

Reforms Forum Note

SEXUAL VIOLENCE AGAINST WOMEN DURING ARMED CONFLICTS: RUSSIAN AGGRESSION AGAINST UKRAINE AS AN EXAMPLE

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ABSTRACT

Sexual violence is a significant issue that violates human rights and is a source of increasing concern for women during international and local armed conflicts. It has widespread impacts on civilian communities and on women in particular, with grave and long-lasting health, psychological, and social impacts. The descriptive analytical method was used to investigate and

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analyse laws prohibiting sexual assault against women, focusing on the role of international law in addressing these crimes. It was found that multiple international laws are in place to address this violence, but the enforcement of these laws requires work.

Methods: *The descriptive-analytical method is used to investigate and analyse legal provisions prohibiting sexual violence against women. A set of recommendations is derived for how to limit and avoid the deterioration of such phenomena and to deal with it at legal, social, political, health, and other levels.*

Results and Conclusions: *Due to its consequences, which include physical, psychological, social, and economic complications, sexual assault is regarded as one of the most serious violations of human rights. The scarcity of judicial trials and prosecutions against perpetrators of this violence is considered to be a driving force behind these crimes.*

1 INTRODUCTION

Armed conflicts, across all times and continents, involve human rights abuses. The longer armed conflicts continue, the more security issues are faced by women and the more potential there is for persecution to occur. During armed conflicts, women are subjected to human rights abuses and suffer from violence related to discrimination and vulnerability. Phenomena of sexual violence against women include mistreatment, torture, sexual abuse, and trafficking.

This research aims to study and highlight the legal mechanisms that are to be followed by relevant authorities to limit the occurrence of this violence and to provide appropriate protections to preserve the safety, dignity, and privacy of women.

2 SEXUAL VIOLENCE UNDER THE PROVISIONS OF INTERNATIONAL LAW

The term 'sexual violence' refers to all sexual assault on women that causes them physical and psychological pain, including the threat of such abuse, pressure to participate, or associated deprivations of freedom. There are various international legal conventions and texts prohibiting sexual assault against women during armed conflicts. The 1948 UDHR promotes equality of rights and freedoms among men and women, which includes rights to bodily protection and freedom from sexual abuse, torture, and other inhumane treatment.¹ According to the 1979 CEDAW, all human rights must guarantee gender equality, and the state parties must take all necessary measures, including legislative ones, to prevent the exploitation of women.²

In 2017, the General Recommendation No. 38 of the CEDAW identified that some asylum policies and measures restrict women's movement and increase their vulnerability to sexual violence and other forms of exploitation because many of them struggle to meet their basic needs. It urged states to take whatever steps necessary to stop the exploitation of women, including legislative measures to suppress sexual violence associated with armed conflict.³

1 Arts. 2, 3, 5, and 7 of the Universal Declaration of Human Rights, adopted by the United Nations General Assembly Resolution 217 A (III) (10 December 1948).

2 Arts. 1, 2, and 6 of the Convention on the Elimination of All Forms of Discrimination against Women, adopted by the United Nations General Assembly (18 December 1979).

3 General Recommendation No. 38 on Trafficking in Women and Girls in the Context of Global Migration Committee on the Elimination of Discrimination against Women, CEDAW/C/GC/38 (20 November 2020).

According to the Beijing Declaration of 1995, all types of violent acts against women must be eliminated through the adoption and implementation of appropriate legislative measures. This encompasses violent behaviours that occur during hostilities, such as abortion, routine rape, sexual enslavement, and forced pregnancies.⁴ The 1984 Convention against Torture requires that states must swiftly conduct an immediate and fair investigation when there are grounds to suspect that acts of abuse are being committed in one of the regions under their jurisdiction and that exceptional circumstances, such as wars and conflicts, shall not be a justification or invocation for violence.⁵

