

THEORY AND PRACTICES OF LAW

DOI <https://doi.org/10.30525/2592-8813-2024-2-1>

SEXUAL AND GENDER BASED VIOLENCE IN ARMED CONFLICTS: PROBLEMS OF DEFINING AND CREATING A PREVENTION MECHANISM

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Abstract. In this comprehensive analysis, the article delves into the multifaceted nature of gender-based violence, highlighting its impact on individuals' health, development, and identity, primarily stemming from entrenched gender inequalities. It underscores the challenge in documenting and prosecuting such violence, exacerbated by stigmatization and access barriers to essential services for survivors. The study emphasizes the role of key international human rights documents, like the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), in advocating for gender equality and safeguarding human rights and fundamental freedoms. Through a review of scholarly work and an examination of the current state of gender-based violence in conflict zones, the article identifies a pressing need for mechanisms to prevent and address such violence effectively. It critically assesses the role of international legal frameworks and the Geneva Conventions in establishing accountability and protective measures for women, while also recognizing the persistent issues of impunity and the complex factors contributing to sexual violence in conflicts, including power dynamics and systemic vulnerabilities. The article advocates for enhanced legal and institutional responses at both national and international levels to bridge the gap between law and reality, proposing the establishment of an International Gender Unit as a proactive measure towards integrating gender perspectives into peace and security policies. Finally, it calls for concerted efforts to enforce the prohibition of sexual violence, underscoring the necessity of global and localized action.

Key words: sexual violence, international humanitarian law, international human rights law, international criminal law, crimes against humanity, acts of genocide.

Introduction. Gender-based violence is a concept that can be used to describe any form of violence: physical, sexual, psychological, economic, sociocultural, which has a negative impact on the physical or psychological health, development and identity of an individual and is the result of gender-based inequalities among men and women based on differences between them.

According to Sima Bacchus, Executive Director of UN Women: “Gender-based violence is one of the most difficult international crimes to document and prosecute. Widespread stigmatization prevents survivors from speaking out or seeking the support they need. This, in turn, limits survivors' access to important medical and legal services, leading to unresolved problems. Allegations of sexual violence must be thoroughly investigated, prioritizing the rights, needs and safety of victims”.

One of the most important human rights documents for achieving this goal is the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which has now been adopted by 185 countries. This document states: “The Convention provides a framework for achieving equality between women and men by ensuring women equal access to and equal opportunities in political and public life, including the right to vote and to stand for election, as well as in education, health and employment. States Parties agree to take all appropriate measures, including legislative and temporary special measures, to ensure that women are able to enjoy all human rights and fundamental freedoms”. International organizations also have difficulties in documenting, and the data they collect is fragmented. However, it is a mistake to use the term “gender-based violence” exclusively as violence against women, although it should be borne in mind that the vast majority of violence is committed against women. Gender-based violence against women is a manifestation (act) of gender-based violence. That is why the international community's attention to combating this phenomenon is fully justified.

Analysis of scientific publications. Certain aspects of the issue of sexual and gender-based violence in armed conflicts have been studied to some extent by several researchers – Banwell Stacy, Mykola Hnatovsky (current ECHR judge from Ukraine), Iryna Hloviuk, Gaggioli Gloria, Maulidyta Allyanisa, Alief Hidayat Muhamad, Natalia. Dremina-Volok, Anton Korynevych, Timur Korotkyi, Vasyl Repetskyi.

The aim of the work. The *aim of the article* is to analyze the problems of defining and creating a mechanism for preventing sexual and gender-based violence in armed conflicts.

