

BETWEEN STIGMA AND OBLIVION

A Guide on Defending the Rights of Women Victims of Rape
or other Forms of Sexual Violence in Bosnia and Herzegovina

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PREFACE

In all countries at all time there is something called the rule of law. Its manifestation will vary, it will not always be recognizable or familiar, it may be quite heinous, but there will be something. This will sit, easily or otherwise, within the normative framework provided by international law in its various forms and with it the different fora created to monitor, report, discuss, and on occasion hold accountable the actors responsible for ensuring compliance.

The concept of an integrated system for the protection of human rights is ambitious and idealistic but one I have faith in, despite evidence to the contrary which makes cynicism easy. But my answer to such cynicism is what if the international legal systems, the doctrines that underpin them and the mechanisms in place to ensure compliance and accountability for failure to do so, actually worked? If there was real application of law, objectively and impartially applied by the United Nations bodies tasked to do so and without subordination to political expediency?

It is possible, difficult but possible and it requires the sort of engagement that has not yet happened on a large enough scale to make a sustainable difference. And that is why guides, such as this one are important: to make the system work we have to understand it. Once we have understood it, then we can see better how and where law itself fails to accurately describe the experiences of those who seek its protection, where it excludes, where it discriminates and how the accessibility of the system prevents justice being delivered. When we have understood how it works then we are better equipped to make it honest. Nowhere is this better illustrated than in Bosnia and Herzegovina.

In 1996 Bosnia and Herzegovina was schizophrenic; there was the grief and the trauma caused by the conflict, but there was also optimism and a belief that there was a real chance to move forward, particularly amongst the women's organisations. The two were, and are, inherently inter connected; to move on from the first requires Justice, failure to obtain Justice prevents that progress and exacerbates the trauma. The inability to move forward causes generational tensions and resentments, allows political parties to use victims as pawns and leads to the continuation of hostility, which, sadly, is where Bosnia and Herzegovina is today.

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Sixteen years after the conflict, the paucity of successful prosecutions for sexual violence, the continuing social and economic conditions of the majority of women who survived war-time rape and abuse, and the lack of any real hope of progress, are testimony to the failure of the system; quite simply the national and the international systems have failed to provide the transformation from war to peace. There are multiple reasons; the impossible nature of the Dayton Peace Agreement and its fragmented constitutional arrangements, the lack of real transitional justice mechanisms, economic failure, and the nationalist politics of identity which forced identification with political parties based on ethnicity and underpinned by religion, as the only way to obtain any social, economic or political advantage.

Reading this Guide, it is possible to understand how this could change, late though it is in Bosnia and Herzegovina. If the essentials of transitional justice, advised by human rights law and the Security Council resolutions on women peace and security, were adopted as policy and with economic resources to secure delivery, there would be immediate changes for women survivors; the prosecutorial framework would have to be harmonized in accordance with international law. The investigative process would have to be reformed to provide better protection. The reparations system, subsumed into the form of welfare payments would have to be re-constituted to protect against conditionalities. The vetting of officials would have to be seriously addressed and the guarantees of non-repetition would establish whether there is a commitment to peace or not. There is much more that must be done but there can be no Justice without this at the core.

How to use the international system, particularly on human rights, is a vital and integral element of such an approach. There have been reports to treaty bodies, there have been visits of rapporteurs, and a report to the Human Rights Council but to an extent they have served merely to illustrate the fragmentation in how rights have been dealt with, the need to bring yourself within a particular protected category in order to claim protections and rights, means that that they are looked at in isolation, can be deemed to relate only to a particular category of claimant and can be subordinated to political expediency. Put all the recommendations from all the bodies together and then see how true to the current experiences of the survivors of war crimes they are and how their recommendations would make a difference if implemented coherently.

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There is an obvious need to keep what is happening in Bosnia and Herzegovina in the international purview by ensuring that the mechanisms are used, that indicators of instability are drawn to the relevant body, and that the doctrine of the responsibility to protect is used as a means of prevention rather than of intervention.

These are lessons that should be learnt from what happened in Bosnia and Herzegovina. Which is again why this Guide is important. Whilst aimed at Bosnia and Herzegovina, it has resonance beyond to other post conflict countries and to those which are experiencing a worrying descent into instability. If there is early and accurate information as to the real situation in States, if this is accurately reported to the relevant bodies, and if the responses from those bodies translate international obligations into action leading to early and non violent attention being paid so as to prevent conflict, then we have a system which can work. Understanding what we have is at least part of the solution and this Guide will help that.

Madeleine Rees,

Secretary General of the Women's International League for Peace and Freedom

INTRODUCTION

During the 1992–1995 war in Bosnia and Herzegovina (BiH) the use of rape or other forms of sexual violence was widespread. Indeed, rape was used as a means of implementing the strategy of ethnic cleansing and to increase inter-ethnic hatred. Unfortunately, victims of sexual violence are often turned into outcasts because of the stigma and humiliation associated with the crime and, in general, rape is among the most under-reported crimes. Moreover, it is indisputable that in a considerable number of cases those responsible for rape or other forms of sexual violence during the war enjoy impunity.

Certainly, rape or other forms of sexual violence do not concern solely women. However, the present guide focuses specifically on women victims of sexual violence and the international legal instruments and mechanisms relevant for this particular category of people. Some of the considerations and references contained hereby apply also to any victim of rape or other forms of sexual violence, irrespective of their gender, while others concern only women, aiming at granting to the latter an enhanced level of protection.

When rape or other forms of sexual violence are perpetrated, certainly the individual responsible for such acts is liable to prosecution and, in certain cases, incurs civil and administrative sanctions. However, at the same time, the State also bears a number of obligations towards the victims of rape or other forms of sexual violence, which often are enshrined in international treaties. This holds true, although to different degrees of responsibility, whether the authors of acts of rape or other forms of sexual violence are agents of the State (e.g. policemen, members of the army) or act with the tolerance, acquiescence or support of State agents (e.g. members of paramilitary groups) or are private individuals.

This guide will not deal with domestic remedies or with the matter of individual responsibility for rape or other forms of sexual violence. It will focus on the responsibility of the State towards women victims of rape, the international legal instruments dealing with this subject and the possible venues at the international level before which victims of sexual violence may bring their complaints. Concrete examples will be provided in order to make the subject as understandable as possible. Nevertheless, it must be kept in mind that, while some of the procedures that will

be described are relatively simple to undertake and may be pursued almost by anyone, others (in particular international litigation) are rather complicated and would require the assistance of an expert. In this sense, the guide does not pretend to be a comprehensive guide to the use of international human rights mechanisms, but rather to provide a general overview, in an accessible language, of the existing mechanisms, and of what victims of rape or other forms of sexual violence may expect when submitting their case to them.

Finally, this guide is an attempt at presenting complex legal issues in a simple way, so as to avoid confusing the reader. This entails the risk to simplify some of the complexities, to omit discussing some exceptions, or to choose one interpretation, leaving alternative ones out. Each reader should keep this in mind when using the present guide.

HOW TO USE THIS GUIDE

This guide was drafted to provide a concise but complete overview of the existing international legal framework relevant for women victims of sexual violence, and of the available international legal means for action. Strong efforts were made to make this guide as accessible as possible. Unfortunately, legal matters remain complicated and the language must maintain a certain level of technicality, and can sound dry or difficult to understand to persons not trained as lawyers.

In this sense, the guide is directed not only at victims of sexual violence and their representative organizations, but also at lawyers assisting them. The legal vocabulary was used even if at times less legalistic terms could have made the reading easier. However, the understanding of legal actions gains in strength when the victims become acquainted with the legal framework and its vocabulary.

Among the potential actions described in the guide, some can be undertaken by victims themselves and by civil society organizations on their own. But other actions will indeed require the assistance of a qualified lawyer.

The guide briefly introduces the different definitions of rape and other forms of sexual violence under international law, in order to help the reader to better **determine the applicable legal framework** to the situation concerned (chapter 1).

The guide then presents and analyses **international legal instruments particularly relevant for women victims of rape or other forms of sexual violence** (chapter 2). Some provisions or excerpts of these instruments are reproduced and, where possible, an explanation of complex legal notions is provided.

Chapter 3 analyses in depth the **international obligations of the State towards victims of sexual violence**, in particular with regard to prevention, sanction of those responsible for the crime, and redress to victims for the harm suffered.

Finally, chapter 4 presents **international human rights mechanisms that may deal with violations related to rape or other forms of sexual violence** (chapter 4). The mandate and the functioning of each of these mechanisms are analysed in brief, as well as what can concretely be expected when deciding to undertake an action before these international bodies.

WHY “LISTING” DIFFERENT LEGAL INSTRUMENTS AND PROVISIONS AND ANALYSING THE STATE’S OBLIGATIONS IS USEFUL

First, in order to claim for a victim's rights, it is necessary to **know what these rights are**. Going through the provided list, the reader will learn which rights are internationally recognized to women victims of sexual violence and which are the corresponding obligations of the State. Thus, references to the mentioned provisions can be made:

- a) When **meeting the authorities** (prosecutors, members of Parliament at each level, government employees, etc.), to demonstrate to be aware of the existing rights and that the State has accepted international obligations that must be respected. These meetings can concern both an individual case, or be generic public events. Advocacy and lobbying activities can thereby prove more effective.

EXAMPLE 1: A victim of sexual violence meets with the prosecutor to discuss her case (or writes a letter to do so). She can quote which her rights are and which obligations the prosecutor must uphold under international law. She will strongly transmit the message that she is aware of what her rights are, that she is ready to have them duly respected and enforced, and that she could instigate legal actions if necessary.

EXAMPLE 2: A public event is held where authorities present their plan of actions with regard to women victims of sexual violence. Representatives of associations from civil society can take the floor and refer to the mentioned legal provisions, to illustrate what the international obligations of the State are and to clearly spell out what is not in line with these obligations in the policy and practice of the State, thereby meaningfully supporting the demands put forward by victims of sexual violence.

- b) When drafting a **claim/complaint/appeal/communication** before domestic or international mechanisms (e.g. domestic tribunals or the European Court of Human Rights or one of the United Nations Committees) reference to the violation of international obligations of the State must be made. This strengthens the contents of the claim and transmits the message that the victim is aware of her rights and is ready to take the necessary steps to have them duly respected. In general, for the drafting of claims, either before domestic or international mechanisms, victims will need the assistance of a lawyer, who will have to include references to international standards to increase the impact of the action at the domestic level and to deal adequately with the case at the international level.

