

SEXUAL AND GENDER BASED VIOLENCE IN CONFLICT

- International and internal armed conflicts have led to widespread incidents of sexual and gender based violence
- Protection of victims of such violence, who are largely women and girls, has become a priority for governments and international organisations
- International law unequivocally prohibits sexual or gender based violence in conflicts
- Despite efforts to mainstream international law relating to sexual or gender based violence in conflicts enforcement by States of binding provisions remains insufficient and a general climate of impunity prevails

BACKGROUND

What is sexual and gender based violence and who does it affect?

1. Civilians account for the vast majority of those adversely affected by armed conflict. People of any gender can be impacted by sexual or gender based violence in conflict but women and girls are particularly vulnerable.
2. Gender-based violence, broadly, is violence that is directed against a person on the basis of gender or sex. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.ⁱ Sexual violence, in particular, concerns “any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed against a person’s sexuality using coercion, by any person regardless of their relationship to the victim, in any setting.”ⁱⁱ Acts of sexual violence and gender-based violence (SGBV) are proscribed as crimes by many national and international laws and are defined to encompass: rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization, and any other form of sexual violence of a comparable gravity, including indecent assault, and trafficking.
3. SGBV is often used as a tactic of war to humiliate, dominate, instil fear, disperse and/or forcibly relocate civilians from community or ethnic groups; perpetrated in this manner it can persist long after the cessation of hostilities.ⁱⁱⁱ

INTERNATIONAL LEGAL INSTRUMENTS

What are the obligations on States and individuals to address conflict-related sexual and gender based violence?

4. International law, both customary and normative, specifically prohibits SGBV by state or non-state actors (which would include armed groups and private contractors) especially in the context of military conflict. States parties to international treaties are under a duty to prevent or prosecute perpetrators of such crimes both under international humanitarian law (IHL) and international human rights law (IHRL).^{iv} Under IHRL, generally, the State is held accountable when it fails to address SGBV for instance, through access to justice and prosecuting crimes. IHL, on the other hand, largely looks to hold individuals accountable for violations within a State or non-State apparatus. Assessing which regime applies can be important because different standards and rules can apply.

International humanitarian law

5. Provisions of IHL, which regulate conduct under “armed conflict”, require humane treatment of civilians, prisoners, the wounded and sick and apply equally to both men and women.^v There are, however, specific laws focusing on women and girl children given the disproportionate effect of SGBV in conflict on them. IHL criminalises conduct which constitutes SGBV. Acts of sexual violence which includes rape, enforced prostitution and any form of indecent assault, if committed in the context of an armed conflict, constitute war crimes.^{vi} A State is required to “especially protect” women and children from sexual violence or the threat of sexual violence. Women prisoners must be housed separately from men in particular to avoid sexual abuse.^{vii} Individuals are to be held criminally responsible for such acts.
6. Since WWII, a range of crimes and acts of sexual violence (rape or crimes involving a sexual element such as trafficking/slavery) have also been gradually recognised by international bodies/tribunals/courts to constitute crimes against humanity or acts of genocide. Such recognition has significantly extended the scope of charges that may be brought against an individual for SGBV and have diluted the requirement for there to be an “armed conflict” for there to be a successful charge and/or prosecution.^{viii}

International human rights law

7. In situations of “armed conflict” incidents of SGBV that occur can also be governed by IHRL although not exclusively. In that sense, IHRL and refugee law complements the protection provided under IHL.
8. The Convention on the Elimination of Discrimination Against Women (CEDAW) accords women and girls the right to equal protection or non-discriminatory application of IHL norms in times of armed conflict.^{ix} It imposes upon States parties an obligation, including due diligence, to prevent, investigate, punish and ensure redress for crimes against women by either State or non-State actors.^x This duty extends to non-citizens of a State including internally displaced persons, refugees, asylum-seekers and stateless persons, within their territory or effective control (which could, therefore, require States to apply the provision extra-territorially).^{xi}

International resolutions

9. The UN Security Council (UNSC) following resolution 1325 (2000) called upon all parties to armed conflict to take special measures to protect women and girls from SGBV particularly rape and other forms of sexual abuse.^{xii} Since then the UNSC is competent to deal with all kinds of sexual violence in situations of conflict or in post-conflict situations and is able to enforce its resolutions under Chapter VII of the UN Charter.^{xiii} UNSC resolutions are “binding” and, therefore, create obligations on its addressees which could include all UN members States.

