Court, the mission of which is to support victims of genocide, crimes against humanity, war crimes and aggression within the jurisdiction of the International Criminal Court via its two separate mandates, compensation and assistance. Special-purpose financing constitutes an important part of resources of the Trust Fund within the assistance mandate, especially to support victims of sexual violence related to conflict and atrocity.

- How to forward information to the International Criminal Court:

Information can be forwarded to the International Criminal Court via:

- Office of the Prosecutor of the International Criminal Court in The Hague: *otp.informationdesk@icc-cpi.int* (you can write in any language);

- Prosecutor General’s Office of Ukraine: <https://warcrimes.gov.ua> (website for centralised collection of information on war crimes), where you can upload photo and video materials that will be used to reinstate justice in Ukraine and international bodies;
 - Telegram bots: Security Service of Ukraine: *@stop_russian_war_bot*; Cyberpolice of Ukraine: *@ukraine_avanger_bot*.
- If the victim of sexual violence is a child:
 - A child is deemed to be a victim of sexual violence if they have witnessed the crime, or their family member or relative is a victim.
 - Take the child to the safe place and make sure s/he feels safe.
 - Give short and clear answers to the child’s question, without giving unnecessary information.
 - The child affected by sexual violence needs professional aid and medical and psychological support.
 - Before testimony is collected from a child, it is necessary to consider secondary damage that can be unintentionally inflicted. The risk must be assessed by the mental health professional.
 - If you have witnessed sexual violence:
 - Being forced to witness sexual violence may be as traumatic as being directly subjected to physical or sexual violence itself. It is especially so where the direct victim of the crime is a child, a relative, a close friend. In such a situation, it is essential that the individual seek out psychological aid, including through the resources provided here.
 - If a victim of sexual violence has trusted you:
 - Help him or her get to a safe place and make sure s/he feels safe.
 - Explain that s/he is not guilty of what has happened, and that his or her main task was to survive. The violence committed is the rapist’s choice and responsibility.

- Demonstrate compassion and support. Ask for the victim’s permission before touching or hugging him or her.
 - Do not ask questions. Do not assess the victim’s emotions and responses. You should be especially careful with the persons who behave in an estranged and very calm manner after sexual violence. Try to keep an eye on the person.
 - Suggest that s/he should see professional aid.
 - Respect his or her confidentiality.
- National services for victims of sexual violence:
 - 103** – medical aid, health condition records
 - 102** – National Police to record the fact of the crime
 - 0 800 500 202** – police call centre
 - 0 800 507 001** – Prosecutor General
 - 096 755 02 40** – Prosecutor General’s Office
 - e-mail: *conflict2022.ua@gmail.com*
 - @stop_russian_war_bot* or *@war_crime_bot* – Telegram bots
 - 044 235 75 89** – hotline of the Human Rights Commissioner
or **0 800 501 720**
 - hotline@ombudsman.gov.ua*
 - 068 145 55 90** – Ukrainian Women Lawyers Association “JurFem”

Sexual violence often results in strong psychological trauma for victims. Timely and professional psychological aid can prevent further and deepening traumas and development of the victim’s depression.

Victims and witnesses of sexual violence should never blame themselves. It is no use trying to understand or acquit those who have committed the crime as this can deepen the emotional trauma. Violence is always the perpetrator’s decision, and they are criminally liable and morally responsible for the acts they have committed.

It is essential that victims find a person they can trust and do not retreat into themselves. It can be a close person or a professional psychologist; the principal criterion when choosing this person must be that the victim likes and trusts them. It is the victim's personal decision whether to seek help from governmental authorities. However, they should remember that timely professional aid can protect them from complications, both physical and psychological.

Enforcement Gap

Rape and other forms of sexual violence are violations of human rights law and international humanitarian law entailing state responsibility, and can also amount to international crimes and, consequently, entail individual criminal responsibility.

The prohibition against sexual violence is one of the areas where the Istanbul Convention and other international humanitarian law, human rights law and international criminal law move in the same direction, complementing and reinforcing each other. It is not uncommon to find international criminal tribunals and human rights courts and other bodies citing each other's decisions as they reach their findings as regards cases of sexual violence before them.

However, the legal recognition of sexual violence as a violation of international law has always led to a prioritisation in the documentation and prosecution of sexual violence. There continues to be a yawning chasm between the prohibition under international law of rape and other forms of sexual violence and the prevalence of crimes of sexual violence committed with impunity. There needs to be better implementation and enforcement of international law to ensure effective prosecutions of crimes of sexual violence, both internationally and domestically. Proper documentation, analysis and reporting strengthens those advocating that such prosecutions must be prioritised, and supports the work of bringing cases before national, regional and international courts and tribunals.

A full examination of international humanitarian law, human rights law and international criminal law as regards sexual violence can be found in Section III (Legal Frameworks).

Documentation of Sexual Violence

This section provides the particular guidance that should be considered when documenting sexual violence. It sits, therefore, within the broader framework for documenting violations of international law.

Documenting sexual violence comes with specific challenges. Information and evidence of sexual violence, due to the circumstances in which it often takes place, tends to be collected through the interviews with survivors and witnesses. Obtaining information about sexual violence requires individuals to confront, admit to, and discuss an issue that is extremely sensitive, both culturally and socially. In particular, survivors are often asked to describe painful past or recent experiences, which may be profoundly distressing to them. Beyond this, constructing a clear record can be challenging due to the impact of trauma on memory. Additionally, the domestic legal framework of a particular country may contribute to an under-reporting of sexual violence. This would include instances where it is unlawful for women and girls over the age of consent to have pre-marital sex, or for men and boys over the age of consent to engage in same-sex sexual activity, where the law makes no distinction between consensual and non-consensual sexual intercourse.

Victims and witnesses may be asked to speak about their views on matters which are generally not openly discussed. In some settings, simply participating in an interview or inquiry about sexual violence can have serious, even life-threatening implications. While survivors may be particularly vulnerable, there may also be rippling dangers for the community of which they are part, as well as for those involved in collecting information. The risks to male and female survivors may differ, particularly as regards stigma. It is important to be alert to this so that signs that sexual violence has taken place are not overlooked during the documentation exercise.

Data collection, including through the collection of statistical or demographic data, is also invaluable to the analysis and prosecution of international crimes, including crimes of sexual violence. Under Article 11 of the Istanbul Convention, Parties are obliged “to collect disaggregated relevant statistical data at regular intervals on cases of all forms of violence covered by the scope of this Convention” and “to support research in the field of all forms of violence covered by the scope of this Convention.” The Explanatory Report underscores the importance of such data collection for the prevention and punishment for sexual violence, “[a]ccurate statistical information specifically designed to target victims and perpetrators of such violence is not only important in efforts to raise awareness among policy-makers and the public on the seriousness of the problem, but can also encourage reporting by victims or witnesses.”⁴⁸

Paragraph 2 of the same Article details Parties’ obligation to endeavour conducting population-based surveys. Such surveys can also provide reliable data on victims’ experiences of violence, on the reasons for not reporting, on the services received, as well as victims’ opinions of and attitudes towards such violence.

As discussed in Section I (Understanding Sexual Violence), sexual violence often follows and reinforces pre-existing structural inequalities in a society.

Understanding the context in which you are about to work will assist both in the documentation and analytical exercise.

In this section, we examine the guidance provided by the Manual on Effective Investigation and Documentation of Torture and Other cruel, Inhuman or Degrading Treatment or Punishment, more commonly known as the Istanbul Protocol, which was updated in June 2022. We then move on to look at the PEACE Model framework, the international best practice for the conducting victim-centred, trauma-informed interviews of survivors of crimes, including of conflict-related sexual violence.

The Istanbul Protocol

What is the Istanbul Protocol?

Torture, which may be committed through acts of sexual violence, inflicts profound harm on individuals and threatens the health, dignity, and wellbeing of families and communities. Health professionals have a duty both to document torture and to protect human rights as a foundation for human health and wellbeing. Effective clinical investigation and documentation are, therefore, essential to corroborate allegations of torture and other forms of ill-treatment and to achieve prevention, accountability, and redress for such crimes.

In 1996, health professionals with legal and human rights experts developed such standards, and these became the *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, or the Istanbul Protocol. Updated in 2004 and 2022, the Istanbul Protocol has been used in medico-legal and other contexts as a practical tool to effectively guide the investigation and documentation of torture and ill treatment and the protection of victims, and is routinely referenced by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.⁴⁹ It provides essential guidance for medical, law enforcement, prosecution, judicial and other relevant professionals.

The Istanbul Protocol standards have been endorsed by the UN and international, regional, and national human rights bodies and legal mechanisms. They have informed states' treaty obligations to investigate, prosecute, and punish torture under the UN Convention against Torture and international and national law. And they have underpinned health

professionals' global efforts to end torture, hold perpetrators accountable, and afford victims the redress and rehabilitation to which they are entitled.

The 2022 Update

Over the past six years, more than 180 clinical, legal, and human rights experts from 51 countries worked together to update the Istanbul Protocol standards and provide additional guidance. The initiative was coordinated by four civil society organisations (Physicians for Human Rights, the International Rehabilitation Council for Torture Victims, the Human Rights Foundation of Turkey, and REDRESS) and four UN anti-torture bodies (the Committee against Torture, the Subcommittee on Prevention of Torture, the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the UN Voluntary Fund for Victims of Torture).

This latest edition – published in June 2022 – reflects advances in the global understanding of the practices and effects of torture and ill-treatment. It clarifies the definition and scope of torture, jurisprudence on torture prevention, accountability, and redress, and outlines current legal investigation practices as well as new guidance for judges, prosecutors, and other actors.

It provides more consistent guidance on (a) the interpretation of physical and psychological evidence of torture and ill-treatment, as well as on (b) the obligation of clinicians to provide a conclusion on the possibility of torture in all medico-legal clinical evaluations. The updated Istanbul Protocol has been referred to as an essential tool to empower health professionals to leverage their clinical knowledge and skills to help end torture and safeguard our humanity.

Role of health professionals in documentation: ethical and other considerations

There are clear links between concepts of human rights and the principles of health-care ethics. There is also significant overlap in the professional ethics to which both the legal and medical professions must adhere.

The central tenet of all health professional ethics, however articulated, is always the fundamental duty to respect human dignity and act in the best interests of the patient, regardless of other constraints, pressures, or contractual obligations.

The duty of doctors to act in the best interests of the patient and not to harm them has been recognised for centuries in a number of codes, including the Charaka Samhita, a Hindu code dating from the first century A.D.

Hippocratic values reflect four foundational principles:

- ▶ Beneficence (to act in the best interests of patients)
- ▶ Non-maleficence (the 'do no harm' principle)
- ▶ Confidentiality (to protect the confidentiality of patient information).
- ▶ Respect for patient autonomy (respecting patients' decisions).

Confidentiality: the duty of confidentiality covering identifiable personal health information can be overridden only with the informed authorisation of the patient. Health professionals cannot be compelled to disclose information about their patients in such situations, particularly in situations of armed conflict. This is recognised in Article 28 of the Istanbul Convention, Reporting by Professionals.

Respect for autonomy recognises that patients themselves are the best judges of their own interests. This requires health professionals to adhere to an adult patient's decisions rather than to the views of any person in authority about what would be best for that individual. It is therefore necessary to obtain voluntary and informed consent from patients prior to any examination or procedure. This means that individuals need to know and understand the implications of agreeing and the consequences of refusing, as well as any reasonable alternatives. .

What happens when law and professional ethics are in contradiction? What is there is a law requiring reporting incidents of torture, but the patient does not consent to an examination or to reporting the findings of an examination?

There is consensus in international and national declarations of ethical precepts that other imperatives, including the law, cannot oblige health professionals to act contrary to medical ethics and to their conscience. In such cases, health professionals must decline to comply with the law or a regulation rather than compromise basic ethical precepts or expose patients to harm.

The World Medical Association has provided guidance to physicians on the circumstances in which breaches in confidentiality may be considered, for example when harm is believed to be imminent, serious (and irreversible), unavoidable except by unauthorised disclosure, and greater than the harm likely to result from disclosure. In determining the proportionality

of these respective harms, the physician needs to assess and compare the seriousness of the harms and the likelihood of their occurrence.

Principles of Effective Investigation and Documentation

The purposes of effective investigation and documentation of torture and ill-treatment include:

- ▶ Clarification of the facts and establishment and acknowledgement of individual and state responsibility for victims and their families;
- ▶ Identification of measures needed to prevent recurrence;
- ▶ Facilitation of prosecution or, as appropriate, disciplinary sanctions for those indicated by the investigation as being responsible and demonstration of the need for full reparation and redress from the state, including fair and adequate financial compensation and provision of the means for medical care and rehabilitation.

To run an effective investigation and documentation one needs:

- a. A clear understanding of the elements of the crime
- b. States must ensure that complaints and reports of torture or ill-treatment are promptly and effectively investigated. The investigating body should be as diverse as the communities they serve.
- c. necessary budgetary and technical resources for effective investigation.
- d. Alleged victims, witnesses and those conducting the investigation and their families must be protected from violence, threats of violence or any other form of intimidation or reprisals that may arise pursuant to the investigation.
- e. Alleged victims of torture or ill-treatment have the right to complain about such treatment and to have such complaints promptly and impartially examined and the right to an effective remedy.
- f. Medical experts involved in the investigation of torture or ill-treatment should behave at all times in conformity with the highest ethical standards and, in particular, must obtain informed consent before any examination is carried out.

Support to Victims of Sexual Violence

Ensuring states parties provide support to victims of sexual violence is a pillar of the Istanbul Convention.

Article 22 obliges parties to provide short and long-term specialist services to victims of any form of violence covered by the Istanbul Convention in adequate geographical distribution. This includes shelter and safe accommodation,⁵⁰ immediate medical support, the collection of forensic medical evidence in cases of rape and sexual assault, short and long-term psychological counselling, trauma care, legal counselling, advocacy, and outreach services. In September 2022, Oksana Zholnovych, Minister of Social Policy of Ukraine and Head of Delegation, in her response to questions from the Committee on the Elimination of Discrimination against Women during the ninth periodic report of Ukraine, stated that Ukraine –mindful of the Istanbul Convention– had expanded its network of specialised support services for victims of domestic violence and gender-based violence, comprising of 431 mobile teams of social and psychological assistance, 43 shelters, and 37 daycentres of social and psychological assistance.⁵¹ In 2022, almost 15,000 people had used these services.

Under Article 24 of the Istanbul Convention, parties are required to set up state-wide telephone helplines available 24 hours, 7 days a week and free of charge to ensure easy and confidential access to information and counselling by trained professionals on all forms of violence against women in all relevant languages. It also encompasses telephone helplines to direct victims to the right type of service and specific services for children as victims or witnesses.⁵² 3As per the Explanatory Report, the aim of such specialised support is “to ensure the complex task of empowering victims through optimal support and assistance catered to their specific needs.”⁵³ Ukraine has indicated that, as of September 2022, several hotlines – four national hotlines and 21 regional hotlines to combat domestic violence and support survivors– were in operation and being administered by the Government, with others coordinated by non-governmental organisations.⁵⁴

Parties to the Istanbul Convention, by virtue of Article 25, are required to take “the necessary legislative or other measures to provide for the setting up of appropriate, easily accessible rape crisis or sexual violence referral centres for victims in sufficient numbers to provide for medical and forensic examination, trauma support and counselling for victims.” The Mid-Term Horizontal Review of GREVIO baseline evaluation reports provides more specific guidance, indicating that parties

are required to provide a set of holistic services to victims of sexual violence, including immediate medical care and trauma support combined with forensic examinations, as well as short and long-term psychological

counselling and therapy to ensure the victim's recovery. Such services should be provided by trained and specialised staff in an appropriate manner to respond to the victims' needs, preferably within rape crisis or sexual violence referral centres established in sufficient number through the country to ensure their easy access.⁵⁵

Paragraph 142 of the Explanatory Report underscores that the parties are obliged to ensure not only that the centres are set up "in sufficient numbers, but also to ensure their easy access and that their services are carried out in an appropriate manner."⁵⁶ The Final Activity Report of the Council of Europe Task Force to Combat Violence against Women, including Domestic Violence (EG-TFV (2008)6) recommends that one such centre should be available per every 200.000 inhabitants and that their geographic spread should make them accessible to victims in rural areas as much as in cities.⁵⁷

Significantly, Article 26 focuses on support to and protection of child victims and witnesses, and requires parties to ensure that, when providing services and assistance to victims with children who have witnessed violence, their rights and needs are considered. Paragraph of Article 26 calls for age and developmentally appropriate best evidence-based psychosocial interventions that are specifically tailored to children to cope with their traumatic experiences where necessary. The Mid-Term Horizontal Review of GREVIO baseline evaluation reports emphasises that "the term "child witnesses" refers not only to children who are present during the violence and actively witness it, but to those who are exposed to screams and other sounds of violence while hiding close by or who are exposed to the long-term consequences of such violence."⁵⁸

Physical and Psychological Impacts of Sexual Violence

The analysis of sexual violence necessarily includes an examination of the impact of sexual violence on survivors and their communities. Where perpetrators have used sexual violence strategically, examining impact is one measure of how successful they have been in achieving their objectives. Beyond that, an analysis of impact allows the documenting entity to make meaningful recommendations where survivors and their communities are being inadequately served by their state.

Impacts of sexual violence that have been repeatedly documented include

- ▶ Extreme physical and psychological pain in survivors, some of which may result in life-changing physical and mental injuries;

- ▶ An increased risk of a range of sexual and reproductive health problems, with both immediate and long-term consequences;
- ▶ Disruption of relationships with spouses and children;
- ▶ Destabilisation of gender and sexual identity (more often seen amongst male survivors);
- ▶ The breakdown of social bonds within targeted communities;
- ▶ An aggravation of existing sectarian, ethnic and other divisions in the society;
- ▶ When committed disproportionately against women and girls, the perpetuation of gender inequality, an obstacle to achievement of equality, development, and peace.

Some of the personal impacts on survivors may be mitigated by the provision of psychosocial support, and counselling.

Impact of stigma

Stigma aggravates the impacts of sexual violence on individuals and communities; reinforces structural inequalities including notably gender inequality; and prevents community and societal recovery by causing impacts to ripple through generations. At its worst, stigma can be life-threatening, isolating the survivor and equating their erasure with the erasure of shame.

As stated in the 2017 Annual Report of the Office of the Special Representative of the Secretary-General on Sexual Violence and Armed Conflict,

Shame and stigma are integral to the logic of sexual violence being employed as a tactic of war or terrorism: aggressors understand that this type of crime can turn victims into outcasts, thus unravelling the family and kinship ties that hold communities together. The effect may be diminished reproductive capacity and prospects for group survival.

As stigma and sexual violence are mutually reinforcing, interrupting stigma is crucial to breaking the cycle and alleviating stigma's negative social, political and economic impacts. Documentation, analysis and reporting of sexual violence, when done properly and sensitively, play a key role in that interruption.

Impact of impunity

Where there is no path to accountability, there is an increased likelihood of instability and conflict surfacing (or re-surfacing). That there is no clear route to accountability may be a result of under-reporting, inadequate documentation particularly as regards linkage, lack of jurisdiction, or failure to apprehend perpetrators.

It is also necessary to look at the legal codes of the particular country to determine whether its criminal codes impact on the reporting of sexual violence to state authorities. For example, states where pre-marital sexual relations and/or same-sex sexual relationships are criminalised can drive down reporting, with survivors seeing coming forward as a legal, as well as a social, risk.⁵⁹ Some criminal codes assume that the victim of a rape is always a woman or girl, so it is not legally possible for male survivors to make a criminal complaint. Not only do these frameworks make justice for male victims impossible in many countries, but they can also actively deter first-instance reporting to police and service providers.

Where the state or agents of the state are said to have perpetrated the crime, survivors are less likely to engage with state-run systems of justice. An absence of justice also decreases chances of reconciliation, particularly in societies where sexual violence is seen as besmirching the honour of the victim, their family and their community.

The PEACE Model

The PEACE model is a framework that supports the conducting of effective, ethical, and survivor-centred interviews.