EXAMPLE 1: A complaint is submitted to the Constitutional Court of BiH or to another domestic tribunal by a victim of sexual violence, and reference to existing international standards is included. The legal arguments put forward will certainly be stronger and the judge will be pushed to adhere to the international applicable standards, thus fundamentally enhancing the quality of the judgment and increasing the level of protection offered to the victim.

EXAMPLE 2: A complaint is submitted to the UN Human Rights Committee or to the European Court of Human Rights. While it is essential to know the provisions applied by these bodies, including references to other international standards further strengthens the contents of the complaint and is likely to lead to a stronger decision that will stick to the highest standards of protection of the victims.

Notably, in the guide reference is also made to legal instruments that are not-binding (which means that they do not directly create an obligation of the State): this can anyway be useful to understand the existing trends in international law that can be referred to as guidelines to improve existing domestic legislation and practice.

WHY “LISTING” THE DIFFERENT INTERNATIONAL HUMAN RIGHTS MECHANISMS IS USEFUL

Chapter 4 is particularly important, as the reader can explore the existing remedies offered by international law and determine whether any of them is useful for him/her and, if so, how, under which conditions, and with which implications.

Referral of matters to international mechanisms can prove a powerful tool for overcoming impunity and obtaining redress. It certainly contributes to raising the attention and awareness of the international community to specific matters, which, in turn, puts pressure on domestic authorities to solve existing problems and to improve the situation.

Chapter 4 thus addresses both judicial and quasi-judicial mechanisms (e.g. the European Court of Human Rights or the United Nations Committees) that can issue judgments or views, as well as United Nations Special Procedures (e.g. the Special Rapporteur on Violence against Women, its Causes and Consequences).

EXAMPLE 1: A member of an association working on the issue of women victims of sexual violence during the war is threatened. This situation can be referred – besides to the local police – to an international mechanism (e.g. the Special Rapporteur on Human Rights Defenders or the Special Rapporteur on Violence against Women). The latter may call on domestic authorities to undertake certain actions (e.g. investigating the events and protecting the person who has been threatened). International pressure is thus put on domestic authorities, which will feel the attention of international community and are likely to try to respect the recommendations received.

EXAMPLE 2: A victim of sexual violence has undertaken all necessary measures at the domestic level to obtain justice and redress for the harm suffered (e.g. has denounced the events to the

prosecutor, and has brought a claim for compensation), but this has not produced any result. She can now consider the possibility to bring the case before an international human rights mechanism (e.g. the European Court of Human Rights or one of the United Nations Committees). The procedure is complicated and the victim will need the assistance of an expert. In any case, the awareness of the existence of this very possibility and its consequences (a potential judgment or the views delivered by an international mechanism) is essential to decide whether international litigation is worth trying to improve the current situation and to obtain the termination of ongoing violations of basic rights, as well as compensation for the harm suffered.

1. RAPE OR OTHER FORMS OF SEXUAL VIOLENCE: ORDINARY CRIME, CRIME AGAINST HUMANITY, WAR CRIME, GENOCIDE AND HUMAN RIGHTS VIOLATION

Rape or other forms of sexual violence are not only ordinary criminal offences, but, under certain circumstances, also international crimes and human rights violations.

The importance of legal definitions and their consequences

One may think that the meaning of the terms “rape” and “sexual violence” is self-evident and to a certain degree intuitive and that therefore there is no need to examine in detail the existing legal definitions.

However, the manner in which a particular act is defined or codified brings significant consequences that determine the applicability or non-applicability of a specific legal regime.

In this chapter the different definitions of “rape or other forms of sexual violence” in international law will be analysed.

This will allow the reader to better understand the applicable legal framework and to therefore qualify under this angle the various legal instruments relevant for women victims of sexual violence analysed in chapter 2.

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Rape or other forms of sexual violence are first of all ordinary criminal offences, as such, codified and regulated under domestic criminal law. Each country may adopt a different definition of the crimes of rape or other forms of sexual violence. However, certain minimum requirements of the definition of rape have been established under international law. A clear trend can be seen that in abandoning formalistic definitions and narrow interpretations in this area. First, it appears that a requirement that the victim must resist physically is no longer present in a great number of domestic legislations. In this light, there is a universal trend towards regarding lack of consent as the essential element of rape and sexual abuse.

States must therefore penalise and effectively prosecute any non-consensual sexual act, including in the absence of physical resistance by the victim, and must establish appropriate penalties which take into account the extreme seriousness of the crime.

Indeed, rape can also be qualified as:

- **War crime** due to its commission during an armed conflict and the awareness of the perpetrator for the existence of such conflict;

Statute of the International Tribunal for the Former Yugoslavia (ICTY) (1993): Art. 2 (b) and (c) respectively indicate that "torture or inhumane treatment" and "willfully causing great suffering or serious injury to body or health" against persons protected under the provision of the relevant Geneva Convention amounts to a crime of war.

Statute of the International Criminal Court (ICC) (1998): Art. 8, para. 2 (b), (xxii) establishes that "committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions" amounts to a crime of war.

Bosnia and Herzegovina ratified the Rome Statute on 11 April 2002. The ICC is competent to judge over crimes committed after 1 July 2002.

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- **Crime against humanity**, when committed as part of a widespread or systematic attack directed against a civilian population with the knowledge of the perpetrator of this fact.

Statute of the ICTY (1993): Art. 5 (g) defines rape as a crime against humanity if committed in armed conflict, whether international or internal in character, and directed against any civilian population.

Statute of the ICC (1998): Art. 7, para. 1 (g) defines "rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity" as crimes against humanity when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.

Among others, in the judgment delivered on 22 February 2001 on the case Prosecutor v. Kunarac and others, the ICTY found the three accused guilty, among others, of rape as a crime against humanity.

- **Genocide**, when committed **with the intent to destroy, in whole or in part, a particular group** (ethnic, religious, etc.), targeted as such.

"Causing serious bodily or mental harm to members of the group" with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group amounts to genocide.

Convention on the Prevention and Punishment of the Crime of Genocide (1948): Art. 2 (b)

Statute of the ICTY (1993): Art. 4, para. 2 (b)

Statute of the ICC (1998): Art. 6 (b)

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In the landmark judgment of 2 September 1998 on the case **Prosecutor v. Jean-Paul Akayesu**, the International Criminal Tribunal for Rwanda found that “[...] **rape and sexual violence [...] 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, targeted as such**” (para. 731).

In the judgment delivered on 16 November 1998 on the case **Mucić and others** the ICTY declared that “There can be no question that **acts of rape may constitute torture** under customary international law [...] The Trial Chamber considers the rape of any person to be a despicable act which strikes at the very core of human dignity and physical integrity” (paras. 495–496).

The mentioned legal regimes are not mutually exclusive, but embody different authorities of prosecution and standards of evidence, which can apply to the different contexts and circumstances of sexual crimes.

The above considerations are important when it comes to establishing **individual responsibility** for the crime of rape. However, **also the State has responsibilities and corresponding obligations towards women victims of rape or other forms of sexual violence**. In fact, when committed by **State agents** or by persons or groups of persons **acting with the authorization, support or acquiescence of the State**, rape or other forms of sexual violence amount to a violation of the right to personal integrity and can be considered as a particularly grave form of **torture**. Torture is an international crime and its prohibition is binding on all States.

This guide will focus in particular on international human rights instruments and mechanisms that are relevant for women victims of rape or other forms of sexual violence, therefore analysing which are the international obligations of the State and which international mechanisms can monitor the respect of such obligations.

The **European Court of Human Rights** declared that “[...] 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. Furthermore, rape leaves deep psychological scars on the victim which do not respond to the passage of time as quickly as other forms of physical and mental violence. [...]” (Case Aydin v. Turkey, judgment of 25 September 1997, para. 83). In the same judgment, the Court expressly affirmed that **rape amounts to torture**.

WHAT IS THE DIFFERENCE BETWEEN INTERNATIONAL HUMANITARIAN LAW, INTERNATIONAL HUMAN RIGHTS LAW, AND INTERNATIONAL CRIMINAL LAW?

International humanitarian law (IHL) applies in times of war, and aims to protect people who do not or are no longer taking part in hostilities. The rules of IHL impose duties on all parties to a conflict, in particular on States.

International human rights law applies both in times of conflict and peace, and its main aim is to protect individuals from arbitrary behaviours by their own governments.

International criminal law refers to the responsibility of individuals for the most serious international crimes, such as genocide, crimes against humanity and crimes of war.

In the judgment of 2 September 1998 on the already mentioned case **Akayesu**, the International Criminal Tribunal for Rwanda held that “Like torture, **rape is a violation of personal dignity, and rape in fact constitutes torture when inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity**” (para. 597).

2. INTERNATIONAL LEGAL INSTRUMENTS PARTICULARLY RELEVANT FOR WOMEN VICTIMS OF RAPE OR OTHER FORMS OF SEXUAL VIOLENCE

Over the years a number of international documents of relevance for women victims of rape or other forms of sexual violence have been adopted.

THE IMPORTANCE OF GETTING TO KNOW THE RELEVANT INTERNATIONAL INSTRUMENTS

In order to claim for the realisation of victims' rights, it is essential to know what such rights are and which international legal instruments enshrine them.

In this chapter the reader will find a comprehensive list of the rights that are internationally recognized to women victims of sexual violence.

This list includes instruments of different legal nature (binding and non-binding) that are examined in chronological order.

Some of the adopted instruments are **binding** (treaties, protocols, conventions and covenants) and some others are not (declarations, guidelines, sets of principles).

Saying that an instrument is **binding** on States means that the latter **assumed legal obligations** (what a State **must** do). If an instrument is **not binding** on States, this simply indicates **what States should do**. Nonetheless, non binding instruments have a significant moral and symbolic value and, sometimes, may contain provisions that have indirectly binding effects since they reproduce **generally recognized customary rules**.

Customary rules are recognized and accepted as binding by the international community.

This guide will more precisely analyse those documents that contain provisions of particular relevance for women victims of rape, while other instruments of a more general nature will be simply mentioned.

2.1 Declaration on the Protection of Women and Children in Emergency and Armed Conflict (1974)

This declaration was adopted by the United Nations General Assembly by resolution 3318 (XXIX) of 14 December 1974.¹ As a declaration, it is not by itself binding. However, it contains provisions that reproduce customary rules of international law which, as such, have a mandatory character. In particular, it establishes that, in times of war:

States must **prohibit and criminalise** any form of persecution, torture (including rape), punitive measures, degrading treatment and violence against civilian population (and, in particular, women and children);

This implies that the State also holds a **positive obligation**, when these crimes are perpetrated, to investigate, identify those responsible and sanction them.