The United Nations Security Council has made decisions to put an end to this violence, including Decision No. 1325, issued in 2000, which addresses issues relating to women, peace, and security. It was concluded that civilians make up the vast majority of individuals harmed by armed conflicts and that once such conflicts are started, troops and armed units progressively target non-military people. It was resolved that countries at war have to safeguard women against sexual violence and other forms of sexual abuse. The warring governments must also ensure that individuals who commit such atrocities are brought to justice by, for instance, filing lawsuits against perpetrators and excluding amnesty provisions from these types of crimes.⁶

The 2010 Security Council Decision No. 1960 also condemned all types of violence, including sexual violence in armed conflicts, stressing the necessity of all combatants abiding by the rules imposed by international law. The conflicting parties must establish a proper legal prosecution system that manages war crimes, including cases of sexual violence, and institute systematic arrangements for monitoring, analysing, and reporting these types of crimes. It also stresses that the jurisdiction of the conflicting parties must be expanded to put an end to sexual violence, whether it is committed as a tactic of war or occurs spontaneously as a result of an armed conflict.⁷ The United Nations has put in place several mechanisms to end this violence, which include appointing a special representative on this violence, establishing a panel of experts on the subject, appointing women's protection advisors, and establishing specialised monitoring, analysing, and reporting mechanisms.

Notwithstanding the significance of international legal efforts to combat this violence, it is urgently necessary to reach a formal international agreement to include sexual assault as a prohibited crime stipulated under international law. This will ensure that such crimes are prevented, perpetrators are punished, and a safe environment is created for victims. An example of such a convention is the 2011 Istanbul Convention. This convention aims to prevent violence in all of its forms, including sexual assault that occurs during both peace and war times.

4 Arts. 114 and 115 of the Beijing Declaration and Platform for Action, adopted at the Fourth World Conference on Women (4-15 September 1995) 6.

5 Arts. 2, 12 of the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment New York (10 December 1984).

6 Security Council Resolution 1325, adopted by the Security Council at its 4213th meeting (31 October 2000) 3.

7 Security Council Resolution 1960, adopted by the Security Council at its 6453rd meeting (16 December 2010) 4.

3 SEXUAL VIOLENCE UNDER PROVISIONS OF INTERNATIONAL HUMANITARIAN LAW

Although international law prohibits sexual violence, conflicts inevitably raise the probability that brutal and violent crimes against women will occur. Given that women are among the populations most vulnerable to violence, they ought to be given high priority when violence is addressed. Women are in urgent need of protection against sexual abuses, whether committed by regular military force members, militias, armed gangs, or civilians.

International humanitarian law places special emphasis on the protection of women due to biological characteristics that make them vulnerable to violence and explicitly prohibits all types of sexual violence. In addition, it stipulates the criminal responsibility of perpetrators. The Geneva Conventions and Additional Protocols is one of the main references for the protection of women against this violence, whereas the Geneva Convention (III) of 1949 stipulates in article 14 that women shall be protected while taking into account their gender. According to the 1949 Geneva Convention (IV), civilian women shall be respected in particular from attacks on their honour, notably against rape or any other manner of defilement. These acts of sexual violence should be outlawed everywhere, at all times, and against all women, irrespective of characteristics such as nationality, religion, and age, to ensure that women's honour and dignity are protected.⁸ Additional Protocol I, which is related to the four Geneva Conventions of 1979, protects women from all forms of outrage upon personal dignities, including acts of rape and enforced prostitution, whether committed by military or civilian persons.⁹

The Rome Statute has determined that all types of sexual assault during war, such as rape, sexual slavery, and forced pregnancy, constitute major breaches of international humanitarian law. Furthermore, these crimes are considered to be international offences that are subject to the Court's jurisdiction as crimes against humanity or war crimes. The statute has also stipulated a set of measures to protect sexual assault victims' dignity as well as their psychological and physical integrity.¹⁰

Despite the importance of recognising the international criminal responsibility associated with acts of this type of violence, the paucity of convictions highlights the failure to address crimes of this nature. As of 2022, the International Criminal Court has issued only a single conviction against perpetrators of sexual violence. This identifies the need for further efforts to activate the International Criminal Court to ensure accountability for such crimes.¹¹

4 EXAMPLES OF SEXUAL VIOLENCE

Throughout history, there have been instances of sexual assault against women and other human rights violations committed during international and local military conflicts. These violations endanger global peace and security. Several recent examples of this violence are presented below.

