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special
edition

Legal Guidebook on State Obligations for Conflict-Related Sexual Violence

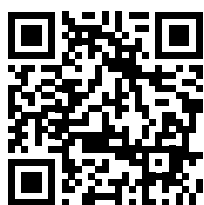
dr. Denis
Mukwege
Foundation

Legal Guidebook
on State Obligations
for Conflict-Related
Sexual Violence

The following is a printed excerpt of the Mukwege Foundation’s Legal Guidebook on State Obligations for Conflict-Related Sexual Violence, containing the:

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To read the rest of the Guidebook, please visit:
red-line-guidebook.netlify.app

Dear Readers,

For nearly 25 years, I and the staff of the Panzi Hospital in the Democratic Republic of Congo, whose original purpose was to combat maternal mortality, have taken charge of survivors of sexual violence and helped them rebuild their lives. After all these years, we simply cannot continue to tolerate the persistence of this widespread crime in the majority of conflicts around the world.

The international community can no longer limit itself to reacting after the fact once these despicable crimes have already been committed, whether through reparative responses or legal actions.

Conflict-related sexual violence violates our shared humanity and can no longer be accepted as an inevitable consequence of war, but must be seen as a totally unacceptable method that no longer has a place in modern armed conflicts.

These crimes never happen accidentally. It is a choice to employ or tolerate them: therefore, they can be stopped.

This is why for 10 years I have been calling on the international community to draw a red line against the use of sexual violence as a weapon of war. The time has come for States to act to stop this scourge.

To support my call to action, the Mukwege Foundation has launched the *"Red Line Initiative"*, a global campaign to eliminate the use of sexual violence in conflict, the first of which is the launch of the *"Guidebook on State Obligations for Conflict-Related Sexual Violence"*.

The guidebook compiles all of the applicable international law and norms relating to conflict-related sexual violence into a handbook with an aim to inform States in a comprehensive manner of their current obligations under international humanitarian law, international human rights law, and UN Security Council resolutions that form the Women, Peace and Security agenda.

This new guidebook - which is divided into four thematic areas: prevention, justice and responsibility, humanitarian response, and reparations - also aims to raise awareness and strengthen the capacity of civil society, including survivor movements in asserting their rights and to support their advocacy efforts to hold States accountable.

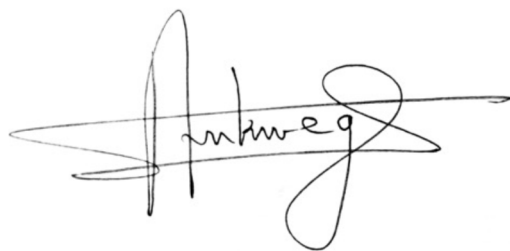
What is clear from reading the guidebook is that there is already a robust set of obligations and that, if States fully respect them, significant progress would be made towards ending the scourge of conflict-related sexual violence.

Everyone knows the saying, “No one is supposed to ignore the law”. I hope that this guidebook, as an accessible online resource, will contribute to ensuring that States no longer ignore their obligations to prevent, respond to and end conflict-related sexual violence, and will aid them to finally meet their international commitments.

I would like to express my gratitude to all those involved in the development of the guidebook. Without the help of the Mukwege Foundation, which has worked with legal experts, civil society and academic experts, and survivors who graciously donated their time and expertise to enrich the guidebook, this important initiative would not have seen the light of day.

It is my sincere hope that this guidebook will contribute to finally reaching a turning point in our struggle for human dignity and justice and will allow the scourge of conflict-related sexual violence to be forgotten in history.

Together, we will succeed!

A handwritten signature in black ink, appearing to read 'Mukwege', with a large, stylized flourish extending to the right.

dr. Denis
Mukwege
Foundation

The *Guidebook on State Obligations for Conflict-Related Sexual Violence* would not have been possible without the support and assistance of too many people to name individually.

The Dr. Denis Mukwege Foundation first wishes to express its gratitude to the experts that participated in the Expert Conference on the Treaty-Making Process organised in March 2022. Their insights and collaborative engagement with the *Red Line Initiative* team inspired the initial idea for the Guidebook. This initial idea was discussed during a workshop at the 2021 SEMA Global retreat and resulted in SEMA's support for the creation of the Guidebook as a key *Red Line Initiative* priority. The Mukwege Foundation is grateful for SEMA's partnership and guidance in how to ensure that the Guidebook addresses the needs and priorities of CRSV survivors.

The Mukwege Foundation would also like to express its sincere gratitude to all of the legal experts, academics, UN staff, members of civil society, and survivors who gave so graciously of their time and expertise to review drafts, participated in roundtables and consultations during the design and production phase of the project, and provided resources for the "Further Readings" chapter.

The staff of the UK Foreign, Commonwealth, and Development Office has provided invaluable support throughout the entire project.

Finally, while the Guidebook is the result of a collaborative process with many contributors, no one's contribution was more invaluable than that of the project's two legal researchers, Ms Sara Cristina Fernandez Rivera, who conducted research on the regional human rights systems, and Mr Luca Caroli, who researched the remainder of and assisted with drafting and revising the Guidebook.

Introduction

It doesn't matter what you're wearing.

It doesn't matter what your gender is.

It doesn't matter what side of the conflict you're on.

It doesn't matter who your family are.

It doesn't matter if you're a soldier or a civilian.

Sexual violence is never the survivor's fault.¹

The *Red Line Initiative* is rooted in the belief that sexual violence in conflict and as a method of warfare represents a violation of our shared humanity that can no longer be accepted as an unfortunate, but unpreventable part of armed conflict. Rather, it must be prioritised as a wholly unacceptable tactic that has no place in modern warfare.

For States, conflict-related sexual violence (CRSV) is regulated through international humanitarian law (IHL), international human rights law (IHRL), and the United Nations Security Council (UNSC) resolutions under its peace and security authority under the United Nations (UN) Charter. Over the past two decades, for each of these legal frameworks, there have been important advances in clarifying and strengthening States' obligations to prevent, stop, and respond to CRSV.

The *Red Line Initiative* team has undertaken extensive research and consultations with leading legal experts, focusing on better identifying and understanding the current gaps and fragmentation in the existing international legal frameworks relevant to CRSV. From that process, one of the key insights learned was that there is a need for States to be better aware of their existing obligations.² For example, while IHRL contains strong binding standards relevant to CRSV, consulted experts noted that some States remain unaware of the scope of their obligations and thus fail, due to this and other reasons, such as lack of political will, to take the steps required of them to meet these standards. Several experts have indicated that this may be due in large part to the fact that these standards are spread out across different documents that are not easily accessible to government officials. It was suggested that a compilation of these standards could support policy makers in ensuring a coherent approach to CRSV through different branches of law and different instruments.

Like all aspects of the Dr. Denis Mukwege Foundation's work, the *Red Line Initiative* employs a survivor-centred approach that seeks to not only ensure that the law is responsive to the needs and desires of victims/survivors, but also that victims/survivors actively participate in the design and development of education and advocacy tools to realise their legal rights to justice, accountability, and redress.

NOTE TO READERS: In line with the Committee against Torture’s [General Comment 3](#), a person should be considered a victim ‘regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted or convicted’, and regardless of any familial or other relationship between the perpetrator and the victim. The term ‘victim’ also includes ‘affected immediate family or dependants of the victim as well as persons who have suffered harm in intervening to assist victims or to prevent victimization’.

The term ‘survivors’ may, in some cases, be preferred by persons who have suffered harm (hence the use of both in the Guidebook). We recognise and respect that the terms ‘victim’ and ‘survivor’ are without prejudice to other terms which some individuals may use to refer to themselves.

At the June 2022 global SEMA (the global network of CRSV survivors) retreat, a half-day workshop on the *Red Line Initiative* was held. At the conclusion of the global retreat, SEMA members voted to form a *Red Line* working group and expressed their strong interest in engaging on the issue of state responsibility with regard to CRSV, including ensuring that States live up to their current international commitments.

From these activities, the *Guidebook on State Obligations for Conflict-Related Sexual Violence* came to be. The Guidebook compiles the applicable international law and standards relevant to CRSV in order to inform States of their current obligations in a comprehensive manner. It covers State obligations set out in: 1) IHL; 2) IHRL; and 3) UNSC resolutions. It aims to address the awareness gap discussed above and to provide States with an accessible and easy to use tool to ensure that they are meeting their obligations in preventing, stopping, and responding to CRSV under international law. It is also intended to serve as an advocacy tool for survivor groups, CSOs, and NGOs.

1. Methodology

The Guidebook is based on an extensive review of binding sources of international law, including treaties and their protocols, customary law (which is where there is widespread, representative State practice that is accepted by States as being required by law),³ the jurisprudence of international courts and tribunals (which, while binding only on the parties to a case, is nevertheless authoritative), and UNSC resolutions (which are binding on UN Member States).⁴

Where an obligation is not extensively detailed under binding international law, reference is expressly made to other material from authoritative bodies, such as the UN treaty bodies, which offers avenues as to how an obligation may be best implemented. While not strictly binding, such material remains persuasive. Other material cited in the Guidebook includes, but is not limited to:

- As regards IHL, the International Committee of the Red Cross (ICRC)’s Commentaries to the Geneva Conventions;
- As regards IHRL, the General Comments/Recommendations, Decisions/Views, Concluding Observations and other material of the relevant UN treaty bodies. When appropriate, reference has also been briefly made to reports of Special Rapporteurs.

For readers who wish to deepen their understanding of a specific system beyond the sources of law cited, we have also included a “Further Readings” section in the Guidebook.

