

# Sexual and Gender-Based Violence in Armed Conflict



Sexual and gender-based violence (SGBV) constitutes a serious human rights violation. Endemic even in peace-time, armed conflict increases the risk of SGBV.

ODIHR's mandate to work on SGBV in armed conflict is three-fold: based on commitments of OSCE participating States to combat violence against women (e.g., Ljubljana 2005, Basel 2014, Milan 2018), as a form of torture or other cruel, inhuman or degrading treatment (e.g., Copenhagen 1990, Tirana 2020), and as a possible war crime or crime against humanity (e.g., Helsinki 1992, Budapest 1994).

OSCE participating States should "...take all necessary steps to prevent gender-based violence against women and girls during and after armed conflict and emergencies, including the bringing to justice of perpetrators of crimes, and to take special measures to address the needs of women and girls in the post-conflict environment."

OSCE Ministerial Council, Decision No. 15/05

This factsheet explains the unique characteristics of SGBV committed during armed conflict, the applicable international law, and gives an overview of international and domestic efforts to hold perpetrators accountable.

## **ODIHR explainer series**

This series of explainers aims to bring topics of importance to the areas of democracy and human rights across the OSCE region to a wider audience.

The OSCE Office for Democratic Institutions and Human Rights (ODIHR) is mandated to assist OSCE participating States to "ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and ... to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society."

Helsinki Document, 1992

## What is SGBV?

**Sexual violence** means any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, human trafficking, or acts otherwise directed against a person's sexuality, using coercion by anyone, regardless of their relationship to the victim in any setting.

**Gender-based violence** is violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering, based on gender discrimination, gender role expectations and/or gender stereotypes, or based on the differential power status linked to gender.

The combined term **sexual and gender-based violence (SGBV)** reflects the dual nature of this type of violence as both sexual and a form of discrimination. SGBV can be directed against both women and men, although women are more likely to fall victim to this form of violence. SGBV includes rape, attempted rape, all forms of sexual assault, sexual threats, harassment, exploitation or humiliation, forced pregnancy, forced sterilization, forced abortion, trafficking for sexual exploitation, sexual slavery, and female genital mutilation.

## What is the relationship between SGBV and armed conflict?

The breakdown of law and order and the general context of violence make it easier for perpetrators to commit SGBV on a large scale and with relative impunity. SGBV is often used as a 'strategy' or 'tactic' of war, e.g., in order to intimidate the civilian population or extract confessions from detainees. Certain forms of SGBV are more prevalent in armed conflict than in peacetime, including sexual slavery and gang rape.

SGBV is just one of many forms of violence during armed conflict. They can lead to mass killings, civilian displacement, arbitrary

detentions, abductions, pillaging and the wholesale destruction of civilian property and essential infrastructure. The risk of violence, including SGBV, is higher in certain settings, for example in detention.

## Sex and gender shape a person's individual experience of armed conflict

Women and girls are more vulnerable to SGBV and most perpetrators are men. However, men are also routinely victims of SGBV during armed conflict, in particular in detention settings where the inherent power imbalance between the detainees and their captors increases the risk of abuse. Women and men tend to suffer different forms of abuse. Women are more likely to be raped, often by multiple perpetrators and repeatedly, and also frequently become victims of sexual slavery. Men are more likely to suffer genital beatings, castration, rape with foreign objects and being forced to perform sexual acts on other detainees.

"... civilians account for the vast majority of those adversely affected by armed conflict; ... women and girls are particularly targeted by the use of sexual violence, including as a tactic of war to humiliate, dominate, instill fear in, disperse and/or forcibly relocate civilian members of a community or ethnic group; sexual violence perpetrated in this manner may in some instances persist after the cessation of hostilities. ..."

UN Security Council Resolution 1820



## How does international law apply to SGBV in armed conflict?

International law contains an absolute prohibition of SGBV. This applies in armed conflict as well as in peacetime and regardless of the identity of the victim, the perpetrator or the specific setting.

### **International human rights law (IHRL)**

The primary role of IHRL is to regulate state conduct towards individuals in peacetime, but it continues to apply in times of conflict. While some IHRL protections are modified during armed conflict by specific laws, this does not include the IHRL prohibition of SGBV, which continues to apply fully.

