

UN, Secretary General: Report on conflict-related sexual violence

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N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

Report of the Secretary General on conflict-related sexual violence

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I. Introduction

1. The present report, which covers the period from January to December 2014, is submitted pursuant to paragraph 22 of Security Council resolution 2106 (2013), in which the Council requested me to report annually on the implementation of resolutions 1820 (2008), 1888 (2009) and 1960 (2010) and to recommend appropriate actions. The report presents information on parties to conflict credibly suspected of committing or being responsible for acts of rape and other forms of sexual violence. The year under review was marked by harrowing accounts of rape, sexual slavery and forced marriage being used by extremist groups, including as a tactic of terror.
2. The term “conflict-related sexual violence”, which appears throughout the present report, refers to rape, sexual slavery, forced prostitution, forced pregnancy, enforced sterilization and other forms of sexual

violence of comparable gravity perpetrated against women, men, girls or boys that is linked, directly or indirectly (temporally, geographically or causally) to a conflict. This link may be evident in the profile of the perpetrator; the profile of the victim; in a climate of impunity or State collapse; in the cross-border dimensions; and/or in violations of the terms of a ceasefire agreement.

3. While conflict-related sexual violence occurs in many settings, the present report focuses on 19 country situations for which credible information is available. It covers 13 conflict settings, 5 post-conflict countries and 1 additional situation of concern. It highlights actions taken and challenges faced by States in attempting to protect civilians from such violence [...]

4. The report is based on cases documented by United Nations peacekeeping and political missions as well as country teams. As such, it is only indicative of the scale and character of sexual violence globally. It is noteworthy that the increased presence of Women's Protection Advisers in the field has made a tangible contribution to improving the quality of information and analysis received. Moreover, since the establishment of the post of my Special Representative on Sexual Violence in Conflict, ground-breaking gains have been made in terms of traction with national authorities, accountability and engagement with armed forces and groups, though momentous challenges remain.

II. Sexual violence as a threat to international peace and security: overview of current and emerging concerns

5. Sexual violence during and in the wake of conflict continues to be dramatically underreported because of the risks, threats and trauma faced by those who come forward. These risks affect not only the survivors, but also witnesses, human rights defenders, service providers, journalists, justice officials and others who seek to ensure that sexual violence is no longer suffered in silence. Despite the political momentum and visibility gained in recent years, the reality on the ground is that many Governments have not been able to create an environment in which survivors feel safe to report sexual violence. The fear of stigmatization and reprisals is almost universal, and often compounded by a sense of futility stemming from the limited services available and the painfully slow pace of justice. Even in settings where primary health care is available, further capacity-building and resources are urgently needed to help frontline staff deliver comprehensive care, including mental health and psychosocial support. In situations of live conflict, such as the Central African Republic, Iraq, Somalia, South Sudan, the Sudan and the Syrian Arab Republic, service provision is further impeded by access restrictions and a climate of fear.

6. In 2014, sexual violence against adolescent girls, including incidents of rape, sexual slavery and forced marriage, continued to be a disturbing trend. The ideological opposition of extremist groups to the education of girls has placed them at heightened risk of abuse. Other trends include the use of sexual violence as a form of persecution to forcibly displace populations as well as the vulnerability of displaced and refugee women and girls to sexual abuse. The threat or use of sexual violence as a form of ill-treatment in detention settings (often against men and boys) is evident in many situations. The targeting of individuals on the basis of their (actual or perceived) sexual orientation has come to light as a form of social control employed by certain armed groups in the Syrian Arab Republic, Iraq and elsewhere. In recent months, sexual violence in the context of rising violent extremism has captured the attention of the world. This transnational threat

makes it more urgent than ever to confront the challenge of engaging non-State actors.

7. Displaced civilians fleeing their homes in fear for their lives owing to instability in the Syrian Arab Republic or the Horn of Africa remain at high risk, even when they reach the supposed refuge of neighbouring countries. There have been rising numbers of displaced civilians in the Sudan (Darfur) over the past year, with attendant reports of sexual violence. In the Democratic Republic of the Congo, vulnerability persists both for those displaced internally and those who seek to cross the border into neighbouring Angola or the Republic of the Congo. Forced dispossession effectively denies women a vital source of livelihood. In Colombia, women working with displaced communities and calling for land restitution have been targeted by armed groups and subjected to repeated sexual assault. Around the world, both urban and camp environments pose considerable risks of sexual exploitation for women and girls. Particular attention must be paid to the underlying

political economy of violence, including competition for the control of natural resources and mining settlements by armed groups, which correlates with increased civilian displacement, human trafficking and sexual abuse, as witnessed in the Democratic Republic of the Congo and elsewhere [...]