- P Planning and Preparation
- E Engage and Explain
- A Account and Clarification
- C Closure
- E Evaluation

There are five core principles, common to both the PEACE Model and the Istanbul Protocol:

- ▶ **Do No Harm:** The aim of all documentation is to minimise, as far as is possible, harm to individuals. An equally important objective is to ensure that those doing the documentation feel empowered to decide not to proceed in an instance where the likelihood of causing harm cannot be sufficiently reduced. In order to fully implement the “do not harm” principle in one’s work, one should have a strong grasp of the cultural norms and gender dynamics in the society that may render survivors and witnesses vulnerable to harm. This understanding should be based on research and should not default to stereotype. Harm should be interpreted broadly and includes murder/ threats to life, physical violence, re-traumatisation, and stigma – both at the hands of perpetrators, the survivors’ families and communities.
- ▶ **Informed Consent:** Anyone providing accounts of sexual violence must give informed consent before participating in the data gathering activity. This is key to respecting the autonomy of participants.
- ▶ **Confidentiality:** The confidentiality of individuals who provide their accounts of sexual violence must be protected at all times, in line with their informed consent and any protection concerns identified.
- ▶ **Security:** The safety and security of all those involved in information gathering is of paramount concern and in emergency settings in particular should be continuously monitored.
- ▶ **Care:** Basic care and support for survivors/victims must be available locally before commencing any activity that may involve individuals disclosing information about their experiences.

Planning and Preparation

Preparing to interview starts long before one sits down with a survivor. Key questions that those documenting, including those documenting as a team, must ask and answer include:

- ▶ What is the **purpose** of the proposed data collection activity?
- ▶ What are the likely physical, psychological, social, and legal **risks** to survivors, their families and supporters, and to communities? Have the designed interviewers been empowered to decline to interview someone, if they are unable to mitigate the harm caused by revisiting the violations they may have suffered?

- ▶ What are the likely physical, psychological, social, and legal **risks** to those involved in collection of the data of the proposed data collection activity?
- ▶ How can those risks be **minimised**? For example, is there any other viable way of collecting this information other than interviewing survivors? Other ways of obtaining relevant information about the commission of sexual violence would be through hospital records, interviews with medical staff, interviews with witnesses; analysing statements made by members of the perpetrator group; and gathering information in videos or in photographs.
- ▶ Survivors and witnesses may use a particular vocabulary or local idiom to describe sexual acts, sexual violence, and genitalia. Those involved in collecting testimonial information on sexual violence should be familiar with such vocabulary to avoid misunderstanding or misinterpretation. Where an interpreter is being used, this should be discussed with her/him during the preparatory stage.
- ▶ The safety and security of all those involved in information gathering about sexual violence is of paramount concern and in emergency settings in particular should be continuously monitored. The interview should also include questions about stigma, risk of retaliation or other ongoing harms or risks.
- ▶ Additional safeguards must be put into place if minors (i.e., those under 18 years) are to be the subject of information gathering. There should be a policy in place dictating that interviews with children should not be undertaken unless the interviewer has significant prior expertise.
- ▶ Human rights law and standards requires that investigations and prosecutions of the crimes of rape and sexual violence must be undertaken with careful attention given to the task of challenging stereotypes. The integrity of investigations and prosecutions should not be tainted by stereotypical assumptions, including assumptions about sexual violence towards men and boys, as well as towards women and girls.

It is integral that those involved in documenting, whether working as individuals or as part of teams

- ▶ Have a common understanding of the contextual dynamics;
- ▶ Understand the confidentiality policy in place and be able to explain it to the interviewee, if asked;

- ▶ Understand the process through which one decides whether or not to go ahead with the interview
 - Can you abide by 'do no harm'?
 - Are you respecting survivor autonomy?
 - Does the team understand informed consent?
- ▶ Is there a template and guidance for drafting an interview plan? Has such a plan been created?
- ▶ Is there agreed wording for requesting and recording informed consent (or lack thereof)?
- ▶ Has thought been given as to who is the most appropriate interviewer(s) for each interviewee?
- ▶ What happens to the information collected? Is chain of custody recorded? How is it stored? Who will you share it with?

It is important to be alive to the risk that sexual violence is being “over-researched”. This risk arises when multiple sexual violence inquiries are conducted in the same place, by different organisations or individuals, with little or no information sharing or coordination.

Understanding the contextual dynamics

It is particularly important for those documenting sexual violence, in order to establish an appropriately sensitive methodology, to have a nuanced understanding of how the legal, civil, economic, political, cultural, and social issues impact various groups in the country, region or situation where instances of sexual violence have been alleged. One should not assume that simply because one is from the country where the sexual violence has reportedly taken place, that that is sufficient to give rise to a nuanced understanding of local dynamic and the impact of marginalised intersecting identities of the victims and survivors.

Where the initial reports suggest that sexual violence has disproportionately targeted women and girls, the documentation team should look at the human rights situation of women in that society. Attention should be paid to intersectionality and the pre-existing human rights landscape in the society, including those marginalised on the basis of sexual orientation; religious, ethnic, racial, and gender identities; class;

national origin; and mental and physical ability; and status. Status may include being part of the community of refugees or the displaced, as well as being a human rights defender or journalist. Female fighters and women in the military are also vulnerable to sexual assault and harassment by state and non-state armed groups. Bear in mind that identities can and often do intersect, with the consequence that some individuals and groups are particularly targeted for violence.

Mapping should include:

- i. Identification of protection gaps that might create obstacles for survivors to report sexual violence. One example of this would be the criminalisation of same-sex sexual relationships which might inhibit the reporting of rape by male survivors;
- ii. Anticipating possible obstacles that might surface during the documentation exercise and discuss whether there are strategies available to resolve or mitigate them. For example, the context in which the sexual violence took place may require thought as to team selection;
- iii. Where the interviews are likely to be with traumatised individuals, a review how to assess and manage trauma in interviews should be conducted. An important part of this is the identification of *viable* referral pathways and ensuring team members have this information to hand before deploying.

Selecting an appropriate interviewer

The composition of the team is particularly important for the documentation of sexual and other forms of gender-based violence. Following the mapping exercise, an informed discussion about the team composition, in particular, for interviews concerning the commission of acts of sexual violence should take place. Survivors and witnesses may prefer to be interviewed by persons of the same gender, age, ethnicity, and religion – though this is not always the case and should not be presumed.

The preferences of those being interviewed should be prioritised. Taking into account their preferences, where possible, is likely to increase their trust in the interviewer, potentially affecting their readiness to open up about the difficult and distressing topic of sexual violence. To suffer sexual violence is to have your agency over your body and choices forcibly taken away. The process of filtering an interviewee's preferences into the choice of interviewer can, if done correctly, be an exercise in empowering the interviewee as an active participant in setting some of the terms of the interview.

Training and resources for the entire team

While there may be specialists on the investigation, analysis, and reporting of sexual violence (and more broadly gender-based violence) within the team, the documentation of sexual violence remains the responsibility of the entire documentation team. It is often difficult to foresee when an interviewee may disclose instances of sexual violence, nor when someone may have in their possession relevant documentary or other material. For this reason, it is imperative that training on and resources related to the documentation of sexual violence are provided to the entire team. This training will include knowing when to defer to specialists in the collection of information and evidence.

Team members should:

- i. have available to them all briefing notes that result from the mapping exercise, including in particular insights into the gender dynamics of the particular situation on which documentation is focused;
- ii. be knowledgeable about referral pathways and the contact details of relevant people within them;
- iii. have specific training on gender-sensitive investigations, in general and with specific attention paid to interviews with survivors of and witnesses to sexual violence. This should include protocols for interviewing survivors of sexual violence, and the span of conduct that encompasses sexual violence; and
- iv. be trained on the applicable law as it relates to sexual violence.

Informed Consent

When collecting information and evidence, it is always essential to record the informed consent of the interviewee/individual providing documentary information or evidence, both the consent for the documenting entity to use the information, and to share with future accountability mechanisms or other entities.

Survivors of sexual violence have suffered not only a physical assault but also a profound assault on their personal autonomy. The process of recording their consent, if done properly, can be an empowering one. It is therefore particularly important that the process of asking for consent be clear and transparent. In circumstances where there is direct path to accountability, it is important to highlight this so that interviewees have realistic expectations of the consequences of providing the interview.

Survivors and witnesses of sexual violence may suffer from trauma and depression, which may impact their grasp of consent options. It is therefore crucial that the person asking for consent record their impressions of the informed nature of that consent, which is to say, their impressions of how fully the interviewee understood what they were consenting to.

Presence of a third person for the purpose of emotional support

Survivors of sexual violence, as well as witnesses and family members of survivors, may request the presence of a third person for emotional support during the interview. Such support would not usually attend the interview itself unless specifically requested by the interviewee to be present as a source of emotional support. It is important, therefore, to ascertain that this is what the interviewee wants, rather than something s/he has been pressured to ask for.

Any persons providing emotional support who are present in the room at the request of the particularly vulnerable individual are clear as to their role, the confidentiality of the interview, and appropriate conduct during the interview process.

Collecting original material

In some instances, perpetrators (whether a state or non-state actor) may produce documentation which sheds light on policies of which sexual violence forms a part, or which condone sexual violence committed by forces under its effective control.

As a general rule, organisations which do not have in place protocols governing the intake of original material – such as photographs, medical records, death certificates, marriage certificates and internal official documents – should not collect them but should instead make a copy or take a photograph of the original.

Where there is a risk that such documentation may be lost, the documenting entity will have to decide on whether to collect the original material. If it decides to do so, this decision must be made during the planning stage, and a system for recording chain of custody of and preserving the original must be put in place. To collect original pieces of evidence requires creating a clear well-documented record of the chain of custody, including a statement of how it came into the organisation's possession and a log of every individual who has come into contact with the piece of evidence since then. This record must be kept safely in a secure location protected from the possibility of tampering.

To remove original evidence from someone without these protocols in place does not safeguard that evidence. In fact, it does the opposite, as it destroys incrementally the probative value of the evidence, and may result in it being deemed inadmissible or of little evidential value in future criminal proceedings. If an organisation is likely to collect such information and evidence, it will need specific expertise on hand to ensure that the probative value of the original is protected. The person or persons in charge of chain of custody should bear in mind they may have to give evidence about the chain of custody if the original document is ever adduced before a court.

Security of Data

Victims of sexual violence may face particular risks as a result of participating in interviews. Those collecting information and evidence from survivors should be able to speak in detail about the security arrangements for the materials they collect.

Recognising distress and Referral Services

Interviewers should be able to respond appropriately to survivors, witnesses, and other affected persons if they become distressed in the interview. In particular, family members of the survivors may be gravely affected by the violence committed against their relatives and exhibit significant distress. As part of recognising distress, they should pay particular attention to verbal and non-verbal signals of those giving testimony.

Care and support, including medical care and psycho-social support, must be available locally before commencing any activity that may involve individuals disclosing information about their experiences of sexual violence. Details of those services and contact details must be on hand in the interview.

Engage and Explain

This governs the start of the interview. In her or his introduction, the interviewer shall explicitly:

- ▶ state who s/he represents, and her/his primary objective in carrying out the interview (based on the mandate of the body s/he is working for);
- ▶ provide a detailed overview of the benefits and risks of participating in the documentation process and limitations of services provided, if any;

- ▶ set out the types of questions that may be asked of the interviewee;
- ▶ Identify those present, their functions, who they work for and for whom the information is being gathered;
- ▶ explain the confidential nature of the interview, and any limits that are placed on that confidentiality; and
- ▶ seek to manage the interviewee's expectations about prospects for accountability and emphasise that it is nevertheless important to ensure that all relevant information is collected;
- ▶ Explain the psycho-social support/ referral services available;
- ▶ Keep the tone conversational.

The interviewer should emphasise that the process is entirely voluntary, and it is the survivor who decides whether to proceed. In particular, the interviewer should give the interviewee some sense of control over how the interview proceeds and inform them that it is the survivor who decides:

- ▶ whether or not to proceed with the interview;
- ▶ if s/he is comfortable with speaking to the interviewer and/or interpreter (e.g. gender, race) and whether s/he wishes to change the interviewer or interpreter in the event that s/he is not comfortable with her/him;
- ▶ when s/he would like to have a break, though breaks will be offered to her/him regularly; and
- ▶ when s/he wishes to bring the interview to an end.

Throughout this process, the interviewer should evaluate the survivor's capacity to give informed consent and be ready to stop the interview if, in her/his judgment, the interviewee lacks such capacity. **Informed consent is a process** and involves consenting throughout all stages of documentation: all interviewees must give their informed consent to each applicable stage or process, which may include any of the following:

- ▶ to be interviewed and/or examined;
- ▶ to be photographed;
- ▶ to have their information recorded;

- ▶ to be referred to any support services; and
- ▶ to have their information and contact details shared with third parties.

At the start of the interview, the interviewer shall explain to the survivor some basic guidelines that will assist in the interview process:

- ▶ be as open as possible, understanding that trust will be built over time;
- ▶ say if s/he is not ready to speak about a particular incident or event at the moment and would like to come back to it later (and indicate to her/him that that is perfectly fine);
- ▶ let the interviewer know if s/he does not understand the question, or would prefer that the question be phrased in a different way;
- ▶ let the interviewer know if s/he is unsure about something or cannot recall something (noting that this would be completely understandable and that it is better in such circumstances not to guess);
- ▶ distinguish as much as possible between what s/he saw and heard her/himself, and what s/he heard from others; and
- ▶ understand that if the interviewer follows up one of his/her answers or asks additional questions, this in no way means there is any doubt as to the truthfulness of the answer and is to obtain further information.

Account & Clarification

When one reaches this stage, the survivor has settled, and the interview is turning towards the survivor's account of what happened. Interviewers should be prepared to let the victim speak freely for the first five minutes of the interview as they may come to the interview to speak about particular aspects of their account (for example, the killing of a relative; their separation from their children).

In such a case, when the victim reaches a natural pause, the interviewer should thank her/him for providing the information and express sympathy for any losses or trauma described. At that point, the interviewer should impose some order on the interview process by tackling issues in the order set out in the interview plan. The interviewee should be offered the opportunity to have a break at least once an hour, when there is a natural pause in the account being provided.

Guidance on formulating interview questions

- ▶ Ensure that questions are appropriate, empathetic, and non-judgmental;
- ▶ Keep questions simple and avoid composite questions;
- ▶ Ask open-ended questions rather than leading questions to the interviewee. This includes using TED questions ("Tell me..!", "Explain to me", "Describe to me") as well as WH questions ("Who, What, When, Where, How, and How do you know").
- ▶ Only ask closed questions when this is required to obtain clarification (i.e., "did you see this before or after reaching the checkpoint?");
- ▶ Accept "I don't know" and "I can't remember" as legitimate responses to questions. Do not ask the same questions over and over in the hope of eliciting new or further details;
- ▶ Give her/his full attention to the survivor and use an active listening posture: maintaining respectful eye contact, nodding, or giving non-committal sounds which encourage the interviewee to continue speaking;
- ▶ Acknowledge the most difficult parts of the account and explain why these details are needed. Do not react negatively to details of descriptions of violence including sexual violence;
- ▶ Prioritise the well-being of the survivor. Pay attention to non-verbal cues, and use them as indicators of when to stop, change the subject, or offer the survivor the chance to have a break;
- ▶ Allow the survivor to control the pace of the disclosure and the extent of what is disclosed. Never appear frustrated;
- ▶ Respect and be supportive of the survivor 's reactions. Do not tell her/him to calm down or treat any crying as an inconvenience or an emotional reaction to be quieted.

Once the questioning starts, if the interviewer senses or sees a traumatic or charged emotional response, they should not interrupt. As soon as there is a pause, the interviewer should ask the survivor whether they would like to take a break and offer the survivor water or other refreshments.

The interviewer should remind the survivor that s/he can bring the interview to an end at any time. If the interviewee shows overt signs of trauma, the interviewer may decide to halt the interview and consult a social worker or psychologist if

there is particular concern. The interviewer should record any signs of trauma in her/his notes. It is important, however, not to assume that survivors of sexual violence will behave or react in a particular way: it is integral to avoid stereotypes and assumptions about survivors of sexual violence.

Closure

Interviews should not end abruptly. Interviewers should set aside enough time to close the interviews properly and to explain the next stages of the process to the survivor.

Before ending of the interview, interviewers should reflect on their interview plan and the information obtain during the interview and consider whether the interviewer has covered all the questions s/he wanted to ask.

The interviewer shall:

- ▶ Ask if the survivor has anything to add or if there are any aspects that were not discussed;
- ▶ Ask if the survivor has any questions or concerns. If s/he does have questions, the interviewer must give honest answers including indicating if they do not know the answer;
- ▶ Discuss with the survivor her/his needs and explain to her/him again the referral options available. It is essential to emphasise that her/his details will only be shared with service providers with her/his informed consent;
- ▶ Explain and ensure that the survivor understands what will happen next, making sure to manage her/his expectations;
- ▶ End the interview on neutral topics and assess the emotional state of the victim/witness. Explain that remembering and describing experiences may make traumatic memories more present for a while;
- ▶ If the survivor appears distressed as a result of the interview, try to bring her/him back to the present and to a positive frame of mind. If s/he appears outwardly distressed during the closure phase, recommend referring her/him to a body which can give professional psychological support (with her/his informed consent);
- ▶ Recognise the survivor's participation and thank her/him for talking to you.

Evaluation

Once the interview has been concluded, the interviewer should review the documentation and investigation plan in light of the information obtained during the interview. Next, s/he should consider the impact of the new information; any leads on additional interviewees; and what action needs to be taken next.

The interviewer should evaluate their interviewing skills. Relevant questions include:

- ▶ What did I do well?
- ▶ What could I have done better?
- ▶ What skills could I further develop?
- ▶ How can I acquire these skills?

Particular challenges in documenting sexual violence against men and boys

Many of the same factors which contribute to women and girls' under-reporting of sexual violence contribute to the under-reporting of sexual violence against men and boys. These include internalised feelings of shame, and the fear of stigmatisation. Legal frameworks and social services which do not recognise men and boys as victims of sexual violence also prevent survivors from reporting to the authorities. Men and boys may also face the stigma and 'shame' of assumed homosexuality, and so are subjected to double stigmatisation – the stigma from being a survivor of sexual violence, and the additional stigma which exists in many societies around homosexuality.

There may also be unrecognised assumptions within the documentation team that impact adversely on the documentation of sexual violence against men and boys. Often, gender stereotypes of females as victims and men as perpetrators operate to obscure the commission of sexual violence against men. Documentation of sexual violence against men and boys often takes place into the context of detention, but the circumstances of commission are often wider. Levels of sexualised violence against men and boys during conflict, for example, are much higher than is generally assumed or publicly admitted. A population-based survey of adults conducted in eastern Democratic Republic of the Congo (DRC) in March 2010 showed rates of reported sexual violence were 39.7% among women and 23.6% among men.⁶⁰ An earlier (2008) population-based survey of adults in Liberia showed that former combatants – whether men or women –

experienced higher rates of exposure to sexual violence than non-combatants: among women, 42.3% (vs 9.2% of civilian women) and among men, 32.6% (vs 7.4% of civilian men).⁶¹

Investigative leads, such as medical staff and humanitarian organisations, which may assist in locating women and girls (or corroborating their accounts) may prove less effective as regards male survivors of varying ages. One main reason is that medical, psycho-support and humanitarian interventions are usually far less available for men and boys who have suffered sexual violence, in part because they are often not considered as victims during the planning and funding stages. There continue to be concerns that those supporting male victims of sexual violence, including doctors, counsellors and aid workers, may view all male victims of sexual violence as being gay. A reluctance to question this and other male rape myths reduces the kind of support they are willing to give and increases the likelihood that they contribute to the survivor's stigmatisation and isolation.

It is important, before the start of the documentation exercise, to discuss the particular challenges that may be faced in documenting sexual violence against men and boys, including any assumptions which may be present in the team.