8 Art. 27, the Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, adopted by the Diplomatic Conference of Geneva (12 August 1949).

9 Arts. 75, 76, Protocol Additional 1 to the Protection of Victims of International Armed Conflicts, adopted by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts (8 June 1977).

10 Arts. 7, 8, and 68, Rome Statute of the International Criminal Court, adopted at a diplomatic conference in Rome, Italy, 17 July 1998, entered into force on (1 July 2002).

11 T Altunjan, 'The International Criminal Court and Sexual Violence: Between Aspirations and Reality' (2021) 22 German Law Journal 878.

4.1. The Democratic Republic of the Congo

Since the 1990s, the Congo has had a history of suffering caused by civil disruptions and political instability, which has resulted in high rates of sexual torture and brutal rape of women. Women have suffered from repeated crimes of sexual assault committed by militias, armed troops, and rebel organizations.¹² This has led to describing the eastern region of the country as the capital of rape in the world, given the forms of sexual assault committed against women there.

4.2. The Bosnia and Herzegovina War

International reports indicate that during the war between Bosnia and Herzegovina that took place between 1992 and 1995, hundreds of women were sexually assaulted by men from different ethnic groups. Rape was used as a weapon of war in acts of terrorism and genocide by Serbian forces in particular.¹³ After ICTFY was established in 1993, the Tribunal declared systematic rapes and other types of sexual assault committed by Serbian forces to have been a crime against humanity.¹⁴ In March 2016, Radovan Karadzic, the President of the Bosnian Serb Republic throughout the conflict in Bosnia and Herzegovina, was found guilty of crimes against humanity. The Trial Chamber of ICTY commanded him to forty years in jail, and in March 2019, the Appeals Chamber of the Tribunal increased the sentence to life imprisonment.¹⁵

4.3. The Pakistani War Against Bangladesh

In 1971, in the Pakistani war against Bangladesh, sexual assault was used as a weapon of terror. Individuals from the Pakistani military and pro-Bengali militias abducted, tortured, and assaulted women in a systematic campaign of mass rape to achieve political and military objectives.¹⁶ After the war, Bengali and Indian soldiers were also implicated in the rape of Bihari women on the pretext that they supported Biharis in Pakistan.¹⁷

4.4. The American War Against Iraq

On 12 March 2006, during the American War against Iraq, five American soldiers were accused of raping a fourteen-year-old Iraqi girl in the Muhammadiyah neighbourhood in the capital, Baghdad. They subsequently killed her and the rest of her family who was in the

12 L Clifford, P Eichstaedt, et al, 'Sexual Violence in the Democratic Republic of Congo', Institute for War & Peace Reporting, Netherlands, (October 2008) 6.

13 JA Vetlesen, *Evil and Human Agency: Understanding Collective Evildoing* (Cambridge Cultural Social Studies 2005) 197.

14 JO Bell, *The Bosnian War Crimes Justice Strategy a Decade Later* (FICHL Policy Brief Series, No. 92, Torkel Opsahl Academic Publisher 2018) 3.

15 International Criminal Tribunal for the former Yugoslavia Radovan Karadžić (IT-95-5/18), Case Information Sheet, (2019) 1.4.

16 L Sharlach, 'Rape as Genocide: Bangladesh, the Former Yugoslavia, and Rwanda' (2000) 22(1) *New Political Science* 92.