IMPLEMENTATION MECHANISMS

What are the means of accountability for sexual and gender based violence and are they effective?

10. The primary duty to prevent and prosecute SGBV ordinarily falls on the State in which an incident occurs. This obligation, however, is not always met by the State concerned. In that instance, the concept of “universal jurisdiction” entitles other States to prosecute and punish perpetrators of war crimes and crimes against humanity.^{xiv} In reality, universal jurisdiction is rarely applied due to diplomatic considerations and respect for the principle of sovereignty of nation States.^{xv} There are also the practical difficulties for the prosecuting State to gather evidence and arrest perpetrators.
11. International treaties can bind States. As all States, however, are not signatories to international human rights treaties they are not consequently bound. States parties who are signatories could still prohibit individual complaints which would restrict application. Furthermore, the fact that there is no legally binding international human rights instrument exclusively focused on proscribing SGBV is particularly limiting.^{xvi}
12. The UNSC is competent to intervene in armed conflicts where SGBV occurs.^{xvii} Measures which the UNSC can adopt include but are not limited to referral to ICC (where a State is not a party) or the creation of *ad hoc* tribunals.^{xviii} Such measures, however, require the consent of permanent members which are entitled to veto resolutions.^{xix}
13. Alongside the practical constraints of using international mechanisms for accountability, on-the-ground factors hamper the elimination of conflict-related SGBV. Under-reporting of endemic sexual violence makes assessment of magnitude difficult. Primarily, victims are reluctant to come forward due to feelings of guilt, shame, fear of societal stigma, or rejection from the community. Lack of medical assistance also reduces the ability to evidence and document SGBV in conflict, which precludes successful investigation and ultimately prosecution.^{xx}

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ⁱ United Nations, *Declaration on the Elimination of Violence against Women*, New York: United Nations Dept. of Public Information, 2000, Articles 1- 2; United Nations, Committee on the Elimination of Discrimination against Women (CEDAW), *General Recommendations Nos. 19 and 20, adopted at the Eleventh Session*, 1992, A/47/38, para. 6.

ⁱⁱ Krug EG et al., eds. WHO, *World report on violence and health*, Geneva, World Health Organization, 2002. Note that sexual violence is seen as one manifestation of gender-based violence and the scope of particular treaties or conventions may limit application to one aspect of gender-based violence or a particular act of sexual violence.

ⁱⁱⁱ UN Security Council, Security Council resolution 1820 (2008), [on acts of sexual violence against civilians in armed conflicts], 19 June 2008, S/RES/1820 (2008).

^{iv} UN Security Council, Security Council Resolutions on “women, peace, and security”: resolutions 1325 (2000), 1820 (2008), 1889 (2009), 1960 (2010), 2106 (2013); UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, , Treaty Series, vol. 1249, p. 13; CEDAW, *General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations*, 1 November 2013, CEDAW/C/GC/30.

^v International Committee of the Red Cross (ICRC), *Geneva Conventions*, 12 August 1949 and ICRC, *Protocols Additional to the Geneva Conventions of 12 August 1949*, 8 June 1977. Note that “armed conflicts” under international law can be international conflicts (involving two or more States or wars of liberation) or non-international conflicts (where government forces fight armed insurgents or armed groups fight one-another). IHL is applicable to both situations. It is beyond the scope of this note to outline the technicalities around “armed conflict” but further information is available in the documents suggested below.