Documentation of sexual violence committed against children

As acknowledged in the Explanatory Report to the Istanbul Convention, children do not need to be directly affected by the violence to be considered victims. However, witnessing violence is also traumatising, and therefore sufficient to victimise them.⁶²

Interviews with children about any violations they may have suffered should be conducted by someone with specific expertise and experience in the interviewing of children. Where documentation or investigation are being led by governmental entities, Article 34 of the Lanzarote Convention requires state parties to "adopt such measures as may be necessary to ensure that persons, units or services in charge of investigations are specialised in the field of combating sexual exploitation and sexual abuse of children or that persons are trained for this purpose."⁶³

That child victims of sexual violence must be interviewed by trained practitioners, including a specialist psychologist, is reiterated in the Methodological Guidance on Investigative Interviewing of Children (2021), published by the Council of Europe Office in Ukraine.⁶⁴ Persons lacking such training should not interview minors at all, and if deemed appropriate anyway as well as indispensable, to do

so only by keeping any interaction to a minimum. In particular, those without specific training should avoid interviewing children who have experienced serious trauma, including sexual violence. This owes to the fact that children are highly vulnerable to re-traumatisation and improper interviewing technique can do lasting damage.

Interviews with child victims of sexual violence demand adherence to a child-centred investigative process, which acknowledges that children are not a monolithic group and that differences in gender, age, access to education and other intersecting identities impact the planning and conduct of the interviews as well as on post-interview care. Children-centred interviewing processes, including use of age-appropriate vocabulary and taking place in a child-friendly interview space are methodologically essential. This is because minors, most particularly young children, are highly suggestible, more likely to agree with interviewers, and vulnerable to the creation of false memories.

Where the decision is made for an appropriately trained investigator or lawyer to proceed with an interview with a minor (even a minor close to the age of majority), the parents/guardian, or a person they trust, must at any time be present in any documentation of information. Interviews should speak to the parents/other caregivers and community members on possible consequences that the interview might have on the minor. Additionally, they should consult experts on the local culture where the documentation exercise is occurring to gauge the risks to the child of going ahead with the interview. Similarly, the risks to and impact on a child of having her or his parents present in an interview about sexual violence should be considered.

Interviewers will need to be able to cogently advise the minor, their parents, guardians, or caregivers, of any referral services and protection mechanisms that are available to them. They must also be prepared to see and respond to the specific needs that may arise during an interview.

Documentation of sexual violence committed against sexual and gender minorities

Acts of sexual violence against sexual and gender minorities violently assert a particular political vision of certain norms of masculinity and femininity. Gathering information about sexual violence committed against lesbian, gay, bisexual, transgender, and intersex persons (LGBTI) poses specific challenges. LGBTI persons may be marginalised figures in that particular community, with violations against them generally under-reported or under-actioned. Efforts should be

made to actively seek information on the situation of LGBTi persons, including through organisations that protect their rights, while ensuring confidentiality and the safety of the concerned persons.

Documentation of sexual violence committed against persons with disabilities

Persons with physical and/or disabilities living in conflict settings face increased risk of injury, death, sexual violence, and other serious harm. They may not have the capacity or assistance needed to flee as hostilities intensify in the area in which they live. A 2010 Human Rights Watch report on the violations of international law during the conflict in northern Uganda stated that highlighted that one-third of women with disabilities interviewed had been the victims of conflict-related sexual violence.⁶⁵

There should be dedicated efforts to reach out to persons with disabilities, who may not have the same visibility as victims without disabilities, and who may not be as easily accessible to investigators. It is essential that investigators document sexual violence committed against persons with disabilities as this community, which is by no means monolithic, is often overlooked in the investigation process which dramatically reduces the likelihood that their experiences will be recorded and form part of subsequent case-building efforts.

Recognising Trauma and Stress in the Interview Team

Secondary Traumatic Stress

It is essential that those working with traumatised individuals and communities be able to recognise signs of secondary traumatic stress (STS) in their colleagues. The people who often listen to stories of traumatised people that are full of helplessness and cruelty can develop psychological trauma themselves. The effect of this trauma is cumulative.

STS is the emotional distress that results when an individual hears about the first-hand traumatic experiences of another. Its symptoms mimic those of post-traumatic stress disorder. Individuals affected by STS may find themselves re-experiencing personal trauma or notice an increase in fight and flight reactions related to the indirect trauma exposure. They may also experience changes in memory and perception; alterations in their sense of self-efficacy; a depletion of perceptions of safety, trust, and associated with secondary traumatic independence.

Prevention of secondary traumatisation

Some things help prevent secondary traumatisation or aid quick recovery. They are:

connection with yourself, family, friends and colleagues	taking care of your body (sports, massage etc.). Good sleep and meals	personal borders, especially when it comes to helping others	joy from life, attention and care from other people	relaxation, love, games, entertainment	sufficient rest
getting and providing supervision	setting the maximum number of clients to avoid too much work	various categories of clients and problems	various categories of clients and problems	support by colleagues	personal space and satisfying personal relations
PSYCHOTHERAPY					

Burnout

Burnout continues to be a significant issue for those working on the documentation of mass atrocities. It is most common among the professionals who are required to have numerous and intense interactions with other people due to the nature of their activity. At work, those suffering from burnout may feel nervous and mental pressure expresses itself as gradually intensifying emotional fatigue and feeling of desolation. Those suffering may also experience mounting stress and inter-personal conflicts.

Among those highest at risk are professionals who have a wide circle of contacts with people due to the nature of their activity (doctors, psychologists and psychotherapists who do not adhere to the supervision and personal therapy rules, teachers, social workers). The human nervous system has a certain “communication limit”, which means that a person can pay quality attention only to a limited number of people a day. If the limit is consistently exceeded, exhaustion followed by the burnout is inevitable.

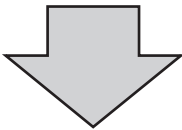
Burnout cannot always be traced at early stages, so this test should be taken from time to time, with questions answered, to respond and take timely measures.⁶⁶

Read the statements below and give yourself:

- ▶ 0 points if it has never happened to you;
- ▶ 1 point if the situation happens several times a year;
- ▶ 2 points if the situation happens once a month;
- ▶ 3 points if the situation happens several times a month;
- ▶ 4 points if the situation happens once a week;
- ▶ 5 points if the situation happens to you several times a week;
- ▶ 6 points if the situation happens to you every day.

1. Working with people directly puts too much stress on me.
2. I feel emotionally drained from my work.
3. I feel used up at the end of the workday.
4. I feel fatigued when I get up in the morning and have to face another day on the job.
5. Working with people all day is really a strain for me.
6. My job is hardening me emotionally.
7. I feel like I'm at the end of my rope.

A contract between two active positions is first made with the professional “affected by the burnout”.



The first active position is to recognise the emotional burnout syndrome. The affected person recognises the existence of the syndrome and assumes responsibility for living through stress.

The second active position is to recognise the need for change and to take a decision to change. Consent to making the contract is a lifeboat for the affected person that helps stop the burnout process, recognise its existence and find ways for recovery.



Five key groups of symptoms

<p>No. 1 PHYSICAL SYMPTOMS</p>	<ul style="list-style-type: none"> ▶ Tiredness, fatigue, exhaustion ▶ Insufficient or excessive weight ▶ Poor sleep, insomnia ▶ Poor health (including when it feels that way) ▶ Laboured breathing, panting ▶ Sickness, dizziness, excessive sweating, trembling ▶ Hypertension (increased tension) ▶ Blisters, abscesses ▶ Heart diseases
<p>No. 2 EMOTIONAL SYMPTOMS</p>	<ul style="list-style-type: none"> ▶ Lack of emotions, no emotions ▶ Pessimism, cynical and unsympathetic attitude in work and personal life ▶ Indifference and tiredness ▶ Frustration and helplessness, hopelessness ▶ Sharp temper, aggression ▶ Anxiety, stronger irrational concerns, inability to focus ▶ Depression, feeling of guilt ▶ Nervous weeping ▶ Loss of ideals or hopes or professional prospects ▶ Stronger depersonalisation of yourself or others ▶ Prevailing sense of loneliness
<p>No. 3 BEHAVIOURAL SYMPTOMS</p>	<ul style="list-style-type: none"> ▶ Working more than 45 hours a week ▶ Tiredness and desire to take a break and rest during the work day ▶ Indifference to food; poor, minimum necessary meals ▶ Insufficient physical activity ▶ Excessive tobacco, alcohol and medicine consumption ▶ Accidents (for instance, injuries, falling down, etc.) ▶ Impulsive emotional conduct

<p>No. 4 INTELLECTUAL CONDITION</p>	<ul style="list-style-type: none"> ▶ Less interest in new theories and idea in work ▶ Less interest in alternative approaches to problem solution (for instance, at work) ▶ boredom, sadness, apathy or lack of drive, zest for or interest in life ▶ More standard templates, routine than creative approaches ▶ Cynicism or indifference to innovation ▶ Minor participation or refusal to participate in development experiments (workshops, education) ▶ Formal performance at work
<p>No. 5 SOCIAL SYMPTOMS</p>	<ul style="list-style-type: none"> ▶ No time or energy for social activities ▶ Less activity and interest in the environment, hobbies ▶ Social contacts limited to work ▶ Limited relations with others, both at home and work ▶ Sense of isolation, misunderstanding of and by others ▶ Sense of insufficient support by the family, friends, colleagues

III. Legal Frameworks

Ukrainian domestic law

Criminal Code of Ukraine

Sexual violence is a criminal offence under the Criminal Code of Ukraine. Punishable criminal offences of a sexual nature include rape (including marital rape, Article 152), sexual violence (Article 153), coercion to engage in sexual intercourse/sexual act (Article 154), sexual relations with a minor (Article 155), and child sexual abuse (Article 156).⁶⁷

In January 2019, and after receiving remarks and recommendations from the UN Committee on the Elimination of Discrimination against Women, the Ukrainian government took steps to bring the definition of the crime of rape in its domestic law into line with international standards. International standards, including those set by the Istanbul Convention, require more inclusive and gender-neutral definition of rape, which not limited to penetration of a vagina by a penis, and based on an absence of freely given consent, while taking into account a wide range of coercive circumstances (which is to say, not based narrowly on the use of force or threat of force).

Consequently, in the Ukrainian Criminal Code rape is defined as “any acts of a sexual nature that include vaginal, oral, or anal penetration by genitals or any other object without the voluntary consent of the victim”.⁶⁸ In addition, consent is considered “voluntary if it is given as the result of the free will of a person, considering the accompanying circumstances”.⁶⁹ This definition appears to be in line both with international and European human rights law and international criminal law, as well as the definition contained in the Istanbul Convention.

Acts of conflict-related sexual violence can constitute war crimes, crimes against humanity or the crime of genocide.

Article 438 of the Criminal Code of Ukraine establishes criminal liability for violation of the laws and customs of war. This article also establishes punishments for the

cruel treatment of prisoners of war or the civilian population, the deportation of the civilian population for forced labour, the use of means of warfare prohibited by international law, other violations of the laws and customs of war provided for by international treaties, the binding consent of which has been granted by the Ukrainian Parliament. However, not all violations of laws of war – which is to say, of international humanitarian law – are criminalised in Ukraine; only serious violations are. Moreover, the Article does not specifically recognise acts of sexual violence as constituting various war crimes, including but not limited to rape.

Article 442 of the Ukrainian Criminal Code establishes liability for the crime of genocide, which it defines as “an act intentionally committed with the aim of full or partial destruction of any national, ethnic, racial or religious group by taking the lives of group members or inflicting serious bodily harm on them, creating living conditions for the group designed for its full or partial destruction, physical destruction, reduction or prevention of childbearing in this group or by forcible transfer of children from one group to another.” While this definition is slightly narrower than that established by the Genocide Convention, and replicated without amendment in Article 6 of the ICC’s Rome Statute – particularly as regards the exclusion of ‘causing severe mental harm’ in addition to bodily harm, investigators and prosecutors knowledgeable about the gendered commission of genocide would be able to use Article 442 in investigations and prosecutions of sexual violence, committed as acts of genocide, in circumstances where there is evidence of genocidal intent.

Draft Law No. 2689

In May 2021, the Ukrainian Parliament adopted Draft Law No. 2689 “On Amendments to Certain Legislative Acts of Ukraine Regarding the Implementation of International Criminal and Humanitarian Law”.⁷⁰ The Draft Law, which has not yet been signed by the President, aims to harmonise the provisions of Ukrainian national law with the provisions of international criminal and humanitarian law regarding criminal prosecution for the core international crimes of genocide, crimes against humanity, war crimes, and aggression.

In particular, the Draft Law proposes the amendment of Articles 438 and 442 of the Ukrainian Criminal Code, and to supplement it with Articles 4381-4382 (on war crimes) and Article 4421 (on crimes against humanity). Articles 4381-4382 introduces national provisions on war crimes that are substantively similar to the provisions of Article 8 the ICC’s Rome Statute. Draft Article 438 defines a war crime as “deliberate commission in connection with an international armed conflict or a non-international armed conflict against a person who is under the protection

of international humanitarian law: 8) rape, sexual exploitation, forced pregnancy, forced sterilisation or any other forms of sexual violence”.⁷¹

Draft Article 442 brings Ukrainian domestic law more firmly in line with the definition of genocide set out in the Genocide Convention and in Article 6 of the Rome Statute. It also specifically recognises that sexual violence may be a constitutive act of genocide, if committed with the requisite intent. It explicitly recognises that that serious harm includes rape and other forms of sexual violence.

Draft Article 442.1 establishes criminal liability for crimes against humanity, and replicates the definition provided by Article 7 of the Rome Statute. The provisions of the article recognise rape, sexual exploitation, forced pregnancy, forced sterilisation or any other form of sexual violence as crimes against humanity. Moreover, it recognises torture – defined as the intentional infliction of severe physical pain or physical or moral suffering on a person – as a crime against humanity. As explored in Section III (Legal Frameworks), sexual violence as a form of torture is recognised in both international human rights law and international criminal law.

The entry into force of Draft Law 2689 will bolster compliance of Ukraine’s domestic criminal laws with international law norms and standards and create a stronger foundation for national efforts to investigate and prosecute allegations of sexual violence.

The impact of martial law

On 24 February 2022, by Presidential decree, martial law was imposed on the entire territory of Ukraine. While the advent of martial law has not impacted on the substance of the law regarding crimes of sexual violence, it has led to some changes in the running of criminal proceedings, which may impact the investigation and prosecutions of crimes of sexual violence, particularly where the commission of such crimes is conflict related.

The changes include the following:

First, prosecutors now have enhanced powers. Under martial law they may delegate the investigation of any criminal offence to another pre-trial investigation body, where the work of the appropriate investigative institution is objectively no longer possible (for example, due to intense hostilities occurring in a particular area). Similarly, pre-trial investigation bodies are permitted to form inter-agency investigative teams to ensure the prompt investigation of all criminal offenses.

Ukraine's martial law also simplifies a number of procedures with which prosecutors must abide. Some examples of such changes include:

- ▶ Article 29 of the Constitution of Ukraine prohibits detention beyond 72 hours without judicial approval. However, under martial law, this period has been extended to 260 hours.
- ▶ Under martial law a court may accept evidence obtained during the interrogation of a witness so long as that interrogation was recorded, and the suspect was represented at the interrogation. This is a significant change, as previously testimony provided at the pre-trial investigation stage could not be relied upon by a court in reaching its final verdict, unless that testimony had been given before the court itself.
- ▶ Prosecutors now have powers to decide on issues related to the implementation of the case, without recourse to a judge. This would include deciding to seize property; granting permission to enter a person's home or other property; granting a search permit; taking samples from items and documents; allowing for covert investigative/search actions; and deciding to extend pre-trial investigations.

Second, before the imposition of martial law, criminal trials could be held by video conference if the accused did not object. That right to object has now been removed and the court may decide on a remote trial without considering the opinion and wishes of the accused person.

Third, a number of specific offences have been created by martial law, arising directly from the ongoing armed conflict between Russia and Ukraine as a result of Russia's invasion of Ukrainian territory. These include the offences of:

- ▶ collaborationism;
- ▶ "Justification, recognition as lawful, or denial of the armed aggression by the Russian Federation against Ukraine as well as glorification of its participants";
- ▶ Dissemination of information on the location of weapons, equipment, and soldiers, save for where information is published by the General Staff of the Armed Forces of Ukraine or the Ministry of Defense of Ukraine;
- ▶ Incitement to regional hatred;
- ▶ Defamation of soldiers' honour and dignity, and threats against soldiers;
- ▶ Illegal use of humanitarian aid.

Finally, the Criminal Code was amended to exclude the liability of civilians who took up arms against Russian forces or any other persons “carrying out armed aggression against Ukraine.”

The Ukrainian government has, since 2019, taken concerted steps to ensure the criminalisation of the crime of rape and other crimes of sexual violence are in line with international and European standards. In so doing, it offers both recognises a larger population of victims of sexual violence and provides them with a path towards justice, in the form of criminal accountability.

International Human Rights Law

The Istanbul Convention is founded upon respect for human rights and international human rights instruments and obligations, as set out in its Preamble. International human rights law applies both in peacetime and in times of conflict. While the primary obligation to uphold human rights falls on states, but it is increasingly understood that armed groups, notably those in effective control of territory and over the populations therein, also have human rights obligations. Human rights are interdependent, indivisible, and interrelated. Consequently, violations of human rights are often cumulative and overlapping.

International human rights law prohibits sexual violence, in all its forms.⁷² Depending on the context in which it occurs, sexual violence violates a number of human rights, including the rights to: life; liberty and security of person; privacy; the highest attainable standard of physical and mental health; equality; be free from all forms of discrimination; equal protection under the law; and the right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment. States are required to exercise due diligence to prevent, investigate and prosecute acts of sexual violence perpetrated by state or non-state actors.

As a starting point, the non-derogable – and *jus cogens*⁷³ – prohibition of **torture or cruel, inhuman or degrading treatment or punishment**, contained in all universal and regional human rights treaties,⁷⁴ provides a strong basis to prohibit virtually all forms of sexual violence at all times. This includes not only the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was adopted by the General Assembly in 1984, but also the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), adopted by the member states of the Council of Europe in November 1987. At the time of its publication, the European Convention was ground-breaking, as it was the first instrument

capable of enforcing compliance with the obligations it created. It was ratified by Ukraine in 1997 and came into force the same year.

In 1986, the Special Rapporteur against Torture noted that sexual abuse was one of the various methods of physical torture.⁷⁵ Human rights jurisprudence provides guidance as to the circumstances in which sexual violence has been held to amount to torture or cruel, inhuman or degrading treatment or punishment. Rape, in particular, has often been considered as torture.

In the 1996 case of Raquel Martín de Mejía v. Peru, the Inter-American Commission on Human Rights (IACHR) determined that a rape, committed by a Peruvian soldier, of a woman suspected of belonging to a “subversive” group, and whose husband had been abducted by the Peruvian army, amounted to torture as it was committed intentionally by a state official with the objective of punishing and intimidating her.⁷⁶ In 1997, the European Court of Human Rights (ECtHR) in Aydin v. Turkey, determined the rape of a 17-year-old girl detained by Turkish security forces on suspicion of her and/or her family’s collaboration with the PKK, was committed in order to obtain information, and constituted torture.⁷⁷ The Court noted,

Rape of a detainee by an official of the state must be considered to be an especially grave and abhorrent form of ill-treatment given the ease with which the offender can exploit the vulnerability and weakened resistance of his victim. Furthermore, rape leaves deep psychological scars on the victim that do not respond to the passage of time as quickly as other forms of physical and mental violence. The applicant also experienced the acute physical pain of forced penetration, which must have left her feeling debased and violated both physically and emotionally. ... [T]he Court is satisfied that the accumulation of acts of physical and mental violence inflicted on the applicant and the especially cruel act of rape to which she was subjected amounted to torture in breach of Article 3 of the Convention. Indeed the Court would have reached this conclusion on either of these grounds taken separately.”