8. Sexual violence perpetrated by State actors or armed groups associated with the State remains of grave concern in countries such as the Sudan (Darfur), South Sudan, the Syrian Arab Republic and the Democratic Republic of the Congo. Indeed, in recent years, particular emphasis has been placed on the responsibility of Governments to protect the civilian population. This has been exemplified by such actions as the appointment of advisers to fight sexual violence and the adoption of codes of conduct and action plans by militaries, as occurred in the Democratic Republic of the Congo and Côte d'Ivoire, or zero-tolerance policies for the armed forces, as exists in Colombia and Nepal. However, non-State actors account for the vast majority of incidents, and engaging them raises political and operational challenges. Sexual violence perpetrated by non-State armed groups, including those pursuing extremist ideologies in Iraq, Syria, Somalia, Nigeria, Mali, Libya and Yemen, was of grave concern during 2014 and efforts to degrade or destroy the capacity of groups like Islamic State in Iraq and the Levant (ISIL), Al-Shabaab, Boko Haram, Ansar Dine and Al-Qaida affiliates are an essential part of the fight against conflict-related sexual violence.

[...]

10. Indeed, the era of silence has been replaced by international recognition that the shame of sexual violence resides not in the victims but in the perpetrators and any party that condones or conceals their conduct. However, serious concerns persist about official denials and efforts to downplay these crimes, including pressure to induce victims and witnesses to withdraw their complaints. Evidence of sexual violence is not always readily apparent or easily traced, hence the need for timely, independent and transparent investigations, linked to services and survivor care.

11. Across the varied contexts examined in the present report, a common point is that waves of conflict-related sexual violence take place against a backdrop of structural gender-based discrimination, including in formal and informal systems of law, and the exclusion of women from political life. For example, the disempowerment of women that attends the rise of violent extremism is not incidental, but systemic. In countries where conflict-related sexual violence is most prevalent, safe abortion is inaccessible or illegal and survivors face the risk of becoming victims of “honour” or “morality” crimes, as well as economic

marginalization. Often, women and girls are subjected to sexual violence when they are engaged in tasks that are socially prescribed on the basis of gender, such as collecting firewood or water, as documented in Darfur, the Democratic Republic of the Congo and northern Nigeria. Moreover, the occurrence of many incidents reveals that it is precisely the mechanisms of coping with conflict that place women and girls at risk of sexual violence, whether it be forced displacement to escape the fighting, early marriage to “protect” daughters or sexual exploitation as a means of survival. Some women even face double victimization if they report crimes to predatory security officials or are compelled to marry the perpetrator as a form of traditional settlement, as documented in Somalia, South Sudan and elsewhere. These dynamics affirm that efforts to prevent conflict, foster equality and build gender responsive institutions are central to eradicating the scourge of sexual violence.

A. Sexual violence in conflict-affected settings

Afghanistan

[...]

Central African Republic

[...]

Colombia

17. In 2014, the Government of Colombia took important steps to address more than five decades of internal armed conflict in which sexual violence has been regarded as systematic, according to Colombian Constitutional Court Order 092. A landmark law on access to justice for victims (Law 1719), aimed at enhancing the status of sexual violence survivors so that they can receive reparations, psychosocial support and free medical care, was signed by President Juan Manuel Santos on 18 June 2014. Law 1719 explicitly recognizes that sexual violence can constitute a crime against humanity and that there can be no statute of limitations for such crimes. It includes offences that were previously omitted from the Penal Code, such as enforced sterilization, forced pregnancy and forced nudity, and adds specific reference to aggravating circumstances, for example when sexual violence is committed as a form of retaliation against or intimidation of human rights defenders.

18. Furthermore, in August 2014, Decree 1480 was adopted, establishing 25 May as the National Day for the Dignity of Women Victims of Sexual Violence caused by the Internal Armed Conflict, as a measure of collective reparations. In 2014, 2,081 women victims of “crimes against sexual freedom and integrity” received compensation, out of a total of 7,353 victims registered between 1985 and 2014. In November 2014, the Peace and Justice Tribunal in Bogotá delivered a milestone judgement in the case of Salvatore Mancuso and others, which addressed 175 cases of sexual violence, including kidnapping of women for the purpose of prostitution and sexual slavery, sexual assault, forced sterilization and forced abortion. The judgement ordered Mancuso and other paramilitary leaders to provide reparations to over 9,500 people,

including victims of conflict-related sexual violence, and to issue a public apology.

