
ANALYTICAL & CONCEPTUAL FRAMING OF CONFLICT-RELATED SEXUAL VIOLENCE

This note summarizes key principles of the *Analytical & Conceptual Framing of Conflict-Related Sexual Violence* requested by the Secretary-General's Policy Committee in December 2010 and endorsed by the UN Action Steering Committee in May 2011. The aim is to define the scope of 'conflict-related sexual violence' primarily for the purpose of standardizing reporting through the new **Monitoring, Analysis and Reporting Arrangements (MARA)**. Enhanced clarity will support the challenging task of collecting, classifying and analyzing information to provide the Security Council and other global bodies with data that is comparable across field situations and over time. It will also foster greater attention to the links between sexual violence and the broader context of conflict and peacebuilding. Such information can credibly ground a range of responses, including by the Security Council.

1. What is sexual violence?

Sexual violence is a serious crime that occurs in all societies in times of conflict or of peace. According to WHO, sexual violence is: '*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*'.

2. When is it an international crime?

In addition to being a crime in most national legal systems, sexual violence is also a violation of human rights and, in situations of armed conflict or occupation, a violation of international humanitarian law. The statutes and case law of the International Tribunals for the Former Yugoslavia and Rwanda, the Special Court for Sierra Leone, the Extraordinary Chambers in the Courts of Cambodia, and the *ICC Rome Statute*, when taken collectively, define sexual violence to encompass: rape,

sexual slavery, forced 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.

As the Security Council has noted, such violence can constitute a war crime, crime against humanity or constituent act of genocide. The Council's recognition, in resolution 1820 (2008), that sexual violence may threaten international security was founded on the prior recognition of sexual violence as a self-standing crime under international law. The inclusion of sexual violence within ICC jurisdiction reinforces this link, as the ICC is concerned with crimes that '*threaten the peace, security and well-being of the world*'. The *UN Charter* draws a distinction between matters that fall within the exclusive domestic jurisdiction of a State and matters that constitute a threat to the peace, breach of the peace, or act of aggression. Sexual violence that may amount to a crime under *international* (as well as *national*) jurisdiction and/or is linked with the conduct of parties to armed conflict, comes within the latter category. It can thus be considered conflict-related sexual violence in the sense of resolution 1960 (2010).

Even in the absence of a judicial pronouncement, the MARA can report on the objective elements of the following credibly suspected international crimes:

Sexual violence as a war crime

Acts of sexual violence may constitute war crimes if committed in the context of and associated with an armed conflict.

Sexual violence as a crime against humanity

Crimes against humanity are defined as any of the following acts when committed as part of a widespread or systematic attack directed against a civilian population, with the perpetrator's knowledge that such conduct was part of the attack, in relevant part: rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity. Sexual violence may reach the scale or level of organization of a crime against humanity if it is part either of a government policy or a wide practice of

atrocities tolerated or condoned by a government, *de facto* authority or organized armed group. Crimes against humanity do not require a connection with armed conflict. This is significant as sexual violence may increase during the unrest that presages conflict and its scale and severity often continue post-conflict.

Sexual violence as a form of torture

Torture is defined as the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions. Sexual violence at the instigation of a public official, or otherwise attributable to the State, can constitute torture.

Sexual violence as an element of genocide

Genocide is defined as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its destruction in whole or in part; imposing measures intended to prevent births within the group; and forcibly transferring children of the group to another group. Sexual violence has been used as a step in the process of group destruction and to alter the composition of territory, particularly in ethnic conflicts.

3. When is sexual violence conflict-related?

The definition of ‘**armed conflict**’ is based on factual conditions relating to an armed confrontation between two or more identifiable parties over a sustained period of time at a level of intensity that exceeds ordinary law and order operations (i.e., the use of military force, rather than police forces). ‘**Parties**’ to armed conflict are organized armed forces under a command structure, with the capacity to sustain military operations. This includes both State and non-State actors. The MARA should generally focus on sexual violence committed by organized armed groups (parties), as opposed to isolated violations committed by civilians as a form of criminal activity.

Through resolution 1820 (2008), the Council determined that sexual violence ‘*when used or*

commissioned as a tactic of war in order to deliberately target civilians, or as part of a widespread or systematic attack against civilian populations’ may impede the restoration of international peace and security. Sexual violence as a ‘tactic of war’ refers to acts of sexual violence that are linked with military/political objectives and that serve (or intend to serve) a strategic aim related to the conflict. This will rarely be reflected in overt orders, but may be evidenced by the fact that an armed group has a functioning chain of command and is able to restrain other offenses (like mutiny or desertion), while sexual violence is neither condemned nor punished by the military hierarchy. It may also be apparent that sexual violence is in line with the overall objectives of the group.