17 Y Saika, *Women, War, and the Making of Bangladesh: Remembering 1971* (Duke University Press 2011) 169.

house, burned their bodies, and set fire to the house in an attempt to destroy evidence.¹⁸ Furthermore, the Islamic State in Iraq and the Levant has used sexual assault against the Yazidi women sect – an ethnoreligious minority in Sinjar Province in northern Iraq – as a tool of terror and ethnic cleansing.¹⁹ Thousands of Yazidi women have been kidnapped by ISIS to be raped, trafficked, and kept as sex slaves.²⁰

4.5. Armed Conflict in Syria

In the ongoing Syrian conflict that began in 2011, female detainees have suffered from sexual exploitation, rape, and abduction, both in government detention centres and at checkpoints controlled by various armed groups, primarily ISIL in the northeast of the country.²¹ On the other side, women are sexually assaulted during their detention and interrogation procedures in prisons and detention centres.²²

4.6. Myanmar's Armed Forces Against Rohingya Women in Burma

Since August 2017, attacks, deteriorating security, and serious abuses of human rights have forced thousands of Rohingyas in Myanmar to flee to Bangladesh. Numerous women and girls have been victims of sexual violence by Myanmar's armed forces and rebel groups. The United Nations has classified acts of sexual violence against women as crimes of ethnic cleansing and weapons of racial genocide for the Rohingya in Myanmar.²³

5 THE CAUSES AND CONSEQUENCES OF SEXUAL VIOLENCE

Sexual violence is considered in international disputes to be not merely raping out of control but rape employed to accomplish both political and military objectives.²⁴

During wars, rape and other forms of sexual violence have been used as a weapon of war or military strategy committed by leaders to achieve military goals. The frequent practice of rape in war is because it is a cheap, efficient, and easily accessible weapon. The strategic benefits of it are used as a tool to humiliate and frustrate civilians, who feel they are unable to protect women in society,²⁵ as well as terrorising and intimidating the enemy, weakening morale, applying pressure, and getting revenge.

18 J Frederick, *Black Hearts: One Platoon's Descent into Madness in Iraq's Triangle of Death* (Broadway 2010) 258-261.

19 B Aubert, 'ISIS' Use of Sexual Violence as a Strategy of Terrorism in Iraq' (27 July 2021) *E-International Relations* 3-6.

20 Amnesty International, 'Escape from Hell: Torture and Sexual Slavery in Islamic State Captivity in Iraq, London, United Kingdom' (22 December 2014) 4.

21 Secretary-General, Report of 'Conflict-Related Sexual Violence', No. S/ 2020/ 487 (3 June 2020) 32.

22 A Jarbawi, A Khalil, 'Armed Conflicts & Security of Women' (Al Nasher Advertising Agency, Birzeit, Palestine, November 2008) 19.

23 A Anwar, 'Sexual Violence Against Women as a Weapon of Rohingya Genocide in Myanmar' (2022) 26(3) *The International Journal of Human Rights* 400.

24 Bharat H Desai, Balraj K Sidhu, 'Sexual Violence in Conflict Zones: A Challenge for International Law?' (2017) LII(7) *Economic & Political Weekly* 15.

25 R Nordås, DK Cohen, 'Conflict-Related Sexual Violence' (2021) 24(1) *Annual Review of Political Science* 199.

In some cases, sexual assault is utilized as a tool to reward the aggressors or to urge them to engage in the activities of the authority that employs them, such as in the case of ISIS in both Iraq and Syria.²⁶ Moreover, sexual violence can be considered a corollary of societal collapse and the lack of respect for the rule of law. It is also a symptom of the insecurity associated with conflict situations, where gender inequality and social norms of discrimination against women can be exploited to deliberately abuse and harm them, as in cases of sexual assault in the Congo.