2. Structure

The Guidebook contains 7 chapters:

1. Home – In this chapter, you can find a foreword from 2018 Nobel Peace Prize Laureate Dr. Denis Mukwege, background on the Guidebook project, and contact information for the Mukwege Foundation
2. Introduction
3. International Humanitarian Law (covering the Geneva Conventions, their Additional Protocols of 1977, customary IHL and other IHL obligations)
4. International Human Rights Law
 - a. At the international level (encompassing the Genocide Convention, the Convention on the Elimination of Racial Discrimination, the International Covenant on Civil and Political Rights, the Convention on the Elimination of Discrimination against Women, the Convention against Torture, the Convention on the Rights of the Child, and the Convention on the Rights of Persons with Disabilities)
 - b. At the regional level (including the Council of Europe system, the Inter-American Human Rights system, and the African Union system)
5. The United Nations Peace and Security framework
6. Ratification and Enforcement of Treaties – In this chapter, you can explore the available mechanisms of enforcement of State obligations at the international level and the ratification status of treaties by country, including whether a country has deposited any reservations or declarations/understandings to a treaty, whether it has ratified optional and/or additional protocols to the treaty, and whether it has recognised the competence of the expert treaty committee to hear inter-State disputes and/or individual complaints and to conduct inquiries into alleged grave/serious or systematic violations of the concerned treaty
7. Further Readings – In this chapter, you can explore a thematic library of articles, blogs, and reports by NGOs, experts, academics, and civil society organisations that provide in-depth examination of specific topics relevant to CRSV

All systems analysed in chapters 3-5 contain three sections: 1) Introduction, which provides a general overview of the relevant legal system; 2) Legal Framework, which lists the main treaties and other material specific to that legal system on which our research was based; and 3) Obligations, which details the State obligations to address CRSV under the relevant legal framework.

Additionally, obligations are divided into four thematic categories, namely:

1. Prevention. “Prevention” refers to the actions that States must take to prevent the (re)occurrence of sexual violence in conflict;
2. Justice and accountability. “Justice and accountability” concerns the steps required to investigate/prosecute perpetrators of CRSV and to hold States accountable for violations of their international obligations, as well as to make all justice avenues accessible to victims/survivors;
3. Humanitarian response. “Humanitarian response” refers to what **States** must immediately do to alleviate the suffering of victims/survivors of CRSV in a crisis;

4. Reparations. The 2005 UN General Assembly (UNGA) resolution on Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights and Serious Violations of International Humanitarian Law⁵ sets out the right of victims/survivors to redress from States.⁶ The concept of “redress” has two components: substantive, in the form of reparation (restitution, compensation, rehabilitation, satisfaction and guarantee of non-repetition); and procedural, in the form of an effective remedy. “Remedy” relates to ensuring that there is an appropriate legislative framework and institutions to provide for prompt and effective investigations, victim/survivor participation in any proceedings, and, in the case of convictions, prosecution and punishment of those found responsible. In the Guidebook, these procedural aspects of redress are addressed in the “Justice and Accountability” category.

NOTE TO READERS: Some obligations may fall within multiple categories. For ease of reading, the same obligations are not repeated in multiple categories, but this should not be understood as limiting an obligation’s scope to the Guidebook’s categorisation.

3. Scope

As mentioned above, the Guidebook focuses on **State** obligations to prevent, stop, and respond to CRSV under international law, whether committed by State or non-State, public or private actors. The Guidebook does not cover the (criminal) responsibility of individuals and, as a result, does not have a chapter on international criminal law (ICL).

The focus on certain international legal instruments over others is motivated by the amount of information on CRSV available under each system, and by the authoritativeness of the sources chosen.

Importantly, the Guidebook is descriptive: the Guidebook outlines what State obligations concerning CRSV currently exist under international law and does not purport to provide readers with a more progressive understanding of the law. The Guidebook’s content is limited to those obligations already set out by the relevant authoritative instruments and bodies.

On a final note, the international legal standards on CRSV are not set in stone. As awareness is raised of the damage inflicted by CRSV on society, the law continues to develop. The Guidebook compiles standards that are relevant at the time of its publication and may, at a future date, require updating.

NOTE TO READERS: The “Further Readings” chapter of the Guidebook provides resources that explore different legal interpretations and potential reforms to better combat CRSV.

3.1 International Criminal Law

'Crimes against International Law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of International Law be enforced'.

International Military Tribunal (Nuremberg)⁷

The absence of a thorough examination of ICL in the Guidebook is not meant to overshadow its impact on the development of international law relevant to the prevention of and response to CRSV. In particular, the various international criminal courts and tribunals,⁸ as well as national courts,⁹ have adopted and interpreted identical or similar concepts and obligations under international law, particularly IHL, to punish and elucidate the law on CRSV. Where appropriate, ICL is referred to in the Guidebook.

ICL has played a significant role in holding individuals accountable, and the ability of international criminal courts and tribunals to bring perpetrators to justice is undeniable. However, as also held in the Nuremberg Judgment quoted above: 'international law imposes duties and liabilities upon individuals as well as upon States'.¹⁰ While ICL or criminal law generally do not engage the issue of State responsibility, they nonetheless are an important avenue for the enforcement of IHL and IHRL. For example, under IHL and IHRL, States have an obligation to investigate and prosecute CRSV crimes. Domestic criminal courts do not oversee States' compliance with this obligation. Rather, their establishment and functioning represent one of the ways States can fulfil that obligation. The criminalisation of CRSV in domestic legislation and the domestic prosecution of these crimes are directly relevant to the aims of the Guidebook because they constitute one of the most important ways States can meet their obligations under IHL and IHRL.

The existence of international criminal bodies does not exempt States from their obligation to address CRSV first. Domestic proceedings are encouraged, especially due to States' geographic closeness to the violations and victims/survivors, as well as their receptiveness to local sensibilities and politically sensitive matters.

The ICRC has been at the forefront of this conversation, and has recognised that implementing IHL at the domestic level is an essential step towards achieving better respect for IHL and more protection for victims/survivors of armed conflict. For more information, see:

- ICRC, 'Bringing IHL Home: Guidelines on the National Implementation of International Humanitarian Law' (19 July 2021)
- K T Seelinger, 'Domestic Accountability for Sexual Violence: The Potential of Specialized Units in Kenya, Liberia, Sierra Leone and Uganda' (2015) 96(894) *International Review of the Red Cross* 539
- ICRC, 'ICRC Explainer: What Does International Law Say about Universal Jurisdiction for War Crimes Committed in Non-International Armed Conflicts?' (30 August 2022)
- ICRC, 'Universal Jurisdiction over War Crimes – Factsheet' 21 May 2021

4. Impact

The online availability of an accessible and user-friendly document such as the Guidebook helps consolidate the current international law relevant to CRSV. We hope to increase awareness and understanding by States of their existing obligations under IHL, IHRL, and UNSC resolutions to prevent, stop, and respond to CRSV, while creating a solid foundation for discussions of additional State commitments in this regard. This way, States will be able to make more informed decisions to meet their international commitments to end CRSV. At the same time, survivors and other activists will be empowered to advocate for their rights and ensure States fulfil obligations regarding CRSV under international law.

5. The Mukwege Foundation's Approach to CRSV

5.1 Defining CRSV

CRSV is sexual violence that is related to a conflict. While originally the term typically referred to rape against women only, it has been gradually expanded to include other forms of sexual violence against all persons. To this end, the advocacy of international organisations and groups for a more inclusive understanding of CRSV cannot be overstated. The ICRC, with its unique experiences and access, has offered a great added value in addressing sexual violence in conflict. The Committee on the Elimination of Discrimination against Women has also frequently addressed CRSV, providing States with authoritative guidance on how to comply with the Convention on the Elimination of Discrimination against Women (CEDAW) and protect women in conflict settings.¹¹ Other treaty bodies, such as the Committee against Torture and the Committee on the Rights of Persons with Disabilities, and regional human rights systems have similarly made important contributions to this work. Further, with its resolutions, the UNSC, the UN's highest decision-making body on peace and security, has brought CRSV into its agenda.¹² Civil society groups, women's organisations, and survivor groups have also played an invaluable and critical role in educating the international community on what constitutes CRSV, who is affected and in what manner, and how its harms should be remedied.

Today, sexual violence refers to any act of a sexual nature committed against any person under coercive circumstances without their consent,¹³ including 'force, threat of force, or coercion caused, for example, by fear of violence, duress, detention, psychological oppression or abuse of power'.¹⁴ In line with the report of the UN Secretary-General, sexual violence may be physical, psychological and/or verbal.¹⁵

It includes rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilisation, forced marriage, trafficking in persons 'for the purpose of sexual violence and/or exploitation', 'and any other form of sexual violence of comparable gravity'.¹⁶

NOTE TO READERS: What makes an act 'sexual' and when an act of a sexual nature may become an act of 'sexual violence' have often been the subject of debate. With this in mind, the Hague Principles on Sexual Violence seek to provide practitioners engaged in addressing sexual violence with an enhanced understanding of the various forms that sexual violence may take, 'to allow for more inclusive, survivor-centred, forward-looking and culturally sensitive responses to these crimes'. The Principles are available here.

While there is an international legal definition of what acts may be considered sexual violence, approaches differ on how closely related sexual violence should be to conflict in order to be qualified as CRSV.