Positive obligation means what States must do (while negative obligation means what State must not do).

2.2 Additional Protocol I to the 1949 Geneva Conventions (1977)

Additional Protocol I to the 1949 Geneva Conventions was adopted on 8 June 1977. As a treaty of international humanitarian law, it has a binding nature. It deals with international armed conflicts.² Article 76, para. 1 of the Additional Protocol I provides that:

¹ The integral text (in English) of the Declaration can be found here: www2.ohchr.org/english/law/protectionwomen.htm.

² Bosnia and Herzegovina is a State Party since 31 December 1992.

Women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault (the last expression, somehow obsolete, indicates “other forms of sexual violence”).

2.3 Convention on the Elimination of All Forms of Discrimination against Women (1979)

The Convention on the Elimination of All Forms of Discrimination against Women was adopted on 18 December 1979 and it entered into force on 3 September 1981.³ Bosnia and Herzegovina is a State Party since 1 September 1993. The Convention guarantees the right of all women to be free from discrimination and imposes obligations on States Parties to ensure legal and practical enjoyment of that right. In particular, States Parties must:

- Establish **legal protection of the rights of women on an equal basis with men** and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- **refrain from any act or practice of discrimination against women** and ensure that public authorities and institutions shall act in conformity with this obligation;
- take all appropriate measures, including legislation, to **modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women**;
- take in all fields, in particular in the political, social, economic and cultural fields, all **appropriate measures, including legislation, to ensure the full development and advancement of women**, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

The Convention does not mention specifically the subject of violence against women, but its provisions are a sound set of guarantees also for women victims of sexual violence. The Convention establishes obligations for the State to ensure access to justice, compensation and reparation

³ More (in English) about the Convention on the Elimination of All forms of Discrimination against Women at www.ohchr.org/Documents/Publications/FactSheet22en.pdf. See also the useful Booklet (in English) CEDAW made easy: questions and answers booklet: www.hrea.org/erc/Library/display_doc.php?url=http%3A%2F%2Fwww.unifem.org%2Fattachments%2Fproducts%2FCEDAWMadeEasy.pdf&external=N (it is particularly focused on the Caribbean, but it contains also general information and data).

without discrimination to this group of people. In general, women are entitled to enjoy their rights to health, to education, to participation of political life and to their family life without interference and without discrimination.

On 6 October 1999 an Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women was adopted (it entered into force on 22 December 2000). The Optional Protocol regulates the competence of the Committee on the Elimination of All Forms of Discrimination against Women to receive and examine individual and inter-State communications concerning alleged violations of the rights enshrined in the Convention.

The Convention establishes a Committee on the Elimination of All Forms of Discrimination against Women.⁴

General Recommendation No. 19 of 1992 on Violence against Women

Among other activities, the Committee on the Elimination of All Forms of Discrimination against Women also makes “general recommendations” on any issue affecting women to which it believes that the States should devote more attention. In 1992, it adopted a general recommendation on the subject of violence against women, whereby besides commenting and providing an interpretation of some articles of the CEDAW, it formulates a number of **recommendations to States with regard to the measures that they shall adopt in favour of women victims of sexual violence**, among which:

“States Parties should ensure that laws against [...] rape, sexual assault and other gender-based violence give **adequate protection to all women**, and respect their integrity and dignity. **Appropriate protective and support services should be provided for victims.** [...]” (para. 24.b);

⁴ *Infra* para. 4.2.3.

"States Parties should take all legal and other measures that are necessary to provide effective protection of women against gender-based violence, including, inter alia: [...] **Effective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence** [...]" (para. 24.t.i);

"Measures to protect [women] from violence should include **training and employment opportunities** [...]" (para. 24.p);

"States Parties should establish or **support services for victims of [...] rape, sexual assault and other forms of gender-based violence, including refugees, specially trained health workers, rehabilitation and counseling**" (para. 24.k);

2.4 Declaration on the Elimination of Violence against Women (1993)

This declaration was adopted by the General Assembly by resolution 48/104 of 20 December 1993.⁵ As a declaration, it is not binding by itself, but it contains certain provisions that reproduce customary rules and, as such, create international obligations for the States. Importantly, its provisions apply not only in times of war, but also in times of peace.

First, the declaration indicates that the expression "**violence against women**" includes rape, sexual abuse, sexual harassment and intimidation, forced prostitution and physical, sexual and psychological violence perpetrated or condoned by the State. The last expression means that the perpetrator of the act of violence is a State agent (e.g. member of the police, or the army, etc.), or that even if the perpetrator was not a State agent, the State has somehow supported, tolerated or acquiesced to his crimes.

Besides reaffirming that women must enjoy all fundamental human rights, the declaration establishes, among others, that:

⁵ For the integral text (in English) of the Declaration see: www2.ohchr.org/english/law/eliminationvaw.htm.



- a) **States must prevent, investigate (A)** and, in accordance with national legislation, **punish (B)** acts of violence against women, whether those acts are perpetrated by the State or by private persons.

(A) This means that if a rape or another form of sexual violence is perpetrated, the authorities of the State must identify those responsible, conduct a prompt, impartial, independent and thorough investigation and prosecute those responsible.

(B) This means that those responsible for rape or other forms of sexual violence must be tried and sentenced. The sentence must be commensurate to the gravity of the crime.

- b) **States must develop penal, civil, labour and administrative sanctions** in domestic legislation to punish and redress the harm caused to women who are subjected to violence. This means that those responsible for rape or other forms of sexual violence must be tried and sentenced. The sentence must be commensurate to the gravity of the crime.
- c) Women who are subjected to violence should be provided **with access to the mechanisms of justice**. This can be granted, for instance, through a system of free legal aid or through an exemption from tax fees of those who do not have the necessary economic means.
- d) Women who are subjected to violence should be provided with **just and effective remedies** for the harm suffered (this includes, but is not limited to, pecuniary compensation for the damage suffered).
- e) States must **inform women of their rights** in using such mechanisms. This means that States must find a way to reach out to women victims of rape or other forms of sexual violence and inform them about their rights in a comprehensible manner.
- f) States must work to ensure that women victims of violence and, where appropriate, their **children**, have **specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counselling, and health and social services, facilities and programmes**, as well as **support structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation**.



States must ensure not only to women victims of violence, but, under certain circumstances, access to measures of rehabilitation and assistance. The aim of these measures must be to ensure their physical and psychological health and the reintegration into normal life.

- g) States must ensure that law enforcement officers and public officials receive **training to sensitize them to the needs of the women**. State agents and personnel that deals with women victims of rape or other forms of sexual violence must be trained so that they know the rights and the specific needs of women.
- h) States must adopt all appropriate measures, especially in the field of education, to **eliminate prejudices** and practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women. States must publicly condemn forms of stereotypes and prejudices and educate future generation to a different approach.

2.5 Security Council Resolution 1325 of 31 October 2000

The Security Council of the United Nations is the organ mandated to maintain international peace and security. On 31 October 2000 it adopted Resolution 1325, whereby, among others, it

- Calls on all parties to armed conflict to take **special measures to protect women and girls** from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict; and
- Emphasises 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**.

2.6 Security Council Resolution 1820 of 19 June 2008

On 19 June 2008 the Security Council adopted another resolution relevant for women victims of rape or other forms of sexual violence during armed conflict. In this resolution, the Security Council stresses that sexual violence, when used as a tactic of war to target civilians, can significantly exacerbate situations of armed conflict and may impede the restoration of international peace. In this light, among others, the Security Council

- **demands that all parties to armed conflict immediately take appropriate measures to protect civilians (A), including women and girls, from all forms of sexual violence, which could include enforcing appropriate military disciplinary measures and upholding the principle of command responsibility (B), 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; and**

(A) This means that States have a positive obligation to take concrete and effective measures to protect civilians from any form of sexual violence. With a clear preventive aim, the State must ensure that members of the army are adequately trained on the prohibition of sexual violence, a clear chain of command is established in order to better determine individual criminal responsibility.

(B) This means that a superior is not only responsible for what he/she does, but also for what is done by his/her subordinates, if he/she failed to take all measures to prevent the commission of crimes by his/her subordinates.

- **stresses the need for the exclusion of sexual violence crimes from amnesty provisions in the context of conflict resolution processes.** This means that those persons who are alleged to have committed rape or other forms of sexual violence during the conflict will not benefit from any amnesty law or similar measures that might have the effect of exempting them from any criminal proceedings or sanctions.



- calls upon Member States to comply with their obligations for prosecuting persons responsible for such acts, to ensure that all victims of sexual violence, particularly women and girls, have equal protection under the law and equal access to justice, and stresses the importance of ending impunity for such acts as part of a comprehensive approach to seeking sustainable peace, justice, truth, and national reconciliation.

Two other relevant Security Council Resolutions: the Building Blocks for the Implementation of Resolutions 1325 and 1820

Resolution 1889 (5 October 2009): the Security Council called for a strategy to **increase women's representation in conflict resolution decision-making**, including indicators and proposals for a monitoring mechanism. Among other things, States **must track money spent on women in post-conflict and recovery planning**. In the same resolution the Security Council affirms

“the responsibility of all States to put an end to impunity and to prosecute those responsible for all forms of violence committed against women and girls in armed conflicts, including rape and other sexual violence” (para. 3).

It also encourages Member States in post-conflict situations to:

“in consultation with civil society, including women's organizations, to specify in detail women and girls' needs and priorities and design concrete strategies, in accordance with their legal systems, to address those needs and priorities, which cover inter alia support for greater physical security and better socio-economic conditions, through education, income generating activities, access to basic services, in particular health services, including sexual and reproductive health and reproductive rights and mental health, gender-responsive law enforcement and access to justice, as well as enhancing capacity to engage in public decision-making at all levels” (para. 10).

Resolution 1960 (16 December 2010): the Security Council called for a monitoring and reporting framework to track sexual violence in conflict. **Names of those parties to armed conflicts that are “credibly suspected of committing or being responsible for patterns of rape and others forms of sexual violence in situations of armed conflict on the Security Council's agenda” must be included in annual reports on the implementation** of resolutions 1820 and 1888. The mentioned list will be used by the Security Council as a basis for more focused United Nations engagement with those parties, including, as appropriate, measures in accordance with the procedures of the relevant sanctions committees.