[...]

20. Reports indicate that sexual violence has been used by non-State armed groups as a strategy to assert social control and to intimidate civilians, in particular women leaders and human rights defenders. It has also been employed as part of extortion strategies, with women who are unable to pay being subjected to sexual violence to set an example for others. Women living in close proximity to illegal mining settlements controlled by armed groups are at heightened risk of sexual exploitation, forced prostitution and trafficking. According to the Office of the Ombudsman, there have been cases of targeted sexual assault against women's rights defenders who raise their voices in support of land restitution. Conflict-related sexual violence remains a driver of displacement in Colombia, disproportionately affecting ethnic minorities in remote rural areas. Sexual violence committed against lesbian, gay, bisexual, transgender and intersex individuals, as a form of "corrective violence" or to "cleanse the population", has caused many to flee areas under the influence of armed groups.

21. Other noteworthy developments include the participation of survivors of sexual violence in the peace talks held in Havana, as part of a group of 60 victims that addressed the negotiations. Following the creation of a "gender subcommission" in September 2014, leaders of women's rights and sexual diversity organizations also participated in the talks. As a result of both exercises, conflict-related sexual violence has been raised at the negotiations by both survivors and stakeholders; this is an innovation that not been seen in any prior peace process.

Recommendation

22. I commend the Government of Colombia for the progress made to date and its collaboration with the United Nations, including through the visit of my Special Representative on Sexual Violence in Conflict in March 2015. I encourage the authorities to implement Law 1719 and continue to prosecute cases of sexual violence committed during the conflict to ensure that survivors receive justice and receive reparations. Conflict-related sexual violence should continue to be addressed in the Havana peace talks, as well as in the resulting accords and transitional justice mechanisms. Particular attention should be paid to groups that face additional barriers to justice such as ethnic minorities, women in rural areas, children, lesbian, gay, bisexual, transgender and intersex individuals and women abused within the ranks of armed groups. I encourage the Government to scale up its protection measures and share its good practices with other conflict-affected countries.

Democratic Republic of the Congo

[...]

Iraq

[...]

Libya

[...]

Mali

[...]

Myanmar

41. Information verified by the United Nations indicates that sexual violence remains widespread in Kachin State, where armed conflict continues, as well as in northern Shan and Rakhine States and areas subject to ceasefire agreements in Chin State and the south-east of the country. Intercommunal fighting in Rakhine State has placed Muslim women in particular in a precarious position owing to restrictions on movement and lack of services. Recent reports by women's groups indicate that sexual violence perpetrated by members of the armed forces continues, with 14 cases of gang rape and attempted sexual assault documented between January and June 2014. Reports further suggest that the resurgence of conflict and resulting civilian displacements have heightened the risk of sexual violence. Forced marriages of women and girls have been reported as well as cross-border trafficking for the purpose of sexual exploitation, exacerbated by poverty and the breakdown of community structures. Since early 2014, there has been a marked increase in dangerous migration practices and a surge in the trafficking of adolescent girls as well as an increase in the incidence of sexual violence in areas affected by the crisis. However, reporting of such cases is impeded by gaps in service coverage as well as a requirement that medical care providers share information with the authorities, which compromises confidentiality. Factors exacerbating sexual violence in ethnic areas include the protracted conflict over land and resources, the wide availability of illegal drugs and the close proximity to civilian population centres and internally displaced persons camps of military bases of all the parties to conflict.

42. The transition process in Myanmar has presented an opportunity for advancing women's rights and the Government's endorsement of the Declaration of Commitment to End Sexual Violence in Conflict in June 2014 and the development of specific legislation on violence against women are promising signs. Nevertheless, during 2014 there continued to be a high level of impunity for conflict-related sexual violence perpetrated by State actors and a lack of transparency in military courts. While the Government has adopted a zero-tolerance policy for sexual misconduct by its military personnel, successive Special Rapporteurs of the Human Rights Council on the situation of human rights in Myanmar have recommended that the Constitution be amended to ensure that security forces are subject to the rule of law and civilian oversight. In 2014, the Government prosecuted two perpetrators of rape who were members of the military: one Tatmadaw soldier received a 13 –year sentence for the rape of a 14-year-old girl and the other was sentenced to life imprisonment for rape. While these are promising first steps, legal recourse needs to be available uniformly and systematically and must become a better-known part of an overall culture of redress in Myanmar. For example, the family of a 10-year-old girl who was raped by a soldier in early 2015 was induced by the army to accept a financial settlement and to sign a statement that they would not prosecute the offender.