- For IHL to apply, sexual violence must have a nexus to an armed conflict. In the absence of a nexus, sexual violence would not be regulated as a war crime under IHL;
- Under IHRL, a connection between sexual violence and the conflict itself is not required for the implementation of human rights treaties. IHRL treaties condemn sexual violence as a whole and apply equally in both peacetime and conflict;
- As regards the UN Peace and Security framework,¹⁷ in a report submitted pursuant to Security Council resolution 2467 (2019), the UN Secretary-General stated that a link between sexual violence and the conflict, whether direct or indirect, 'may be evident in the profile of the perpetrator, who is often affiliated with a State or non-State armed group, including those designated as terrorist groups by the United Nations; the profile of the victim, who is frequently an actual or perceived member of a persecuted political, ethnic or religious minority, or targeted on the basis of actual or perceived sexual orientation or gender identity; a climate of impunity, which is generally associated with State collapse; cross-border consequences, such as displacement or trafficking; and/or violations of the provisions of a ceasefire agreement'.¹⁸

Importantly, CRSV can fall within the scope of other kinds of internationally prohibited violence. For example:

- Under the Convention on the Prevention and Punishment of the Crime of Genocide, CRSV may be an underlying act of genocide;
- Under the International Convention on the Elimination of Racial Discrimination, CRSV may be a form of racial discrimination;
- Under the International Covenant on Civil and Political Rights and the Convention on the Elimination of Discrimination against Women, CRSV may be a manifestation of discrimination/violence against women (*a group that includes girls, unless otherwise specified in the Guidebook*) and/or gender-based violence;
- Under the Convention against Torture, CRSV may be classified as either torture and/or other cruel, inhuman or degrading treatment or punishment;
- Under the Convention on the Rights of the Child, CRSV may fall under the scope of violence against children and child abuse;
- Under the Convention on the Rights of Persons with Disabilities, CRSV may amount to violence against persons with disabilities;
- Under the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), CRSV may be a form of domestic violence.

NOTE TO READERS: In the Guidebook, references to the above-mentioned forms of violence and their corresponding State obligations should be understood as including CRSV.

Accordingly, different systems may impose differing obligations (in both substance and scope) on States. Such obligations, however, are not mutually exclusive: for example, States may have the obligation to prevent or respond to CRSV that amounts to racial discrimination and that simultaneously constitutes gender-based violence. Further, several frameworks (at both the regional and international level) have frequently referred to one another's approaches to CRSV. States should not comply with their obligations

under a specific instrument or legal field in an isolated manner: the International Court of Justice (ICJ) has stressed that 'an international instrument has to be interpreted and applied within the framework of the entire legal system prevailing at the time of the interpretation'.¹⁹ As such, States should consider adopting a holistic, intersectional approach in the implementation of their international legal obligations to prevent and respond to CRSV.

In the next 5 subsections, we provide readers with information that States should consider to implement their obligations under international law to prevent and respond to CRSV in a comprehensive manner. We begin by examining how the law has evolved to protect persons that face intersectional discrimination. Then, we discuss which groups may be most exposed to human rights violations by virtue of structural conditions of risk. Further, we illustrate how different areas of international law interact with one another to address CRSV. Next, we explain how, in certain circumstances, States have to implement their international legal obligations beyond their borders. Finally, we consider how States should address CRSV committed by private actors.

5.2 An Intersectional Approach to International Law

Intersectionality is a term coined by Prof. Kimberlé Crenshaw. Originally, she used the term to analyse the multiple and overlapping forms of discrimination experienced by African American women in the United States.²⁰ In the past few decades, UN human rights treaty bodies (committees of experts who monitor States' implementation of human rights treaties) and regional human rights systems have come to embrace intersectionality in their examination of human rights violations.

Case study: *Gonzales Lluy et al v Ecuador* concerned a girl, Talia, who, after contracting HIV following a blood transfusion that had not been tested for infectious diseases, was barred from attending school, suffered discrimination at the hands of school officials and teachers, and was evicted and forced to move with her family multiple times when landlords found out about her status. While this case does not address CRSV, it exemplifies how an intersectional approach can be used when dealing with persons subjected to multiple and overlapping forms of discrimination.

The Inter-American Court of Human Rights established that the discrimination against Talia was associated with several factors such as the fact that 'she was a woman, a person with HIV, a person with a disability, a minor, and due to her socio-economic status', increasing her vulnerability and exacerbating the harm she suffered.²¹ In this sense, the discrimination suffered by the applicant was multiple. The Court, in finding that the State had violated the applicant's right to education among other rights, indicated that the discrimination 'was caused not only by numerous factors, but also arose from a specific form of discrimination that resulted from the **intersection** of those factors'. '[I]f one of those factors had not existed, the discrimination would have been different'.

*Indeed, the [applicant's] poverty had an impact on the initial access to health care that was not of the best quality and that, to the contrary, resulted in the infection with HIV. The situation of poverty also had an impact on the difficulties to gain access to the education system and to lead a decent life. Subsequently, because she was a child with HIV, the obstacles that Talia suffered in access to education had a negative impact on her overall development, which is also a differentiated impact taking into account the role of education in overcoming gender stereotypes. As a child with HIV, she required greater support from the State to implement her life project. As a woman, Talia has described the dilemmas she feels as regards future maternity and her interaction in an intimate relationship, and has indicated that she has not had appropriate counseling.*²²

Talia's case illustrates that discrimination does not affect everyone in the same way and that the impact 'is more severe on members of vulnerable groups'.²³ Distinct discriminations (e.g., sexism, ableism, racism, homophobia and transphobia, among others) should be seen as a unified system that generates oppression. An individual possesses multiple identities simultaneously (for example, a child with a disability who belongs to an ethnic minority), all of which contribute not only to how they see themselves, but also to how they are seen by society.

5.3 The Concept of 'Vulnerability' in International Human Rights Law

Under international law, the concept of vulnerability helps denote persons that 'are more prone to harm than others'.²⁴ From a human rights point of view, their predicament is 'more challenging than the situation of other members of society'.²⁵

NOTE TO READERS: All references to 'vulnerability' in the Guidebook should not be interpreted as overlooking the agency and individual circumstances of vulnerable persons. Where appropriate, the language of 'at risk' has been used instead. Similarly, while many of the sources used in the Guidebook use the terminology of 'vulnerable persons', there has been a movement away from this language. Any references to vulnerable persons should be understood as persons in vulnerable situations or at risk. This shift is meant to encourage States to undertake a context-specific analysis and consider what the vulnerability risk relates to, for example further or heightened discrimination, marginalisation and/or more violence, including sexual violence.

Persons in vulnerable situations possess characteristics, such as gender, immigration status and/or socio-economic deprivation, that entail **external, structural conditions of risk** which place them in a position of higher exposure to human rights violations.²⁶

As a result, such persons require 'special protection'.²⁷ Concern for the protection of vulnerable persons has not only led to the consolidation of IHRL after the Holocaust, but also grounds and prominently features in all the UN and regional human rights treaties adopted after 1948.²⁸

However, **vulnerability should not be understood as a biological descriptor**: vulnerability is not necessarily inherent or intrinsic to the human condition. Rather, **societal structures play a primary role in the creation and aggravation of vulnerabilities**. Vulnerable persons face impediments to the enjoyment of their rights that may result from 'historical patterns of stigma or discrimination'.²⁹

For example, the European Court of Human Rights (ECtHR) has found that the Roma are a vulnerable minority 'as a result of their turbulent history and constant uprooting', occasioned by outbursts of racial or social hatred and the strained relations between communities that have contributed to the 'deplorable situation' in which the majority of Roma lives today.³⁰ Similarly, the European Court has considered that 'people living with HIV are a vulnerable group with a history of prejudice and stigmatisation'. Ignorance about the spread of HIV has bred prejudice which, in turn, has stigmatised or marginalised those who carry the virus:

As the routes of transmission of HIV/Aids became better understood, it was recognised that HIV infection could be traced to specific behaviours – such as same-sex sexual relations, drug injection, prostitution or promiscuity – that were already stigmatised in many societies, thereby creating a false nexus between the infection and personal irresponsibility and reinforcing other forms of stigma and discrimination, such as racism, homophobia or misogyny.³¹

Awareness of the influence that societal structures may have in facilitating human rights violations is fundamental in preventing and responding to CRSV. The UNSC has recognised that discrimination against women and girls, the under-representation of women in decision-making and leadership roles, the impact of discriminatory laws and their gender-based enforcement and application, harmful social norms and practices, cultural assumptions about male invulnerability to sexual violence, structural inequalities, discriminatory views on women or gender roles in society, and lack of available services for survivors all exacerbate exposure to CRSV. CRSV occurs on a continuum of sexual and gender-based violence, which impacts diverse groups of women and girls disproportionately, but also men and boys, in peacetime as well as during armed conflict.³² As a general rule, States should afford special protection to persons at risk of human rights violations by virtue of their:

- Race and colour;
- Sex, gender identity and expression, sexual orientation and sex characteristics;
- Disability;
- Age;
- Health status;
- Language;
- Religion;
- Political or other opinion;
- National or social origin;
- Birth and nationality;
- Marital and family status;
- Economic and social situation.³³

This is not an exhaustive list. What follows is a brief explanation of how certain groups exist in vulnerable situations, and are exposed to further violence, discrimination and/or marginalisation as a result.

Women. Gender equality is not only a basic human right; its achievement has significant socio-economic ramifications. ‘Empowering women fuels thriving economies, spurring productivity and growth’.

Yet gender inequalities remain deeply entrenched in every society. Women lack access to decent work and face occupational segregation and gender wage gaps. They are too often denied access to basic education and health care. Women in all parts of the world suffer violence and discrimination. They are under-represented in political and economic decision-making processes.³⁴

The inferior status frequently accorded to women ‘is entrenched in history, culture and tradition’, and places them at risk of ‘specific violations such as gender-based violence, trafficking and sex discrimination’.³⁵ In conflict, sexual violence against women and girls is widespread and used as a war tactic.³⁶ a majority of the 3300 cases of CRSV that the UN was able to verify in 2021 were women and girls (this number is not representative of the full scale and prevalence of CRSV).³⁷

Children. Children are largely dependent on adults for their basic needs, including food, health care and education. Yet, circumstances force many to manage by themselves. Millions of children, 'especially the youngest, the poorest and the most marginalized', do not have access to nutritious foods.³⁸ nearly half of all deaths in children under 5 are attributable to undernutrition.³⁹ In 2021, 25 million children missed out on lifesaving vaccines.⁴⁰ 64 million children of primary school age remain out of school, 'with the majority of them coming from marginalized groups'.⁴¹

In humanitarian settings, children are especially at risk:

*During armed conflict, natural disasters and other emergencies, children may be forced to flee their homes, some torn from their families and exposed to exploitation and abuse along the way. They risk injury and death. They may be recruited by armed forces. Especially for girls and women, the threat of gender-based violence soars.*⁴²

LGBTQI+ persons. Homophobic and transphobic attitudes, often combined with a lack of adequate legal protection against discrimination on grounds of sexual orientation, gender identity, gender expression and sex characteristics, endanger lesbian, gay, bisexual, transgender, queer and intersex persons (LGBTQI) and others (+). The '+' symbolises the numerous non-cis gender identities and sexualities that cannot be contained in a brief acronym) everywhere.⁴³

LGBTQI+ people are discriminated against in the labour market, in schools and in hospitals, mistreated and disowned by their own families. They are singled out for physical attack – beaten, sexually assaulted, tortured and killed.