Similarly, in June 2017, the UN Human Rights Committee determined that the gang rape, by Nepalese soldiers, of a woman suspected of supporting Maoist groups, and which was committed to extract information, punish and humiliate her, and intimidate others in her community, “unequivocally amounted to torture.”⁷⁸

Other forms of sexual violence can also amount to torture or cruel, inhuman or degrading treatment or punishment. While not exhaustive, these examples are instructive:

- ▶ Forcing someone to witness the rape of close relatives was found to constitute “a form of humiliation and degradation that is a violation of the right to humane treatment”;⁷⁹
- ▶ Involuntary sterilisation has been found to amount to cruel treatment;⁸⁰
- ▶ The strip-searching of a male prisoner in the presence of a female prison officer constituted degrading treatment;⁸¹ and
- ▶ Sexual assaults (including forcing male prisoners to rape each other, sometimes in front of other prisoners) amounted to torture.⁸²

Where a state has not effectively investigated allegations of sexual torture, and has not prosecuted or punished the perpetrators, the victim may suffer a separate violation of the prohibition against torture or other ill-treatment under its procedural limb and/or of the right to an effective remedy.⁸³

Sexual violence also violates the right to life. The UN OHCHR Human Rights Committee identifies violence against women, including sexual violence, as a **threat to the right to life**.⁸⁴ The link between violation of the right to life was made clear in the sexual violence perpetrated by Hutu militia against Tutsi women and girls during the 1994 Rwandan genocide, where victims were raped to death, died from blood loss following sexual mutilation (including the cutting off of breasts), and who years later died from the transmission of HIV during the genocidal rapes. Rape, in particular, can have distinct health consequences harbouring right to life implications, including the transmission of potentially fatal sexually transmitted diseases. Any action by a non-state actor, condoned by the state and which violates the right to life, must result in the strictest sanctions, i.e., criminal sanctions.

The right to liberty and security of persons is a fundamental part of human dignity. It is a recognition of the equal worth of all human beings and a duty of others to respect that worth. Sexual violence is an assault upon this right. Sex trafficking, which may include multiple acts of sexual and physical violence, is a violation of this right as, against their will, women are forced into dangerous conditions and unable to make any decision about their personal security. Sexual violence can be strategically used by state and non-state actors as means of signalling that a refusal to submit to authority in a particular state or region will have consequences for an individual's or group's liberty and security.

In *X & Y v. Netherlands*, the ECtHR held that rape abridges **the right to privacy** under Article 8, which protects the “physical and moral integrity of the person, including his or her sexual life”.⁸⁵

Sexual violence also violates **the right to the highest attainable standard of physical and mental health**. In 2005, the World Health Organization (WHO) indicated that women who suffered physical or sexual violence have experienced a “range of physical symptoms (problems with walking, pain, memory, dizziness, and vaginal discharge)”.⁸⁶ WHO noted that survivors face significant mental health challenges, may be more susceptible to suicide, and suffer the risk of HIV and other sexually transmitted infections. While the WHO report focused on violence against women, its findings are applicable to female and male victims of sexual violence. Survivors have the right to adequate reparation and rehabilitation that cover their physical and mental health.

The right of equality and to be free from all forms of discrimination⁸⁷ in the enjoyment of physical and mental integrity requires that there should be equality in weight given to the free and full agreement of sexual contact by both or all parties to that contact, whether or not such sexual contact involves penetration. Sexual violence is one of the most significant aspects of discriminatory violence against women,⁸⁸ and other traditionally marginalised groups.

Sexual violence, a form of gender-based violence, disproportionately affects women and girls and as stated in General Recommendation No. 35 of the Committee on the Elimination of Discrimination against Women, is

rooted in gender-related factors such as the ideology of men’s entitlement and privilege over women, social norms regarding masculinity, the need to assert male control or power, enforce gender roles, or prevent, discourage or punish what is considered to be unacceptable female behaviour. These factors also contribute to the explicit or implicit social acceptance of gender-based violence against women, often still considered as a private matter, and to the widespread impunity for it.⁸⁹

Article 4 of the Istanbul Convention affirms the principle of substantive equality between women and men by requiring Parties to not only condemn all forms of discrimination against women, but to enshrine the principle of equality in law, ensure its practical realisation as well as prohibit discrimination by law and abolish any discriminatory legislation and practices. The Explanatory Report expressly recognises that “the enjoyment of the right to be free from violence is interconnected with the parties’ obligation to secure equality between women

and men to exercise and enjoy all civil, political, economic, social and cultural rights as set out in the human rights instruments of the Council of Europe, particularly the ECHR and its Protocols and the European Social Charter, and other international instruments, particularly CEDAW, to which they are parties.”⁹⁰

Incidence of sexual violence often falls most heavily on already marginalised groups, both within and outside of the community of women. Some groups of women and girls, such as those from indigenous, black, religious, and ethnic minority communities, face layers of historic and current discrimination and may be particular targeted for sexual and other forms of violence.⁹¹ Other communities that have traditionally discriminated against in a particular society, may also be so targeted. This includes, for example, sexual minorities and the physically and mentally disabled.

Victims of sexual violence may also have their **right to equal protection before the law** violated, where it is found that perpetrators enjoy impunity from investigation, prosecution, and punishment in the overwhelming majority of cases.⁹²

This is not exhaustive. Sexual violence can also be encompassed into other human rights violations depending on the circumstances. For instance, sexual slavery is included in the broader prohibition of slavery. When documenting, analysing, and reporting on sexual violence, it is essential to return to the human rights framework at different stages to reflect on whether and which violations of international human rights law may have occurred.

Where international humanitarian law applies, it is equally important to rely upon the human rights framework when examining conflict-related sexual violence. Human rights practice and case law can be useful tools for interpretation when it comes to concepts such as slavery or discrimination, which can also be found under international humanitarian law and international criminal law. Human rights law also complements international humanitarian law by providing for additional rights/ prohibitions such as the prohibition of human trafficking or the right to privacy or to a private life that have no real equivalent under international humanitarian law.

International Humanitarian Law

International humanitarian law is a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. It applies only to armed conflicts, irrespective of whether they are classified as international or internal. International humanitarian law does not cover internal tensions or disturbances such as isolated

acts of violence. The law applies only once a conflict has begun, and then equally to all sides regardless of who started the fighting.

International humanitarian law treaties, notably the Hague Regulations of 1899 and 1907 and the 1949 Geneva Conventions, have been criticised because they characterised sexual violence as an intrusion on the victim's "honour",⁹³ rather than as attack against the physical and psychological well-being of the victim.⁹⁴ There is a debate as to whether notions of "honour" have the same import today as they did then, but what is clear is that link between sexual violence and honour is less present in more recent international humanitarian law treaties.

Nevertheless, express prohibition against sexual violence appeared in some of the earliest codifications of international humanitarian law,⁹⁵ in contrast with international human rights law treaties. Rape was expressly prohibited in the 1863 Lieber Code.⁹⁶ A recognition of the commission of sexual violence during armed conflict, and the need to prevent it, is contained in the Hague Regulations of 1899 and 1907, and the 1929 Geneva Convention governing the treatment of prisoners of war.

Today, the foundational documents governing international humanitarian law, the 1949 Geneva Conventions and their Additional Protocols of 1977, expressly prohibit rape and other forms of sexual violence in less explicit provisions such as the prohibitions against cruel treatment and torture, humiliating and degrading treatment, outrages upon personal dignity, indecent assault and enforced prostitution. Additional Protocol I, which applies to international armed conflicts, provides that "outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault", are "prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents".⁹⁷ Two additional provisions protect specifically women "against rape, enforced prostitution and any other form of indecent assault"⁹⁸ and children "against any form of indecent assault."⁹⁹

Relevant to non-international armed conflicts, Article 3 common to the four Geneva Conventions implicitly also prohibits sexual violence by prohibiting "violence to life and person, in particular ... mutilation, cruel treatment and torture" as well as "outrages upon personal dignity, in particular humiliating and degrading treatment". Additional Protocol II, which is applicable to a smaller range of internal conflicts than Article 3 common to the Conventions of 1949, prohibits, in the provision on fundamental guarantees, "outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault" for "all persons who do not take a direct part or who have ceased to take part in hostilities".¹⁰⁰ This covers civilians and persons hors de combat.

In December 1992, following the ratification of the Additional Protocols, ICRC issued an aide-memoire to clarify the prohibition of rape under the 1949 Geneva Conventions. It stated, in part, that the grave breaches enumerated in Article 147 of the Fourth Geneva Convention, especially the breach of wilfully causing great suffering or serious injury to body or health, “obviously covers not only rape, but also any other attack on a woman’s dignity”.¹⁰¹

Customary international humanitarian law also prohibits rape and other forms of sexual violence. According to the ICRC Customary Law Study’s Rule 93, this prohibition has been found to apply both in international and non-international armed conflicts and protects women, girls, boys, and men.¹⁰²

International Criminal Law

International criminal law deals with the criminal responsibility of individuals for international crimes. The international core crimes, which is to say crimes over which international tribunals have jurisdiction under international law, are: genocide, war crimes, crimes against humanity and aggression. Crimes against humanity and genocide can be committed irrespective of whether a state of armed conflict exists. War crimes can only be committed during an international or internal armed conflict.

The aftermath of the Second World War saw the rapid development of international criminal law. The precursors to the ad hoc and hybrid tribunals of the 1990s and 2000s, including Security Council resolutions, were unambiguous in their position that the jurisdiction of the international tribunals would include crimes of sexual violence.¹⁰³ The statutes of the various tribunals, International Criminal Court for the former Yugoslavia, International Criminal Court for Rwanda, the Special Court for Sierra Leone, the Extraordinary Court Chambers for Cambodia, and the International Criminal Court¹⁰⁴ bear out this understanding. The subsequent jurisprudence handed down by these tribunals has furthered our understanding and interpretation of the law.

Under international criminal law, rape and other forms of sexual violence can be investigated and prosecuted as

- i. war crimes when committed in the context of and associated with an armed conflict;
- ii. as crimes against humanity when committed in the context of a widespread or systematic attack on a civilian population; and/or

- iii. as an act of genocide when committed with the intent to destroy an ethnic, religious, national, or racial group in whole or in part.

Under international criminal law, therefore, one needs to gather information and evidence of both the underlying crime and the contextual circumstances in which the crime takes place.

War Crimes

For a crime to be classified as a war crime, it must be committed in the context of and associated with an international or non-international armed conflict, by a perpetrator who is aware of the factual circumstances that make the situation one of armed conflict.

An international armed conflict exists “whenever there is a resort to armed force between states.”¹⁰⁵ A non-international armed conflict exists whenever there is [...] protracted armed violence between governmental authorities and organised armed groups or between such groups within a state. International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until [...] in the case of internal conflicts, a peaceful settlement is reached.”¹⁰⁶

For a crime to be a war crime, there must be a nexus between the crime and the armed conflict. The ‘nexus’ requirement means that ‘the offence must be closely related to the hostilities or committed in conjunction with the armed conflict.’¹⁰⁷ The ICTY Appeals Chamber in the *Kunarac* case elucidated further, holding “The armed conflict need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator’s ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed.”¹⁰⁸

Crimes of sexual violence which, if the contextual elements are proven, may be war crimes are:

- i. Rape,
- ii. Sexual slavery,
- iii. Enforced prostitution,
- iv. Forced pregnancy,
- v. Enforced sterilisation, or

- vi. Any other form of sexual violence (in an international armed conflict)/ any other form of sexual violence also constituting a serious violation of Article 3 common to the four Geneva Conventions (in a non-international armed conflict)

Other war crimes that could involve criminal conduct of a sexualised nature:

- vii. Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture.
- viii. Committing outrages upon personal dignity, in particular humiliating and degrading treatment.

Crimes Against Humanity

For a crime to be classified as a crime against humanity, it must be committed as part of a widespread or systematic attack directed against a civilian population where the perpetrator knew or intended the conduct to be part of such an attack. The International Criminal Court has included an additional requirement specific to its jurisdiction: that the attack which constitutes a crime against humanity must have been committed “pursuant to or in furtherance of a state or organisational policy to commit such an attack”.

“Widespread” may be defined as “massive, frequent, large-scale action, carried out collectively with considerable seriousness” and directed against multiple victims.¹⁰⁹ “Systematic” may be defined as “thoroughly organised and following a regular pattern”.¹¹⁰ An “attack” can be described as a course of conduct involving the commission of acts of violence,¹¹¹ or be non-violent in nature.¹¹² It need not be a military attack.¹¹³ An attack is ‘directed against’ a civilian population if the civilian population is the primary object of the attack.¹¹⁴ A population may be considered as ‘civilian’ even if certain non-civilians are present – it must simply be ‘predominantly civilian in nature.’¹¹⁵ A “policy to commit such attack” requires that the state or organisation actively promote or encourage such an attack against a civilian population.¹¹⁶

It is essential to understand that it is not necessary that the sexual violence be widespread or systematic. Rather it is the attack on the civilian population that must be widespread or systematic. “A single isolated act by a perpetrator, if linked to a widespread or systematic attack, could constitute a crime against humanity.”¹¹⁷ For example, in its report “Out of Sight, Out of Mind: Deaths in Detention in the Syrian Arab Republic”, the Commission of Inquiry of Syria determined that rapes

committed in Syrian Government detention constituted crimes against humanity. The Commission determined this through the Government's "widespread conduct of mass arrests, arbitrary arrests and enforced disappearance, victimising the general civilian population living in restive areas and persons otherwise perceived to be in opposition to the Government, and the ensuing ill treatment and killing of those detained, Government forces... engaged in the multiple commissions of crimes, amounting to a systematic and widespread attack against a civilian population. The documented rapes were part of this larger and more diverse widespread and systematic attack."

The perpetrator must know that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Crimes of sexual violence which, if the contextual elements are proven, may be crimes against humanity are:

- i. Rape;
- ii. Sexual slavery;
- iii. Enforced prostitution.
- iv. Forced pregnancy;
- v. Enforced sterilisation; or
- vi. any other form of sexual violence of comparable gravity.

Other crimes against humanity that could involve criminal conduct of a sexualised nature:

- vii. Murder;
- viii. Extermination:
- ix. Torture;
- x. Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3 of Article 7, or other grounds that are universally recognised as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the ICC;
- xi. Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

Genocide

Article II of the 1948 Convention for the Prevention and Punishment of the Crime of Genocide states that the crime of genocide is committed when a person commits a prohibited act with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such. Prohibited acts are (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; (e) forcibly transferring children of the group to another group. This definition is replicated, without amendment, in Article 6 of the Rome Statute.

The crime of genocide requires that the perpetrator have a special intent to destroy, in whole or in part, a protected group. The genocidal acts must be committed against a person because of their membership in a particular group and as an incremental step in the overall objective of destroying the group. Sexual violence, when committed with the requisite special intent, can be a genocidal act. Sexual violence may fall under the following prohibited acts:

Causing serious bodily or mental harm

Conduct resulting in serious bodily or mental harm “may include, but is not necessarily restricted to, acts of torture, rape, sexual violence or inhuman or degrading treatment”.¹¹⁸ The International Criminal Tribunal for Rwanda (ICTR) case of Akayesu first found that rape and sexual violence constitute serious harm on both a physical and mental level – and consequently, if carried out with specific intent to destroy, in whole or in part, a protected group, constitute genocide. The findings of the Trial Chamber in the Akayesu case, heralded as “the most important decision rendered thus far in the history of women’s jurisprudence”,¹¹⁹ are instructive:

Rape and sexual violence certainly constitute infliction of serious bodily and mental harm on the victims and are even, according to the Chamber, one of the worst ways of inflicting harm on the victim as s/he suffers both bodily and mental harm... The rapes resulted in the physical and psychological destruction of the Tutsi women, their families and their communities. Sexual violence was an integral part of the process of destruction, specifically targeting Tutsi women and specifically contributing to their destruction and to the destruction of the Tutsi group as a whole.¹²⁰

Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part

In the *Kayishema* case before the ICTR, the Trial Chamber determined that rape was also a method of destruction which does not “lead immediately to the death of members of the group”.¹²¹ In 2015, the International Court of Justice indicated that rape could fall within Article II(c) of the Genocide Convention but noted, in the particular case before the Court, “it has not been shown that these occurrences [of rape] were on such a scale to have amounted also to inflicting conditions of life on the group that were capable of bringing about its physical destruction in whole or in part”.¹²²

Imposing measures intended to prevent births within the group

Measures intended to prevent births within the group include rape; sexual mutilation; the practice of sterilisation; forced birth control; separation of the sexes; prohibition of marriages; impregnation of a woman to deprive group identity; and mental trauma resulting in a reluctance to procreate.¹²³ Rape can be a measure to prevent births “when the person raped subsequently refuses to procreate, in the same way that members of a group can be led, through threats or trauma, not to procreate”.¹²⁴ Annex A provides detailed breakdown of the elements of each of these crimes.

CONCLUSION

In its September 2022 responses to the CEDAW Committee, Ukraine emphasised that, since February 2022, “cases of sexual violence against civilians by the Russian military had been recorded in Ukraine and sexual violence was being used as an instrument of war”, with 43 criminal proceedings on sexual violence committed during the armed conflict having already been initiated.¹²⁵

As the war rages on, reports of sexual violence committed against Ukrainians – and particularly against women and girls – by Russian forces continue to rise. With access to some areas of the country curtailed and with some victims not yet willing to speak about the atrocities that they have suffered, the true scale of the Russia’s tactical use of rape and other acts of sexual violence may take years to come to light.

The Council of Europe has long committed itself to preventing and combating violence against women, including through the adoption of the Istanbul Convention in 2011, and of a specific monitoring mechanism to underpin the effective implementation of its provisions by the Parties. Since the more recent Russian armed aggression against Ukraine, the Council of Europe has sought to support those working directly with victims of sexual violence in Ukraine, among them psychologists, hotline workers and other social care workers engaged by the local self-government bodies in Ukraine.

Gender-sensitive, victim-centred documentation efforts are integral to both building trust with victims and to carving a path to accountability for the crimes that have been committed. The Istanbul Convention emphasises that documentation of sexual violence has, at its starting point, a recognition that such violence is rooted in structural inequalities, and notably gender inequality. Discriminatory attitudes against women and girls bolster, and are bolstered by, the commission of sexual violence, whether the victims are female or male.

It is through understanding how and why sexual violence is employed against particular individuals and communities in Ukraine that one can grasp the role it plays in achieving the Russia’s wider aims. Understanding the rationale behind

the commission of sexual violence is essential for a nuanced and probing understanding not only of this violation, but also of the larger pattern of violations in which sexual violence often forms part.

The newly updated Istanbul Protocol and the PEACE Model framework are invaluable tools with which to communicate with victims of sexual violence about what they have suffered and what their current needs are. Annex B and C respectively contain guidance on conducting interviews with adult survivors of sexual violence and a template for the documentation of the victim's account.

While it is generally accepted that the prevalence of sexual violence is under-reported – in Ukraine and elsewhere – it is also apparent that understanding of the natures of sexual violence and employing survivor-centred trauma-informed investigative and interviewing processes can overcome some, and perhaps many, of the barriers to documenting sexual violence. Informed analysis ensures that sexual violence is contextualised, and fully understood within a number of different legal frameworks. It is through insightful nuanced reporting that states, international bodies, civil society, and those charged with pursuing justice, can better rise to the responsibilities with which they are charged.

It is integral to recognise the cumulative traumatic impact that intense or consistent interaction with victims of mass atrocity, including victims of sexual violence, has on those working directly in support of them; particularly for mental health and emergency response professionals who are early responders to those who have suffered, or witnessed, highly traumatic violations committed against themselves, their family members, and their neighbours.

ANNEX A: ICC Elements of Crimes of Sexual Violence

RAPE

Physical element

Invasion of 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 body part;¹²⁶ *and*

The invasion was committed by threat of force or coercion,¹²⁷ 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.¹²⁸

Mental Element

The perpetrator meant to invade the body of a person, *and*

The perpetrator was aware of the use of force, threat of force or coercion or taking advantage of a coercive environment or of a person's incapacity to give genuine consent

Rape as an international crime differs to how rape is understood under international human rights law in, under ICL, the victim's lack of consent is not a legal element of the crime of rape.¹²⁹

Under international human rights law, relating to prosecution of rape require that, for sexual contact to be legal, "Consent must be given voluntarily, as a result of the person's free will, assessed in the context of the surrounding circumstances."¹³⁰ This is also often how rape is criminalised under domestic laws.