Recommendation

43. I urge the Government of Myanmar to continue with its reform agenda and, in the process, take practical and timely actions to protect and support survivors of conflict-related sexual violence and to ensure that security personnel accused of such crimes are prosecuted. Sexual violence should be an element in all ceasefire and peace negotiations, excluded from the scope of amnesty provisions and addressed in transitional justice processes. It is critical that women be able to participate consistently in and influence these processes.

Somalia

[...]

South Sudan

[...]

Sudan (Darfur)

[...]

Syrian Arab Republic

[...]

Yemen

[...]

B. Addressing crimes of sexual violence in post-conflict settings

Bosnia and Herzegovina

67. Twenty years after the end of the war, conflict-related sexual violence remains a sensitive political issue, with slow progress made in establishing a comprehensive support system for survivors. The Government has recently expressed its intention to address conflict-related sexual violence, but has focused primarily on prosecution rather than the broad range of needs. The absence of services extends to children born of wartime rape, who face particular risk of stigma, abandonment, rejection and low socioeconomic status. The stigmatization and economic marginalization of rape survivors themselves remains a concern. The United Nations country team in Bosnia and Herzegovina has launched a joint project to tackle the legacy of conflict-related sexual violence. This project seeks to improve redress for survivors by mapping needs and capacities, improving access to justice and services and reducing stigma. The Peace Support Operations Training Centre, with support from UN-Women, continues to provide predeployment training on conflict-

related sexual violence for armed forces in Bosnia and Herzegovina and the region. The inclusion of a specific objective on conflict-related sexual violence in the second national action plan for the implementation of Security Council resolution 1325 (2000) is a positive development that lays the foundations for enhanced service delivery to survivors.

Recommendation

68. I urge the relevant authorities in Bosnia and Herzegovina to harmonize legislation and policies so that the rights of survivors of conflict-related sexual violence to reparations are consistently recognized and to allocate a specific budget for this purpose. I further call upon the authorities to protect and support survivors participating in judicial proceedings through, inter alia, referrals to free legal aid, psychosocial and health services, as well as economic empowerment programmes.

Cote d'Ivoire

[...]

Liberia

[...]

Nepal

75. Survivors of sexual violence during Nepal's civil conflict have not yet been officially recognized as "conflict-affected persons", which limits their access to the Government's interim relief programme. As a result of their exclusion, there have been no dedicated services for survivors, though some support has been secured through peace building and development projects. In terms of ongoing institutional reforms, there are as yet no safeguards to prevent individuals accused of human rights violations from being retained and promoted within the security forces. One of the key obstacles to addressing the legacy of conflict-related sexual violence in Nepal is the lack of comprehensive documentation on its scope and character. In April 2014, the Parliament of Nepal adopted the Act on the Commission on Investigation of Disappeared Persons, Truth and Reconciliation, 2071, which established two commissions: the Truth and Reconciliation Commission and the Commission of Inquiry on Disappearances. The Act acknowledged rape and other forms of sexual violence as "serious violations of human rights". The Minister of Foreign Affairs participated in the Global Summit to End Sexual Violence in Conflict, where he stressed that Nepal had adopted a zero-tolerance policy on sexual and gender-based violence. Nevertheless, challenges to accessing justice remain. For example, the 35-day statute of limitations for the filing of a rape complaint has not yet been amended, despite the 2014 Supreme Court ruling that there should be no statute of limitations for international crimes.

Recommendation

76. I encourage the Government to ensure that survivors of conflict-related sexual violence are recognized under the law as "conflict victims", which will enable them to access services, judicial remedies and reparations. I further call on all parties involved in the transitional justice process to ensure that the rights and

needs of survivors of sexual violence are addressed in institutional reforms and that these crimes are excluded from amnesties and statutes of limitations.

Sri Lanka

[...]

C. Other situations of concern

Nigeria

79. One of the most alarming episodes of 2014 was the abduction on 14 April of 276 girls from a government secondary school in Chibok, Borno State, by Boko Haram. This incident must be viewed in the context of over six years of insurgency in northern Nigeria characterized by consistent human rights violations, including abduction and sexual abuse, by Boko Haram. In addition, the deteriorating security and humanitarian situation in the north-east has resulted in large-scale displacement which, according to humanitarian workers and displaced civilians, has led to rape and child trafficking during population flight and in internally displaced persons camps. However, as the Nigerian Police Gender Unit notes, sexual and gender-based violence is rarely reported owing to fear of stigmatization and prevailing cultural beliefs.