Discrimination and hate-motivated violence against LGBTQI+ people [are] widespread, brutal, and often perpetrated with impunity, and it is even worse for those belonging to racialized communities. They are also victims of torture and ill treatment, including in custody, clinics and hospitals.

*In some 77 countries, discriminatory laws criminalize private, consensual same-sex relationships – exposing individuals to the risk of arrest, prosecution, imprisonment – even, in at least five countries, the death penalty.*⁴⁴

Existing discrimination and violence against LGBTQI+ persons are aggravated during conflict. Trans and intersex persons who lack identification documents with gender markers matching their gender identity 'may lose access to hormone replacement therapy or other medical treatments'. Some may be unable to flee war-torn countries, as trans women and non-binary people assigned male at birth 'are considered "men" and – being potential recruits – are not allowed to leave'. As a whole, LGBTQI+ persons may even be excluded from evacuation and emergency responses.⁴⁵

Reports on the persecution of individuals because of their actual or perceived of sexual orientation, gender identity, gender expression and sex characteristics also mention sexual violence, including forced stripping and rape, 'perpetrated both by government forces and by armed groups, in particular in detention facilities',⁴⁶ as well as beating their sexual organs, forced nudity, and anal or vaginal faux 'examinations' supposedly 'as a means to "confirm" their sex or whether they had been penetrated in their anus'.⁴⁷

Persons with disabilities. Over one billion people worldwide are living with some form of disability.⁴⁸ Persons with disabilities face discrimination and barriers every day that restrict them from participating in society on an equal basis with others.

For example, they are commonly denied their rights to be included in school and the workplace, to live independently in the community, to vote, to participate in sport and cultural activities, to enjoy social protection, to access justice, to consent or refuse medical treatment or to enter freely into legal commitments such as opening a bank account, and inheriting or buying property.⁴⁹

Once an armed conflict breaks out, persons with pre-existing disabilities are frequently unable to access 'the basic necessities for survival, such as food, water, sanitation, shelter, healthcare and humanitarian aid'.

Fearing for their lives and security, when many are forced to flee their homes, persons with disabilities are often left behind, or simply cannot leave, facing the challenges and barriers exacerbated by military operations.

Urban warfare and the use of explosive weapons with wide-area impact in populated areas leave many affected people with life-long disabilities or severe psychological trauma. What remains of healthcare facilities in such environments is often overwhelmed with the sick and wounded, typically with complex injuries.

Persons with disabilities, who already face discrimination and stigma in peacetime, often face even greater harm in armed conflicts – including being directly targeted or indiscriminately attacked. Women and girls with disabilities face an increased risk of sexual violence, while boys and men with disabilities are forcibly recruited or mistakenly targeted as members of parties to the conflict. Institutions housing or caring for persons with disabilities have been targeted or used as human shields.⁵⁰

Refugees, asylum-seekers, and internally displaced persons. Refugees are persons who have fled their own country because they are at risk of persecution there, and have obtained international protection.⁵¹ Asylum seekers are person 'whose request for sanctuary has yet to be processed'.⁵² Internally displaced persons are persons who have been forced to flee their homes to avoid the effects of armed conflict, generalised violence and human rights violations, and have not crossed a border.⁵³

At the end of 2021, there were 89.3 million forcibly displaced persons world-wide 'as a result of persecution, conflict, violence, human rights violations or events seriously disturbing public order'. Many experience racism and/or xenophobia, are excluded from local communities and denied citizenship, becoming stateless as a result.⁵⁴

National or ethnic, religious and linguistic minorities. A considerable number of human rights violations are the product of discrimination, racism and exclusion on the grounds of race, colour, descent, national or ethnic origin, language, religion, social origin and birth.

There is no internationally agreed definition as to who is a minority. The existence of a minority is a question of fact and carries both objective factors (such as the existence of a shared ethnicity, language or religion) and subjective factors (including that individuals must identify themselves as belonging to a national or ethnic, religious or linguistic minority group).⁵⁵

Indigenous persons. There are over 476 million Indigenous persons across the world.

*Indigenous peoples have in common a historical continuity with a given region prior to colonization and a strong link to their lands. They maintain, at least in part, distinct social, economic and political systems. They have distinct languages, cultures, beliefs and knowledge systems. They are determined to maintain and develop their identity and distinct institutions and they form a non-dominant sector of society.*⁵⁶

Indigenous persons are nearly three times as likely to be living in extreme poverty compared to their non-Indigenous counterparts.⁵⁷ During conflict, they are among the most at risk due to the poverty, political marginalisation and systemic discrimination that they still face.

*In some countries, Indigenous peoples are victims of massacres carried out by the army or paramilitary groups during conflicts. In many cases, Indigenous women have been used as “spoils of war” and subjected to sexual violence and rape. Indigenous children are sometimes forcibly recruited to participate in armed conflicts, leaving behind their homes, and their childhood.*⁵⁸

5.4 How Different Fields of Law Interact with One Another

5.4.1 The Interaction between IHL and IHRL

IHL applies in armed conflicts only. On the other hand, IHRL applies at all times and in all situations.⁵⁹ While not identical, the two fields are sometimes alike. In interpreting shared concepts (such as cruel, inhuman and degrading treatment), experts have often referred to IHRL to expand upon IHL (or vice versa).⁶⁰ The IHL and IHRL provisions relevant to CRSV are largely complementary and mutually reinforce each other. As a general rule, to determine States’ international obligations, both IHL and IHRL must be taken into account.⁶¹

However, if the simultaneous application of IHL and IHRL leads to a legal contradiction, it is preferable to adopt a case-by-case approach and apply the provision which provides more detailed guidance on the problem to be addressed.⁶²

5.4.2 The Interaction between Different UN Human Rights Treaties

All rights in human rights treaties are ‘universal, indivisible and interdependent and interrelated’. States must treat human rights ‘in a fair and equal manner, on the same footing, and with the same emphasis’.⁶³

With this in mind, the UNGA adopted resolution 68/268 on strengthening and advancing the functioning of the UN human rights treaty bodies. The UNGA recommended that treaty bodies, while having their own distinct mandates, generalise good practices and methodologies, ‘ensuring coherence across the treaty bodies, and standardizing working methods’.⁶⁴

This recommendation concerns procedural, rather than substantive, matters: States should not adopt a harmonised, generalised approach to the protection of human rights. Doing so risks interfering with the minority-, disability-, or gender-sensitive perspective that may be required in the implementation of different human rights treaties.

As a rule, States should not construe obligations under different human rights treaties that have the potential to contradict each other as conflicting. For example, the Committee on the Rights of Persons with Disabilities and the Committee on the Elimination of All Forms of Discrimination against Women have stated that gender equality and disability rights 'are mutually reinforcing concepts', and that referring to disability rights to restrict or prohibit women's access to safe abortion 'constitutes a misinterpretation of the Convention on the Rights of Persons with Disabilities'.⁶⁵

In the unlikely event that a conflict cannot be resolved, a possible approach is to apply the provision that is more conducive to the realisation of the human right at issue.⁶⁶

5.4.3 The Interaction between International and Regional Human Rights Law

All rights in human rights treaties, including regional treaties, are 'universal, indivisible and interdependent and interrelated'. States must treat human rights 'in a fair and equal manner, on the same footing, and with the same emphasis'. 'While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind', States, regardless of their political, economic and cultural systems, must promote and protect all human rights and fundamental freedoms.⁶⁷

As a result, States should take a similar approach to potential conflicts between international and regional human rights law, and acknowledge that the two reinforce each other.⁶⁸ This has also been the general practice of the UNGA, the UN Human Rights Council and the UN Human Rights Office of the High Commissioner.⁶⁹

5.4.4 The Interaction between IHL, IHRL and Other International Legal Instruments

Under international law, there is a presumption against conflict of international legal norms. It is premised upon the assumption that States 'act consistently and do not enter into agreements that contradict pre-established rights or obligations'.⁷⁰ As a general rule, instruments that touch upon the same subject matter should be implemented in a complementary manner.⁷¹ Conflicts are avoided by reference to the Vienna Convention on the Law of Treaties (VCLT), an instrument which codifies customary law⁷² and provides guidance on how to interpret possibly conflicting provisions harmoniously and whether one should prevail over the other.⁷³

Case study: the Arms Trade Treaty. Currently ratified by 113 States Parties, the Arms Trade Treaty (ATT) is an international treaty that regulates the international trade in conventional arms and seeks to prevent and eradicate their illicit trade by establishing international standards governing arms transfers.⁷⁴ Under article 7, States must assess the potential that the conventional arms or items they wish to export may be used to commit or facilitate a serious violation of IHL and/or IHRL, including serious acts of gender-based violence, or violence against women and children.⁷⁵ If, after conducting this assessment and in the absence of available mitigating measures, the exporting State Party determines that there is an overriding risk, it must not authorise the export.⁷⁶