Methods. Determining the methodological basis was one of the important stages of this study. The methodology is based on a comprehensive approach to the analysis of the object and subject of the study, which covers a wide range of general philosophical, general scientific, special scientific and legal methods. The general methodological basis of the study is the dialectical method of scientific knowledge, which ensured a comprehensive study of the inherent connection between doctrine and practice. Among the interdisciplinary methods, a special place in the study is occupied by the systemic-structural method, on the basis of which the systemic links of sexual and gender-based violence in armed conflicts were studied and substantiated. The use of the psychological method made it possible to reveal the nature of sexual and gender-based violence in armed conflicts. The established regularities, generalisations and conclusions of the author, including those that constitute the novelty of the study, are largely based on the results of the scientific analysis of sexual and gender-based violence in armed conflicts, carried out using the empirical research method. As an important methodological principle, a logical method of clear research design was used, based on the need to study sexual and gender-based violence in armed conflicts.

Such modern methodological approaches as anthropological and synergistic were also actively used. The anthropological method focused the research on the human-centred nature of the problem of sexual and gender-based violence in armed conflicts. The synergistic method, as a qualitatively new approach to scientific knowledge, allowed us to identify the basic principles and patterns of functioning of the subjects of interpretation and the formation of their interpretive methodology.

Objectively, the author has widely used specific legal research methods. In particular, the formal legal method was used to study international treaties and other international documents, as well as national legislation of Ukraine, in analysing the case law of international justice bodies, as well as the practice of Ukrainian courts on sexual and gender-based violence in armed conflicts.

Results and discussions. The protection of women entitled to human rights, constitutional protections, and legal responsibilities, is crucial. Unfortunately, rape against women is often utilized as a tool of warfare, carrying various harmful implications such as degradation, intimidation of opposing forces, and the suppression of women's rights, turning it into a tactical weapon of war. This egregious crime represents a violation of humanitarian law and underscores a failure of the state to safeguard its citizens during conflict. International legal frameworks, particularly the Geneva Conventions of 1949 and the Additional Protocol of 1977, play a pivotal role in addressing these issues by establishing mechanisms for accountability and enforcing obligations to protect women.

Sexual violence has been a persistent issue throughout history, occurring across different continents and persisting in contemporary armed conflicts. However, sexual violence often remains hidden due to factors such as victims' feelings of guilt or shame, fear of reprisals, or cultural taboos that discourage disclosure. Additionally, practical barriers like security risks, geographical distance, and transportation costs further hinder victims from seeking assistance.

Sexual violence is not an inevitable consequence of war, it is a crime. It is important that these violations of international humanitarian law (IHL) are prosecuted and that survivors are supported in their quest for justice (*En quête de justice pour les personnes ayant subi des crimes de guerre basés sur le genre*, 2022).

The United Nations High Commissioner for Refugees (UNHCR) defines sexual and gender-based violence as any act committed against a person's will, based on gender norms and unequal power relations. It includes threats of violence and coercion, and can be physical, emotional, psychological or sexual in nature, and can even take the form of denial of access to resources or services (Sexual and Gender Based Violence. UNHCR, the UN Refugee Agency). The International Criminal Tribunal for Rwanda recognized that “sexual violence is not limited to physical assault on the human body” and can include acts not involving penetration or even physical contact (Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, 1994).

Sexual violence, intensifying in regions like the Democratic Republic of the Congo, Ethiopia, Haiti, and South Sudan, has been documented in Ukraine by the UN as a form of torture against civilians and POWs. In May 2023, a United Nations Framework of Cooperation was signed with Ukraine to address and prevent such violence (Conflict-Related Sexual Violence Report of the United Nations Secretary-General S/2023/413, 2023). Impunity for sexual violence remains widespread, exacerbated by digital threats, climate insecurity, state fragility, and gender inequality. The breakdown of rule of law institutions has led to a “rule of lawlessness”, weakening defenses against such atrocities (Conflict-Related Sexual Violence Report of the United Nations Secretary-General S/2023/413, 2023).

Sexual violence in conflicts, driven by power and dominance rather than sexual desire, affects both women and men, perpetrated by various actors including state forces and non-state groups. It often occurs alongside other abuses and is fueled by impunity, lack of clear prohibitions, and victim vulnerabilities. Its strategic use in conflicts has widespread, devastating effects on victims, their families, and communities, undermining social cohesion and causing deep psychological and physical trauma (Conflict-Related Sexual Violence Report of the United Nations Secretary-General S/2023/413, 2023).