80. In Borno State, Boko Haram has abducted women and girls, often forcing them into marriages that entail repeated rape. These marriages are sometimes proposed as a form of “protection” from rape by other members of the group. Abducted girls who refuse marriage or sexual contact within marriage have faced violence and death threats. Forced marriage, enslavement and the “sale” of kidnapped women and girls are central to Boko Haram’s modus operandi and ideology. As part of the counter-insurgency response, the Government has deployed a joint task force comprising military, police, immigration and intelligence officers. Vigilantes, referred to as the “civilian joint task force”, have also emerged to protect their communities from insurgents. All counter-insurgency operations should take into account the security of women and girls.

Recommendation

81. I encourage the Government to implement its national action plan on the implementation of Security Council resolution 1325 (2000) to ensure that women’s protection concerns are mainstreamed throughout its security operations. I also call upon the authorities to guarantee security in and around internally displaced persons camps and to extend medical and psychosocial services to high-risk areas.

III. Sexual violence perpetrated in the context of rising violent extremism

[...]

IV. Activities of United Nations Action against Sexual Violence in Conflict

[...]

V. Activities of the Team of Experts on the Rule of Law and Sexual Violence in Conflict

[...]

VI. Recommendations

[...]

Discussion

I. Protection against rape and sexual violence

1. What protection does IHL provide against sexual violence? Does IHL expressly prohibit sexual violence in international armed conflicts? In non-international armed conflicts? (GC I-IV, Common Art. 3; P II, Art. 4(2) (a) and (e); CIHL, Rules 90, 91 and 93; GC IV, Art. 27; P I, Arts 75(2) and 76)
2. (*Para. 2*) When is sexual violence conflict-related? Are the criteria listed in para. 2 also sufficient to establish the nexus necessary for IHL to apply? For the act to constitute a war crime?
3. (*Para. 17*) Can sexual violence be seen as an act or threat of violence the primary purpose is to spread terror among the civilian population? Does such a prohibition exist only in IAC or also in NIAC? (P I, Art. 51(2); CIHL, Rule 2)
4. (*Para. 80*) Under IHL, may a general practice of forced marriage be considered per se as an attack against the sexual integrity of women? Or does it entail repeated rapes? (GC IV, Art. 27)

II. Internally displaced persons

5. (*Paras. 6; 20*) Does IHL prohibit using sexual violence as a form of persecution to provoke the displacement of the population? In IAC, would such a prohibition apply in both own and occupied territory? (GC IV, Art. 49; P II, Art. 17)
6. (*Paras. 6; 79*) In the light of this report, may a relation between internal displacement and sexual abuse be established? Under IHL, internally displaced persons receive the same protection as other civilians: in your opinion, does their vulnerability call for a specific regime instead?

III. State responsibility

7. (*Para. 5*) When states do not create an environment in which survivors of conflict-related sexual violence feel safe to report it, do they violate the prohibition of sexual violence? The obligation to prosecute grave breaches and war crimes? Their obligation to respect and ensure respect for the Geneva Conventions in all circumstances? Under IHL, do these obligations apply only during an armed conflict or also in the aftermath of it? (GC I-IV, Art. 1; GC I-IV, Common Art. 3; P II, Art. 4(2) (a) and (e); CIHL, Rules 90, 91 and 93; GC IV, Art. 27; P I, Arts 75(2) and 76; GC I-IV, Arts. 49, 50, 129, 146; CIHL, Rule 150)
8. (*Para. 8*) Does the obligation upon states to ensure respect for the Geneva Conventions also cover acts carried out by members of non-state armed groups? Or does it cover only acts carried out by individuals upon whom states may exercise control, like civilians?
9. Shall the obligation upon states to ensure respect for the Geneva Conventions be respected through organizations of states, like the United Nations? (P I, Art. 89)

IV. Criminal responsibility

10. (*Para. 75*) Whether sexual violence is defined as a “serious violation of human rights”, may it amount to a grave breach of the Geneva Conventions in IAC? May it be included in the list of war crimes in NIACs? (GC I, Art. 50; GC II, Art. 51 GC III, Art. 130; GC IV, Art. 147; GC I-IV, Art. 3; CIHL, Rule 151)

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