Some treaty bodies have found that the treaties they monitor already require States Parties to regulate the international transfer of arms.⁷⁷ However, this has not led to a conflict between instruments. The obligations that States have under such treaties are actually reinforced by the ATT. For example, the CEDAW Committee has observed that ratifying and implementing the ATT would help States address the gendered impact of the international arms trade.⁷⁸

The UNSC has similarly acknowledged the adoption of the ATT, and noted the relevance of article 7(4) (on the export of arms used to commit or facilitate the commission of gender-based violence or violence against women and children) to its Women, Peace and Security agenda.⁷⁹

5.5 The Extraterritorial Scope of International Legal Obligations: Understanding Jurisdiction

A State must comply with its obligations under IHL beyond its own territory. As the purpose of IHL is to regulate the conduct of one or more States involved in an international (i.e., inter-State) armed conflict on the territory of another, there is no question that IHL applies to a State's extraterritorial conduct, though the extent of the geographic reach of IHL applicability is not unlimited.⁸⁰ The same holds true for non-international (i.e., non-inter-State) armed conflict:⁸¹ the rules of IHL reflect 'elementary considerations of humanity' and are applicable under customary international law to any conflict, whether international or non-international.⁸² Parties to a conflict 'cannot be absolved of their IHL obligations when the conflict reaches beyond the territory of a single State'.⁸³

Under IHRL, the matter is more complex. For a State to have human rights duties towards persons (including persons who are not citizens of that State),⁸⁴ and for persons to have human rights enforced by and against that State, that State must have jurisdiction (i.e., 'authority, responsibility or control') over those persons or the space they inhabit.⁸⁵ States' jurisdiction under IHRL is different from:

- States' jurisdiction under general international law, which determines whether States have a right to assert their public, sovereign authority and take legislative, executive or judicial action;
- The jurisdiction (i.e., 'competence', which can be understood as having the authority) of judicial and other bodies, including human rights treaty bodies, to hear a complaint and adjudicate on a dispute;
- Attribution, which determines whether the harmful conduct of particular individuals is imputable to a State.⁸⁶

To establish a State's human rights jurisdiction, control must be effective.⁸⁷ The test to establish whether control is effective may be spatial, personal or functional.

Spatial Jurisdiction. Spatial jurisdiction concerns the effective control that a State exercises over an area. Generally, a State is presumed to have jurisdiction over its own territory. While extraterritorial jurisdiction is exceptional, factual and legal elements, including 'military actions or actions by State security forces that indicate "control", "power" or "authority"', can establish jurisdiction.⁸⁸

This is usually the case when States exercise effective control over occupied territories. Occupying powers (i.e., a State that has placed the opposing State's territory under its authority)⁸⁹ must secure respect for IHRL and protect the inhabitants of occupied territories 'against acts of violence, and not to tolerate such violence by any third party'.⁹⁰ Depending on the circumstances, States that cannot be considered occupying powers may still have effective control over a certain area.⁹¹

Personal jurisdiction. States may exercise effective control over specific individuals, whether present within or outside their territory, and thus have personal jurisdiction. This is usually the case when:⁹²

- States, through their agents, including soldiers, police and security forces, have physical control over those individuals, such as detained individuals;⁹³
- A State exercises the powers normally exercised by a Government that has consented to, invited or acquiesced to that State's presence in its territory, for example by treaty or UNSC resolution.⁹⁴

Functional jurisdiction. Functional jurisdiction is the control that States may have over activities that affect the enjoyment of human rights. A State has extraterritorial obligations under IHRL when its conduct, including ‘its military or other activities’, or the conduct of private actors may lead to harm against human rights ‘in a direct and reasonably foreseeable manner’.⁹⁵

Functional jurisdiction is the broadest in nature.⁹⁶ However, a State cannot be held responsible for every human rights violation committed within its jurisdiction: the particular circumstances of each case must be examined.⁹⁷ To determine whether a State has failed to comply with their IHRL obligations, it must be established that:

- At the time of the violation, the authorities knew or should have known of the real and imminent danger to a person’s human rights, and failed to take all reasonable measures to prevent or avoid that danger;
- There was a causal link between the violation committed within a State’s jurisdiction and the harm caused to that person’s life and/or integrity.⁹⁸

5.6 Preventing and Responding to CRSV Committed by Private Actors

All parties to a conflict, whether State or non-State, public or private, are bound by the provisions of IHL.⁹⁹ Under IHRL, the matter is more complex. While there are debates as to whether IHRL directly applies to private actors, all human rights treaties require States to protect all within their jurisdiction from violations committed by private actors, including non-State armed groups.

*By becoming parties to international treaties, States assume obligations and duties under international law to respect, to protect and to fulfil human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights.*¹⁰⁰

For our purposes, the relevant obligation is that to protect (or, interchangeably, to ensure).¹⁰¹ States must protect individuals not only against human rights violations committed by their agents, but also against violations committed by private persons or entities.¹⁰² Protective measures include preventive measures, such as the enactment of legislation and the establishment of regulatory and monitoring mechanisms in the private sphere, and reactive measures, such as investigation and prosecution of human rights abuses.¹⁰³ Whether States have complied with their obligation to protect human rights is determined through a due diligence test.¹⁰⁴

Case study: Velásquez-Rodríguez v Honduras concerned the violent detention and disappearance of Manfredo Velásquez, a university student, at the hands of the Government of Honduras. In finding that from 1981 to 1984, ‘100 to 150 persons disappeared in the Republic of Honduras, and many were never heard from again’, the Inter-American Court held that a State may be held responsible for human rights violations committed by private persons or whose perpetrators have not been identified because of a State’s ‘lack of due diligence to prevent the violation or to respond to it’ as required by the American Convention on Human Rights.¹⁰⁵

The existence of a particular violation does not, in itself, prove a State's failure to take protective measures. However, a State has a legal duty:

[T]o take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation. This duty to prevent includes all those means of a legal, political, administrative and cultural nature that promote the protection of human rights and ensure that any violations are considered and treated as illegal acts, which, as such, may lead to the punishment of those responsible and the obligation to indemnify the victims for damages.¹⁰⁶

A failure to comply with this legal duty may engage States' international responsibility.¹⁰⁷

United Nations Peace and Security

I. Introduction

The commitment of the Security Council is unequivocal, to bring all tools to bear to break the seemingly endless cycles of sexual violence and impunity.

Pramila Patten, Special Representative of the Secretary-General on Sexual Violence¹⁰⁸

The United Nations (UN) is an intergovernmental organisation founded in the wake of World War II by 51 countries 'to save succeeding generations from the scourge of war'.¹⁰⁹ The UN is guided by the purposes and principles contained in its founding document, the UN Charter,¹¹⁰ such as maintaining international peace and security, developing friendly relations among nations, solving international problems cooperatively and promoting human rights.¹¹¹ Almost all States in existence have ratified the UN Charter.¹¹²

Since its very beginning, the UN has encouraged and participated in the development of international law to regulate international relations and establish 'conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained'.¹¹³ It has done so through its main bodies, including the UN General Assembly (UNGA), the UN Security Council (UNSC), the International Court of Justice (ICJ) and the Secretariat.

The UNGA is the main deliberative, policy-making and representative organ of the UN. All UN Member States are represented in the UNGA, which functions as a forum for multilateral discussion of international issues covered by the UN Charter.¹¹⁴

NOTE TO READERS: Our focus on the Council in this chapter is due to the Council's lead and binding role in determining the existence of a threat to the peace or act of aggression, and what measures may be required in response, under Chapters VI and VII of the UN Charter

Composed of 5 permanent and 10 non-permanent members, the Council has primary responsibility, under the UN Charter, for the maintenance of international peace and security.¹¹⁵ Its decisions are binding on all UN Members.¹¹⁶

The ICJ is the UN's principal judicial organ. Its role is to settle, in accordance with its Statute and international law, legal disputes submitted to it by States and to give advisory opinions on legal questions referred to it by authorised UN organs and specialised agencies.¹¹⁷

The Secretariat comprises the Secretary-General and UN staff members who carry out the day-to-day work of the UN as mandated by its main bodies. The Secretary-General is a symbol of the UN's ideals, and an advocate for all the world's peoples.¹¹⁸ Under the UN Charter, the Secretary-General is empowered to bring to the attention of the Council any matter that may threaten the maintenance of international peace and security.¹¹⁹

I.1 CRSV under the UNSC Resolutions

In its seminal 2008 resolution, Resolution 1820, the Council stated that CRSV has been used as a 'tactic of war to humiliate, dominate, instil fear in, disperse and/or forcibly relocate civilian members of a community or ethnic group'.¹²⁰ In 2009, the Council condemned in the strongest terms 'all sexual and other forms of violence committed against civilians in armed conflict', and recognised that in the context of armed conflict – both international and non-international – civilians (in particular women and children) require protection as an at risk section of the population.¹²¹ Since then, the Council has expressed concern over CRSV committed in, for example, the Democratic Republic of Congo,¹²² the Central African Republic,¹²³ Somalia,¹²⁴ Mali,¹²⁵ Yemen,¹²⁶ and Sudan.¹²⁷

The Council has noted that women and girls 'account for the vast majority of those adversely affected by armed conflict, including as refugees and internally displaced persons, and increasingly are targeted by combatants and armed elements'.¹²⁸ Protecting and guaranteeing the rights of women and girls in times of war and promoting their participation in peace processes are essential to achieving international peace and security.¹²⁹ The Council has also acknowledged that men and boys can be victims of CRSV, including in detention settings and within armed groups.¹³⁰

Further, the Council has recognised that sexual violence is 'known to be part of the strategic objectives and ideology of certain terrorist groups, used as a tactic of terrorism, and an instrument to increase their power through supporting financing, recruitment, and the destruction of communities'.¹³¹