In 2022, under Security Council resolution 1888 (2009), the Team of Experts on the Rule of Law and Sexual Violence in Conflict aided over a dozen countries, including Ukraine, in bolstering legal systems for better accountability on conflict-related sexual violence. They supported the implementation of the Framework of Cooperation, aimed at strengthening the justice sector, creating victim

reparations programs, and addressing conflict-related human trafficking. Additionally, they reviewed Ukraine's legal provisions on such violence and helped develop survivor-focused case management strategies with the Prosecutor General's Office (Conflict-Related Sexual Violence Report of the United Nations Secretary-General S/2023/413, 2023).

Rape and sexual violence are strictly forbidden under international humanitarian and human rights law. These acts, potentially constituting war crimes, crimes against humanity, or acts of genocide, carry individual criminal responsibility. Despite a legal framework uniting different branches of international law, the gap between legal standards and their enforcement remains significant. Strengthening domestic and international efforts to prosecute sexual violence and ensuring compliance with IHL are critical for bridging this gap and combating sexual violence in conflicts, challenging the notion that such violence is an unavoidable aspect of warfare (Gaggioli, 2015).

Sexual violence in conflicts, driven by power rather than sexual desire, affects both genders and can be perpetrated by various actors, including state forces and non-state groups. It's not inevitable but preventable with a strong legal framework and effective institutions. International law, having evolved over two decades, offers a comprehensive approach to criminalize and address sexual violence, necessitating better implementation at both national and international levels to reduce its occurrence. The International Committee of the Red Cross has adapted its approach to support victims even without allegations. Despite legal frameworks, the gap between laws and their application remains, underlining the need for enhanced enforcement to protect communities and provide justice for victims.

Prior to discussing the international legal standards for addressing sexual violence within the realms of international humanitarian law, human rights law, and international criminal law, essential concepts including sexual violence and rape will be clarified. The final section will explore the gap between legal provisions and their real-world implementation, offering potential remedies (Gaggioli, 2015).

Other forms of sexual violence can also amount to cruel, inhuman, or degrading treatment or punishment. These include: forcing close relatives to witness a rape is a violation of the right to humane treatment (*Ana, Beatriz and Celia González Pérez v. Mexico*, Inter-American Court of Human Rights); forced sterilization is cruel treatment (UN Committee against Torture); personal inspection of a male prisoner in the presence of a female prison officer is degrading treatment (*Valasinas v. Lithuania*, ECtHR).

Rape may constitute a form of torture, which is justified by the fact that it falls within the essential elements of the definition of "torture" as set out in Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention against Torture). Firstly, it always causes "severe pain or suffering" by its nature; secondly, it is always committed "intentionally"; thirdly, in some cases it may pursue a specific purpose, such as intimidation; and fourthly, it is almost always intended to coerce the victim. The last element, coercion, is considered an integral element of armed conflict (Zheltukha, 2021).

In September 2023, the New Lines Institute stated that "since the start of the conflict between Russia and Ukraine in 2014, there have been countless reports of conflict-related sexual violence (CRSV) committed by the Russian forces against Ukrainian civilians of all ages and genders" in its report "Conflict-Related Sexual Violence in Ukraine". The report provides information on the following: "women in particular have faced extensive sexual violence during this conflict; they have reported being gang raped, having their families be forced to watch Russians raping them, being branded by soldiers after their rapes, being held as sexual slaves, and being raped until they are pregnant – all of which act as a deliberate method to subjugate the survivors and further break down societal norms and bonds" (Prey, Domi and Kinsey, 2023).

The global community needs to respond promptly, with a focus on justice that prioritizes the survivors. Since the beginning of the conflict between Russia and Ukraine in 2014, there have been countless

reports of conflict-related sexual violence (CRSV) committed by the Russian military against Ukrainian civilians of all ages and genders. Women have been subjected to massive sexual violence during this conflict; they have reported being gang raped, forced by their families to watch Russians rape them, branded by soldiers after the rape, held as sex slaves, and raped until they became pregnant – all of which act as a deliberate method of subjugating survivors and further destroying social norms and ties.