Frequently, this violence results in injury or death. Victims may suffer from serious health and reproductive damage, including mutilation, complications associated with abortion, infertility, and sexually transmitted diseases such as HIV/AIDS. Victims may also suffer from psychological consequences involving fear, self-loathing, and depression. Healing and recovering from physical disabilities and emotional disorders after being exposed to sexual violence may take many years, and victims may continue to suffer from these consequences for the rest of their lives.²⁷

Apart from the health repercussions that women and girls experience after exposure to sexual violence, they may also experience serious social consequences that may last for a long time. The victims of this violence have typically experienced rejection and isolation from their local communities and suffer from associated fears of stigmatisation and blame. As a consequence, victims live with a sense of shame, depression, and helplessness. They may commit suicide as a result of shock or the social pressures imposed on them.²⁸

Sexual violence also has economic consequences. Victims may lose their livelihoods due to work disabilities associated with sexual violence, destruction or confiscation of their property, evictions, and displacement.²⁹

6 SEXUAL VIOLENCE DURING THE RUSSIAN INVASION OF UKRAINE

The majority of the world's countries have condemned Russia's aggression on Ukraine, which began on February 24 of this year, for the lack of legal justification and the horrible damages and casualties suffered by Ukrainian civilians.³⁰ Russian aggression against Ukraine resulted in gross breaches of international humanitarian law. Among those violations are the arbitrary killing of civilians, forced disappearance of innocent civilians, lack of distinction between civilian and military targets, the use of internationally prohibited weapons, and the targeting of Ukrainian residential areas and infrastructure. This resulted in the loss of thousands of civilian lives and approximately 4 million internally displaced persons and refugees looking for safety, protection, and humanitarian assistance.³¹

26 S Ribeiro, D Ponthoz, *International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Best Practice on the Documentation of Sexual Violence as a Crime or Violation of International Law* (2nd edn, UK Foreign & Commonwealth Office 2017) 19.

27 Secretary-General, Report of 'Women, Peace, and Security', No. S/ 2002/ 1154 (16 October 2002) 2, 12.

28 K Bennoune, 'Do We Need New International Law to Protect Women in Armed Conflict' (2007) 38(2) *Case Western Reserve Journal of International Law* 367.

29 The United Nations High Commissioner for Refugees, 'Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons. Guidelines for Prevention and Response' (May 2003) 24.

30 A Osborn, P Nikolskaya, 'Russia's Putin Authorises "Special Military Operation" against Ukraine' (Reuters, 24 February 2022).

31 United Nations High Commissioner for Refugees, 'Refugee Arrivals from Ukraine (since 24 February 2022)' (8 May 2022),

Along with the aforementioned, by May 2022, the United Nations had received numerous complaints and reports of sexual assault instances concerning the conflict committed by Russian combatants or allies of Russia. The Russian forces have used sexual violence against women and systematic and far-reaching sexual assault as a weapon of war and part of their war strategy and as a tool for intimidation in conflict situations. There is a glaring contradiction between the bitter reality from which Ukrainian civilians suffer and the actions taken by the international community to stop this aggression. Reports of hundreds of cases of sexual violence committed by Russian forces all over the country have been forwarded to international organisations, including rape, mass rape, the threat of sexual violence, sexual harassment, and compelled observation of sexual acts committed against family members. Frequently, these cases were accompanied by other violations of human rights, such as murder and looting. In addition, victimised women described being subjected to forced nudity, sexual touching, and sexual assault in order to pass through checkpoints.³²

For example, Russian armed forces committed crimes against unarmed civilians during their occupation of the Ukrainian city of Bucha, including mass murder, torture, and rape, according to videos leaked on 1 April 2022.³³ After learning of the Bucha massacre, the UNGA enacted resolution ES-11/3 on 7 April 2022, actively suspending Russia's membership in the Council of Human Rights due to its egregious and persistent violations of international law during the conflict with Ukraine. The resolution was approved by a majority of ninety-three votes to twenty-four, with fifty-eight abstentions. Russia resigned from the council before the resolution was voted on.³⁴

There have been numerous accounts of Russian soldiers sexually assaulting Ukrainian women who were hiding in shelters. In several cases, children were forced to witness their mothers being raped and killed.³⁵ One of the reports mentions that, in the Ukrainian city of Kyiv, two Russian soldiers broke into a house, gunned down the owner, and proceeded to sexually assault the dead man's wife three times.³⁶