SEXUAL SLAVERY

is committed where a *perpetrator*:

exercises any or all of the powers attached to the right of ownership over one or more persons, such as purchasing, selling, lending or bartering the person) or imposing on them a similar deprivation of liberty,¹³¹ and

*Causes such person or persons to engage in one or more acts of a sexual nature.*¹³²

The perpetrator meant to exercise powers attached to the right of ownership over one or more persons

The perpetrator meant to engage in conduct causing such person or persons to engage in acts of a sexual nature

(!) Forced Marriage

In the Katanga case before the ICC, the Court held that forced marriage may amount to sexual slavery.¹³³

In the ICC case of Ongwen however, the Court concurred with the Special Court for Sierra Leone's Appeals Chamber in the Brima case in finding that forced marriage constituted "other inhumane acts". This reasoning was on the grounds that "victims of forced marriage suffer separate and additional harm to those of the crime of sexual slavery".¹³⁴

ENFORCED PROSTITUTION

is committed where the perpetrator caused one or more persons to engage in one or more acts 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

The perpetrator meant to engage in conduct of causing one or more persons to engage in one or more acts of a sexual nature

The perpetrator meant to obtain or expected to obtain pecuniary or other advantage

person, or by taking advantage of a coercive environment of such person or persons' incapacity to give genuine consent, *and*

the perpetrator or another person obtained or expected to obtain pecuniary or other advantage in exchange for or in connection with the acts of a sexual nature.

International criminal tribunals have not yet adjudicated on this offence. It is currently difficult to see how most, if not all, forms of forced prostitution would not be encompassed by sexual slavery.

FORCED PREGNANCY

is committed where *the perpetrator*

- confined one or more women; and
- One or more women had been forcibly made pregnant; and
- The perpetrator intended to affect the ethnic composition of any population, *or*

The perpetrator intended to carry out grave violations of international law

The perpetrator meant to confine one or more women forcibly made pregnant

The perpetrator meant to affect the ethnic composition of any population or carry out other grave violations of international law by confining one or more women forcibly made pregnant

The perpetrator was aware that one or more confined women had forcibly been made pregnant

(!) The trial of Ongwen before the ICC marks the first occasion where charges of forced pregnancy have been confirmed before an international criminal tribunal.

ENFORCED STERILISATION

The perpetrator deprived one or more persons of biological reproductive capacity

The conduct was neither justified by the medical or hospital treatment of the person or persons concerned nor carried out with their genuine consent.

The perpetrator meant to engage in conduct which deprived one or more persons of biological reproductive capacity.

The perpetrator was aware that the conduct was not justified by the medical or hospital treatment *and* was aware of absence of genuine consent

OTHER FORMS OF SEXUAL VIOLENCE OF COMPARABLE GRAVITY

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.

Such conduct was of a gravity comparable to:

- a crime against humanity as set out in Article 7 of the Rome Statute;
- that of a grave breach of the Geneva Conventions
- that of a serious violation of Article 3 common to the four Geneva Conventions

The perpetrator meant to engage in committing an act of a sexual nature or causing a person or persons to engage in an act of a sexual nature

The perpetrator was aware of the use of force, threat of force or coercion or taking advantage of a coercive environment or of a person's incapacity to give genuine consent

The perpetrator was aware of the factual circumstances that established the gravity of the conduct

(!) The UN Special Rapporteur on systematic rape, sexual slavery and slavery-like practices during armed conflict has defined sexual violence as: "any violence, physical or psychological, carried out through sexual means or by targeting sexuality [... which] covers both physical and psychological attacks directed at a person's sexual characteristics, such as forcing a person to strip naked in public, mutilating a person's genitals, or slicing off a woman's breasts. Sexual violence also characterises situations in which two victims are forced to perform sexual acts on one another or to harm one another in a sexual manner."¹³⁵

ANNEX B.

Baseline Guidance for Conducting Interviews with Adult Survivors of Sexual Violence

The Baseline Guidance for conducting interviews with adult survivors of mass atrocity crimes is designed to:

- (a) identify the particularly vulnerable and recognise signs of primary and secondary trauma, bearing in mind trauma may be physical and/or mental;
- (b) minimise the risk of re-traumatisation of the individual being interviewed;
- (c) ensure proper reflection on whether it is appropriate to proceed with the interview, given the context in which it takes place;
- (d) ensure, where the decision is made to proceed with the interview, that the designated interviewer is the person most suitable for the particular interview, bearing in mind suitability depend on a number of factors including but not limited to having relevant specialised training as well as her/his gender, language abilities, country of origin, and religious background;
- (e) ensure that interpreters and any persons providing emotional support, who are present in the room at the request of the interviewee, are clear as to their role and appropriate conduct during the interview process;
- (f) properly record consent and protection concerns (which may be of special concern to survivors of mass atrocity crimes, including but not limited to crimes of sexual violence);

- (g) ensure that referral systems, including for psycho-social support, are pre-arranged and available to the interviewees; and
- (h) support the on-going monitoring of signs of secondary trauma on those conducting interviews.

This Baseline Guidance is based on the PEACE model, a framework that supports the conducting of effective, ethical, and victim-centred interviews.

P	Planning and Preparation
E	Engage and Explain
A	Account and Clarification
C	Closure
E	Evaluation

It is emphasised that this document provides basic guidance which must be supplemented with training and consistent supervision and feedback.

I. PLANNING

Preparing an information collection plan	
a.	<p>As part of the preparation for the drafting of the information collection plan, the team or the individual(s) designated within it, shall conduct a desk review of available material on the events occurring and command structures (if relevant) in the area where the alleged attack took place:</p> <ul style="list-style-type: none"> i. Collect and review all available information on the location/ incident and/ or alleged perpetrator(s), remembering to include material contained within your organisation's possession and that which is publicly available; ii. Map out and clarify the timeline of events, as far as this can be discerned from the information which forms part of the desk review; iii. Note any gaps or ambiguities in the existing material which subsequent interviews should, wherever possible, address. These gaps, it should be noted, may relate to both the crime and to command structures (where relevant); iv. Understand sufficiently the context in which the various mass atrocity crimes are occurring and of the different elements of the crimes under national and international law;

	<ul style="list-style-type: none"> v. Grasp the gender dynamics in the country or region where the crimes took place (and how those dynamics may intersect with stereotypes of race, ethnicity, sexual orientation, gender identity, the differently abled, etc.); vi. Identify potential other sources of information including but not limited to survivors, eyewitnesses, defectors, humanitarian aid workers, journalists, and religious authorities; vii. Document the geographic location and contact details of potential sources, under the guidance of Head of the Legal Team; and viii. Document sources and locations of documentary information about the broader attack (which may include allegations of the relevant crimes), including statements taken by other organisations (including human rights and media), notes of interviews, photographs, video and audio recordings, transcripts of conversations carried out over social media, medical records, death certificates, official documents, analytical reports, forensic material, and satellite imagery, under the guidance of Head of the Documentation Team.
Ensure team has a confidentiality policy & has a uniform understanding of it	
b.	<p>The following must be in place before any interviews are arranged:</p> <ul style="list-style-type: none"> i. Define a confidentiality policy and ensure that all members of the mission/team, including support staff, are aware of what information will and will not be collected, where and how it may be stored, and who has access to it; ii. Refrain from audio or visual recording; iii. Ensure information protection measures are in place with regards to all identifying information on the interviewee and their accounts, including the use of pseudonyms/coding systems; and iv. ensure all members of the mission/ team understand and apply the parameters of confidentiality policy, and do not discuss case details with family, friends, colleagues or others who are not part of the team.
Designating the interviewer	
c.	<p>Once the likely interviewee(s) are identified, but prior to the interview(s) taking place, the Head of the Documentation team or an individual s/he delegates this task to, shall determine and designate the most suitable individual to conduct the interview of the particularly vulnerable individual. Factors which must be explicitly considered include</p> <ul style="list-style-type: none"> i. Does the interviewer have the requisite specialised training? ii. Does the interviewer have an appropriate number of years of experience in interviewing survivors such as the person identified?

	<p>iii. Given the interviewee's personal characteristics, the nature of the violation(s) suffered, and the defining characteristics of the alleged perpetrator(s), what is the most appropriate (i) gender, (ii) age, (iii) religious background, (iv) country/ city of origin of an interviewer? Are there other characteristics that should be taken into consideration in the relevant context?</p> <p>iv. What language(s)/ dialect(s) will the interview be conducted in, and does the interviewer have the required fluency or fluencies?</p> <p>Bearing in mind that it is often not possible to find the “perfect” interviewer, the Head of the Documentation team or her/his delegate shall designate the most appropriate interviewer from those available.</p> <p>In the event, the designated interviewer requires an interpreter, in selecting an appropriate interpreter, the Head of the Legal team or her/his delegate will consider afresh the factors listed above.</p>
Deciding whether to go ahead with the interview	
d.	<p>The obligation to, de <i>minimis</i>, 'Do No Harm' is the key ethical principle at the heart of the process of information collection. The team or individuals conducting interviews with survivors of mass atrocity crimes must be fully aware of the potential negative impact of information collection on survivors and other witnesses, the wider community and the interviewers themselves. Interviews should only go ahead in the event that interviewers are adequately prepared for those impacts and are able to put in place measures to prevent or minimise that harm.</p>
e.	<p>There must also be respect for a survivor's autonomy, which is to say, a survivor's ability to make her or his own decisions.</p> <p>Respect for autonomy requires the recognition of a person's right to make independent choices, and take action based on their own personal values and beliefs. Separating autonomous decision-making capacity from, for example, cultural or familial pressures that inform individual decision-making, is often difficult, and interviewers may feel that survivors are not acting in their own best interests but rather in the interests of the group. It is, therefore, essential that interviewers</p> <ul style="list-style-type: none"> • do all they can to share accurate information with survivors; • discuss all risks and benefits of participation including the possible negative impacts; • respect confidentiality; and • support them in accessing the services and assistance they may need in order to make the best decision they can.

f.	Interviewers should ascertain whether or not the potential interviewee(s) are able to provide informed consent . Adult men and women with severe intellectual disabilities, mental illness, or any other physical, mental or emotional condition that may impair their ability to fully comprehend all the relevant facts may not be competent to provide informed consent. (This Guidance specifically does not cover conducting of interviews with child victims, but it notes that children are generally presumed to lack competency to consent). The matter of informed consent is visited at the start of the interview, as covered below.
g.	<p>Efforts must be made to ascertain the extent of the trauma suffered, including whether the interviewee is under professional treatment, or receiving support from social services. All inquiries as to the extent of trauma must show proper respect for medical and other professional ethics.</p> <p>The advice of any professionals, including doctors, counselors and social workers, as to whether the interview could be detrimental to the interviewee's condition and progress should be given great weight. Effort must be made for social workers to be available to provide support to the interviewee if necessary before, during and after the interview, but should not usually attend the interview itself unless specifically requested by the interviewee to be present as a source of emotional support.</p>
h.	A review must be conducted by the interviewer, under the supervision of the Head of the Documentation Team with input from the [Head of Entity] to whether proceeding with the interview is likely to create or increase risks to the security of the interviewee or her/his family or anyone else involved in the procedure. If such a risk exists and can be mitigated, discuss appropriate measures to address it before scheduling the interview. If the risk cannot be mitigated sufficiently, the interview should not go ahead.
i.	Additionally the interviewer, under the supervision of the Head of the Documentation Team or her/his delegate, shall consider whether the interview may threaten the interviewee's refugee status or pending application (e.g., the potential that any statements made could be viewed as inconsistent with the narrative supporting their refugee status determination or give rise to charges/offences that compromise their refugee status).
j.	Information regarding the level of trauma and/or the capacity for informed consent and/or the risk of creating or increasing the risk to security, and/or the risk of adversely impacting on the interviewee's refugee status shall be considered by the interviewer and the Head of the Documentation Team, who is encouraged to request insights from the on-staff psychologist, if available and as appropriate. In the event the decision is made not to proceed with the interview, the information collection team will continue identifying other sources of information, while continuing to monitor the risk factors for the particular individual to determine whether in the future, an interview becomes possible.

Preparing an Interview Plan	
k.	If a decision is made to go ahead with the interview of an identified survivor, the interviewer (with the support of her/his team, as relevant), shall search for and review any prior statements made by the interviewee, whether from material contained within your organisation's records and publicly available sources, remembering to search alternatives names and/or aliases of the interviewee and being mindful of alternative ways of spelling of names and locations. The interviewer should make efforts to ascertain if the interviewee has given prior statements to law enforcement authorities or other organisations [rather than duplicating interviews]
l.	The designated interviewer shall also have regard to other events occurring in the location the interviewee is from, the crimes committed that the interviewee is likely to have been victim and/or witness to, and the alleged perpetrator(s), if known. Remember: survivors of crimes may also have been witnesses to other violations and may also have information regarding alleged perpetrator identity.
m.	<p>The Interview Plan shall contain:</p> <ul style="list-style-type: none"> i. a summary of who the interviewee is, including her or his gender, religious and ethnic background (if relevant or being kept for statistical purposes); ii. the interviewee's location at the time of the initial contact with ISIS, their contact with the alleged perpetrator(s) and (where relevant) the violations suffered in a particular location at a particular time; iii. the key areas to be covered in the interview, bearing in mind that this should not be a list of detailed questions, but rather main issues that must be covered, to ensure the interviewer is listening and responding to the information being provided by the interviewee; and iv. details of available referral services, and the contact points in each other, that the interviewee may need or wish to be directed to during or after the interview.
n.	Interviewers should assess, to the extent possible, whether the information they are seeking (i) has already been documented by your entity and/or by other organisations, (ii) whether that information is accessible, and (iii) whether re- interview is necessary.

II. IN THE IMMEDIATE RUN-UP TO THE INTERVIEW

Preparing the interview space	
a.	<p>Survivors should, unless there are severely extenuating circumstances, be interviewed in person.</p> <p>The interviewer should ensure that prior to the arrival of the interviewee, the interview room</p> <ol style="list-style-type: none"> i. is in a quiet, enclosed space that allows the greatest degree of confidentiality possible and where the interviewee feels safe and comfortable; ii. contains sufficient comfortable seating arrangements, including for the interpreter and emotional support person (if likely to be present); iii. is neutral and not inconvenient for the interviewee to travel to; iv. has access to a bathroom; v. has pens, markers and blank paper in case the interviewer or interviewee need to draw a map or object; vi. has a map of the location(s) of the incidents to be covered, if possible; vii. have the names and contact details of available services typed up and available to give to the interviewee in a language that s/he understands, once they have been discussed with her/him at the close of the interview; viii. has available drinks such as water and tea-making equipment in the room to avoid having people enter the interview space; ix. has easily available boxes of tissues; and x. has toys or items for any infants or toddlers to entertain themselves with when interviewing the parents. Children who are old enough to understand the content of the interview should not be present in the interview space. <p>Seating arrangements should have regard to what the interviewee is most comfortable with. As such, the interviewer should consider whether it is appropriate to use a desk (which may introduce an element of formality into the room, and which creates physical distance between the interviewer and interviewee) if necessary or if speaking while seated on the ground is more conducive to building confidence and trust in the interviewee.</p>
b.	<p>In the highly unusual situation that an interview with a survivor takes place remotely, the preparatory steps set out in paragraph above must also be followed. Additionally, the interviewer shall ensure that the necessary equipment and facilities for a remote interview are present, including a laptop (rather than a smartphone or tablet) and a secure/encrypted, stable internet connection.</p>

Briefing the interpreter

c.	<p>As set out above, the interviewer, under the supervision of Head of the Documentation Team or her/his delegate, must designate an appropriate interpreter, where one is needed. For victims of sexual violence, in particular, it is highly desirable that the interpreter has received specialised training.</p> <p>The interpreter should have set out in writing and be briefed verbally about her/his role in the interview. This should include that s/he:</p> <ol style="list-style-type: none"> i. interprets word-for-word, without summarising, everything that the interviewee and interviewer say; ii. interprets the response precisely even if it does not answer the question or includes information that the interpreter considers irrelevant; iii. is empathetic, non-judgment and objective throughout the interview process; iv. looks at and speaks directly to the interviewee and is aware of pitch, tone, cadence, pacing, and inflection; v. actively listens, including maintaining respectful eye contact, nodding etc. vi. should not initiate physical contact with the interviewee without the interviewee's consent; vii. be familiar with words or idioms which may be commonly used to describe sexual violence in that particular context and language; viii. should be aware of her/ his body language and facial expressions, as these may increase the distress of the interviewee at sensitive points in the interview; ix. should spell the names of people or places that may be unfamiliar to the interviewer; and x. should keep all information relating to or arising from the interview confidential. <p>The interpreter should sign a pre-prepared statement indicating s/he understands her/his role and responsibilities, including with explicit reference, to keeping intact the confidentiality of the interview.</p>
d.	<p>Prior to the interview, the interviewer should discuss with the interpreter common idioms, particularly as may be used by the interviewee when responding to questions about sexual violence. The interviewee shall set out why questions, which may seem direct in a conservative cultural context, need to be asked and should request input from the interpreter as to the best way to put these questions, without lapsing into metaphor.</p>

Briefing the person present for emotional support

e.	<p>Survivors of mass atrocity crimes may request that a person they are acquainted with be present in the room as a source of emotional support. That person may be a social worker, doctor, counselor, friend, or family member. This option should be presented to them in a confidential setting, out of the earshot of anyone not involved in the interview.</p> <p>People who cannot be a source of emotional support for the interviewee include anyone under the age of 18, and anyone who is also victim and survivor. It is important not to cross-contaminate the recollections of other victims and survivors by having them present in the interviews of another.</p>
f.	<p>The person who provides emotional support shall have set out in writing and be briefed verbally her or his role in the interview. This should include that</p> <ol style="list-style-type: none"><li data-bbox="236 560 996 639">i. s/he is there solely for emotional support and should remain silent throughout the interview, save for offering words of support as appropriate;<li data-bbox="236 655 996 735">ii. in being present in the interview, s/he will be exposed to questions and answers in relation to abuses, violations, and crimes that s/he may find upsetting;<li data-bbox="236 751 996 831">iii. s/he should not answer the questions of the interviewer and should not give input into the interviewee's answers, even where the interviewee asks for her assistance;<li data-bbox="236 847 996 879">iv. s/he should not give input into the questions posed by the interviewer;<li data-bbox="236 895 996 975">v. s/he should be aware of body language and facial expressions, as these may increase the distress of the interviewee at sensitive points in the interview;<li data-bbox="236 991 996 1070">vi. that it is the interviewee who decides if s/he needs a break, not the person giving emotional support, bearing in mind that regular breaks will be offered throughout the interview; and<li data-bbox="236 1086 996 1134">vii. s/he should not take any notes of the interviews and should keep all information relating to or arising from the interview confidential. <p>The person providing emotional support should sign a prepared statement indicating s/he understands her/his responsibilities, including with explicit reference, to keeping intact the confidentiality of the interview.</p>

g.	<p>On the morning of the interview, the interviewer shall ensure that s/he</p> <ul style="list-style-type: none"> i. is wearing culturally appropriate clothing; ii. is not wearing any overt religious symbols; iii. has a charged laptop or has the charging cable with her/him as well as paper and a sufficient number of working pens; and iv. has all telephone and computer notifications off or on silent.
h.	<p>Prior to meeting the interviewee, ensure that enough time has been allocated to allow for the conduct of the interview. An appropriate length may be estimated based on the interview plan. In general, one expects a 3-6 hour interview (with breaks) for an adult interviewee but using an interpreter can make the interview substantially longer.</p> <p>For more detailed interviews, consider conducting them over more than one day, in order to avoid exhaustion or too much disruption to the interviewee's daily routine - including her/his responsibilities concerning any young children s/he may have.</p> <p>The interviewer should set aside enough time after each interview to review the information collection plan in light of new information gathered.</p>
i.	<p>The interviewer should ensure all costs (e.g. travel costs, accommodation, food, communication) can be reimbursed and record this in case it is alleged at a later stage that the interviewee has been financially rewarded/unduly influenced. While interviewees can never be paid for their testimony, it is acceptable to reimburse actual or reasonable costs associated with attending an interview.</p> <p>The interviewee should be given a sense of how long the interview may last in order to make appropriate childcare arrangements/ arrangements for other dependents/ cover for job-related responsibilities.</p>
<p>Prepare any documents and equipment that may be used in interview</p>	
j.	<p>Prepare any documents that you might show the interviewee (such as maps, photographs, videos, or diagrams) and equipment (such as a camera and ruler to take photographs of injuries, sketch paper and pens).</p> <p>Do not show an interviewee any documents that might lead them to alter their account. If you are unsure about whether showing any documents to the interviewee might lead her/him to alter her/his evidence, do not show it.</p>