Resolution 1820 qualifies the ‘tactic of war’ threshold with the word ‘including’, meaning this is just one manifestation of conflict-related sexual violence alongside sexual violence ‘*committed against civilians*’, committed ‘*in and around UN managed refugee and internally displaced persons camps*’, or committed during ‘*disarmament, demobilization and reintegration processes*’. Sexual violence need not, therefore, be explicitly orchestrated for military gain to be considered as relevant to the Security Council’s remit. The definition is broader and centers on a combination of *who* (the profile of victims and perpetrators), *what* (the elements of the offence), *how* (the method) and *why* (the motive).

Other relevant principles include:

Temporality: the requirement of proximity between the act of sexual violence and the period of conflict. For 1960 reporting purposes, sexual violence can be considered conflict-related over the following time horizon: when it occurs in a context of instability that may escalate to armed conflict; when it occurs during armed conflict; when it occurs during a period of occupation or against persons deprived of their liberty in connection with conflict; and when it takes place in the aftermath of conflict but prior to the restoration of State capacity/authority;

Geography: the requirement that acts of sexual violence occur in conflict-affected areas; and

Causality: the existence of conflict must have played a substantial part in the perpetrator’s

ability or decision to commit sexual violence, the manner in which it was committed or the purpose for which it was committed. This excludes ordinary criminality that continues at pre-conflict levels and lacks a direct or indirect nexus with conflict. A relevant inquiry may be the extent to which sexual violence is exacerbated by the conditions of conflict and ensuing displacement or detention.

Sexual violence as part of the repertoire of **political repression** also warrants analysis from the perspective of early-warning and prevention. Situations of political unrest, including pre and post-electoral violence as witnessed in Kenya, Guinea and Côte d'Ivoire, where reports suggest that sexual violence was used to serve political ends and to target opponents, are relevant even when they do not reach the threshold of armed conflict. These can be considered 'other situations of concern' in the sense of the *UN Charter*. Similarly, natural disasters in fragile settings may stress State capacity and strengthen armed groups. Contexts of concomitant conflict and natural disaster, such as Haiti after the 2010 earthquake, may be sites of conflict-related sexual violence if the violence has a nexus with a prior or continuing conflict.

4. What is the threshold for listing?

Resolution 1960 requests the Secretary-General to list 'parties credibly suspected of **patterns** of sexual violence'. For listing purposes, isolated offenses should be distinguished from those forming part of a pattern, understood in international law and practice as a methodical plan or system that implicates a collectivity of victims. The aim of this threshold is to prevent a single, isolated incident of sexual violence from giving rise to listing.

5. What about other categories of violence?

Prior to its recognition as a self-standing issue of concern to the Security Council, conflict-related sexual violence had been reported under several existing categories. To foster greater specificity and disaggregation of incidents in the context of the MARA, conflict-related sexual violence should no longer be treated as synonymous or interchangeable with the following categories:

Gender-based violence (GBV), which includes acts that are not sexual in nature, such as physical assault or the denial of economic resources, and is an overly-broad category for 1960 reporting purposes.

Violence against women (VAW), which does not reflect the need to also address conflict-related sexual violence against men, girls and boys, in a comprehensive sense.

Harmful traditional practices, such as female genital mutilation/cutting (FGM/C) or child marriage should not be reported as conflict-related sexual violence unless specific justification can be provided.

Sexual Exploitation and Abuse (SEA), which amounts to individual infractions of the rules of conduct and discipline, addressed elsewhere in the UN system.

'**Survival sex**', which will not fall within the rubric of conflict-related sexual violence as premised on international law, unless the circumstances are coercive and vitiate consent.

6. Synthesis definition: combining relevant legal & political thresholds

Conflict-related sexual violence refers to *incidents* or (for SCR 1960 listing purposes) *patterns* of sexual violence, that is rape, sexual slavery, forced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity, against women, men, girls or boys. Such incidents or patterns occur in conflict or post-conflict settings or other situations of concern (e.g., political strife). They also have a direct or indirect nexus with the conflict or political strife itself, i.e. a temporal, geographical and/or causal link. In addition to the international character of the suspected crimes (that can, depending on the circumstances, constitute war crimes, crimes against humanity, acts of torture or genocide), the link with conflict may be evident in the profile and motivations of the perpetrator(s), the profile of the victim(s), the climate of impunity/weakened State capacity, cross-border dimensions and/or the fact that it violates the terms of a ceasefire agreement.