The Authors of a New Lines Institute' report on conflict-related sexual violence (CRSV) in Ukraine provide specific recommendations (Prey, Domi and Kinsey, 2023).

For International Community:

– *Expand the Scope of Universal Jurisdiction*: Encourage states to exercise universal jurisdiction rigorously to bring perpetrators of conflict-related sexual violence (CRSV) to justice. This legal principle should be utilized to its full extent, transcending geographical limitations, thereby allowing states to prosecute CRSV cases irrespective of where the crimes occurred, the nationality of the perpetrators, or the victims.

– *Strengthen Commitment to the Genocide Convention*: Reaffirm the principles laid out in the 1948 Genocide Convention to deter genocidal acts, including the forced transfer of children from Ukraine. This adoption should come with a renewed commitment to enforcing its provisions and undertaking preventive measures.

– *Embed Women, Peace, and Security Agenda Robustly*: Ensure that peace negotiations intrinsically include the Women, Peace, and Security agenda, giving women and CRSV survivors not just a voice but a decisive role in the peace process, thereby honoring their experiences and perspectives in creating enduring peace.

– *Utilize Comprehensive Guides for State Obligations*: States and relevant organizations should employ detailed frameworks like the Guidebook on State Obligations for CRSV, adapting its guidelines to formulate responsive and victim-centric strategies to combat sexual violence effectively.

For Ukraine:

– *Comprehensive Reparations Conversations*: Structure reparations discussions to encompass a full suite of supports, including but not limited to financial compensation, healthcare services, legal assistance, and social reintegration programs, tailoring these to meet the diverse needs of victims.

– *Guarantee Access to Free Legal Aid*: Offer survivors free legal assistance to ensure that the burden of legal fees does not become a barrier in their pursuit of justice. This aid should be comprehensive, including advice, representation, and support through all stages of legal proceedings.

– *Harmonize Domestic Investigation Standards*: Align the investigation procedures and standards for CRSV crimes with international protocols and best practices to reinforce the quality and fairness of judicial processes, ensuring credibility and adherence to global human rights norms.

– *Legal Safeguards for Children Born of War*: Swiftly enact and implement legal protections for children born of wartime sexual violence, recognizing their rights and providing them with access to necessary social services, including education and healthcare.

– *Pursue Accountability without Bias*: Conduct thorough investigations and prosecute all war crimes impartially, including those possibly committed by Ukrainian nationals, to demonstrate an unflinching commitment to justice and the rule of law.

– *Embrace Technological Solutions in Court Proceedings*: Utilize advanced technological solutions such as facial anonymization and voice modulation tools during court testimony to protect the identities of CRSV survivors, thus encouraging more victims to come forward with their testimonies in a secure environment.

On December 6, 2023, Global Rights Compliance, in collaboration with the governments of Ukraine and the Netherlands convened a panel to review progress and strategize on prosecuting sexual and gender-based violence as war crimes within Ukraine's domestic legal framework. The discussion highlighted the significant uptick in such crimes since the conflict's escalation in February

2022, with Ukraine's Prosecutor General's Office actively investigating over 250 cases, including those affecting men and children.

The conversation acknowledged the unique challenges faced by Ukraine in addressing these crimes, emphasizing the need for persistent, specialized support from international partners to fortify the country's judicial processes. Despite the daunting scope of these offenses, the panellists pointed out that the commitment to securing justice for victims remains unwavering, with the primary obstacle being the extensive nature of violations rather than a lack of effort or focus from Ukrainian authorities and their global allies (Progress and challenges to addressing sexual and gender-based crimes in Ukraine domestically, 2023).

Since February 24, 2022, Ukraine's criminal justice system has adapted to the challenges of investigating war crimes through several key measures: adapting legal frameworks for wartime conditions, focusing on specialized investigations, enhancing international cooperation with bodies like the ICC, utilizing open source intelligence (OSINT) for evidence gathering in occupied territories, and broadening collaboration with a diverse range of stakeholders from NGOs to international experts. Additionally, efforts include the digitalization of evidence and procedural documents to streamline and strengthen the process of building war crime cases, ensuring adherence to international legal standards (Hloviuk, 2023).