Russian armed forces and its affiliated groups had previously committed sexual abuse of women in Ukraine before the violence that broke out in 2022. In 2014, a report issued by the UNHCR documented dozens of cases of torture and abuse, the majority of which occurred in the context of deprivation of liberty.³⁷

Survivors of sexual assault in the ongoing conflict in Ukraine face various obstacles and challenges to accessing justice, including a lack of faith in the national and international justice systems and officials' inexperience in dealing with these crimes. In response, the Ukrainian authorities have made efforts to benefit from the experience of nations that have expertise in assisting those who have been sexually assaulted during the armed war. Moreover, they have collaborated with various actors, including investigative branches, law enforcement, and civil society organisations to provide support, care, and assistance to victims of sexual assault.³⁸

32 UN, 'Sexual Violence "Most Hidden Crime" Being Committed against Ukrainians', Civil Society Representative Tells Security Council, Press Releases (6 June 2022).

33 M Amann, M Gebauer, F Schmid, 'Possible Evidence of Russian Atrocities: German Intelligence Intercepts Radio Traffic Discussing the Murder of Civilians' (Spiegel Thema, 7 April 2022).

34 Resolution of the General Assembly of United Nations A/RES/ES-11/3 (7 April 2022).

35 Insecurity Insight, Report 'Sexual Violence, and the Ukraine Conflict', Switzerland (April 2022) 1, 2.

36 Office of the UNHCR, Report 'The Situation of Human Rights in Ukraine in the Context of the Armed Attack by the Russian Federation, 24 February to 15 May 2022' (29 June 2022) 26.

37 Office of the UNHCR, Report 'Conflict-Related Sexual Violence in Ukraine 14 March 2014 to 31 January 2017' (16 February 2017) 3.

38 Council of ECHR, 'Memorandum on the human rights consequences of the war in Ukraine', Strasbourg (8 July 2022) 11.

If we want to stop sexual assault in armed conflicts, such as that committed in the Russian conflict with Ukraine, we must address its root causes and contributing factors. The most prominent among these is the lack of security and stability during armed conflicts, enforced displacement, persecution, and human rights violations. Consequently, the ideal way to put an end to this violence is to strive for political and diplomatic solutions, move forward with negotiations on Russia's cessation of hostilities, and ensure the specialised support and treatment of the victims of sexual violence, particularly in the context of the Ukrainian war. In fact, international diplomacy is the most effective means of influencing the behaviour of states, fostering peaceful international relations, and promoting human rights.

7 CONCLUSIONS AND RECOMMENDATIONS

Despite the multiplicity of international legal conventions and texts prohibiting sexual violence against women in armed conflicts and several efforts and accomplishments that have been made in this regard on the international stage, regrettably, these crimes are still pervasive. Regardless of international reports that regularly document this violence, in all the world regions, access to effective remedies and justice is poor and severely limited, and perpetrators continue to go unpunished on a large scale. This means that the enforcement of international conventions against this violence still requires more work and support.

Among the recommendations, the following should be given:

- Efforts need to be made to stop Russia's gross violations of international law, including the perpetration of sexual violence against women, in its illegal invasion of Ukraine.
- Efforts need to be made to guarantee access to adequate legal remedies for victims of sexual assault in Ukraine and elsewhere to give priority to their security, safety, and dignity. Efforts are also needed to document and investigate cases of sexual violence to ensure that perpetrators are prosecuted. The absence of effective justice for sexual crimes encourages these crimes to be repeated without regret or fear of the consequences.
- Support is needed for local and international organizations in Ukraine to enhance their capacity to handle cases and offer services to women who have been sexually assaulted.
- Material and moral assistance, including healthcare, psychological care, and economic support, need to be provided to Ukrainian victims of sexual assault to facilitate their recovery.
- Measures should be taken to safeguard Ukrainian women from sexual violence and to help victims on their road to recovery, including addressing feelings of blame or stigma associated with the event.
- Awareness must be raised through mass media and campaigns, events, and activities to condemn all forms of violence and to draw attention to laws that prohibit sexual violence against women during armed conflicts.

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