- Several IHRL instruments prohibit violence against women, including SGBV. The 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) requires States to take steps to prevent and eliminate violence against women; a form and manifestation of gender-based discrimination. States worldwide have also agreed on a broad range of commitments which aim to eliminate violence against women: for example, the 2011 Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (the “Istanbul Convention”), Punishment and Eradication of Violence against Women, and the 1995 Beijing Declaration and Platform for Action.
- SGBV also usually constitutes torture or other cruel, inhuman or degrading treatment, which is prohibited by the 1984 UN Convention Against Torture and several general IHRL treaties, including the International Covenant on Civil and Political Rights and a number of regional conventions. Acts of SGBV may also violate other human rights, including the prohibition of slavery, trafficking of people for the purpose of prostitution or other forms of sexual exploitation, the right to liberty and security of the person, or the right to privacy and private life.

“Rape of a detainee by an official of the State must be considered to be an especially grave and abhorrent form of ill-treatment given the ease with which the offender can exploit the vulnerability and weakened resistance of his victim.”

*Aydin v Turkey*, European Court of Human Rights Judgement

“A gender-sensitive lens guards against a tendency to regard violations against women, girls, and lesbian, gay, bisexual and transgender persons as ill-treatment even where they would more appropriately be identified as torture.”

Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 2015

### **International Humanitarian Law (IHL)**

IHL is a special set of rules that apply during armed conflict. The rules governing SGBV are spread across multiple legal instruments, depending on the status of the victim (civilian or combatant) and the type of armed conflict (international or non-international). However, customary IHL prohibits rape and other forms of sexual violence in all circumstances. The following treaty provisions also apply:

- In an international armed conflict, the 1949 Geneva Conventions protect combatants who are not in active combat from “violence to their persons”; prisoners of war are “entitled in all circumstances to respect for their persons and their honour”; civilians “shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity”, and women “shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault”. Similar protections apply under Additional Protocol I to the Geneva Conventions.
- In a non-international armed conflict, Common Article 3 of the Geneva Conventions prohibits “violence to life

and person” including “cruel treatment and torture” and “outrages upon personal dignity”. Where it applies, Additional Protocol II also expressly prohibits “rape, enforced prostitution and any form of indecent assault”.

### **International Criminal Law**

Acts of SGBV can amount to international crimes for which perpetrators are liable under international law. Depending on the circumstances, they may constitute crimes against humanity, war crimes and/or genocide. The 1998 Rome Statute, which established the International Criminal Court (ICC), expressly mentions rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and other forms of sexual violence of comparable gravity to crimes against humanity. They can also constitute war crimes in both international armed conflicts and non-international armed conflicts. Other crimes such as torture or ‘outrages upon personal dignity’ may also have a sexual and/or gender element. The Rome Statute does not explicitly link SGBV to genocide, but the ICC has confirmed that rape and other forms of SGBV “may, depending on the evidence, be an integral component of the pattern of destruction inflicted upon a particular group of people, and in such circumstances, may be charged as genocide.”

## **Holding perpetrators accountable for SGBV in armed conflict**

Recent years have seen some significant successes in prosecuting perpetrators of SGBV committed during armed conflict:

- The **International Criminal Tribunal for the Former Yugoslavia (ICTY)** was the first international court to prosecute a case exclusively on charges of conflict-related SGBV in an indictment against three members of the VRS Bosnian Serb militia operating during the 1992–1995 conflict in Bosnia (*Prosecutor v Kunarac, Kovač*

*and Vuković*). The judgement marked the first ever conviction of individuals for rape as a crime against humanity (in addition to convictions for enslavement and torture as a crime against humanity, and multiple war crimes). In the course of its mandate, the ICTY prosecuted over 120 individuals and about one third of the cases involved SGBV charges.

- The **International Criminal Tribunal for Rwanda (ICTR)** was the first to convict a perpetrator for rape as an act of genocide (*Prosecutor v Akayesu*). The defendant was a local government leader who was found to have ordered, instigated, and aided and abetted SGBV, including the rape of Tutsi women. About half of the ICTR’s prosecutions involved SGBV charges.

“With regard, particularly, to [...] rape and sexual violence, the Chamber wishes to underscore the fact that in its opinion, they constitute genocide in the same way as any other act as long as they were committed with the specific intent to destroy, in whole or in part, a particular group.”