I.2 The UNSC's Response to CRSV

Under Chapter VII of the Charter, the Council has the authority to establish 'the existence of any threat to the peace, breach of the peace, or act of aggression', and to make recommendations or determine measures 'to maintain or restore international peace and security'.¹³² Before doing so, the Council may require all parties concerned to comply with any provisional measures it deems necessary: a failure to comply may result in a harsher response.¹³³

Decisions on procedural matters require nine members of the Council to vote affirmatively. Decisions on non-procedural matters require nine members of the Council to vote affirmatively, including the permanent members (i.e., China, France, Russia, the United Kingdom and the United States of America).¹³⁴

Measures to maintain or restore international peace and security are generally considered as non-procedural matters,¹³⁵ and include:

1. Measures 'not involving the use of armed force', such as 'complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations'. The Council may call upon Members of the UN to apply such measures;¹³⁶

2. Should such measures be inadequate, 'action by air, sea, or land forces'. Action includes 'demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations'.¹³⁷

CRSV, as a practice that may reach appalling levels of brutality that persist the cessation of hostilities and 'impede the restoration of international peace and security', may require the adoption of such measures to avoid the significant exacerbation of armed conflict situations.¹³⁸ Hence, the Council has continuously included such situations on its agenda to, where necessary, adopt appropriate steps to address them.¹³⁹ For example, it has required all parties to an armed conflict to cease all acts of sexual violence with immediate effect.¹⁴⁰ The Council has done so by recalling the commitments States have under the Beijing Declaration and Platform for Action, reaffirming the obligation of States Parties to the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol (urging States that have not yet done so to consider ratifying or acceding to them), and noting General Recommendation 30 on Women in Conflict Prevention, Conflict and Post-Conflict Situations of the Committee on the Elimination of Discrimination against Women.¹⁴¹

NOTE TO READERS: The intervention of the Council does not displace States' obligations to prevent the commission of CRSV within their territory or, if it has materialised, to prosecute the perpetrators. 'States bear primary responsibility to respect and ensure the human rights of their citizens, as well as all individuals within their territory'.

Other ways in which the Council has dealt with threats to peace include:

1. State-specific sanctions regimes, including targeted and graduated measures against parties to armed conflict who commit CRSV;¹⁴²
2. The appointment of the Special Representative of the Secretary-General on Sexual Violence in Conflict;
3. The use of force.

1.2.1 Sanctions

Sanctions are a non-military measure that the Council has increasingly resorted to. As sanctions are adopted in accordance with the Council's powers under Chapter VII of the UN Charter,¹⁴³ all UN Members have an obligation to implement them when called upon. Since 1966, the Council has established 31 sanctions regimes.

¹⁴⁴The Council has imposed targeted sanctions on individuals who have perpetrated and directed CRSV.¹⁴⁵ In resolution 2467, the Council reiterated its intention, when choosing whether to adopt or renew targeted sanctions in situations of armed conflict, to consider including designation criteria pertaining to acts of rape and other forms of sexual violence.¹⁴⁶

The following are four regimes which expressly denote sexual and gender-based violence as violations of international law requiring sanctions.

I.2.1.1. Situation in the Democratic Republic of Congo (DRC)

In Resolution 1493 (2003), the Council called upon the parties to the conflict to stop violations of international humanitarian law (IHL). Five years later, the Council 'strongly condemn[ed] the continuing violence, in particular sexual violence directed against women in the Democratic Republic of the Congo'¹⁴⁷ and included CRSV as part of the designation criterion for sanctions.¹⁴⁸

In 2016, the Council adopted Resolution 2293 noting again 'with great concern the persistence of serious human rights abuses and international humanitarian law violations against civilians in the eastern part of the DRC', including 'sexual and gender-based violence and large scale recruitment and use of children committed by armed groups'. The resolution renewed the previously imposed sanctions.¹⁴⁹

The Council also urged 'the Government of the DRC to continue the full implementation and dissemination throughout the military chain of command, including in remote areas, of its commitments made in the action plan signed with the United Nations, and for the protection of girls and boys from sexual violence'.¹⁵⁰ It welcomed efforts 'made by the Government of the DRC to combat and prevent sexual violence in conflict, including progress made in the fight against impunity'. The Council called on the DRC 'to further pursue its action plan commitments to end sexual violence and violations committed by its armed forces and continue efforts in that regard, noting that failure to do so may result in the [Armed Forces of the Democratic Republic of the Congo] being named again in future Secretary General's reports on sexual violence'.¹⁵¹

I.2.1.2. Situation in Somalia

In Resolution 2002 (2011), the Council included sexual and gender-based violence as a designation criterion for targeted sanctions. The Council condemned in the strongest terms 'all acts of violence, abuses and violations, including sexual and gender-based violence, committed against civilians, including children, in violation of applicable international law'.¹⁵² The Council stressed 'that the perpetrators must be brought to justice, recalling all its relevant resolutions on women, peace and security, on children and armed conflict, and on the protection of civilians in armed conflicts'.¹⁵³

I.2.1.3. Situation in South-Sudan

In 2015, the Council established a sanctions regime against South Sudan, and included rape and sexual violence in the list of prohibited acts.¹⁵⁴ The Council strongly condemned 'past and ongoing human rights violations and abuses and violations of international humanitarian law', including those involving rape, and other forms of sexual and gender based violence, by all parties, 'including armed groups and national security forces, as well as the incitement to commit such abuses and violations'. The Council emphasised 'that those responsible for violations of international humanitarian law and violations and abuses of human rights must be held accountable, and that the Government of South Sudan bears the primary responsibility to protect its population from genocide, war crimes, ethnic cleansing, and crimes against humanity'.¹⁵⁵

The Council also condemned 'the use of media to broadcast hate speech and transmit messages instigating sexual violence against a particular ethnic group, which has the potential to play a significant role in promoting mass violence and exacerbating conflict'¹⁵⁶ and called on the Government 'to take appropriate measures to address such activity'.¹⁵⁷ The Council urged all parties to instead contribute to promoting peace and reconciliation among communities.¹⁵⁸

I.2.1.4. Situation in the Central African Republic

In 2014, the Council adopted targeted sanctions in Resolution 2134 against individuals undermining peace, threatening political processes, and committing atrocities, including sexual violence.¹⁵⁹ The Council expressed its concerns about the 'multiple and increasing violations of international humanitarian law and the widespread human rights violations and abuses', including those involving sexual violence against women and children and rape 'committed by both former Seleka elements and militia groups, in particular those known as the "anti-Balaka"'.¹⁶⁰

The Council decided that the mandate of the United Nations Integrated Peacebuilding Office in the Central African Republic had to be reinforced and updated to include the promotion and protection of human rights and 'monitor, help investigate and report to the Council, specifically on violations and abuses committed against children as well as violations committed against women including all forms of sexual violence in armed conflict, including through the deployment of child protection advisers and women protection advisers'.¹⁶¹

I.2.2 The Special Representative of the Secretary-General on Sexual Violence in Conflict

The Council's binding resolutions on CRSV are complemented by the work of the Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, established by UNSC resolution 1888 (2009).¹⁶² To effectively address CRSV at both headquarters and country level, the Special Representative is empowered to:

- Provide coherent and strategic leadership;
- Strengthen existing UN coordination mechanisms;
- Engage in advocacy efforts with parties to armed conflict, civil society and governments, including military and judicial representatives;
- Promote cooperation and coordination of efforts among all relevant stakeholders, primarily through the UN Action against Sexual Violence in Conflict inter-agency initiative, a network of 24 UN entities aiming to end sexual violence 'during and in the wake of armed conflict';¹⁶³
- Work with UN Members to develop joint Government-UN Comprehensive Strategies to Combat Sexual Violence, in consultation with all relevant stakeholders;¹⁶⁴
- Provide additional briefings and documentation on sexual violence in armed conflict to the Council.¹⁶⁵

A primary function of the Office of the Special Representative is to prepare the Annual Report of the Secretary-General on CRSV, focusing on countries for which credible information is available. The Report includes detailed information on parties to armed conflict that are 'credibly suspected of committing or being responsible for' acts of sexual violence. All listed parties should engage with the Office to develop 'specific, time-bound commitments and action plans to address violations', or risk exclusion from UN peacekeeping operations.¹⁶⁶

Since 2017, the office has been led by the Special Representative Ms Pramila Patten of Mauritius, who has set three strategic priorities as part of her mandate, namely '(i) converting cultures of impunity into cultures of justice and accountability through consistent and effective prosecution; (ii) fostering national ownership and leadership for a sustainable, survivor-centered response; and (iii) addressing the root causes of CRSV with structural gender inequality and discrimination, poverty and marginalization as its invisible driver in times of war and peace'.¹⁶⁷

The Special Representative has highlighted the work done by the Council to address CRSV throughout its resolutions:

'The resolutions on sexual violence articulate the elements of a compliance regime to influence the conduct of perpetrators, and potential perpetrators. The resolutions reinforce International Humanitarian Law, which makes it clear that even wars have limits, and sexual violence is beyond the scope of acceptable conduct, even in the midst of battle. These limits have been universally agreed upon and must be universally respected. They include a categorical prohibition on all forms of sexual violence, which can never be excused, justified, or amnestied.'

In addition, the Special Representative has indicated that sexual violence 'is the most consistently and massively under-reported violation', hence the available data only represents 'the tip of the iceberg'. Her office has recommended that the Council 'mobilize immediately on the basis of our common conviction that even one case of sexual violence is unacceptable'.¹⁶⁸

NOTE TO READERS: The Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict has produced a number of important tools for States and international actors to combat CRSV. These resources can be explored in the "Further Readings" chapter.