Effective investigation of sexual violence during armed conflict as a prohibited conduct under IHL (which is not identical to the national definition of sexual violence in Article 153 of the Criminal Code of Ukraine) is characterized by the fact that establishing contextual circumstances (in terms of the setting of the crime) is of utmost importance. In addition, it is important that in international criminal practice, once sufficient evidence of coercive circumstances that made consent impossible is provided, there is no need to extract further specific evidence from the victim to prove the absence of consent, including whether the victim physically resisted the offender (Hloviuk, 2023). The persistent issue of sexual violence in conflict zones necessitates a unified response from international communities, prompting the idea of an International Gender Unit. This initiative, rooted in frameworks like the CEDAW and UN Security Council Resolution 1325, underscores the importance of integrating women into peace processes and decision-making, aiming to reinforce gender protections and prevent gender-based violence globally. It advocates for the strategic involvement of women across all levels of international peace efforts, emphasizing their critical role in conflict resolution and the distribution of humanitarian aid (Maulidyta and Muhamad, 2023).

The International Gender Unit's mission extends to enforcing legal standards against sexual violence, ensuring accountability, and implementing disciplinary actions against perpetrators within military ranks. By framing such acts as crimes against humanity and war crimes under international law, the unit aims to fortify the global commitment to gender safety and justice in war-torn areas. The United Nations categorizes sexual violence and rape perpetrated by military personnel as crimes against humanity and war crimes, as outlined in Articles 7(1) and (9) and Article 8(2)(e)(vi) of the Rome Statute, respectively (Maulidyta and Muhamad, 2023).

This streamlined approach symbolizes a progressive step towards embedding gender perspectives in peace and security policies, aiming to not only address the immediate challenges of sexual violence in conflicts but also to promote a broader culture of responsibility and protection for women on the international stage.

Conclusions. Gender-based violence is a negative assault on the rights and freedoms of a woman or a man by another person or group of persons, which is aimed at violating the rights of women and men because of their gender, and which is expressed in various forms (psychological, physical, sexual, etc.) and areas of society (social, economic, political). State institutions play a key role and bear the primary responsibility for responding to such situations and should work to prevent all forms of gender-based violence.

Sexual violence can be qualified as crimes against humanity or constitute a component of genocide. Rape and other serious forms of sexual violence are war crimes.

The occurrence of violations and humanitarian crimes, such as sexual violence against women by military forces in conflict zones, necessitates immediate attention and action. It is imperative to swiftly implement the provisions of the Geneva Conventions, which offer legal safeguards for women, to prevent further atrocities and loss of life due to torture and violence.

To address this pressing issue effectively, establishing an international gender unit and strengthening the International Court of Justice (ICJ) and the International Criminal Court (ICC) as global judicial bodies, alongside the formation of international entities under the United Nations, can facilitate the implementation of robust legal measures aligned with international principles. This would ensure the proper protection of women and children as integral parts of humanity.

Moreover, concerted efforts are required to eradicate sexual violence in armed conflicts and prevent the exploitation of women as instruments of war in the future. Despite its prevalence, sexual violence is not an inevitable consequence of conflict and can be prevented through the establishment of a comprehensive legal framework and the presence of robust institutions dedicated to enforcing the prohibition of such acts. In the context of a full-scale military invasion waged by the Russian Federation against Ukraine, crimes are being committed that are qualified under international law as crimes against humanity and are gross violations of international humanitarian law.

It is extremely important to raise the issue of human rights and gender equality during the Russian invasion to Ukraine, to declare what is happening to the whole world and to try to develop tactics to eliminate specific manifestations of injustice that may be caused by socio-economic, political, cultural or other factors, to develop mechanisms to restore the possibility of exercising their constitutional rights to affected persons.

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