III. THE INTERVIEW

Commencing the interview (Engage and Explain)	
a.	Once the interviewee settles into the room and once it is ascertained whether the interviewee would like a person to provide emotional support in the room, the interviewer shall introduce her or himself to the interviewee, including her/his name, who s/he works for, and why they are there to ask the interviewee questions that day.
b.	Similarly, the interviewer shall introduce the interpreter, explain her/ his role in the interview, and make it clear that he/she will treat the interview and its contents as confidential. At the time of introducing the interpreter, the interviewer shall ensure that the interpreter and interviewee are able to understand each other. Where there are difficulties in communicating, the interview should be halted while a determination is made as to whether it is possible to go ahead with that particular interpreter or whether to postpone the interview while a more suitable interpreter is procured.
c.	Where a person is present in the room to provide emotional support to the interviewee, that person shall introduce her/himself and confirm that s/he understands her/his role as a source of emotional support. S/he shall confirm that he/she will treat the interview and its contents as confidential.
d.	In interviews with victims of sexual violence, only those who are strictly required should be present in the room with the interviewee. This is to safeguard confidentiality, allow for better trust building and not overwhelm an interviewee who may have particular protection concerns and who will recall distressing events. Unless there are exceptional circumstances, only the interviewer and the interpreter, if one is needed, should be present in the room. If other members of the mission/team are in the room, the interviewer must also introduce them to the interviewee, and explain their role and why they are there.
e.	In her/ his introduction, the interviewer shall explicitly <ol style="list-style-type: none"> i. state who s/he represents, and her/his primary objective in carrying out the interview (based on the mandate of the body s/he is working for); ii. provide a detailed overview of the benefits and risks of participating in the information collection process and limitations of services provided, if any; iii. set out the types of questions that may be asked of the interviewee; iv. Identify those present, their functions, who they work for and for whom the information is being gathered; v. explain the confidential nature of the interview, and any limits that are placed on that confidentiality; and

	<p>vi. seek to manage the interviewee's expectations about prospects for accountability & emphasise why it can be useful to ensure that all relevant information, including the interviewee's account, is collected;</p> <p>vii. keep the tone conversational.</p> <p>The above should be explained in a clear way and efforts shall be made to ensure that the interviewee has fully understood what has been explained to her/him. It is good practice for interviewers to ask the interviewee to repeat back to them what the interviewee has understood about the process.</p>
f.	<p>The interviewer should provide an overview of available referral services, to which the interviewee wishes to be directed. Interviewees have a right to know what health, psychological services are available to them prior to being interviewed.</p> <p>It is important that the survivor understand that being referred to services is not dependent on her/his consenting to be interviewed. Every survivor should, with their consent and according to their needs, be referred to the appropriate service even if they decline to be interviewed.</p>
g.	<p>Prior to asking for any personal information from the interviewee, such as her/his name, the interviewer must emphasise to the interviewee that the interview process is entirely voluntary and within her/his control. In particular, the interviewer should give the interviewee some sense of control over how the interview proceeds and inform that it is the interviewee who decides</p> <ul style="list-style-type: none"> i. whether or not to proceed with the interview; ii. if s/he is comfortable with speaking to the interviewer and/or interpreter (e.g. gender, race, religion) and whether s/he wishes to change the interviewer or interpreter in the event that s/he is not comfortable with her/him; iii. when s/he would like to have a break, though breaks will be offered to her/him regularly; and iv. when s/he wishes to bring the interview to an end. <p>The interviewer must emphasise to the interviewee that the interview is confidential (explaining what precisely that means) and that while her/his account is being documented by the interviewer, it is the interviewee who consents to how her/his information is used, and this will be covered at the end of the interview.</p> <p>Throughout this process, the interviewer should evaluate the interviewee's capacity to give informed consent and be ready to stop the interview if, in her/his judgment, the interviewee lacks such capacity.</p>

h.	<p>The interviewer shall inform the interviewee that s/he will be keeping a written or typed note of the interview.</p> <p>If using a computer or where there are cellular telephones visible in the room, the interviewee shall confirm to the interviewer that no audio or audio-visual recording are being made of the interview. If possible, angle the computer away from the interviewee.</p>
i.	<p>Once the procedure set out in above in III a. - h. is covered, the interviewee shall request the interviewee's informed consent to proceed with the interview.</p> <p>Informed consent is a process and involves consenting throughout all stages of information collection: interviewees must give their informed consent to each applicable stage or process, which may include any of the following:</p> <ul style="list-style-type: none"> i. to be interviewed and/or examined; ii. to be photographed; iii. to have their account recorded; iv. to be referred to any support services; and v. to have their account and contact details shared with third parties. <p>Informed consent also involves consenting to all aspects of information collection. Interviewees must fully and clearly understand:</p> <ul style="list-style-type: none"> i. the purpose of the collection of information and intended future use ii. the meaning of confidentiality and how it applies, or not, to the information they provide iii. the procedures that will be followed—including the kind of information that will be requested; iv. the risks and benefits to themselves of participating in the interview. <p>The results of an interview conducted without securing proper and informed consent may also not be accepted in certain legal proceedings, on the grounds that the information was provided under some kind of duress or coercion or based upon misleading assurances.</p>
Settling into the interview	
j.	<p>At the start of the interview, the interviewer shall explain to the interviewee some basic guidelines that will assist in the interview process. The interviewer shall ask the interviewee to</p> <ul style="list-style-type: none"> i. be as open as possible, understanding that trust will be built over time;

	<ul style="list-style-type: none"> ii. say if s/he is not ready to speak about a particular incident or event at the moment and would like to come back to it later (and indicate to her/him that that is perfectly fine); iii. let the interviewer know if s/he does not understand the question, or would prefer that the question be phrased in a different way; iv. let the interviewer know if s/he is unsure about something or cannot recall something (noting that this would be completely understandable and that it is better in such circumstances not to guess); v. distinguish as much as possible between what s/he saw and heard her/himself, and what s/he heard from others (as the interviewer is primarily interested in what s/he saw and heard directly); and vi. understand that if the interviewer follows up one of his/her answers or asks additional questions, this in no way means there is any doubt as to the truthfulness of the answer but is to obtain further information; and vii. indicate if s/he has made any prior statements or been interviewed, and/or ask whom else s/he has discussed these issues with.
k.	<p>The interviewer shall start by documenting the interviewee's</p> <ul style="list-style-type: none"> i. full name (and any alternative names); ii. age and/or date of birth and any alternative dates of birth if there are difference on any official documents); iii. religious and ethnic background; iv. marital status and number of children (if any); v. contact telephone number (the interviewer may wish to skip this and come back to the end of the interview, when there (hopefully) has been more trust built); vi. location at the time of the initial violation and/or contact with alleged perpetrator(s). <p>As a separate matter, the interviewer shall record the names of all those present in the interview room.</p>
Interviewing about violations/ crimes/ suspects (Account and Clarification)	
l.	<p>When embarking on the main part of the interview concerning the violations, abuses and crimes suffered by the interviewee, or concerning any suspect(s), the interviewer should be prepared to let the interviewee speak freely for the first five minutes of the interview. The interviewee will often want to speak about the part of her/his account which most troubles or distresses her/him, for example the point at which s/he is separated from her/his children. Often this means the interviewee starts in the middle of the account. Do not attempt to marshal the interviewee at this time, but let her/him speak about what comes to the forefront of her/his mind.</p>

	<p>When the interviewee reaches a natural pause (or where they hit a ten-minute mark), thank her/him for providing the information and express sympathy for any losses or trauma described. At that point, the interviewer should let the interviewee know that it is clear that s/he has a lot of important information but that it is important to make sure her/his account is documented clearly and so they will start at a specific point of relevance and are then likely to move chronologically through her/his account. The interviewee should therefore start her/his questioning focused on the chronological start of the event or attack.</p>
m.	<p>In formulating questions, the interviewer shall</p> <ol style="list-style-type: none"> i. ensure that her/his line of questioning and the individual questions are appropriate, empathetic, and non-judgmental; ii. keep questions simple and avoid composite questions that could be broken down into several, simpler questions; iii. ask open-ended questions rather than leading questions to the interviewee (so, for example: "who was detained with you at that location?" as opposed to "was your sister also held with you at that location?"). This includes using TED questions ("Tell me...", "Explain to me", "Describe to me") as well as WH questions ("Who, What, When, Where, How, and How do you know"). Avoid asking Why; iv. only ask closed questions when this is required to obtain clarification (i.e., "did you see this before or after reaching the checkpoint?") or specific details (i.e., "what color was the car?"); v. ensure the questions are directed to determining (i) whether the elements of crimes, whether domestic and/or international, can be determined and/or (ii) the involvement of alleged perpetrators; vi. accept "I don't know" and "I can't remember" as legitimate responses to questions. Do not ask the same questions over and over in the hope of eliciting new or further details; vii. give her/his full attention to the interviewee and use an active listening posture: maintaining respectful eye contact, nodding or giving non-committal sounds which encourage the interviewee to continue speaking; viii. acknowledge the most difficult parts of the account, and explain why these details are needed. Do not react negatively to details of descriptions of violence including sexual violence; ix. prioritise the well-being of the interviewee. Pay attention to non-verbal cues, and use them as indicators of when to stop, change subject, or offer the interviewee the chance to have a break; x. allow the interviewee to control the pace of the disclosure and the extent of what is disclosed. Never appear frustrated;

	<p>xi. respect and be supportive of the interviewee's reactions. Do not tell her/him to calm down or treat any crying as an inconvenience or an emotional reaction to be quieted.</p> <p>Where the interviewer is aware of previous, inconsistent information provided by the interviewee, s/he should clarify the discrepancy to the extent possible in a respectful manner (e.g., "Can I just clarify, you said before that you left [location] in the afternoon but you mentioned earlier that it was dark when you left...").</p> <p>During the clarification process, confirm what has been said about each aspect of the account to check that your understanding is accurate before moving on to the next topic, repeating back the interviewee's own words. Do not change her/his words as this may have the effect of leading the interviewee.</p>
n.	<p>As the interviewer moves forward in time through the account, if an interviewee does not remember the dates and/or times when certain events occurred, the interviewer should not suggest these (even if this is known from other sources), but should only record the interviewee's approximate recollection in that respect. The interviewee can be prompted to try to recall other events that may be able to link the event with a date, but they should never be coaxed into providing a date that they would not otherwise provide but for the interviewer's suggestions.</p>
o.	<p>Continue to check with the interviewee that the information s/he is providing is based on what s/he says or heard her/himself. For example, if s/he speaks about the execution of the men and boys from a village, is this something s/he saw or heard? Or did s/he see the men and boys led away and never return, and is therefore inferring their execution? A key follow-up question is likely to be "How do you know [x] piece of information]?"</p>
p.	<p>If an interviewee refers to documentary evidence that is in her/his possession or that s/he can retrieve, ask that copies be provided after the interview, so they can be annexed to the notes of the interview. Do not collect original pieces of documentary evidence.</p>
q.	<p>The interviewer shall offer the interviewee the opportunity to have a break at least once an hour, when there is a natural pause in the account being provided.</p>
r.	<p>Once the questioning starts, if the interviewer senses or sees a traumatic or charged emotional response, s/he should not interrupt. As soon as there is a pause, the interviewer should ask the interviewee whether s/he would like to take a break and offer her/him water, or other refreshment. The interviewer and interpreter should be cautious about making any physical gestures of support, such as touching the interviewee unless s/he has expressly shown that s/he consents to such touching.</p>

	<p>The interviewer shall remind the interviewee that s/he can bring the interview to an end at any time. If the interviewee shows overt signs of trauma, the interviewer may decide to halt the interview and consult a social worker or psychologist if there is particular concern. The interviewer should record any signs of trauma in her/his notes.</p> <p>Do not, however, assume that survivors will behave or react in a particular way. Be careful to avoid stereotypes and assumptions about survivors.</p>
Ending the interview (Closure)	
s.	Interviews should not be ended abruptly, and it is critical that the interviewer set aside enough time to close them properly and to explain the next stages of the process to the interviewee.
t.	<p>Before ending of the interview, interviewers should reflect on their interview plan and the information obtained during the interview, and consider whether:</p> <ul style="list-style-type: none"> i. s/he has covered all the questions s/he wanted to ask; ii. the interviewee has had the opportunity to provide all the information that they are able and willing to provide; iii. s/he has met the objectives of the interview, to the extent that they proved feasible.
u.	<p>The interviewer shall:</p> <ul style="list-style-type: none"> i. ask the interviewee if s/he has anything to add or if there is any aspect of the event(s) that were not discussed; ii. ask the interviewee if s/he has any questions or concerns. If s/he does have questions, give honest answers including indicating if you do not know the answer; iii. discuss with the interviewee her/his needs and explain to her/him again the referral options available. Emphasise that her/his details will only be shared with service providers with her/his informed consent; iv. ask the interviewee whether there is anyone else with whom the interviewer should speak with in relation to the event/ attack; v. explain and ensure that the interviewee understands what will happen next, making sure to manage her/his expectations; vi. ask them again whether they give their informed consent for the interview and use or disclosure of information; vii. end the interview on neutral topics and assess the emotional state of the interviewee. Explain that remembering and describing their experiences may make traumatic memories more present for a while and that they may have more difficulty sleeping for a time;

	<p>viii. if the interviewee appears distressed as a result of the interview, try to bring them back to the present and to a positive frame of mind. If s/he appears outwardly distressed during the closure phase, recommend referring her to a body which can give professional psychological support (with her/his informed consent);</p> <p>ix. recognise the interviewee's participation and thank them for talking to you. Ensure to use culturally appropriate gestures when departing.</p>
--	---

IV. POST-INTERVIEW

Evaluation	
a.	<p>After the interview, the interviewer is responsible for the efficient drawing up of the notes of interview. In drafting the notes, the interviewer shall ensure that s/he:</p> <ul style="list-style-type: none"> i. includes the interviewee's full name, gender/sex, religious and ethnic background, age and/or date of birth, and contact details; ii. includes the date and place of the interview; iii. includes the names of all other persons present in the interview; iv. includes the notes of the interview organised chronologically, divided into section and using numbered paragraphs so they can be easily referenced; v. includes a summary of the contents of the copies of any relevant documentary evidence provided or discussed by the interviewee; vi. attaches said copies of documents to the notes of interview, assigning a reference number to each document so they can be unequivocally cross-referenced in the body of the notes of the interview; vii. clearly explains in the body of the interview notes whether a given document has been provided by the interviewee or whether it was shown to her/him by the interviewee. viii. records the consent provided by the interviewee, including (though separately) the interviewer's impressions of the informed nature of that consent and any concerns s/he may have had regarding that informed nature (e.g. informed consent may have been impacted by level of education, level of trauma). ix. records in a separate section of the notes, which is designated for internal use only, any comments, thoughts and analysis by the interviewer. This includes security concerns, health issues, potential issues of credibility, and other issues relating to the interviewee, as well as gaps that need to be filled with follow-up questions during potential further interviews.

	Included in the file should be any signed statements of the interpreter and/or person providing emotional support.
b.	<p>The final notes of interview should be saved into your organisation's records immediately on completion. Any drafts of these notes or associated material contained on unsecured laptops or in the documents section of the interviewer's office computer must be deleted.</p> <p>The notes of the interview should be assigned a unique code/ reference number. After that number has been assigned, the notes and interviewee must then be referred to only by that number. The reference code of the copies of any documents must then be amended to remove the interviewee's initials and replace them the code/reference number.</p>
c.	<p>Review the interview plan in light of the information obtained during the interview. Consider</p> <ol style="list-style-type: none"> i. if the objectives of the interview plan were achieved? ii. was information gained that allowed/ assisted the determination of alleged perpetrators/ crimes/ violations? iii. what additional information has been gained? iv. is it consistent with the information already collected from different sources? Are there inconsistencies that need to be reviewed? v. what further enquiries need to be made as a result of this interview?
d.	<p>Review the information collection plan in light of the information obtained during the interview. Consider</p> <ol style="list-style-type: none"> i. the impact of the new information; ii. any leads on additional interviewees/ sources of information; and iii. what action needs to be taken next.
e.	<p>The interviewer should have an evaluation of/ evaluate their interviewing skills. Debrief with a supervisor, a colleague, or on the interviewer's own. Relevant questions include:</p> <ol style="list-style-type: none"> i. What did you do well? ii. What could you have done better? iii. What skills could you further develop? iv. How can you acquire these skills?

f.	In the event that the notes of interview of a particular interviewee are part of a dossier of information and evidence that is being shared with a third party, in line with the informed consent option(s) selected by the interviewee, the original interviewer shall make all efforts to contact the interviewee to inform her/him of the use of the notes of her/his interview and subsequently, of any significant developments.
Monitoring of secondary trauma on the part of the interviewer and interpreter	
g.	<p>The interviewer and interpreter (if s/he is a member of the team) should have access to a psychologist to discuss the impact of the interviews.</p> <p>Where the mission has contracted the interpreter, s/he shall be briefed on the nature and symptoms of secondary trauma at the time of her/his being contracted, and strongly advise to identify sources of professional support before going on mission.</p>

ANNEX C.

Template: Interviewing victims of sexual violence

INTERVIEW NOTES

INTERNAL Code reference:

EXTERNAL Code reference:

INTERVIEWEE INFORMATION:

Last Name:

First and middle names:

Other names used:

Gender:

Father's name:

Mother's Name:

Date of Birth/Age:

Place of birth:

Nationality:

Occupation:

Ethnicity:

Religion:

Language(s) spoken by the interviewee:

Language(s) written by the interviewee:

Language(s) used in the interview:

Place of interview:

Date(s) and time(s) of interview session(s):

Name of interviewer:

Name of interpreter:

Names and titles of all other persons present:

NOTES OF INTERVIEW

Opening Procedure

1. I (*name of INTERVIEWER*) introduced myself to the interviewee and informed them that I was part of [entity name], working to [entity mandate].
2. (*Name of INTERPRETER*) was introduced to the interviewee as an interpreter working with [entity] and the interpreter's role in the interview was also explained to the interviewee. (Add anyone else's name and role if present in the interview, including the psychologist or a support person).
3. (*Name of INTERVIEWER*) explained the objective of [entity name] work in collecting information about [focus of investigation].
4. The interviewee agreed that the interview would be conducted in the [xxxxxx] language. They confirmed that they understand and speak the [xxxxxx] language. I informed the interviewee that, in the event of the interview lasting longer than an hour, there will be scheduled time breaks and that they were very welcome to let us know if they wanted a break **at any time** during the course of the interview. I also advised the interviewee that they had the right to end the interview at any time. The interviewee was advised that this is a voluntary process, and they were not obliged/under any pressure to participate in the interview process. I also advised the interviewee that they did not have to answer any questions that they did not wish to answer. If they did not like the way particular question was asked, they could also ask me to rephrase it.
5. I explained the interview process to the interviewee and asked them to be as accurate as possible in their account. I emphasised to the interviewee that they should state when they do not know the answer to a question or do not understand the question. The interviewee was

asked to distinguish between what they experienced or saw themselves and what they heard or learnt about from someone else or through any other source.