1.2.3 Use of Force, Humanitarian Intervention and Responsibility to Protect

In their international relations, all UN members must refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the UN.¹⁶⁹ Under the Charter, there are only two exceptions to the rule:

- States may use force in self-defence against an armed attack.¹⁷⁰ The use of force in retaliation, including as punishment, revenge or reprisal, is not legal;¹⁷¹
- Under article 42 of the Charter, the Council may expressly authorise States, and States acting through international organisations, to use force after determining the existence of any threat to the peace, breach of the peace, or act of aggression. Since the end of the Cold War, the Council has authorised the use of force numerous times.¹⁷²

A third, but controversial exception, 'not mentioned in the Charter and presumably to be found, if at all, in customary international law', envisages a right for States to use force to avert an overwhelming humanitarian catastrophe in another State (i.e., a humanitarian intervention) without the authorisation of the Council.¹⁷³ Its proponents hold that, in cases of egregious violations of IHL and/or international human rights law, State sovereignty and the prohibition on the use of force must yield to humanitarian imperatives.¹⁷⁴

Conscious of the controversial nature of humanitarian intervention, and of the much-criticised NATO military intervention in Kosovo,¹⁷⁵ at the 2005 UN World Summit meeting, UN Member States committed instead to the principle of the responsibility to protect (R2P).¹⁷⁶ They found that, under this principle:

1. Each individual State has the responsibility to protect its populations from mass atrocity crimes (i.e., genocide, war crimes, ethnic cleansing and crimes against humanity);
2. The international community should encourage and help States to exercise this responsibility, including 'before crises and conflicts break out', and support the United Nations in establishing an early warning capability;

3. In accordance with the UN Charter, the international community has the responsibility to use diplomatic, humanitarian and other peaceful means to help to protect populations from mass atrocity crimes. If a State is manifestly failing to protect its populations from such crimes and peaceful means are inadequate, the international community should take collective action, in a timely and decisive manner, to protect that State's populations.¹⁷⁷

While the application of R2P is restricted to mass atrocity crimes, the UN has a vast array of tools available to address these violations. This encompasses:

- Preventative measures, including 'monitoring and warning systems for mass atrocity crimes, institution-building, and diplomatic efforts';
- Protective measures once atrocity crimes are committed, including refugee camps for fleeing populations, coercive measures against perpetrators such as targeted individual sanctions on travel and finance, and the use of force through the Council as a last resort;
- measures to respond to mass atrocity crimes, including creating international commissions of inquiry, referring cases to the International Criminal Court for prosecution, and assisting local efforts for truth and reconciliation.¹⁷⁸

II. Legal Framework

United Nations Security Council resolutions, including resolutions on:

- Women, Peace and Security Agenda
- Children and Armed Conflict

III. Obligations under the UNSC Resolutions

Prevention

III.1 States should criminalise CRSV

National authorities should 'strengthen legislation to foster accountability for sexual violence'.¹⁷⁹ The domestic investigation and judicial systems of Member States have a critical role in preventing and eliminating sexual violence in conflict, and ensuring accountability for those responsible.¹⁸⁰ Thus, criminalisation of CRSV is an important step in addressing CRSV.

Laws can have preventative value from two points of view:

- First, the criminalisation of gender-based violence and atrocities indicates what is and what is not acceptable behaviour in a society, strengthening normative values and contributing to the rule of law;
- Second, these laws and institutions may also have preventative value insofar as robust frameworks to punish gender-based violence and atrocity crimes are a necessary first step in making accountability efforts possible, if these acts occur.¹⁸¹

To maximise States' ability to address CRSV, national legal frameworks should incorporate relevant aspects of international criminal law and IHL.¹⁸²

III.2 States parties to armed conflict must cease CRSV against civilians

All parties to armed conflict must cease all acts of sexual violence against civilians,¹⁸³ particularly women and girls, with immediate effect and also in post-conflict situations.¹⁸⁴

III.3 States parties to armed conflict must fully respect international law applicable to the rights and protection of women and girls

All parties to armed conflict must fully respect international law applicable to the rights and protection of civilians, especially women and girls, in particular as protected under:

- The Geneva Conventions of 1949 and the Additional Protocols thereto of 1977;
- The Refugee Convention of 1951 and the Protocol thereto of 1967;
- The Convention on the Elimination of All Forms of Discrimination against Women of 1979 (CEDAW) and the Optional Protocol thereto of 1999; and
- The United Nations Convention on the Rights of the Child of 1989 and the two Optional Protocols thereto of 25 May 2000.¹⁸⁵

Additionally, States should bear in mind the relevant provisions of the Rome Statute of the International Criminal Court.¹⁸⁶

III.4 States should be inclusive in their efforts to address CRSV

States should adopt a 'survivor-centered approach in preventing and responding to sexual violence in conflict and post-conflict situations'. They should ensure that prevention and response are non-discriminatory and specific. Further, they should respect the rights and prioritise the needs of victims/survivors, including groups that are particularly vulnerable or may be specifically targeted, 'notably in the context of their health, education, and participation'.¹⁸⁷

Refugees and internally displaced persons are a particularly vulnerable group. Civilians, especially women and children, account for the vast majority of those adversely affected by armed conflict, including as refugees and internally displaced persons.¹⁸⁸ States parties to armed conflict must consider the specific needs of women and girls in refugee camps and settlements, including in their design.¹⁸⁹

III.5 States must take special measures to protect their population, especially women and girls, from CRSV

States must 'take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict'.¹⁹⁰

Appropriate measures include, among others:

- Enforcing appropriate military disciplinary measures and upholding the principle of command responsibility;
- Training troops on the categorical prohibition of all forms of sexual violence against civilians (which encompasses the issuance of clear orders through chains of command prohibiting sexual violence and the prohibition of sexual violence in Codes of Conduct, military field manuals, or equivalent),¹⁹¹
- Identifying and releasing women and children 'who have been forcefully abducted into armed groups and armed forces' from their ranks,¹⁹²
- Debunking myths that fuel sexual violence;
- Vetting armed and security forces to take into account past actions of rape and other forms of sexual violence;
- Evacuation of women and children under imminent threat of sexual violence to safety,¹⁹³
- Supporting the capacity of civil society groups to enhance informal community-level protection mechanisms against sexual violence in conflict and post-conflict situations.¹⁹⁴

The application of these special measures has particular importance in armed conflict given that sexual violence occurs 'on a continuum of interrelated and recurring forms of violence against women and girls'.¹⁹⁵

armed conflict exacerbates the frequency and brutality of other forms of gender-based violence.¹⁹⁶ To that end, States should strengthen the 'rule of law and accountability as a central aspect of deterrence and prevention of crimes of sexual violence'.¹⁹⁷

Additionally, States should protect men and boys at risk of or subjected to CRSV by establishing and strengthening policies that offer appropriate responses to male survivors and challenge cultural assumptions about male invulnerability to such violence.¹⁹⁸ The monitoring, analysis, and reporting of CRSV should focus more consistently on the gender specific nature of sexual violence in conflict and post-conflict situations against all affected populations in all situations of concern, including men and boys.¹⁹⁹

III.6 States should take special measures to protect children from CRSV

The Council has strongly condemned the targeting of children in armed conflict, including their recruitment and use in conflict in violation of international law.²⁰⁰ All parties to armed conflicts should 'take special measures to protect children, in particular girls, from rape and other forms of sexual abuse and gender-based violence'.²⁰¹ Governments have the primary role and responsibility in providing protection and relief to all children affected by armed conflict, and should strengthen national capacities in this regard.²⁰²

The Council has expressed deep concern about girls being the target of attacks while attempting to access and/or continue education at school and on the way to and from school. Attacks include rape and other forms of sexual violence such as sexual slavery, threats of attacks, abductions, forced marriage, human trafficking, and any resulting stigma and grave consequences on their health, all of which may further impede the continuation of their education. States should foster an enabling and secure environment to ensure safe access to education.²⁰³

III.7 States should implement the Women, Peace and Security Agenda and include civil society, especially women, in peace processes

The Council has recognised 'the progress made as well as the opportunity and need for far greater implementation of the women, peace and security agenda', expressing concern at the persisting barriers to its full implementation. The Council has been especially wary of:

- The frequent under-representation of women in many formal processes and bodies related to the maintenance of international peace and security;
- The relatively low number of women in senior positions in political, peace and security-related national, regional and international institutions, and the lack of adequate gender-sensitive humanitarian responses and support for women's leadership roles in these settings;
- Insufficient financing for Women, Peace and Security, and the resulting detrimental impact on the maintenance of international peace and security.²⁰⁴

States should implement the Women, Peace and Security Agenda²⁰⁵ by:

- Ensuring and promoting the full, equal and meaningful participation of women in all stages of peace processes, including through mainstreaming gender perspectives;²⁰⁶
- Facilitating women's full, equal and meaningful inclusion and participation in peace talks from the outset, both in negotiating parties' delegations and in the mechanisms set up to implement and monitor agreements;
- Supporting efforts, including timely support to women to enhance their participation and capacity building in peace processes, 'to address the unequal representation and participation of women in the peace and security agenda'²⁰⁷ and all political processes, including negotiations for peace.²⁰⁸

States should incorporate a gender perspective in all stages of peace processes, including conflict resolution and peacebuilding,²⁰⁹ and ‘across humanitarian programming’. They should do so by ensuring that access to protection and the full range of medical, legal and psychosocial and livelihood services are available without discrimination, and that women and women’s groups can participate meaningfully and are supported to be leaders in humanitarian action.²¹⁰

To reinforce States’ ability to address CRSV, all actors involved in peace agreements must adopt a gender perspective that encompasses:

- The special needs of women and girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstruction;
- Measures that support local women’s peace initiatives and Indigenous processes for conflict resolution, and that involve women in the peace agreements’ implementation; and
- Measures that ensure the protection of and respect for human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary.²¹¹

States must condemn acts of discrimination, harassment and violence against civil society and journalists who report on CRSV and raise awareness on its root cause, namely structural gender inequality and discrimination. States should develop and put in place measures to protect them and enable them to do their work.²¹²

Additionally, States should join efforts with leaders at the national and local level, including traditional and religious leaders, who may be more knowledgeable about local sensibilities and customs. States should encourage them ‘to play a more active role in sensitizing communities on sexual violence to avoid marginalization and stigmatization of victims, to assist with their social reintegration, and to combat a culture of impunity for these crimes’.²¹³

III.8 States should incorporate a gender perspective in peacekeeping operations and training to prevent and respond to CRSV

The Council has expressed support for measures ‘to incorporate a gender perspective into peacekeeping operations’.²¹⁴ In particular, it has urged the Secretary-General to ensure that, where appropriate, ‘field operations include a gender component’,²¹⁵ as well as to promote the inclusion of women in peacekeeping missions. The Council has recognised that women and children may feel more secure working with and reporting abuse of women in peacekeeping missions.²¹⁶ This could help peacekeeping and humanitarian personnel to prevent, recognise and respond to sexual violence and other forms of violence against civilians.²¹⁷ While in principle this obligation concerns the UN only, it also encompasses duties of and recommendations addressed to States acting in their capacity as Members of the UN.