2.7 Resolution 1670 (2009) of the Parliamentary Assembly of the Council of Europe

At the European level, on 29 May 2009 the Parliamentary Assembly of the Council of Europe adopted Resolution 1670 concerning sexual violence against women in armed conflict. This document makes a direct reference to the cases of rape and other forms of sexual violence perpetrated during the war in the Balkans, and denounces the fact that there have been almost no prosecutions for rape and other crimes of sexual violence before domestic courts, and that thousands of victims have been denied access to justice, reparation and redress.

Among other things the Parliamentary Assembly calls on members States (Bosnia and Herzegovina became a member to the Council of Europe on 24 April 2002) to:

- Ensure that rape or other forms of sexual violence are **codified as autonomous crimes (meaning that there is a specific and autonomous provision concerning these crimes in the Criminal Code) in accordance with international standards** to enable the **prosecution of those responsible;**
- **Consider sanctioning countries that do not want** to protect women from sexual violence in armed conflict or **to prosecute perpetrators.**

2.8 Other relevant provisions

In international humanitarian law, **Article 12 of the First and Second Geneva Conventions of 1949** (respectively on the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field and on the Amelioration of the Condition of the Wounded, Sick and Shipwrecked members of the Armed Forces at Sea) contains the rather generic indication that “women shall be treated with all consideration due to their sex”.

Article 27 of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Times of War establishes that “**women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault**”.

Article 3, common to the four Geneva Conventions covers situations of non-international armed conflicts. It establishes that **persons taking no active part in the hostilities** (civilians and members of the armed forces who have laid down their arms and those who are no longer combating due to sickness, wounds, detention, or any other cause) **shall in all circumstances be treated humanely, without any discrimination**. In particular, with respect to the mentioned people, **violence to life and person, including cruel treatment and torture and outrages upon personal dignity, in particular humiliating and degrading treatment are prohibited at any time and in any place whatsoever**.

All four Geneva Conventions are international treaties and, as such, binding on their States Parties. These Conventions entered into force on 21 October 1950 and are now virtually universally applicable. Moreover, many of their provisions are currently considered as customary rules. This means that the mentioned provisions are applied and must be respected everywhere in the world.

Additional Protocol II to the 1949 Geneva Conventions was adopted on 8 June 1977 and has also a binding nature. It refers to armed conflicts of a non international character. **Article 4 of the Additional Protocol II** provides that:

1. All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honour and convictions and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction. It is prohibited to order that there shall be no survivors.

2. Without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph 1 are and shall remain prohibited at any time and in any place whatsoever:

(a) violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment; [...]

(e) outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;

[...] (h) threats to commit any of the foregoing acts. [...]

With regard to international human rights law, a number of provisions of various treaties can also be applied to women victims of rape or sexual violence which, together with the interpretation elaborated by the respective monitoring bodies, are useful for determining the existing international obligations of the States with respect to this group of persons, with regard to prevention and sanction of certain violations, as well as to the provision of integral reparation (including measures of rehabilitation, restitution and guarantees of non-repetition) to victims and their families. For instance:

- The **International Covenant on Civil and Political Rights** (into force since 23 March 1976; Bosnia and Herzegovina ratified this treaty on 1 September 1993) contains a number of relevant provisions. In particular:



Article 2, paras. 2 and 3 “Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant**. **3.** Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy (the last expression means an accessible and efficient procedure to determine the rights of a claimant), notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or

by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted".

This means that States have the positive obligation to adopt laws that in fact allow to enforce the rights recognized in the Covenant. For instance, States must adopt laws that criminalize rape in accordance with international standards.

Article 3 "The States Parties to the present Covenant undertake to ensure the **equal right of men and women to the enjoyment of all civil and political rights** set forth in the present Covenant".

Article 7 "**No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.** [...]".

Article 10.1 "All persons deprived of their liberty shall **be treated with humanity and with respect for the inherent dignity of the human person**".

This means that even if a person is legally deprived of his or her liberty, certain standards must be respected in order to ensure that the person is treated humanely. For instance, persons deprived of their liberty shall receive medical treatment and live in humane conditions (not overcrowded places and with respect for some hygienic minimum conditions).

The Human Rights Committee is entrusted with the monitoring of the implementation of this treaty.⁶

The **International Covenant on Economic, Social and Cultural Rights** (into force since 3 January 1976; Bosnia and Herzegovina ratified this treaty on 1 September 1993) contains a number

⁶ See *infra* para. 4.2.1.

of general provisions that could be of relevance also to women victims of sexual violence. In particular:

Article 2, para. 2 "The States Parties to the present Covenant undertake to guarantee that the **rights enunciated in the present Covenant will be exercised without discrimination** of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

Article 6 "1. The States Parties to the present Covenant recognize the **right to work**, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right. 2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include **technical and vocational guidance and training programmes**, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual".

This means that the State shall not only protect the rights of those already working, but also adopt measures to enable those not working but willing to, to attain a better qualification.

Article 10 "[...] The widest possible **protection and assistance should be accorded to the family**, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses. 3. **Special measures of protection and assistance should be taken on behalf of all children and young persons** without any discrimination for reasons of parentage or other conditions. [...]".

Article 11, para. 1 The States Parties to the present Covenant recognize the right of everyone to an **adequate standard of living** for himself and his family, **including adequate food, clothing and housing, and to the continuous improvement of living conditions** [...].

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Article 12, paras.1 and 12.2.d): “The States Parties to the present Covenant recognize the right of everyone to the **enjoyment of the highest attainable standard of physical and mental health**”. “The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: [...] The creation of conditions which would assure to all medical service and medical attention in the event of sickness”.

The Committee on Economic, Social and Cultural Rights is entrusted with a certain number of functions to monitor the implementation of the Covenant.⁷

The **Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment** (into force since 26 June 1987) contains a number of relevant provisions, as rape can be considered as a form of torture.

Article 1 For the purposes of this Convention, the term “**torture**” means any act by which **severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination** of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Article 2 Each State Party shall take **effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction**. 2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture. 3. **An order from a superior officer or a public authority may not be invoked as a justification of torture**.

Article 4 Each State Party shall ensure that **all acts of torture are offences under its criminal law**. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. 2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

⁷ For more information see the Web-site: www2.ohchr.org/english/bodies/cescr/index.htm.

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Article 5 Each State Party shall take such measures as may be necessary to **establish its jurisdiction** over the offences referred to in article 4 in the following cases: (a) When the **offences are committed in any territory under its jurisdiction** [...]; (b) When the **alleged offender is a national of that State**; (c) When the **victim is a national of that State** if that State considers it appropriate. 2. Each State Party shall likewise **take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite** him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article. 3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.



Article 7, para. 1: The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, **if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution**. [...]

These provisions are of particular importance, as they establish that, if a person suspected or accused of torture in on the territory of a State party to the Convention, this State must either extradite this person to be judged by a competent court (domestic or international) or take the necessary steps to directly judge and sanction the person concerned.



Article 12 Each State Party shall ensure that its competent authorities proceed to a **prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction**.⁸

Article 14, para.1 Each State Party shall ensure in its legal system that the victim of an act of torture **obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible**. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation. [...]⁹

⁸ On the obligation to conduct an investigation see infra para. 3.2.

⁹ On the obligation to provide compensation and integral reparation see infra para. 3.3.

The Committee against Torture is in charge of monitoring the implementation of this treaty.¹⁰

- **The Convention for the Protection of Human Rights and Fundamental Freedoms** (also called the European Convention on Human Rights) contains a number of relevant provisions. In particular:

Article 3 **"No one shall be subjected to torture or to inhuman or degrading treatment or punishment"**.

Article 8 **"Everyone has the right to respect for his private and family life**, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others".

Article 13 **"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority** notwithstanding that the violation has been committed by persons acting in an official capacity".

Article 14 **"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race**, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status".

The European Court of Human Rights is mandated to monitor the implementation of this treaty.¹¹

¹⁰ See *infra* para. 4.2.2.

¹¹ See *infra* para. 4.3.

Other Important References

- On the occasion of the Fourth World Conference of Women, held in Beijing in September 1995, the **Beijing Declaration and Platform of Action** was adopted. The Platform represents an agenda for women's empowerment and it is constituted around 12 crucial areas of concern, including "violence against women" and "women and armed conflict".
- In the **United Nations Millennium Declaration** (2000) States resolve **to combat all forms of violence against women and to implement the Convention on the Elimination of All Forms of Discrimination against Women**.
- Between 2000 and 2004, the United Nations General Assembly adopts a number of resolutions on the Elimination of All Forms of Violence against Women, whereby member States are **urged to strengthen awareness and preventive measures for the elimination of all forms of violence against women**.
- In **2000** the General Assembly holds a special session entitled **"Women 2000: Gender Equality, Development and Peace for the Twenty-First Century"**. As an outcome, a political declaration was adopted, whereby the General Assembly.
- In 2005 the **World Summit Outcome document to eliminate all forms of violence against women and girls, including by ending impunity and by ensuring the protection of civilians, in particular women and girls, during and after armed conflicts** is adopted by the General Assembly. In the document States reaffirm their commitment to **eliminating all forms of discrimination and violence against women** and the girl child, **including by ending impunity** and by ensuring the protection of civilians, in particular women and the girl child, during and after armed conflicts in accordance with the obligations of States under international humanitarian and human rights law.

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- In **2006** the Secretary-General of the United Nations issues and **In-depth Study on All Forms of Violence against Women**, whereby the international obligations of States are thoroughly analysed and spelled out.
- Between 2006 and 2010 the United Nations General Assembly adopts a number of resolutions on the **Intensification of Efforts to Eliminate All Forms of Violence against Women**, whereby it **strongly condemns violence against women perpetrated by the State, private persons or non-State actors** and encourages international institutions and States to intensify their efforts and support for activities to eliminate it.
- In 2010 the United Nations Human Rights Council adopts a resolution on **Accelerating Efforts to Eliminate All Forms of Violence against Women: Ensuring Due Diligence in Prevention**. In the resolution the Human Rights Council stresses that **States have an obligation to exercise “due diligence” (that is take all possible measures) to prevent, investigate, prosecute and punish the perpetrators of violence against women.**

United Nations Action against Sexual Violence in Conflict

To create awareness on the sexual abuses committed against women in conflicts and to sustain a global campaign to prevent and eradicate this heinous practice, a number of **United Nations agencies** decided to join their efforts:

- United Nations Development Programme (UNDP);
- Office of the High Commissioner for Human Rights (OHCHR);
- United Nations High Commissioner for Refugees (UNCHR);

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- Office for the Coordination of Humanitarian Affairs (OCHA);
- United Nations Entity for Gender Equality and the Empowerment of Women (UN Women);
- United Nations Children’s Fund (UNICEF);
- World Health Organization (WHO);
- World Food Programme (WFP);
- United Nations Population Fund (UNPFA); and
- Department of Peacekeeping Operations (DPKO).