6. I asked the interviewee for their consent to be interviewed. I approached the issue of consent to share at the start/at the end of the interview and explained to the interviewee that I would be asking them whether they would consent to sharing it with different named entities, and that I would provide an explanation of the work of the entity. I emphasised to the interviewee that they were welcome to ask additional questions especially if anything was unclear and that they also had the choice to consent to share the information with or without providing their personal details. I took the interviewee through the consent options and took note of the interviewee's choice with regard to consent in these notes.
7. I advised the interviewee that other than the entities they had consented to share information with, that the interview was confidential.
8. I explained to the interviewee that in the interview they may be asked to recall events or conduct that might be upsetting. In the days and weeks following the interview, the interviewee might feel sadder or more angry than usual or may have difficulty sleeping. I asked whether the interviewee was receiving counselling and/or other forms of psychosocial support. If so, I encouraged them to continue to use them. If not, I asked for the interviewee's consent to refer them to available psychosocial support services near them, providing both location and contact information.
9. I asked the interviewee if they had any further questions. If they did, the questions and my answers were recorded in the notes below. The interviewee was again asked to confirm their willingness to proceed with the interview.

RECORDING OF INFORMED CONSENT

Code reference:

Consent to be interviewed

- Interviewee has provided consent to be interviewed by [entity]

Consent to share information with

	W/ personal details	Without
<input type="checkbox"/> Ukrainian prosecutorial authorities	_____	_____
<input type="checkbox"/> International Criminal Court	_____	_____
<input type="checkbox"/> UN Commission of Inquiry	_____	_____
<input type="checkbox"/> [insert name of entity]	_____	_____
<input type="checkbox"/> Prosecutors of foreign countries	_____	_____

If interviewee specifies countries please record below:

Record of any concerns about informed nature of consent:

- Interviewee is unable to provide informed consent. *(Explain why)*
- Interviewee was not asked to provide consent to share. *(Explain why)*

**RECORDING OF PSYCHO-SOCIAL
SUPPORT (PSS) ENGAGEMENT**

Code reference:

Interviewee already receives counselling/ PSS

- Yes, regularly
- Yes, occasionally
- No

Interviewee is interested in engaging with PSS services

- Yes
- No

Interviewee has been provided with the contacts and details of nearest PSS provider

Yes

No

Interviewee has consented to their contact details being provided to [entity] for this purpose only

Yes

Contact details:

No

Background

10. _____

11. _____

Events

12. _____

13. _____

ANNEXES

14. Annex 1: _____

15. Annex 2: _____

Closing

16. I indicated to the interviewee that the interview/ this day of interviewing was almost complete. The interviewee was asked whether they have anything they wished to add or anything to clarify at this time. I specifically asked if there was any aspect of the events that were not discussed and that they would like to be recorded in the notes of the interview.
17. I asked the interviewee if they had any questions or concerns that they wanted to raise before the end of the interview. If they did, those questions and the answers are set out in the notes above.
18. I again reviewed their consent options with them and made further efforts to ascertain the informed nature of that consent. I explained that the information collected from the interviewee will be securely stored and the aim is to use it to [entity mandate]
19. I explained clearly that it was not possible to guarantee justice because, for example, the person responsible may have died. I also emphasised that it takes time to gather enough evidence for a case, and to identify the person responsible. Where there is a case, the justice process often takes a long time. I explained this so that the interviewee had enough information to have realistic expectations about the possibilities of justice and the length of any justice process.
20. I ended the interview on neutral topics and made efforts to assess the interviewee's emotional state. I again discussed with the interviewee that they might feel sadder or angrier than usual in the days and weeks that followed the interview and emphasised the importance of receiving counselling or another form of psycho-social support as they continue to process the trauma they have experienced and/or witnessed. I emphasised that asking for help and receiving help is a strength and not a weakness.
21. I expressed gratitude to the interviewee for speaking with [entity name] and thanked them once again before bringing the interview to a close.

Select Bibliography

Council of Europe (2011a), Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), available at: <http://conventions.coe.int/Treaty/EN/Treaties/html/210.htm>.

Council of Europe (2011b), Istanbul Convention Explanatory Report, available at: <http://conventions.coe.int/Treaty/EN/Reports/Html/210.htm>.

Council of Europe, Mid-term Horizontal Review of GREVIO baseline evaluation reports, February 2022, <https://rm.coe.int/prems-010522-gbr-grevio-mid-term-horizontal-review-february-2022/1680a58499>

Council of Europe, Parliamentary Assembly, Recommendation 1873 (2009) Sexual Violence Against Women in Armed Conflict, <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17743&lang=en>

Council of Europe, European Convention for the Prevention of Torture and Inhuman or Degrading Treatment, (Text amended according to the provisions of Protocols No. 1 (ETS No. 151) and No. 2 (ETS No. 152) which entered into force on 1 March 2002) <https://rm.coe.int/16806dbaa3>

Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms (as amended by the provisions of Protocol No.15 (CETSNo.213) as from its entry into force on 1 August 2021 and of ProtocolNo.14 (CETSNo.194) as from its entry into force on 1 June 2010), https://www.echr.coe.int/documents/convention_eng.pdf

Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 25 October 2007, Article 34, <https://rm.coe.int/1680084822>

Council of Europe, UN Women and Equality Now, Effectively investigating, prosecuting and adjudicating sexual violence cases: a manual for practitioners in Georgia, September 2021, <https://rm.coe.int/investigation-manual-eng/1680a3e8e4>

Council of Europe, Public Defender (Ombudsperson) of Georgia, The Administration of Justice on Sexual Violence Crimes against Women, December 2020, <https://rm.coe.int/sexual-violence-research-eng/1680a13604>

Council of Europe, Preventing and combating violence against women and domestic violence in Ukraine: Good International Practices and Standards on

Violence against women and domestic violence, Report, May 2015, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680488675>

Council of Europe Office in Ukraine, Methodological Guidance on Investigative Interviewing of Children (2021), <https://rm.coe.int/method-rec-2021-ukr-web/1680a317f6> (currently only available in Ukrainian)

European Court of Human Rights, *M.C. v Bulgaria*, Application 39272/98, Judgment. 4 December 2003.

European Institute for Gender Equality, Final Activity Report Task Force to Combat Violence against Women, including Domestic Violence (EG-TFV), 2008, <https://eige.europa.eu/node/1924>

United Nations Office of the High Commissioner for Human Rights, Internal Guidance Note Systematising Gender Integration for Commissions of Inquiry and Fact-Finding Missions, 2016

United Nations International Children's Emergency Fund and United Nations Office on Drugs and Crime, Guidelines on Justice Matters Involving Child Victims and Child Witnesses of Crime, 2005, https://www.unodc.org/documents/justice-and-prison-reform/Justice_in_matters...pdf

United Nations, Convention on the Rights of the Child, 20 November 1989, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

United Nations Committee on the Elimination of Discrimination against Women, General recommendation No. 33 on women's access to justice, 2015, <https://digitallibrary.un.org/record/807253?ln=en>

International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Best Practice on the Documentation of Sexual Violence as a Crime or Violation of International Law, March 2017, https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2019/06/report/international-protocol-on-the-documentation-and-investigation-of-sexual-violence-in-conflict/International_Protocol_2017_2nd_Edition.pdf

Criminal Code of Ukraine, <https://zakon.rada.gov.ua/laws/show/2341-14#Text>

Ukrainian Draft Law No. 2689 "On Amendments to Certain Legislative Acts of Ukraine Regarding the Implementation of International Criminal and Humanitarian Law", http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67804

Beijing Declaration and Platform for Action, Fourth World Conference on Women, 15 September 1995, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995).

Endnotes

1. See for example, Bethan McKernan, *Rape as a weapon: huge scale of sexual violence inflicted in Ukraine emerges*, Guardian (UK), 4 April 2022, <https://www.theguardian.com/world/2022/apr/03/all-wars-are-like-this-used-as-a-weapon-of-war-in-ukraine>; Yogita Limaye, *Ukraine conflict: 'Russian soldiers raped me and killed my husband'*, BBC News, 11 April 2022, <https://www.bbc.com/news/world-europe-61071243>
2. European Union External Action, Joint Statement by EU High Representative for Foreign Affairs and Security Policy, Josep Borrell, and UN Special Representative on Sexual Violence in Conflict, Pramila Patten, on the occasion of the International Day for the Elimination of Sexual Violence, 17 June 2022, https://www.eeas.europa.eu/eeas/joint-statement-eu-high-representative-foreign-affairs-and-security-policy-josep-borrell-and_en
3. ReliefWeb, *Sexual Violence 'Most Hidden Crime' Being Committed against Ukrainians, Civil Society Representative Tells Security Council*, 6 June 2022, <https://reliefweb.int/report/ukraine/sexual-violence-most-hidden-crime-being-committed-against-ukrainians-civil-society-representative-tells-security-council-0>. Ms. Karbowska went on to underscore that, though the full scale of conflict-related sexual violence was not yet known, human rights activists and law enforcement agencies estimated that hundreds of cases have been committed “not just against women and girls, but also men and boys and people of other gender identities.”
4. Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210) (hereinafter, the “Istanbul Convention”), <https://rm.coe.int/168008482e/>
5. Council of Europe Newsroom, *Ukraine ratifies the Istanbul Convention*, 18 July 2022, <https://www.coe.int/en/web/istanbul-convention/-/ukraine-ratifies-the-istanbul-convention>
6. Council of Europe, Parliamentary Assembly, Recommendation 1873 (2009) *Sexual Violence Against Women in Armed Conflict*, para. 2, <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17743&lang=en>
7. Council of Europe, UN Women and Equality Now, *Effectively investigating, prosecuting and adjudicating sexual violence cases: a manual for practitioners in Georgia*, September 2021, <https://rm.coe.int/investigation-manual-eng/1680a3e8e4>

8. Council of Europe, Public Defender (Ombudsman) of Georgia, *The Administration of Justice on Sexual Violence Crimes against Women*, December 2020, <https://rm.coe.int/sexual-violence-research-eng/1680a13604>
9. Council of Europe, Preventing and combating violence against women and domestic violence in Ukraine: Good International Practices and Standards on Violence against women and domestic violence, Report, May 2015, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680488675>
10. See, for example, *M.C. v. Bulgaria*, App. no. 39272/98, (ECtHR, 4 December 2003), para. 181
11. Committee on the Elimination of Discrimination against Women (CEDAW Committee), General Recommendation No. 35 on gender-based violence against women, CEDAW/C/GC/35; CEDAW Committee, *Karen Tayag Vertido v. Philippines*, Merits, Communication No. 18/2008, UN Doc. CEDAW/C/46/D/18/2008(2010); R.P.B. v *Philippines*, Communication No. 34/2011, UN Doc. CEDAW/ C/57/D/34/2011 (2014);
12. International Criminal Court (ICC), ICC Rules of Procedure and Evidence; International Criminal Court (ICC) Elements of the Offences Articles 7(1)(g)-1, 7(2) and 8(2) of the ICC Elements of the Offences; *Prosecutor v. Bemba* ICC-01/05- 01/08-3343, Judgment pursuant to Article 74 of the Statute, 21 March 2016, Paras. 105-106; *Prosecutor v. Katanga* ICC-01/04-01/07, Decision on the Confirmation of Charges 30 September 2008, Para. 440; *Inter-American Court Case of Fernandez Ortega et al v Mexico*, Judgment of May 15 2011; Interpretation of judgment on preliminary objection, merits, reparations and costs; the International Criminal Tribunal for Rwanda (ICTR), *The Prosecutor v. Akayesu*, ICTR-96- 4-T, Judgement, international Criminal Tribunal for the Former Yugoslavia (ICTY), 2 September 1998; *Prosecutor v. Kunarac, Kovac and Vukovic*, No. IT-96-23& IT-96-23/1-A, ICTY, 12 June 2002; *Mechanism to Follow Up on the Implementation of the Convention on the Prevention, Punishment and Eradication of Violence against Women (MESECVI)*, Second Hemispheric Report on the Implementation of the Belém do Pará Convention (Apr. 2012); and the Declaration on Violence Against Women, Girls and Adolescents and their Sexual and Reproductive Rights.
13. See, OHCHR Internal Guidance Note Systematising Gender Integration for Commissions of Inquiry and Fact-Finding Missions, 2016, in which acts of sexual violence are defined as “acts of a sexual nature against one or more persons or that cause 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.” <https://searchlibrary.ohchr.org/record/22753?ln=en>
14. de Brouwer, A., and Ruiz L. *Male Sexual Violence and Female Perpetrators of Sexual Violence in Conflict* in S. Mouthaan and O. Jurasz (eds) *Sexual Violence in Transitional Justice*. Antwerp: Intersentia, 2017.

15. UNICEF and UNODC, *Guidelines on Justice Matters Involving Child Victims and Child Witnesses of Crime*. 2005.
16. UN General Assembly, Convention on the Rights of the Child, 20 November 1989.
17. European Court of Human Rights, *M.C. v Bulgaria*, Application 39272/98, Judgment. 4 December 2003, paragraph 163.
18. *Ibid.*, para. 166
19. International Criminal Court, Trial Chamber III, No.: ICC-01/05-01/08, Situation in the Central African Republic *in the case of the Prosecutor v. Jean-Pierre Bemba Gombo*, Judgment pursuant to Article 74 of the Statute, 21 March 2016, available at: https://www.icc-cpi.int/CourtRecords/CR2016_02238.PDF
20. Council of Europe, *Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence*, 11 May 2011, (hereinafter, "Explanatory Report"), <https://rm.coe.int/1680a48903>
21. International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: *Best Practice on the Documentation of Sexual Violence as a Crime or Violation of International Law*, March 2017, https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2019/06/report/international-protocol-on-the-documentation-and-investigation-of-sexual-violence-in-conflict/International_Protocol_2017_2nd_Edition.pdf
22. This also remains true where, as in the case of Pauline Nyiramasuhuko who was convicted before the ICTR, the perpetrator is female. See, Drumbl, She makes me ashamed to be a woman: The Genocide Conviction of Pauline Nyiramasuhuko, 2011, Michigan Journal of International Law, Vol. 34, Issue 3, January 2013. However, the fact that no instance has been documented as yet where women have been the primary perpetrators of sexual violence is also relevant to understanding sexual violence as an enforcement mechanism of patriarchal societies.
23. *Colombia: Women, Conflict-Related Sexual Violence and the Peace Process*, p. 7, quoting Global Rights and AFRODES, The human rights situation of internally displaced afro-Colombian women: Life in the Face of Adversity, November 2008, page 26.
24. Human Rights Campaign, Sexual Assault and the LGBTQ Community, <https://www.hrc.org/resources/sexual-assault-and-the-lgbt-community>
25. Kangura, Issue No. 6, *The Hutu 10 Commandments*, 10 December 1990. Original available in the Genocide Archive of Rwanda in Kinyarwanda. Available in English <https://www.rwanda-nogreaterlove.com/hutu-10-commandments>
26. Christopher Taylor, *Sacrifice as Terror: The Rwandan Genocide of 1994* (Oxford: Berg, 1999), p. 177.
27. Alison L. des Forges, *Leave None to Tell The Story: Genocide in Rwanda* (New York, NY: Human Rights Watch, 1999), ("des Forges – Leave None to Tell The Story") p. 215;

Human Right Watch, *Shattered Lives: Sexual Violence during the Rwandan Genocide and its Aftermath*, September 1996, (“HRW – Shattered Lives”), p.39.

28. HRW – *Shattered Lives*, p.39.
29. des Forges – *Leave None to Tell The Story*) p. 215; HRW – *Shattered Lives*, p.18.
30. UN Committee on the Elimination of Discrimination against Women, General recommendation No. 33 on women's access to justice, 2015, <https://digitallibrary.un.org/record/807253?ln=en>
31. African Rights, Rwanda – Broken Bodies, Torn Spirits: Living with Genocide, Rape and HIV/AIDS, (Kigali, Rwanda: African Rights, April 2004), p. 75; UN Commission of Inquiry on the Syrian Arab Republic, “They Came To Destroy”: ISIS Crimes against the Yazidis, 16 June 2016, A/HRC/32/CRP1, (Col Syria - They Came to Destroy), para. 145.
32. *Akayesu* Trial Judgment, para. 731. Later similar findings that rape and sexual violence were acts of genocide were made by in *Prosecutor v. Stakić, Trial Judgment*, 31 July 2003 (“*Stakić* Trial Judgment”) para. 516; *Rutaganda* Trial Judgment, para. 51, *Musema* Trial Judgment, para. 156, *Gacumbitsi* Trial Judgment, paras. 291-292; and *Muhimana* Trial Judgment, para. 502.
33. See Beth Van Schaack, *Engendering Genocide: The Akayesu Case Before the International Criminal Tribunal for Rwanda*, Santa Clara University School of Law, Legal Studies Research Paper Series, July 2008; Sherrie L. Russell-Brown, *Rape as an Act of Genocide*, Berkeley Journal of International Law, Volume 21, Issue 2, 2003.
34. Col Syria - *They Came to Destroy*, para. 124.
35. Amnesty International, Mexico: *Sexual violence routinely used as torture to secure “confessions” from women*, 28 June 2016, <https://www.amnesty.org/en/latest/news/2016/06/mexico-sexual-violence-routinely-used-as-torture-to-secure-confessions-from-women/>
36. Freedom from Torture, Rape as Torture in the DRC: *Sexual Violence Beyond the Conflict Zone*, June 2014.
37. UN Commission of Inquiry on the Syrian Arab Republic, A/HRC/33/55, 11 August 2016, paras. 92-110, https://ap.ohchr.org/documents/dpage_e.aspx?si=a/hrc/33/55
38. Human Rights Watch, “*They Treated Us in Monstrous Ways*”, *Sexual Violence Against Men, Boys, and Transgender Women in the Syrian Conflict* 29 July 2020, <https://www.hrw.org/report/2020/07/29/they-treated-us-monstrous-ways/sexual-violence-against-men-boys-and-transgender>
39. Human Rights Watch, *Bloody Monday: The September 28 Massacre and Rapes by Security Forces in Guinea*, 17 December 2009.
40. Sandesh Sivakumaran, *Sexual Violence Against Men in Armed Conflict*, *European Journal of International Law*, Volume 18, Issue 2, April 2007, Pages 253–276, <https://doi.org/10.1093/ejil/chm013>

41. United Nations, *Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 780* (1992), S/1994/674, 27 May 1994.
42. HRW – Shattered Lives, p.40.
43. Ukrainian University of Customs and Finance. “*Sexual Violence in War-time: Reasons for Victims to Act*”. 4 July 2022. <http://umsf.dp.ua/index.php/blog/1267-seksualne-nasilstvo-pid-chas-vijni-prichini-yak-diyati-postrazhdalim> Sara Ferro Ribeiro and Danaé van der Straten Ponthoz, *The International Protocol on Documenting and Investigating Sexual Violence in Conflict: Best Practice on the Documentation of Sexual Violence as a Crime or Violation of International Law*. UK Foreign & Commonwealth Office. Second Edition: March 2017. EN: https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2019/06/report/international-protocol-on-the-documentation-and-investigation-of-sexual-violence-in-conflict/International_Protocol_2017_2nd_Edition.pdf and UKR: https://womenua.today/UWC-library/unwomen/37-International_Protocol_2017_2nd_Edition_UKR.pdf. Chas newspaper. Kyiv, Ukraine. Accessed 18 July 2022. <https://chas.cv.ua/zakon-pravo/109919>
44. Instruction on filling in the form of primary accounting documentation No. 027/o “*Extract from the medical card of an outpatient (inpatient) patient*” <https://zakon.rada.gov.ua/laws/show/z0682-12#n2>. Instruction on filling in the form of primary accounting documentation No. 028/o “*Consultative opinion of a specialist*”. <https://zakon.rada.gov.ua/laws/show/z0683-12#n2>. <https://bit.ly/3xnGYdO>
45. For contact details see website of the prosecutor's regional offices <https://www.gp.gov.ua/ua/posts/sajti-oblasnih-prokuratur> or <https://bit.ly/3NpqMyg>
46. *Google map of Legal Aid Bureaus in Ukraine*. <https://bit.ly/3mjmsF5>
47. *Free legal aid in Ukraine*. <https://linktr.ee/legalaid.gov.ua>
48. *Explanatory Report*, para.78.
49. See, for example, CPT/Inf (2022) 16, *Report to the Greek Government on the ad hoc visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 22 November 2021 to 1 December 2021, Strasbourg, 2 September 2022*, para. 64, <https://rm.coe.int/1680a7ce96>.
50. Article 23 of the Istanbul Convention calls for shelters to be set up in sufficient numbers to provide appropriate temporary accommodation for all victims.
51. UNOG-INFORMATION Press_Geneva, CEDAW/22/33 - *Experts of the Committee on the Elimination of Discrimination against Women Commend Ukraine for Achievements in Gender Equality, Raise Questions on Conflict-Based Sexual Violence*, 19 October 2022.
52. Under Article 24 of the Istanbul Convention, parties are required to set up state-wide telephone helplines available 24 hours, 7 days a week and free of charge to ensure

easy and confidential access to information and counselling by trained professionals on all forms of violence against women in all relevant languages.