Accordingly, Member States should incorporate guidelines and materials on the protection, rights and the particular needs of women ‘into their national training programmes for military and civilian police personnel in preparation for deployment’.²¹⁸

The Council has also proposed to implement a ‘policy of zero tolerance of sexual exploitation and abuse in United Nations peacekeeping operations’.²¹⁹ Troop- and police-contributing countries should ‘take appropriate preventative action, including pre-deployment and in-theater awareness training, and other action to ensure full accountability in cases of such conduct involving their personnel’.²²⁰

Further, troop- and police-contributing countries should heighten awareness and the responsiveness of their personnel participating in UN peacekeeping operations to protect civilians, including women and children, and prevent sexual violence against women and girls in conflict and post-conflict situations, including wherever possible through the deployment of a higher percentage of women peacekeepers or police.²²¹

In this regard, States should strengthen the capacity of the security and defence sector to prevent sexual violence, and have 'the military, police, border guards and other government security and defense forces' establish specific action plans to that end.²²²

III.9 States should support women organisations' gender-sensitive efforts to address CRSV

To promote the equal and full participation of women, States should promote and empower women, and support women's organisations and networks.²²³ State support should encompass 'voluntary financial, technical and logistical support for gender-sensitive training efforts',²²⁴ including efforts undertaken by funds and programmes, such as the United Nations Fund for Women and the United Nations Children's Fund.²²⁵

States should continue to support gender-sensitive efforts in all post-conflict peacebuilding and recovery processes and sectors,²²⁶ and support such programmes through international development cooperation relating to women's empowerment and gender equality.²²⁷

Justice and Accountability

III.10 States must promptly and ethically investigate CRSV

States should strengthen access to justice for women in conflict and post-conflict situations, including through the prompt investigation of sexual and gender-based violence perpetrated by either civilians or military personnel.²²⁸ National authorities should 'strengthen legislation to foster accountability for sexual violence'.²²⁹ The domestic investigation and judicial systems of Member States have a critical role in prosecuting those responsible.²³⁰

In particular, States must make and implement specific commitments on timely investigation of alleged abuses to hold perpetrators accountable.²³¹ Consistent and rigorous investigations of sexual violence crimes are critical to deterrence and prevention,²³² States should challenge the perception that CRSV is a cultural phenomenon or an inevitable consequence of war or a lesser crime.²³³

Several tools have been established to provide guidance on ethical and effective evidence collection and prosecution efforts across jurisdictions, including the [Handbook for United Nations Field Missions on Preventing and Responding to Conflict-Related Sexual Violence](#) (2020), the [International Protocol on the Documentation and Investigation of Sexual Violence in Conflict](#) (2017), the [Global Code of Conduct for Gathering and Using Information about Systematic and Conflict-Related Sexual Violence \(Murad Code\)](#) (2022) and the [WHO Ethical and Safety Considerations for Interviewing Trafficked Women](#) (2003).²³⁴ States should implement them while investigating CRSV. In doing so, States should also adopt a framework of cooperation to investigate and prosecute CRSV with the Special Representative.²³⁵

III.11 States must prosecute CRSV

States have a responsibility to end impunity and to prosecute those responsible for genocide, crimes against humanity, and war crimes, including those relating to sexual and other violence against women and girls.²³⁶ 'Ending impunity is essential if a society in conflict or recovering from conflict is to come to terms with past abuses committed against civilians affected by armed conflict and to prevent future such abuses'.

To that end, States may consider a variety of justice and reconciliation mechanisms, 'including national, international and "mixed" criminal courts and tribunals and truth and reconciliation commissions'.²³⁷

Such mechanisms can promote not only individual responsibility for crimes, but also peace, truth, reconciliation and the rights of victims.²³⁸ Civilian superiors and military commanders have a responsibility to use their authority and powers to prevent sexual violence, including by combating impunity.²³⁹

However, the Council has noted with concern that only a limited number of perpetrators of CRSV have been brought to justice,²⁴⁰ and that, in armed conflict and post-conflict, national justice systems may be significantly weakened.²⁴¹ States should adopt 'a comprehensive approach to transitional justice in armed conflict and post-conflict situations, encompassing the full range of judicial and non-judicial measures, as appropriate'.²⁴²

More must be done 'to ensure that transitional justice measures address the full range of violations and abuses of women's human rights, and the differentiated impacts on women and girls of these violations and abuses as well as forced displacement, enforced disappearances, and destruction of civilian infrastructure'.²⁴³

III.12 States should refrain from using amnesty provisions in cases of CRSV

CRSV may amount to a war crime, a crime against humanity, or a constitutive act with respect to genocide.²⁴⁴ In those cases,²⁴⁵ States should 'ensure that all victims of sexual violence, particularly women and girls, have equal protection under the law and equal access to justice',²⁴⁶ and exclude the application of amnesty provisions.²⁴⁷

The Special Representative has similarly stressed that addressing CRSV includes 'ensuring that amnesties for sexual violence crimes are explicitly prohibited'.²⁴⁸

III.13 States should undertake comprehensive legal and judicial reforms to ensure that victims/survivors of CRSV have access to justice

States should undertake comprehensive legal and judicial reforms in conformity with international law to strengthen legislation and foster accountability for sexual violence.²⁴⁹ Reforms should be implemented without delay to bring perpetrators of CRSV to justice and to ensure that survivors 'have access to justice, are treated with dignity throughout the justice process and are protected and receive redress for their suffering'.²⁵⁰

Reforms may include, if not yet established, victim and witness protection laws, and provide, where appropriate, legal aid for victims/survivors. Additionally, States may establish specialised police units and courts to address CRSV and should remove procedural impediments to justice for victims such as:

- Restrictive limitation periods for filing claims;
- Corroboration requirements that discriminate against victims as witnesses and complainants;
- Exclusion or discrediting of victims/survivors' testimony by law enforcement officials and within judicial and other proceedings; and
- Lack of facilities for closed hearings.²⁵¹

In national legislation, States should recognise the equal rights of all individuals affected by CRSV, 'including women, girls and children born of sexual violence in armed conflict', in accordance with their obligations under the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child.²⁵²

In particular, States should address the obstacles in accessing justice in conflict and post-conflict settings faced by women, girls and their children born as result of CRSV (such as 'economic and social marginalization, physical and psychological injury, statelessness, discrimination and lack of access to reparations').²⁵³ They should do so through legal and judicial reforms to make the legal, judicial and security sectors gender-responsive.²⁵⁴

Humanitarian Response

III.14 States should provide victims/survivors of CRSV with appropriate, comprehensive care

States should support the development and strengthening of national institutions' capacities, in particular of judicial and health systems, and of local civil society networks in order to provide sustainable assistance to victims of sexual violence in armed conflict and post-conflict situations.²⁵⁵

States should ensure that victims/survivors of sexual violence, 'committed by certain parties to armed conflict, including non-state armed groups designated as terrorist groups', have access to national relief and reparations programmes, as well as health care, psychosocial care, safe shelter, livelihood support and legal aid.

Services should include 'provisions for women with children born as a result of sexual violence in conflict, as well as men and boys who may have been victims of sexual violence in conflict including in detention settings'.²⁵⁶ Ideally, this will 'contribute to lifting the sociocultural stigma attached to this category of crime and facilitate rehabilitation and reintegration efforts'.²⁵⁷

In consultation with women's organisations, States should ensure that services address women's and children's needs and priorities by covering, among other things, 'support for greater physical security and better socio-economic conditions, through education, income generating activities, access to basic services, in particular health services, including sexual and reproductive health and reproductive rights and mental health',²⁵⁸ 'including regarding pregnancies resulting from rape'.²⁵⁹

In light of the link between CRSV and HIV infections, and the disproportionate burden of HIV and AIDS on women and girls as a persistent obstacle and challenge to gender equality, States should 'support the development and strengthening of capacities of national health systems and civil society networks in order to provide sustainable assistance to women and girls living with or affected by HIV and AIDS in armed conflict and post-conflict situations'.²⁶⁰

Reparations

III.15 States should provide victims/survivors of CRSV with reparations

States should provide victims/survivors of CRSV with reparations,²⁶¹ in accordance with the relevant provisions of international law 'on the right to reparations for violations of individual rights'.²⁶² Such provisions cover compensation, restitution, satisfaction, guarantees of non-repetition,²⁶³ and rehabilitation of survivors.²⁶⁴ If States consider it necessary, they may request support from the UN in this regard.²⁶⁵

NOTE TO READERS: Readers should refer to the "International Human Rights Law" chapter, subchapter on the "Convention against Torture" to find a detailed explanation of the various forms of reparations, when they are appropriate, and how they are intended to remedy the harms caused in direct favour of victims/survivors. Additional resources on reparations are available in the "Further Readings" chapter.

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Foreword from Dr. Mukwege

Acknowledgements

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The Hague Office

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Contact Information

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