These agencies aim at improving coordination and accountability, amplifying programming and advocacy, and supporting national efforts to prevent sexual violence and respond effectively to the needs of survivors.

Coalition for Women’s Human Rights in Conflict Situations

To ensure that crimes committed against women in conflict situations are adequately examined and prosecuted, in 1996 a Coalition for Women’s Human Rights in Conflict Situations was also established: its core working group is comprised of lawyers, legal scholars, women’s rights activists and NGOs concerned with gender and international justice.

3. THE OBLIGATIONS OF THE STATE

As mentioned in chapter 2, binding legal instruments create obligations for the State that must implement and respect them. The failure to do so brings legal consequences and can be the subject of actions before international human rights mechanisms.

The importance to examine the obligations of the State

After having presented the existing internationally recognised rights of women victims of sexual violence in chapter 2, the corresponding obligations of the State will be analysed in chapter 3.

This is important to determine what the State must or must not do in concrete terms in order to respect victims' rights.

In fact, the provisions listed in chapter 2 are often limited to a brief enunciation of a right or of a prohibition, but do not spell out the concrete measures that must be adopted by the State. International jurisprudence has contributed a great deal in analysing the nature of the obligations at stake.

On this basis, the concrete actions and programmes that the State must undertake or adopt can be envisaged. Such a list can be regarded as a platform for advocacy. If the obligations spelled out in chapter 3 are not respected, the State can be held accountable before international monitoring mechanisms.

3.1 The obligation to adopt all necessary measures to prevent rape or other forms of sexual violence

As seen above, States must take all the measures that may be necessary to **prevent** gross human rights violations, including torture and rape.

Preventive measures may include:



- ▶ The adoption of adequate **criminal legislation duly codifying violations** such as rape in accordance with international standards and establishing sanctions commensurate to the gravity of the crime;
- ▶ Adoption of civil remedies including **protection/restraining and/or expulsion orders** in favour of women at risk of suffering violence;
- ▶ Development of **awareness-raising campaigns, including large-scale media campaigns** (e.g. national days of action against violence against women; "zero tolerance" campaigns; efforts to involve men and boys in prevention activities);
- ▶ Provision of **training for specified professional groups**, including army, police, prosecutors, members of the judiciary, as well as medical personnel;
- ▶ Implementation of periodical and comprehensive **vetting programmes** to ensure the exclusion from public offices and security forces and armies of those associated with serious violations of human rights law, including sexual violence;
- ▶ Upholding the **principle of command responsibility** with regard to sexual crimes committed by the military and adopting the necessary legislative measures to ensure the application of the principle.

In general, the State must be **engaged towards overall societal transformation** to deal with root causes of violence against women, including discrimination, gender inequality, and social and cultural attitudes and stereotypes on gender. In particular, myths that fuel sexual violence must be debunked.



If a crime is duly codified this may have a dissuasive effect, eventually preventing the commission of crimes, besides allowing for the adequate sanction of criminals.

Interesting example

Art. 8 of the Brazilian Maria da Penha Law (2006) provides for integrated prevention measures, including encouraging the media to avoid stereotyped roles that legitimize domestic violence, launching public educational campaigns, and including the subject of violence against women in educational curricula at all levels.

3.2 The obligation to investigate: identify, prosecute and sanction persons responsible for rape or other forms of sexual violence

When gross human rights violations occur, including torture or rape, States must conduct an **investigation in order to identify those responsible** (as well as their potential accomplices, or any person who orders, solicits or induces the commission of, attempts to commit, or participates in a sexual crime), **judge and sanction** them. In fact, in cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the **duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violation and, if found guilty, the duty to punish him or her**. If the State leaves a violation unpunished and the victim's full enjoyment of his or her rights is not restored as soon as possible, it fails to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of fundamental human rights.

To comply with international standards, investigations must be:

- ▶ **Prompt:** while there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a **prompt response by the authorities in investigating** gross human rights violations may generally be regarded as essential in maintaining public confidence;

- ▶ **Impartial:** impartiality presupposes lack of pre-conceived ideas and prejudice by those who carry out the investigation. In cases where there is suspicion that racist or discriminatory attitudes induced the commission of a violent act, it is particularly important that the official investigation is carried out in a transparent way and impartially;
- ▶ **Independent:** the persons responsible for and carrying out the investigation have to be independent from those implicated in the events. This means not only a lack of hierarchical or institutional connection but also a practical independence;
- ▶ **Thorough/effective:** the investigation must be **capable of leading to the identification and punishment of those responsible**. This is not an obligation of results, but of means. The authorities must take the reasonable steps available to them to secure the evidence concerning the events, including, among others, eyewitness testimonies, forensic evidence and medical reports. Any deficiency in the investigation which undermines its ability to clarify the events or the person or persons responsible will risk falling foul of this standard.

The European Court of Human Rights has also declared that "there must be a **sufficient element of public scrutiny of the investigation or its results to secure accountability in practice** as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the next-of-kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests".

Moreover, in cases of gross human rights violations, including torture and rape, **the investigation must be carried out ex officio, without the victims or their relatives having to launch a complaint**.

Investigation must be undertaken in a **serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests** that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government. This is true regardless of what agent is eventually found responsible for the violation. Where the acts of private parties that violate the Convention are not seriously investigated, those parties are aided in a sense by the government, thereby making the State responsible on the international plan.

An interesting reference on investigation of human rights violations

A number of interesting documents containing guidelines and principles (therefore not binding on States) on how investigations on human rights violations, including torture and rape, should be conducted have been adopted. These instruments can be an important reference for advocacy and lobbying on domestic authorities. Of particular interest are the:

United Nations Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2000).

There are some measures that can be adopted to facilitate the carrying out of investigations in cases of sexual violence, such as the creation of specialised investigatory or prosecutorial units within domestic institutions.

To make justice as accessible as possible for victims of sexual crimes, States must, among others:

- ▶ Launch programmes to **provide legal information** to victims and encourage them to enforce their rights;
- ▶ Offer programmes of adequate and comprehensive **protection and psychological support to witnesses as well as to victims** of sexual crime. Protection and support must be provided prior, during and after trials. If necessary, protection must be extended also to the family of the witness or of the victim of the sexual crime;
- ▶ Ensure that victims of sexual crime **do not have to go through complicating or degrading reporting procedures**;
- ▶ Provide **gender-sensitivity training to police and judiciary**.

Interesting examples

All too frequently cases of sexual violence are dropped without any explanation to the complainant. This is certainly a source of frustration, debasement and revictimisation.

In order to address this issue, a special provision was introduced in the Spanish legislation (Instruction 8/2005 of the State's General Prosecutor's Office) that **requires prosecutors to explain to complainants why their case has been dropped**.

For various reasons, victims of sexual violence often delay in reporting the violation to public authorities. This shall not bring adverse consequences to the victim.

- Section 7 of the Namibia Combating of Rape Act (2000) provides that "in criminal proceedings at which an accused is charged with an offence of a sexual or indecent nature, the court shall not draw any interference only from the length of the delay between the commission of the sexual or indecent act and the laying of a complaint".

- Section 59 of the South Africa Criminal Law (Sexual Offences and Related Matters) Act (2007) contains a similar wording.

During proceedings concerning gross human rights violations, including torture and rape:

- ▶ Victims must be enabled to defend their interests, to **be heard in proceedings** and to **present evidence**. They must have broad legal standing and a **right to receive information about their rights as well as on the conduct and outcome of proceedings**;
- ▶ Victims must have a **remedy against decisions to discontinue** the case;
- ▶ Victims must have access to **legal aid**.

Good practices on free legal aid to women victims of sexual violence

- The rape crisis centres established under the Philippines *Rape Victims Assistance Act* (1998) provide free legal aid.
- Art. 21 of the Guatemalan *Law against Femicide and other Forms of Violence against Women* (2008) obliges the government to provide free legal assistance to survivors.
- In Spain, any woman victim of violence has the right to specialised and immediate legal assistance, including free legal aid to litigate in all administrative processes and judicial procedures directly associated with the violence suffered.
- In Kenya, the *Sexual Offences Act* (2006) provides for a third party to bring a case where the complainant is unable to go to court by herself.
- In Honduras, the *Code of Criminal Procedure* (1999) provides for the possibility of the complainant being represented by an organization, such as a women's rights organization. For example, the Centre for Women's Rights in Honduras has acted on behalf of victims, in coordination with the public prosecutor.
- In the United Kingdom and the United States of America, the prosecution has the responsibility to obtain and pay for an interpreter for complainants of sexual and domestic violence, once the need for one is recognized.

Principles to Combat Impunity

On 8 February 2005 the United Nations Commission on Human Rights adopted the **Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity** (Principles to Combat Impunity). These Principles are not binding on States. However, they provide a sound set of references of what States should do to avoid impunity (interpreted as the lack of investigation, trial and sanction – be it criminal, civil, administrative or disciplinary of perpetrators of serious crimes under international law, such as crimes against humanity and torture). Indeed, the Principles contain some binding provisions, whereby they reproduce general existing obligations for States. In particular, it is reiterated that States have an obligation to:

Investigate violations; to take appropriate measures in respect of the perpetrators, particularly in the area of justice, by ensuring that **those suspected of criminal responsibility are prosecuted, tried and duly punished**; to provide victims with effective remedies and to ensure that they receive **reparation for the injuries** suffered; to ensure the inalienable **right to know the truth** about violations; and to take other necessary steps to **prevent** a recurrence of violations.

In this sense, the Principles contain provisions relating to the establishment of truth commissions (or commission of inquiry); preservation and access to archives containing testimonies of violations; measures to ensure the right to justice of victims and their relatives as well as their right to reparation.

... A tip ...

The Principles can be a valuable reference when dealing with State's authorities in charge of investigation and prosecution, to remind them of existing international standards on this matter.

Other references

There are also other documents containing guidelines or principles (thus non binding on States) that may in any case be of use to victims of sexual violence to enforce their rights and, in particular, the right to justice. Among others, of particular interest is the **United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power** (1985).

In order to ensure the prosecution and sanction of those responsible for gross human rights violations, including torture and rape, States must adopt a number of measures to remove potential obstacles, including:

- ▶ Ensure that military courts have competence over offences of a military nature committed by military personnel. Gross human rights violations will never be interpreted as constituting offences of a military nature and therefore must **not be tried by military tribunals**;
- ▶ Perpetrators of gross human rights violations, including torture and rape, **cannot benefit of any amnesty or similar measure, aiming at excluding their criminal responsibility or sanction**;
- ▶ **Statutes of limitations in criminal proceedings cannot be applied** to people accused of crimes against humanity or gross human rights violations, including torture;

Statutes of limitations means the number of years over which criminal proceedings relating to a certain event can be opened. For instance, if for a certain crime there is a statute of limitations of 5 years, it means that it will be possible to open criminal proceedings over that crime for 5 years from the date of its commission.

BiH Criminal Code establishes that crimes against humanity are imprescriptible, which means that they are not subjected to statutes of limitation.

- ▶ The fact that the **perpetrator of violations acted on the orders of his or her government or of a superior does not exempt him or her from responsibility** (this may be regarded as attenuating circumstances);
- ▶ If a violation was committed by a subordinate, also **superiors are criminally responsible if they knew or, at the time, had reasons to know that the subordinate was committing or about to commit such crime and they did not take all the necessary measures to prevent or punish the crime**;
- ▶ The **official status of the perpetrator** of an international crime – even if acting as a head of State or government – **does not exempt him or her from criminal responsibility**.

3.3 The obligation to guarantee compensation and integral reparation to victims of rape or other forms of sexual violence

With the word “reparations” reference is made to **measures adopted by States to “repair”, as much as possible, past harms**. Sometimes, the wording “redress” or “effective remedy” can also be used. Neither “**reparation (A)**” nor “redress” nor “**effective remedy (B)**” shall be interpreted as meaning exclusively the payment of a certain amount of money (pecuniary compensation). Indeed, pecuniary or financial compensation is a very common form of reparation, but it is certainly not the only form that reparation can take.

(A) Reparation usually refers to the “substance” or the nature of the relief afforded (an award for damages, a public apology, etc.).

(B) Indeed, “remedy” or “remedies” rather refers to the procedural means by which a right is enforced (e.g. an administrative or civil procedure).

States have an obligation to provide reparations when they are responsible for gross human rights violations, including rape or other forms of sexual violence. This is undisputed under international law and it is also enshrined in domestic law of BiH, as well as in a number of already mentioned international treaties.

States bear the primary responsibility for providing reparation to victims of human rights violations in their country. There is a legal obligation on the State to provide reparation when violations are committed by agents of the State or under the State's authority. In some cases, it may be appropriate for authorities to establish reparation programmes to ensure that victims have access to a range of services and benefits. When crimes are committed by agents of other States or non-State actors, then the State has an obligation to ensure that victims can claim reparation against those responsible, including claims before national courts. When obtaining redress from other States or non-State actors is not possible or where there are obstacles that will delay the vital measures of assistance required by survivors or victims, the State should step in and provide reparation to survivors and victims and then seek to reclaim any costs from those responsible.

Thus, reparation aims at eliminating, as far as possible, the consequences of the illegal act and at restoring the situation that would have existed if the act had not been committed. Reparation can take many forms and the contents of the right to a remedy will depend on the nature of the substantive right in question. Indeed, such remedy must be effective in practice as well as in law and it cannot be merely illusory or theoretical.

Reparations for gross human rights violations, including torture and rape, have developed their own features. Special rules on the subject, different from those regulating inter-State or inter-individual reparations, have emerged. The main characters of these rules are the **articulated notion of victims** (individuals, groups, direct victim, relatives and society as a whole) and the **wide range of measures of reparation that must be accompanied by the effective guarantee of the rights to truth and justice of the victims and their relatives**. Consequently, taking into account individual circumstances, victims of gross human rights violations shall be provided with full and effective reparation, which comprises:

- ▶ **pecuniary compensation** (covering material and non-pecuniary damages), as well as other forms of reparation aiming at granting
- ▶ **restitution,**
- ▶ **rehabilitation,**
- ▶ **satisfaction, including restoration of dignity and reputation,**
- ▶ and **guarantees of non-repetition.**

Each of these entries will be explained in detail below.

In cases where gross human rights violations take place on a large scale as it happened during the war in BiH, instituting **administrative reparations schemes rather than litigation on a case-by-case basis** is certainly to be preferred.

With regard to measures of reparation that concern specifically women, it is of the utmost importance that **women are involved in the design of programmes of reparations from the outset**. Reparations should not be simply about restoring women to their original position, but should instead have a "**transformative potential**", meaning by this that they should allow women to improve or at least consolidate their position in society.

United Nations Basic Principles on Reparation

By resolution 60/147 of 16 December 2005, the General Assembly of the **United Nations adopted the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law** (Basic Principles on Reparation).

Although *not binding*, the Principles are a fundamental reference for defining State's responsibility for providing reparation to victims for acts or omissions that can be attributed to the State.

It is noteworthy that States are responsible for their failure to meet international obligations **even when substantive breaches originate in the conduct of *privae persons***, as States have to exercise due diligence to eliminate, reduce and mitigate the incidence and consequence of private violence.

The notion of reparation enshrined in the Basic Principles is a comprehensive one, entailing: **compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition.**

Notably, the notion of "victim" contained in the Basic Principles is also a wide one, encompassing persons who, **individually or collectively**, suffered harm, including **physical or mental injury, emotional suffering, economic loss or substantial impairment** of their fundamental rights. The term "victim" also includes the **immediate family or dependants of the direct victim** and persons who have suffered harm in intervening to assist victims in distress or to prevent victimisation.

General Comment by the Committee against Torture

Art. 14 of the Convention against Torture establishes the obligation of States to guarantee that all victims of torture obtain redress and have an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.

In 2011 the Committee against Torture decided to draft a general comment on this provision in order to better illustrate its contents and to spell out the related State obligations. The draft general comment has been circulated to obtain comments and observation by different actors,

including organizations from civil society. As of the time of writing, the final version of the general comment has not been issued yet. Nevertheless, the working document reproduces the notion of comprehensive reparation, reiterating that, with regard to victims of gross human rights violations and, in particular, of torture, reparation shall include:

- a) Restitution;
- b) Compensation;
- c) Rehabilitation;
- d) Satisfaction;
- e) Guarantees of non-repetition.

States are reminded that in the determination of redress and reparative measures provided or awarded to a victim of torture, the **specificities and circumstances of each case must be taken into consideration and redress should be tailored to the particular needs of the victim and the gravity of the violations committed against them.**

The Committee against Torture underlines that, in order to fulfill their obligations with regard to the right to reparation, States must ensure:

- ▶ The adoption of an adequate **legislative framework**;
- ▶ The establishment of **effective and accessible mechanisms for filing complaints.**

The Committee underlines the importance that judicial and non-judicial proceedings apply **gender sensitive procedures which avoid re-victimisation and stigmatisation.** With respect to sexual violence and access to due process and an impartial judiciary, the Committee emphasizes that in any proceedings, civil or criminal, to determine the victim's right to

redress, including compensation, **rules of evidence and procedure in relation to sexual and gender violence must afford equal weight to the testimony of women and prevent the introduction of discriminatory evidence and harassment of victims and witnesses.** The Committee considers that complaints mechanisms and investigations require specific **positive measures** which take into account gender aspects in order to ensure that victims of abuses such as sexual violence and abuse, rape, marital rape, domestic violence, female genital mutilation, and trafficking are able to come forward and seek redress.

According to the Committee, **Statutes of limitations should not be applicable in cases of claims of torture or ill-treatment**, as well as of rape. States must ensure that all victims of torture or ill-treatment, regardless of when the violation occurred or whether it was carried out by or with the acquiescence of a former regime, are able to access their rights to remedy and to obtain redress.

In fact, a comprehensive approach to the dimensions of the human being and the human suffering demands for an integral form of reparation.

Recipients of reparations should include, besides the direct victim, his or her family members. When women victims of sexual violence are involved, consideration shall be given to ongoing issues that women and girls face, for instance in dealing with the material consequences of stigma.

Another well-established principle is that, when the victims belong to particularly vulnerable groups, such as children, the **measures of reparation must** adequately mirror this aspect and try to **meet the specific features and needs of the people harmed.**

Reparations for violence against Women and their Special Nature

Nairobi Declaration and Basic Principles on Women's and Girls' Right to a Remedy and Reparation

In March 2007, during the International Meeting on Women's and Girls' Right to a Remedy and Reparation that was held in Nairobi, women's rights advocates and activists, as well as survivors of sexual violence in situations of conflict throughout the world adopted the Nairobi Declaration and a set of Basic Principles on Women's and Girls' Right to a Remedy and Reparation. These are *not binding instruments* on States, but they provide useful guidelines and references. In particular, it is stressed that:

- ▶ **National governments bear the primary responsibility** to provide remedy and reparation;
- ▶ Reparation must aim at driving post-conflict **transformation of socio-cultural injustices and political and structural inequalities;**
- ▶ Reparation programmes must **address the responsibility of perpetrators** and all actors involved and they must be accompanied by truth-telling experiences or other forms of transitional justice. In this sense, ending impunity through legal proceedings for crimes against women and girls is a crucial component of reparation policies;
- ▶ Reparation programmes must be shaped **taking into account the needs, interests and priorities of women victims of sexual violence, as defined by them.** In this sense, reparation programmes shall guarantee support of women's and girls' empowerment by taking into consideration their autonomy and participation in decision-making. Processes must thus empower women and girls, or those acting in the best interests of girls, to determine for themselves what forms of reparation are best suited to their situation. To this aim, States must ensure that **women and girls are adequately informed of their rights;**

- ▶ In the case of victims of sexual violence, when shaping reparation programmes States shall **take into account the multi-dimensional and long-term consequences of these crimes to women and girls, their families and their communities, requiring specialized, integrated, and multidisciplinary approaches**; and
- ▶ Reparation processes must **allow women and girls to come forward when they are ready and they should not be excluded if they fail to do so within a prescribed time period. Support structures are needed** to assist women and girls in the process of speaking out and claiming reparation.

An interesting judgment: Gonzáles and others v. Mexico

In 2009 the Inter-American Court of Human Rights delivered a landmark judgment concerning violence against women (***Gonzáles and others v. Mexico***, also known as "Cotton Field" case). The case concerned young girls who were abducted and subjected to sexual violence and torture before being killed. The State was found responsible of a number of violations against the victims and their families and the Court ordered Mexico a number of measures of reparation. Besides the payment of monetary compensation for the families of the victims, the State was ordered to adopt some other measures of redress, including the carrying out of thorough investigations on the sexual violence and the murders and the implementation of gender training for the police. Interestingly, the Court indicated that **"reparations should be oriented to identify and eliminate the structural factors of discrimination" and, in doing so, should aim at transforming the underlying gender inequalities that generated the violence.**

A Report on Reparations by the Special Rapporteur on Violence against Women

In 2010 the United Nations Special Rapporteur on Violence against Women issued a thematic report on reparations in response to gender-based violations. In particular, the Special Rapporteur stressed the growing demand for "transformative justice", noting that the

measures for redress need to **"subvert instead of reinforce pre-existing patterns of cross-cutting structural subordination, gender hierarchies, systematic marginalization and structural inequalities that may be the root causes of the violence that women experience before, during and after the conflict"**.

What is transitional justice?

Often after a conflict or a period of political violence characterised by massive atrocities the judiciary alone is not capable to deal with all the violations and the crimes that have been perpetrated and to duly investigate, judge and sanction those responsible.

Therefore, "transitional justice" must be seen as a set of measures (mainly non-judicial) aiming at establishing the truth on what happened (e.g. Truth Commissions); redressing the harm caused (e.g. programmes of reparations, that may include significant institutional reform, or measures for the preservation of memory), and, eventually, allowing the ordinary competent judicial authorities to prosecute those responsible and to sanction them. **Indeed, transitional justice cannot be considered as a mere substitute of justice.**

Initiatives of transitional justice are usually adopted at the **domestic level** (in the sense that is the local government that formally endorses them, for instance, through a decree or a specific law) and they may be supported by international organizations.

3.3.1 Compensation

"Compensation" is the expression used to refer to a certain **amount of money** that the victim of a violation is entitled to receive for the harm suffered. This sum of money must cover both the **material** (any economically assessable damage) and the **moral** damage suffered. In practice, compensation must cover:

BETWEEN STIGMA AND OBLIVION

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- ▶ **Physical** or **mental** harm;

Since it may be difficult to provide the evidence for psychological effects of a violation, mental harm should be presumed as a consequence of gross human rights violations such as torture and rape.



- ▶ **Lost opportunities**, including employment, education and social benefits;

There must be a causal link between the violation suffered and the actual condition of the victim, whereby the latter must demonstrate that, had the violation not taken place, he or she would have been able to work, study, etc.



- ▶ Material damages and **loss of earnings**, including loss of **earning potential**;

This depends from the kind of harm actually suffered by the victim that may have actually caused him or her a certain degree of invalidity.



- ▶ **Moral** damages, including harm to reputation and dignity; and
- ▶ **Costs** required for legal or expert assistance, **medicine and medical services**, and psychological and social services.

Compensation must be **proportional to the gravity** of the violation and the circumstances of each case.

Victims may obtain compensation through **civil proceedings** or **specifically established programmes and funds**.

When compensation can be obtained only through court proceedings, the State must:

BETWEEN STIGMA AND OBLIVION

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- ▶ **Make the existence of this possibility known** to victims;
- ▶ Provide **adequate legal assistance** to victims seeking compensation;
- ▶ Ensure that if a **court fee** is required in order to initiate proceedings, victims of gross human rights violations, including torture and rape, are **exempted**. In any case, the personal circumstances of the person concerned must be duly taken into account and indigent people must never be requested to pay court taxes;
- ▶ Ensure that it is **possible to include compensation claims in criminal proceedings**. Indeed, a civil proceeding and the victim's claim for reparations should **not be dependent on the conclusion of a criminal proceeding**.

Where payments are made, it is crucial to **ensure that women can actually access the money**, in contexts where they may not have bank accounts, the necessary forms of identification, or exercise little control over their own income.

Warning!

In cases of rape or other forms of sexual violence, the **burden of proof can be extremely challenging**. Thus, reparation programmes for victims of sexual violence should include measures that do not require evidence, which may be difficult to provide or place the victims at further risk.

An interesting example

The programme of reparations launched in Chile after the military dictatorship established that **compensation could be paid to victims of torture and rape without requiring them to disclose or prove their experiences**.

Compensation was paid automatically to victims that had been detained in a location known for the systematic use of torture or sexual violence.

This model could be followed where it has been established (and this is the case of BiH) that the incidence of sexual violence was exceptionally high, by this means avoiding demanding proof from individual victims.

No statutory limitation for compensation claims

For many victims of gross human rights violations, including torture and rape the passage of time has no attenuating effect. In cases where sexual violence is involved, victims need time to decide to step forward and claim for their rights. The fact that obtaining compensation is subjected to statutory limitations may represent an insurmountable obstacle.

In this sense, **civil claims for compensation shall not be subjected to statutes of limitation.**

3.3.2 Restitution

“Restitution” literally means **restoring the victim to the original situation before the violation occurred.** In cases of rape or other forms of sexual violence, it is certainly impossible to interpret this expression in its literal meaning, but in practice restitution can also be interpreted as including measures such as:

- ▶ Restoration of **legal rights** (e.g. giving victims access to health care, education, pensions and social rights);
- ▶ **Restoration of employment;**

This particular measure can also be granted through the offer of vocational trainings and courses for victims, as well as through the establishment of funds from which victims may obtain loans with favourable rates to start an activity.

- ▶ Return of **property;**
- ▶ **Return**, in *safe and dignified* conditions, to **one's place of residence.**

3.3.3 Rehabilitation

Rehabilitation for victims of torture and rape, should encompass **medical and psychological care** as well as **legal** and **social services.**

In this light, the State should ensure that victims of gross human rights violations receive, **free of charge, medical and psychological care, including the medicines required.** In practice, this shall be provided through the State's specialized health institutions, taking into account the specific problems and needs of any victim after making an individual evaluation. This is of particular importance in case of victims of rape or other forms of sexual violence, where special protocols must be followed due to the peculiar nature of the violation suffered and its consequences.

It is the State, through its health institutions, that is responsible for providing medical and psychological rehabilitation. Indeed, this cannot be solely delegated to non-governmental organizations that offer this type of services. The State may decide to financially contribute to the functioning of the mentioned organizations.

Furthermore, victims shall be entitled to receiving **free legal aid** to enable them to realizing their rights, as well as to allow them to feel more comfortable if they take part to proceedings against those responsible for the rape or other forms of sexual violence they suffered.



In general, a free legal aid system must be established by the State and not merely delegated to the legal support provided by non-governmental organizations. The State may decide to financially support the mentioned organizations.

“Social” rehabilitation means ensuring that victims are integrated or reintegrated into society by helping them to adjust to the demands of family, community, and occupation, while reducing any economic and social burdens that may hamper the total rehabilitation process.

Measures of rehabilitation shall also benefit the **victim’s family** and, in certain cases, the **community**.

An interesting example

Often women victims of sexual violence who are mothers tend to prioritize the needs of their children and to forget about themselves and the harm they have suffered.

As a consequence of the commission of widespread and systematic violations, including sexual violence, in Timor East a programme of reparations was adopted.

“**Mothers**” (including single mothers, widows, and victims of sexual violence) were considered to be a category deserving special measures, including the supply of **scholarships to their children**.

Particularly interesting was the procedure established to enforce this measure. To guarantee the reception of scholarships to children, the **mothers have to appear once in a month** before the local commission in charge of the distribution of scholarships and other measures of reparation. **On the same occasion, mothers receive other forms of assistance, such as legal aid, psychological or medical support, workshops and trainings, access to credit.**

This is a manner to guarantee the effective access of women to measures of reparation: they will therefore be able to deal at the same time with their own needs and those of their family.

3.3.4 Satisfaction

“Satisfaction” aims at providing victims of torture and rape, with **non-financial forms of reparation for moral damage or damage to the dignity and reputation of the victim**.

Measures aiming at granting “satisfaction” include:

- ▶ **Official declarations or judicial decisions restoring the dignity**, the reputation and the rights of the victim and of persons closely connected with the victims;
- ▶ **Public apologies**, including acknowledgement of the facts and acceptance of responsibility;
- ▶ **Commemorations and tributes to the victims**;
- ▶ Inclusion of an **accurate account** of the violations that occurred in **educational material at all levels**; and
- ▶ **Verification of the facts and full and public disclosure of the truth** to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim’s relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations.

This may include, depending on the case, public ceremonies, the building of memorials or monuments, the creation of commemorative plates or entitling buildings or streets to victims. Indeed, this kind of measures must be adopted only if the victims or their families so wish and in consultation with them.



3.3.5 Guarantees of non-Repetition

As a measure of reparation, State shall also ensure that victims, and society as a whole, **do not again have to endure violations of their rights**. These measures are also known as "guarantees of non-repetition" and usually encompass major **institutional reforms**. Guarantees of non-repetition may include:



Institutional reforms aimed at preventing a recurrence of violations should be developed through a process of broad public consultations, including the participation of victims and other sectors of civil society.



- ▶ **Reviewing and reforming laws** contributing to or allowing gross violations of human rights;



This may encompass the repeal of laws that contributed to the commission of human rights abuses or the enactment of new legislative measures to ensure respect of human rights.



- ▶ Providing **human rights and international humanitarian law education** to all sectors of society and training for law enforcement officials as well as military and security forces;
- ▶ Promoting the **observance of codes of conduct and ethical norms**, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel;
- ▶ Ensuring that public officials and employees who are personally responsible for gross violations of human rights, in particular those involved in military, security, police, intelligence and judicial sectors, **shall not continue to work in State institutions**. Their removal shall comply with the requirements of due process of law and the principle of non-discrimination. Persons formally charged with individual responsibility for serious crimes under international law shall be suspended from official duties during the criminal or disciplinary proceedings;

- ▶ Ensuring **effective civilian control of military and security forces**;
- ▶ Ensure the **independent, impartial and effective operation of courts in accordance with international standards of due process**.

Educate to Prevent

To guarantee the non-repetition of similar violations, the truth commission established in Timor East recommended the establishment of a specific **programme of education addressed to the whole population** on violence and, in particular on sexual violence. The principal aim of this programme is to reduce the discrimination and stigma suffered by victims of sexual violence, dismantling stereotypes and affirming clearly that "guilt" is with perpetrators and not with victims.

Moreover, States must guarantee the establishment of **empowerment programmes, including education, skills trainings, legal literacy and access to productive resources**.

What happens if the State does not respect its international obligations?

At the international level a number of mechanisms have been established with the aim of monitoring the implementation by States of their obligations.

When domestic authorities breach their obligations and national remedies are not effective, under certain conditions, international mechanisms may offer an appropriate venue to fulfil the rights to justice, truth and reparation of victims of human rights violations, including torture and rape.