*Prosecutor v Akayesu, Trial Chamber Judgment*

- The **ICC** has prosecuted several cases over conscription and abuse of child soldiers, including girls who were enslaved as rebels’ “wives”. The prosecution of Ugandan militia leader Dominic Ongwen marked the first time that forced pregnancy was charged as a standalone crime by an international court and the first time forced marriage was prosecuted before the ICC.
- **Hybrid courts** such as the War Crimes Chamber of the Court of Bosnia and Herzegovina (WCC) have also successfully prosecuted perpetrators of SGBV. The WCC convicted at least 123 perpetrators of SGBV committed during the Bosnian conflict, with a conviction rate of 76%.
- **Domestic courts** in several countries have also used the principle of command responsibility to prosecute perpetrators of SGBV committed in armed conflict, including high-ranking officers.

Some European states, including Germany and Sweden, have successfully prosecuted SGBV cases committed in foreign armed conflicts on the basis of universal jurisdiction.

In January 2022, a German court convicted a former high-ranking Syrian colonel, Anwar Raslan, for murder, rape, sexual assault and torture as crimes against humanity. Raslan headed “Branch 251” of the Syrian General Intelligence Directorate and its notorious Al-Khatib detention centre, where he oversaw torture and other abuse of detainees. He was arrested in Germany in 2019, which allowed the case to go forward.

- **Transitional justice bodies**, such as truth and reconciliation commissions, have played a key role in uncovering the scale and patterns of SGBV committed during armed conflict. They provide a forum for survivors to be heard and create momentum for domestic prosecutions. Individual victims have also brought cases to international human rights courts (such as the European Court of Human Rights and the Inter-American Court of Human Rights).

## Significant challenges in delivering justice to survivors of SGBV remain

International courts can only prosecute a small number of the most high-profile cases, while domestic authorities struggle with lack of capacity and/or willingness to engage meaningfully with conflict-related SGBV, often complicated by inadequate domestic legislation and evidentiary protocols. More also needs to be done to prosecute political and military leaders for their role in SGBV committed by subordinates.

### The UN Security Council

“*Emphasizes* the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, and war crimes including those relating to sexual and other violence against women and girls, and in this regard stresses the need to exclude these crimes, where feasible from amnesty provisions.”

UN Security Council Resolution 1325

### The UN Security Council

“*Demands* that all parties to armed conflict immediately take appropriate measures to protect civilians, including women and girls, from all forms of sexual violence, which could include, inter alia, enforcing appropriate military disciplinary measures and upholding the principle of command responsibility, training troops on the categorical prohibition of all forms of sexual violence against civilians, debunking myths that fuel sexual violence, vetting armed and security forces to take into account past actions of rape and other forms of sexual violence, and evacuation of women and children under imminent threat of sexual violence to safety. ...”

UN Security Council Resolution 1820

### The OSCE Ministerial Council

“Encourages the participating States to strengthen the efforts to investigate, prosecute and punish the perpetrators of all forms of violence against women and provide victims with protection and appropriate remedies;”

OSCE Decision MC.DEC/7/14/Corr.1.



## Upholding international standards: policy recommendations

- Align domestic legal frameworks with international standards, providing individual criminal responsibility for crimes against humanity, war crimes and genocide, including express references to SGBV and abolishing immunities and limitation periods in relation to conflict-related SGBV;
- Consider using specialized institutions, including appointing special investigatory, prosecutorial and judicial bodies to deal with international crimes;
- Ensure capacity for the investigation of conflict-related SGBV, including by drawing on international technical and other expertise and assistance;
- Uphold the protection of detainees at all times. In particular refrain from holding detainees in unregistered facilities, set and ensure compliance with human rights-compliant interrogation protocols;
- Make a clear commitment to investigating and prosecuting SGBV proactively, including by adopting a comprehensive strategy for SGBV prosecutions;
- Ensure fair representation of women, men and minorities among police officers, statement takers and others who come into contact with victims or potential victims of SGBV;
- Adopt a victim-centred approach to responding to SGBV and ensure comprehensive redress in the form of reparations, medical and psychological care, economic and legal support, and societal and community engagement.



**OSCE** ODIHR



OSCE Office for  
Democratic Institutions and  
Human Rights

Ul. Miodowa 10  
00-251 Warsaw  
Poland

Office: +48 22 520 06 00  
Fax: +48 22 520 06 05  
office@odihr.pl

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