53. *Explanatory Report*, para.132.
54. UNOG-INFORMATION Press_Geneva, CEDAW/22/33 - *Experts of the Committee on the Elimination of Discrimination against Women Commend Ukraine for Achievements in Gender Equality, Raise Questions on Conflict-Based Sexual Violence*, 19 October 2022.
55. Council of Europe, *Mid-term Horizontal Review of GREVIO baseline evaluation reports*, para. 277, February 2022, (hereinafter, 'Mid-term Horizontal Review'), <https://rm.coe.int/prems-010522-gbr-grevio-mid-term-horizontal-review-rev-february-2022/1680a58499>
56. *Explanatory Report*, para.142.
57. European Institute for Gender Equality, *Final Activity Report Task Force to Combat Violence against Women, including Domestic Violence (EG-TFV)*, 2008, <https://eige.europa.eu/node/1924>
58. *Mid-term Horizontal Review*, para. 288.
59. *Office of the Special Rapporteur to the Secretary-General on Sexual Violence and Armed Conflict*, 2017 Annual Report.
60. Johnson K, Scott J, Rughita B, Kisielewski M, Asher J, Ong R, Lawry L. *Association of sexual violence and human rights violations with physical and mental health in territories of the Eastern Democratic Republic of the Congo*. JAMA. 2010 Aug 4;304(5):553-62. doi: 10.1001/jama.2010.1086.
61. Johnson K, Asher J, Rosborough S, Raja A, Panjabi R, Beadling C, Lawry L. *Association of combatant status and sexual violence with health and mental health outcomes in postconflict Liberia*. JAMA. 2008 Aug 13;300(6):676-90. doi: 10.1001/jama.300.6.676.
62. *Explanatory Report*, para. 27, <https://rm.coe.int/1680a48903>
63. Council of Europe *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention)*, 25 October 2007, Article 34, <https://rm.coe.int/1680084822>
64. For detailed guidance on child investigative interviewing, see Council of Europe Office in Ukraine, *Methodological Guidance on Investigative Interviewing of Children (2021)*, <https://rm.coe.int/method-rec-2021-ukr-web/1680a317f6>.
65. Human Rights Watch, *'As if We Weren't Human': Discrimination and Violence against Women with Disabilities in Northern Uganda*, August 2010, https://www.hrw.org/sites/default/files/reports/uganda0810_brochure_low.pdf
66. *"The Measurement of Experienced Burnout"*, Christina Maslach and Susan E. Jackson. *Journal of Occupational Behaviour*. Vol. 2, No. 2., para. 99-113. Wiley. April 1981. <https://www.jstor.org/stable/3000281>

67. Criminal Code of Ukraine, <https://zakon.rada.gov.ua/laws/show/2341-14#Text>
68. Article 152 (paragraph 1) of the Ukrainian Criminal Code.
69. Note to the Article 152 of the Ukrainian Criminal Code.
70. Draft Law No. 2689 “*On Amendments to Certain Legislative Acts of Ukraine Regarding the Implementation of International Criminal and Humanitarian Law*”, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67804
71. Ibid.
72. Surprisingly, however, most human rights treaties do not contain explicit or specific prohibitions of sexual violence. See, for example, the International Covenant on Civil and Political Rights (ICCPR), 1966; European Convention on Human Rights (ECHR), 1950; American Convention on Human Rights (ACHR), 1969; African Charter on Human and Peoples’ Rights, 1981.
73. See, for example, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Juan E. Méndez, UN Doc. A/HRC/25/60, 10 April 2014, para. 40: “The prohibition against torture and other cruel, inhuman or degrading treatment or punishment enjoys the enhanced status of a jus cogens or peremptory norm of general international law.”
74. See, African Charter on Human and Peoples’ Rights (art. 5), American Convention on Human Rights (art. 5), American Declaration of the Rights and Duties of Man (art. 27), Arab Charter on Human Rights (arts 8), Cairo Declaration on Human Rights in Islam (arts. 19-20), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Convention on the Protection of the Rights of Migrant Workers and Members of their Families (art. 10), Convention on the Rights of the Child (art. 37), European Convention for the Prevention of Torture and Inhuman or Degrading Treatment, European Convention for the Protection of Human Rights and Fundamental Freedoms (art. 3), Inter-American Convention To Prevent and Punish Torture, International Covenant on Civil and Political Rights (arts. 4, 7 and 10), United Nations Standard Minimum Rules for the Treatment of Prisoners (art. 31), and Universal Declaration of Human Rights (art. 5).
75. *Report of the Special Rapporteur on Torture*, UN Doc. E/CN.4/1986/15, 19 February 1986, para. 119.
76. IACHR, *Raquel Martín de Mejía v. Peru*, Case No. 10.970, Report No. 5/96, Annual Report 1995, OEA/Ser. L/V/II.91 Doc. 7 rev. (1996), p. 185.
77. ECtHR, *Aydin v. Turkey*, Application No. 57/1996/676/866, Judgment, 25 September 1997, paras 83–86.
78. CCPR/C/119/D/2245/2013, Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2245/2013, 23 June 2017.

79. ACHR, *Ana, Beatriz and Celia González Pérez v. Mexico*, Case No. 11.565, Report No. 53/01, Annual Report 2000, OEA/Ser.L/V/II.111 Doc. 20 rev. p. 1097 (2001), para. 53.
80. Committee against Torture, “*Concluding Observations, Peru*”, UN Doc. CAT/C/PER/CO/4, 25 July 2006, para. 23.
81. EctHR, *Valasinas v. Lithuania*, Application No. 44558/98, Judgment, 24 July 2001.
82. ICTY, *Prosecutor v. Simić, Tadić and Zarić*, Case No IT-95-9, Judgment (Trial Chamber), 17 October 2003, paras 728 and 772.
83. EctHR, *M.C. v. Bulgaria*, Application No. 39272/98, Judgment, 4 December 2003 (Arts 3 and 13 of ECHR), paras 169–187; IACHR, *Mejía v. Peru*, (violation of Arts 1(1), 8(1) and 25 of ACHR).
84. *Maria Da Penha v. Brazil*, Case 12.051, Inter-Am. Comm’n H.R., Report No. 54/01, OEA/Ser.L/V/II.111, doc. 20 rev. 704 (2001); *Lenahan v. United States*, Case 12.626, Inter-Am. Comm’n H.R., Report No. 80/11, OEA/Ser.L/V/II.142, paras. 170, 177, 199 (2011).
85. ECtHR, *X & Y v. Netherlands*, Application no. 8978/80, 26 March 1985.
86. WHO, *Multi-country study on women's health and domestic violence against women*, 2005.
87. These human rights are recognised in recognised in Article 2 UDHR and are cross-cutting issues of concern in different UN human rights instruments, such as Articles 2 and 26 ICCPR, Article 2(2) ICESCR, Article 2 CRC, Article 7 CMW and Article 5 CRPD. In addition, two of the major UN human rights treaties are established explicitly to prohibit discrimination, CERD on the ground of race and CEDAW on the ground of gender.
88. Article 1, UN *Declaration on the Elimination of Violence against Women*, UN Doc A/RES/48/104, 20 December 1993. See also The Beijing Platform for Action, paragraph 97. Beijing Declaration and Platform for Action, Fourth World Conference on Women, 15 September 1995, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995): “The human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination, and violence. Equal relationships between men and women in matters of sexual relations and reproduction, including full respect for the integrity of the person, require mutual respect, consent and shared responsibility for sexual behaviour and its consequences.” See also Committee on the Elimination of Discrimination against Women, Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention, and reply from the Government of Mexico, CEDAW/C/2005/OP8/MEXICO, 27 January 2005.
89. Committee on the Elimination of Discrimination against Women, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, CEDAW/C/GC/35, 14 July 2017.

90. Explanatory Note, para. 50
91. See, for example, Government of Canada, Department of Justice, Victims of Crime Research Digest No. 3, *A Review of Research on Criminal Victimization and First Nations, Métis and Inuit Peoples 1990 to 2008*, which found “Sexual assault against women is particularly prevalent in Northern Canada where there is a much higher proportion of Aboriginal people in each of the territories than in the provinces”.
92. IACHR, *González et al. (“Cotton Field”) v. Mexico* Judgment of November 16, 2009, paragraph 400.
93. For example, the Hague Regulations of 1899 and 1907 protect the “family honour and rights” of the population of an occupied territory, while the Third Geneva Convention of 1949 (repeating the language of the 1929 Geneva Convention on prisoners of war) provides that prisoners of war are “in all circumstances entitled to respect for their persons and honour” and that “women shall be treated with all regard due to their sex”. The Fourth Geneva Convention provides that civilian “women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault”.
94. Judith Gardam, “Women, Human Rights and International Humanitarian Law”, *International Review of the Red Cross*, No. 324, September 1998, pp. 421–432; Judith Gardam and Michelle Jarvis, *Women, Armed Conflict and International Law*, Kluwer Law International, The Hague, 2001. See also, on the criticisms made by these authors, Helen Durham, “Women, Armed Conflict and International Law”, *International Review of the Red Cross*, Vol. 84, No. 847, 2002, pp. 655–659.
95. See, for example, *Treaty of Amity and Commerce, US-Prussia*, 10 Sept. 1785, reprinted in *2 Treaties, Conventions, Acts, Protocols And Agreements Between The United States And Other Powers 1776-1909*, Malloy Collections, (1910).
96. Lieber Code: *Instructions for the Government of Armies of the United States in the Field*, General Order No. 100, 24 April 1863, Art. 44, available at: www.icrc.org/ihl/INTRO/110.
97. Additional Protocol I, Article 75(2)(b).
98. Additional Protocol I, Article 76(1).
99. Additional Protocol I, Article 77(1).
100. Additional Protocol II, Article 4(2)(e).
101. International Committee of the Red Cross, Aide-memoire, December 1992, para. 2.
102. ICRC Customary International Humanitarian Law database, Rule 93.
103. For example, Security Council Resolution 820 (17 April 1993), which concerned the creation of the ICTY, condemned “[A]ll violations of international humanitarian law, including in particular, the practise of “ethnic cleansing” and the massive, organised and systematic detention and rape of women, and reaffirms that those who committed

or who have committed or order or ordered the commission of such acts will be held individually responsible in respect of such acts.”

104. The Rome Statute of the International Criminal Court became 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.
105. ICTY, *Prosecutor v. Tadic*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94-1-A, 2 October 1995, para.70.
106. ICTY, *Prosecutor v. Tadic*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94-1-A, 2 October 1995, para.70; ICTR, *Prosecutor v. Akayesu*, (Trial Chamber), 2 September 1998, paras. 619-21, 625.
107. ICTR, *Prosecutor v. Rutaganda*, Appeals Judgment, 26 May 2003, para. 557; ICTR, *Prosecutor v. Bagosora*, Trial Judgement, December 18, 2008, para. 223; ICTR, *Prosecutor v. Kamuhanda*, Trial Judgement, 22 January 2004, para. 735; ICTR, *Prosecutor v. Semanza*, Trial Judgement, May 15, 2003, paras. 368-69; ICTR, *Prosecutor v. Bagilishema*, Trial Judgement, June 7, 2001, para. 105.
108. ICTY, *Prosecutor v. Kunarac*, Appeals Judgment, 12 June 2002.
109. ICTR, *Prosecutor v. Akayesu*, Trial Judgment, 2 September 1998, para. 580; ICTR, *Prosecutor v. Musema*, Trial Judgment, 27 January 2000, para. 204; ICTR, *Prosecutor v. Rutaganda*, Trial Judgment, 6 December 1999, para. 69.
110. ICTR, *Prosecutor v. Akayesu*, Trial Judgment, 2 September 1998, para. 580; ICTY, *Prosecutor v. Tadic*, 7 May 1997, para. 648, citing from the ILC Draft Code of Crimes Against the Peace and Security of Mankind; ICTY, *Prosecutor v. Kunarac*, Appeals Judgment, 12 June 2002, para. 94.
111. ICTY, *Prosecutor v. Kunarac*, Trial Judgment, 22 February 2001, para. 415.
112. ICTR, *Prosecutor v. Musema*, Trial Judgment, 27 January 2000, para. 205.
113. ICC Elements of Crimes, Article 7.
114. ICTY, *Prosecutor v. Naletilic and Martinovic*, Trial Judgement, 31 March 2003, para. 235.
115. ICTY, *Prosecutor v. Kordic and Cerkez*, Trial Judgment, 26 February 2001, para. 180; ICTY, *Prosecutor v. Naletilic and Martinovic*, Trial Judgement, 31 March 2003, para. 235; ICTY, *Prosecutor v. Jelusic*, Trial Judgement, 14 December 1999, para. 54; ICTY, *Prosecutor v. Blaskic*, Trial Judgement, 3 March 2000, para. 214.
116. ICC Elements of Crimes, Article 7, footnote 6 of which reads, “A policy which has a civilian population as the object of the attack would be implemented by State or organisational action. Such a policy may, in exceptional circumstances, be implemented by a deliberate failure to take action, which is consciously aimed at

encouraging such attack. The existence of such a policy cannot be inferred solely from the absence of governmental or organisational action.”

117. ICTY, *Prosecutor v. Kordic and Cerkez*, Trial Judgment, 26 February 2001, para. 178.
118. Footnote 3 of Article 6(b) of the Rome Statute.
119. Kelly Askin, *Women’s Issues in International Criminal Law: Recent Developments and the Potential Contribution of the ICC, in International Crimes, Peace and Human Rights: the Role of the International Criminal Court 47, 52* (Dinah Shelton ed., 2000).
120. Akayesu Trial Judgment, para. 731. Later similar findings that rape and sexual violence were acts of genocide were made by in *Prosecutor v. Stakić*, Trial Judgment, 31 July 2003, para. 516; Rutaganda Trial Judgment, para. 51, Musema Trial Judgment, para. 156, Gacumbitsi Trial Judgment, paras. 291-292; and Muhimana Trial Judgment, para. 502.
121. *Prosecutor v. Kayishema et al.*, ICTR Trial Judgment, 21 May 1999, para. 116.
122. *Republic of Croatia v. Republic of Serbia*, Application of the Convention on the Prevention and Punishment of the Crime of Genocide, ICJ Judgment, 3 February 2015, paras. 362-364.
123. Akayesu Trial Judgment, paras. 507-8. See also Rutaganda Trial Judgment, para. 53.
124. Akayesu Trial Judgment, para. 508.
125. UNOG-INFORMATION Press_Geneva, CEDAW/22/33 - *Experts of the Committee on the Elimination of Discrimination against Women Commend Ukraine for Achievements in Gender Equality, Raise Questions on Conflict-Based Sexual Violence*, 19 October 2022.
126. Invasion, in the ICC’s framework, includes same-sex penetration, and encompasses both male and/or female perpetrators and victims.
127. The ICC in the Bemba case considered the facts which may contribute towards a coercive environment, holding “The Chamber does not exclude the possibility that, in addition to the military presence of hostile forces among the civilian population, there are other coercive environments of which a perpetrator may take advantage to commit rape. Further, the Chamber considers that several factors may contribute to create coercive environment. It may include, for instance, the number of people involved in the commission of the crime, or whether the rape is committed during or immediately following a combat situation, or is committed together with other crimes”. In addition, the Chamber emphasises that, in relation to the requirement of the existence of a “coercive environment”, it must be proven that the perpetrator’s conduct involved “taking advantage” of such a coercive environment”, ICC, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Trial Chamber III, Judgment pursuant to Article 74 of the Statute, Case No. ICC-01/05-01/08-3343, 21 March 2016, para. 104.
128. ICC Elements of Crimes, Article 7(1)(g), footnote 16: “A person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity.”

129. ICC, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Trial Chamber III, Judgment pursuant to Article 74 of the Statute, Case No. ICC-01/05-01/08-3343, 21 March 2016, para. 105.
130. European Court of Human Rights, *M.C. v Bulgaria*, Application 39272/98, Judgment. 4 December 2003, paragraph 163.
131. ICTY, *Prosecutor v. Kunarac et al.*, Trial Judgment, para. 542: “[I]ndications of enslavement include elements of control and ownership; the restriction or control of an individual’s autonomy, freedom of choice or freedom of movement; and, often, the accruing of some gain to the perpetrator. The consent or free will of the victim is absent. It is often rendered impossible or irrelevant by, for example, the threat or use of force or other forms of coercion; the fear of violence, deception or false promises; the abuse of power; the victim’s position of vulnerability; detention or captivity, psychological oppression or socio-economic conditions. Further indications of enslavement include exploitation; the exaction of forced or compulsory labour or service, often without remuneration and often, though not necessarily, involving physical hardship; sex; prostitution; and human trafficking.”
132. UNCHR, Update to the Final Report of the UN Special Rapporteur on the Situation of Systematic Rape, *Sexual Slavery and Slavery-like Practices during Armed Conflict*, E/CN.4/Sub.2/2000/21, 6 June 2000, para. 50, which reads, “It is the status or condition of being enslaved which differentiates sexual slavery from other crimes of sexual violence, such as rape. One respect in which slavery differs from imprisonment or arbitrary detention is that the limitations on autonomy can be solely psychological or situational, with no physical restraints.”
133. ICC, *Prosecutor v. Germaine Katanga*, Trial Chamber II, Decision on the Confirmation of Charges, Case No. ICC-01/04-01/07, 30 September 2008, para. 431, which reads “sexual slavery also encompasses situations where women and girls are forced into “marriage”, domestic servitude or other forced labour involving compulsory sexual activity, including rape, by their captors. Forms of sexual slavery can, for example, be “practices such as the detention of women in ‘rape camps’ or ‘comfort stations’, forced temporary ‘marriages’ to soldiers and other practices involving the treatment of women as chattel, and as such, violations of the peremptory norm prohibiting slavery.”
134. ICC, *Prosecutor v. Dominic Ongwen*, Pre-Trial Chamber II, Decision on the confirmation of charges against Dominic Ongwen, Case No. ICC-02/04-01/15-422- Red, 23 March 2016, paras. 93-94.
135. UNCHR, *SubCommission on Prevention of Discrimination and Protection of Minorities, Contemporary forms of slavery, systematic rape, sexual slavery and slavery like practices during armed conflict: Final report submitted by Ms. Gay J. McDougall*, Special Rapporteur, 22 June 1998, E/CN.4/ Sub.2/1998/13 (‘UNCHR Final Report McDougall’), paras. 21-22.

This Manual is aimed at supporting professionals who assist victims of sexual violence committed during the ongoing conflict in Ukraine. The Istanbul Convention and existing Council of Europe guidance materials can frame Ukrainian mental health and emergency response to ensure access to gender-sensitive and victim-centred social, psychological, medical, and legal assistance to affected persons, including internally displaced persons.



NSSU
National Social
Service of Ukraine

www.nssu.gov.ua

ENG

www.coe.int

The Council of Europe is the continent's leading human rights organisation. It comprises 46 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

#CoeCOVAW

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE