



### **Part III: Conflict Related Sexual Violence: Legal Aspects Summary**

#### **Overview.**

Sexual Violence in conflict and post-conflict situations is a gross violation of IHRL, and may amount to a violation of IHL and a serious crime. Vide its Resolution 1960 (2010), the Security Council has reiterated the necessity of all State and non-State parties to conflict to comply with their obligations under applicable international law, including the prohibition of all forms of sexual violence and stressed the need for civilian and military leaders to demonstrate commitment to prevent sexual violence, to combat impunity and enforce accountability.

The Security Council has underscored these obligations in its subsequent resolutions including resolutions 1998 (2011) and 2068 (2012). In its latest resolution 2106 (2013) on sexual violence in conflict, the SC noted with concern that sexual violence in armed conflict and post-conflict situations disproportionately affects women and girls, as well as groups that are particularly vulnerable or may be specifically targeted, while also affecting men and boys and those secondarily traumatized as forced witnesses of sexual violence against family members. With the above background in view, the important legal aspects pertaining to conflict related sexual violence (CRSV) are discussed below.

#### **CRSV as Violation of International Human Rights Law.**

Sexual violence is a violation of universally recognized human rights and its obligations, in particular those emanating from peremptory international law bind States in times of peace and during armed conflict, and armed groups are also expected to respect those obligations. Acts of rape, other conflict related sexual violence, and sexual and other forms of slavery, constitute a gross violation of human rights law.

Sexual violence includes acts of a sexual nature which are perpetrated against a person without his or her consent, often by force or coercion. These acts constitute a human rights violation if:

- a. The SV is committed by a person or an organ of a state, or a person or organ acting on its behalf.
- b. A State fails to ensure that SV by State agents is effectively investigated, prosecuted and punished in accordance with the gravity of the offence (whether State or non-State actors).
- c. State fails take necessary steps to adopt legislative or other measures as may be necessary to give effect to the rights recognized in international human rights law.

#### **CRSV as a Form of Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment.**

Sexual violence at the instigation of a public official, or otherwise attributable to the State, may amount to torture. It can be part of crimes against humanity when inflicted upon a person in the custody or under the control of the accused; and a violation of IHRL when it involves a public official, either directly or indirectly (i.e. if acts are committed at the instigation or with the consent or acquiescence of a public official).

#### **CRSV as Violation of International Humanitarian Law.**

International humanitarian law (IHL) applies in situations of armed conflict and governs the conduct of parties to an armed conflict. IHL specifically prohibits rape, enforced prostitution, and other forms of sexual violence or indecent assault on civilians, and more generally, prohibits outrages upon personal dignity, including humiliating and degrading treatment. Sexual violence encompasses rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and any other form of sexual violence of comparable gravity, which may include indecent assault, trafficking, inappropriate medical examinations and strip searches.

#### **Sexual Violence as International Crimes.**

The statutes of the International Criminal Tribunals for the Former Yugoslavia and Rwanda, the Special Court for Sierra Leone, the Extraordinary Chambers in the Courts of Cambodia, and the Rome Statute for the International Criminal Court (ICC) criminalize sexual violence, namely: rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and any other form of SV of comparable gravity, which may include indecent assault, trafficking, inappropriate medical



examinations and strip searches. In fact, SCR 2106 (2013) has recalled the inclusion of a range of sexual violence offences in the Rome Statute of the International Criminal Court (ICC) and the statutes of the ad hoc international criminal tribunals. Rape and other sexual violence may constitute international crimes, such as a war crime<sup>1</sup>, a crime against humanity<sup>2</sup> and as an element of genocide<sup>3</sup>. International law requires holding personally accountable, perpetrators of international crimes, including military commanders and civilian officials who order the commission of such crimes. A military commander can be held responsible for crimes committed by forces under his effective command and control, or for failing to exercise control properly over such forces, where:

- a. The commander knew or, owing to the circumstances at the time, should have known that the forces were committing, or about to commit such crimes; and
- b. The commander failed to take all necessary and reasonable measures within his/her power to prevent or repress their commission, or to submit the matter to the competent authorities for investigation and prosecution.

### **CRSV: A threat to International Peace and Security.**

The Security Council has also recognised that SV, when used or commissioned as a tactic of war in order to deliberately target civilians or as a part of a widespread or systematic attack against civilian populations, can significantly exacerbate situations of armed conflict and may impede the restoration of international peace and security<sup>4</sup>. The inclusion of SV within ICC jurisdiction reinforces this link, as the ICC is concerned with crimes that ‘*threaten the peace, security and well-being of the world*’. When sexual violence is considered as part of a threat to international peace and security, it would no longer remain a matter which essentially falls within the domestic jurisdiction of a State.

### **CRSV as Crimes Under Domestic Law.**

States bear the primary responsibility to respect and ensure the human rights of all persons within their territory and subject to their jurisdiction as provided for by international law. National criminal law provisions prohibit acts of rape and other sexual offences. Additionally, the laws of many countries provide for the discipline of military personnel by establishing a system of military justice for both criminal and disciplinary offences. Sexual offences often form part thereof.

### **Legal Accountability.**

International law imposes an affirmative obligation on States to provide effective accountability measures to redress violations of international human rights and humanitarian law. It may include the obligation to investigate such allegations and, to prosecute and punish those found to be responsible. Accountability processes must be transparent and the outcome should be published in order to fulfil the requirement of the right of victims and of society at large to know about the true facts and circumstances of violations (CRSV), including the identity of perpetrators and instigators. If soldiers and other state security officials are involved, depending on the rules and regulations that govern them, there may be an obligation to immediately suspend those under investigation from their duties and to permanently remove those found to have participated in serious violations from the security forces or, in the case of armed groups, bar them from entering such forces. Accountability may also include institutional reforms and memorialization.

Additionally the *Human Rights Due Diligence Policy* (HRDDP) on United Nations Support to non-United Nations Security Forces must be used as a tool to ensure compliance with forces supported by the United Nations, including addressing sexual violence in armed conflict and post-conflict situations.

In resolution 1820 (2008) the Security Council stressed “the need for the exclusion of sexual violence crimes from amnesty provisions in the context of conflict resolution processes”, and called upon the Member States to comply.

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<sup>1</sup> Article 8 (2) (b) (xxi & xxii) and (e) (vi) of Rome Statute of the ICC

<sup>2</sup> Rome Statute: Article 7.

<sup>3</sup> Article II of Convention on the Prevention and Punishment of the Crime of Genocide & Article 6 of Rome Statute of the ICC

<sup>4</sup> SCR 1820 (2008), Para-1 (Page 2)



In many conflict ridden/ affected countries, an obstacle to obtaining accountability in respect of crimes involving sexual violence victims are cultural norms that make it difficult for victims to report, and testify in respect of acts of sexual violence. Although criminal justice systems may provide guidance and encourage victims of SGBV to file complaints, protect healthcare workers providing assistance to victims of SGBV, and recommend expeditious assistance to victims, the negative effects of socio-cultural stigmatization associated with rape remains a challenge that deters many victims.

The Security Council has recognized that effective investigation and documentation of sexual violence in armed conflict is instrumental both in bringing perpetrators to justice and ensuring access to justice for survivors. In addition the Council also recognizes that consistent and rigorous prosecution of sexual violence crimes, as well as national ownership and responsibility in addressing the root causes of sexual violence in armed conflict, are central to deterrence and prevention; as is challenging the myths that sexual violence in armed conflict is a “cultural phenomenon” or an “inevitable consequence of war” or a lesser crime.