^{vi} ICRC, *Four Geneva Conventions*, 12 August 1949, Common Article 3; ICRC, *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 12 August 1949, 75 UNTS 287, Article 27; ICRC, *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, 1125 UNTS Articles 75(2)(a)(b), 76 and 77(1); ICRC, *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, 8 June 1977, 1125 UNTS 609, Articles 4(2)(a) and (e); Meron T., *Human Rights and Humanitarian Norms as Customary Law*, 1989.

^{vii} ICRC, *Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention)*, 12 August 1949, 75 UNTS 135, Articles 14, 25, 29, 97, 108.

^{viii} The case law and governing statutes of the following bodies make this clear: International Criminal Court for the former Yugoslavia; International Criminal Court for Rwanda; Special Panels for Serious Crime; Special Court for Sierra Leone; the International Criminal Court; and the Extraordinary Court Chambers for Cambodia.

^{ix} UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249; CEDAW Recommendation No. 19, A/47/38, para. 7(c).

^x UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13; CEDAW, *General recommendation No. 30, on women in conflict prevention, conflict and post-conflict situations*, 1 November 2013, CEDAW/C/GC/30.

^{xi} United Nations, CEDAW Recommendation No. 30, CEDAW/C/GC/30, paras 8-12.

^{xii} UN Security Council, *Security Council resolution 1325 (2000), [on women and peace and security]* , 31 October 2000, S/RES/1325 (2000).

^{xiii} UN Security Council, Security Council Resolutions on “women, peace, and security”: resolutions 1325 (2000), 1820 (2008), 1889 (2009), 1960 (2010), 2106 (2013).

^{xiv} ICRC, *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 12 August 1949, 75 UNTS 287, Articles 49, 50, 129 and 146. Under these articles, States are required to search for and bring before a court alleged offenders “regardless their nationality”. The articles have been interpreted as providing mandatory universal jurisdiction. Customary international law, which extends to all violations of the laws and customs of war constituting war crimes, does not impose an obligation on States but a right to vest universal jurisdiction in their national courts.

^{xv} United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, Article 2(1).

^{xvi} Viseur Sellers P., *The Prosecution on sexual violence in conflict: The importance in Human Rights as Means of Interpretation*, p. 30-31.

^{xvii} United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, Articles 24 (1).

^{xviii} *Rome Statute of the International Criminal Court*, 17 July 1998, A/CONF.183/9, Article 13(b); United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, Article 41.

^{xix} United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, Article 27.

^{xx} UN Secretary-General (UNSG), *Conflict-related sexual violence: report of the Secretary-General*, 13 January 2012, A/66/657*S/2012/33, para. 16.

RELATED DPI PUBLICATIONS

¹ DPI FFM, *The Gendered effect of conflict: Turkey*, DPI, London, August 2011.

² DPI FFM, *A Study into the Ways to Better Incorporate Women into Peacebuilding and Conflict Resolution Through the Implementation of UNSCR 1325*, DPI, London, November 2014.

OTHER USEFUL DOCUMENTS

¹ Buss, Doris, Joanne M. Lebert, Blair A. Rutherford, Donna Sharkey, and Obijiofor Aginam, *Sexual Violence in Conflict and Post-Conflict Societies: International Agendas and African Contexts*, New York: Routledge, 2014.

² Leatherman, Janie L., *Sexual violence and armed conflict* Cambridge, UK and Malden, MA: Polity Press, 2011.

³ Shteir, S., *Conflict related sexual and gender-based violence: An introductory overview to support prevention and response efforts*, Civil-Military Occasional Paper. Queanbeyan NSW: Australian Civil-Military Centre, 2014.

⁴ International Criminal Court, *Policy Paper on Sexual and Gender-Based Crimes*, June 2014.

⁵ United Nations, Division for the Advancement of Women, *Ending Violence Against Women: From Words to Action*, Volume 795, 2006.