4. INTERNATIONAL HUMAN RIGHTS MECHANISMS THAT MAY DEAL WITH VIOLATIONS RELATED TO RAPE OR OTHER FORMS OF SEXUAL VIOLENCE

There are international mechanisms that monitor the implementation of existing international legal instruments and standards that apply to women victims of rape or other forms of sexual violence.

Time for action

After having determined which is the applicable legal framework, and having assessed which are the rights recognized by international law to victims of sexual violence and what are the corresponding obligations of the State, chapter 4 focuses on what victims and civil society organizations can undertake to force the State to comply.

Some mechanisms are easy-to-use and accessible to almost anyone, while others require complicated procedures and the assistance of experts.

This chapter is crucial to assess what the possibilities offered to victims of sexual violence at the international level are, and to determine whether any of them is useful for the victim concerned and, if so, how, under which conditions, and with what implications.

As the legal instruments are divided into **binding** (those that express what States must do) and **non-binding** (those that express what States **should** do), international monitoring bodies also have different degrees of “power” towards States.

Some mechanisms are called **judicial** (e.g. the European Court of Human Rights), as they are composed by judges, and adopt **judgments** that are **binding** on respondent States and, as such, must be implemented.

Some mechanisms are called **quasi-judicial** (e.g. the United Nations Committee), being composed of independent experts, and they may adopt **views and recommendations** that are **not directly binding** on the States concerned, but that are nonetheless relevant, as they do represent the state of international law and, as such, should be implemented in good faith by the State.

There are some other mechanisms (e.g. the United Nations special procedures) that are not related to any specific treaty and discharge their mandate with regard to all the States of the world. They cannot adopt judgments or views and their recommendations are not binding on the States concerned.

Although among the mechanisms analysed in chapter 4 the European Court of Human Rights is certainly the most powerful, and indeed the only one capable of issuing binding judgments. But it is also the most complicated mechanism to use. The procedure before the Court is very articulated and certainly requires the assistance of a professional lawyer. Moreover, one can submit a case to the European Court of Human Rights only after having exhausted domestic remedies. This requires to first undertake several steps at the domestic level and, possibly, to wait for some years if that has not already been done.

For this reason the analysis below starts from the Special Procedures of the United Nations: they are not binding, but the procedure before them is relatively simple and accessible and does not require the assistance of a lawyer. Moreover, Special Procedures are competent to receive information and allegations from any country in the world, irrespective of whether a State has ratified a treaty or not. And to bring a situation to the attention of Special Procedures does not require to first exhaust domestic remedies or to respect deadlines. In this light, they are a flexible tool and may be particularly useful when it becomes necessary to deal with urgent matters.

The submission of a particular case to Special Procedures is not incompatible with the filing of a communication or a complaint before an international quasi-judicial or judicial body. In this light, if the pressure exerted on the State by Special Procedures is not enough, and if a number of requirements are met, victims can subsequently consider to turn to quasi-judicial or judicial international human rights mechanisms.

4.1 The United Nations Special Procedures

“Special Procedures” (either Special Rapporteurs or Working Groups) are the mechanisms established by the Human Rights Council to address either specific “country” situations or “thematic” issues in **all parts of the world**. In particular, “thematic mandates” deal with specific subject-matters (e.g. torture, violence against women, enforced disappearance, arbitrary detention, etc.).

Special Procedures are not related to the monitoring of any specific treaty or convention. Special Procedures do not issue judgments or views on individual applications and their recommendations are not binding on the States concerned. Nonetheless, they represent an effective venue to raise awareness on human rights violations in a country and their intervention may put a significant pressure on the State.

Special Procedures usually examine, monitor, advise and publicly report on human rights situations in specific countries or on major phenomena of human rights violations worldwide. In this context, various activities are carried out by the Special Procedures. All of them may receive urgent appeals and letters of allegation. This will be explained below more in detail for each of the Special Rapporteurs that are particularly relevant in cases of rape or other forms of violence against women.

Besides this, all Special Procedures conduct the following activities:

Country visits. Upon previous invitation and consent by the government, Special Procedures can visit a country to assess the overall situation with regard to the subject of their mandate, such as torture or violence against women. After such visit, the Special Procedure concerned will release a report containing conclusions and recommendations.

Annual reports. Each Special Procedure reports annually to the United Nations Human Rights Council on its activities, reporting also on its communications with governments and NGOs, its missions, all cases received during the year and the implementation of international obligations by States.

IMPORTANT: all procedures of the Special Rapporteurs and Working Groups are free of charge.

Special Procedures do not:

- ▶ Directly investigate individual cases of rape or other forms of sexual violence against women;
- ▶ Directly adopt measures of protection against reprisals;
- ▶ Establish individual or State responsibility in cases of rape or other forms of sexual violence against women;
- ▶ Judge and sanction;
- ▶ Grant compensation or reparation.

Why should a case be submitted to one or more Special Procedures?

Reporting a case to one or more Special Procedures has the first important consequence of alerting the United Nations and the international community in general on the existence of a problem. This is crucial to “**keep record**” of something that happened or is happening. Indeed, **international pressure** may be a key factor in solving a case of violence against women or reprisal or harassment against people (or associations) working on it. Furthermore, it is noteworthy that to bring cases before Special Procedures it is **not necessary to have previously exhausted domestic remedies** and the whole activity is less formal than before a tribunal or a Committee. Moreover, Special Procedures are **competent on cases coming from every country of the world**, regardless of the ratification of any specific treaty by the State concerned.

Can an individual submit a case to a Special Procedure or does he or she need assistance?

Cases relating to rape or other forms of sexual violence or episodes of reprisal suffered by persons or associations working on such cases can be submitted to Special Procedures directly by the

victims or by organizations acting on their behalf. Whoever submits the case or the allegation to the Special Procedure concerned must afterwards be able to maintain communication with it and to answer promptly to requests for further information or clarification.

When communicating with a Special Procedure one can request confidentiality due to privacy or security reasons. This will ensure a certain level of protection.

Is it difficult to communicate with Special Procedures?

Information to the Special Procedures must be submitted in writing (preferably by fax or e-mail). Communications can be written in English, French or Spanish. The contact address is:

OHCHR-UNOG
CH-1211 Geneva 10
Switzerland
Fax: 0041 (0) 229179006

The e-mail address that must be used for urgent actions is: urgent-action@ohchr.org. Furthermore, each Special Procedure has a specific address which can be used for regular communications.

Urgent Actions

“Urgent actions” (or “urgent appeals”) is the expression used to refer to communications to Special Procedures that concern:

- Violations that have not yet occurred, but are likely to be perpetrated.

Some Special Procedures consider “urgent actions” also Violations that occurred in the previous 3 months.

Violations that have already occurred (and, in any case, that occurred more than 3 months before the submission), are dealt with as “regular” allegations and, as such, are not granted priority.

In general, it is important to remember that within the United Nations there are numerous Special Procedures¹² that deal with different subjects. Here only those whose mandate is more relevant to victims of rape or other forms of sexual violence will be mentioned. However, on specific issues, the others can also be seized (e.g. the Special Rapporteur on Internally Displaced Persons on matters related to victims of forced displacement).

In 2010, pursuant to resolution 1888 of 30 September 2009 of the Security Council, the United Nations Secretary-General appointed a **Special Representative on Sexual Violence in Conflict** (currently, the mandate is held by Mrs. Margot Wallström). The Special Representative is mandated to lead, coordinate, and advocate for efforts to end conflict-related sexual violence against women and bring more attention and action on this critical issue. In November 2010, Mrs. Wallström visited BiH and expressed deep concern on the situation of women victims of rape or other forms of sexual violence in BiH. Indeed, she determined that BiH will be a focus country for her Office in the upcoming period.

4.1.1 The Special Rapporteur on Violence against Women, its Causes and Consequences

What is the Special Rapporteur on Violence against Women, its Causes and Consequences?

The mandate of the Special Rapporteur was established in 1994. He or she can:

- a) **Seek and receive information** on violence against women from different sources (including non-governmental organizations and women’s organizations); and
- b) **Recommend measures** and means at the national level **to eliminate violence** against women and to **remedy its consequences**.

¹² For the complete list (in English) of the existing Special Procedures, their contact details and the respective mandates see: www2.ohchr.org/english/bodies/chr/special/themes.htm. On the functioning and mandate of the United Nations Special Procedures see also www.ohchr.org/Documents/Publications/FactSheet27en.pdf.

What are the Special Rapporteur's Functions?

Besides country visits and annual reports, the Special Rapporteur receives and analyses:

Urgent appeals: if there is a situation that involves an **imminent threat, or fear of threat, to the right to personal integrity or the life of a woman** (e.g. a witness or the victim in a trial for rape have been threatened, the office of an association of women has been attacked and the members have been harassed). In these cases, an urgent appeal can be submitted to the Special Rapporteur. If the latter considers the information reliable and credible, it will **communicate with the government, appealing on it to ensure effective protection of the person** under threat or at risk of violence.

Sending urgent appeals has a crucial importance, as it allows putting international pressure on governments.

Allegation letters: if there is a situation that refers to **violence against women that already occurred** or to **general pattern of violations** (including **gaps in the legal framework and its application** with regard to the protection of the rights of women), a letter of allegations can be sent to the Special Rapporteur. If the latter considers the information received reliable, it will **require the government to clarify the substance** of the allegations received.

Sending letters of allegation has the aim to raise awareness on the existence of systemic problems in the protection of women and to submit to public attention the occurrence of grave violations.

If the information submitted to the Special Rapporteur concerns violations committed by private individual or groups (rather than governmental officials), all information that may indicate that the government failed to exercise due diligence to prevent, investigate, punish and ensure compensation for the violations must be included.

A copy of the **individual application form in English** to submit a case to the Special Rapporteur can be found here: www2.ohchr.org/english/issues/women/rapporteur/form.htm

What is the e-mail address of the Special Rapporteur on Violence against Women, its Causes and Consequences?

E-mail: vaw@ohchr.org

Interesting!

The Special Rapporteur has dealt on a number of occasions with the subject of "**violence against women perpetrated and/or condoned by the State**" and has issued some reports that analyse in-depth the main obligations of the States. Of particular interest are two reports adopted respectively in 1998 (E/CN.4/1998/54) and 2001 (E/CN.4/2002/73) and that, through reference to concrete instances and analysis of existing jurisprudence and practice, and can be used as a sound guide to determine what States must do to prevent and eradicate sexual violence against women.

4.1.2 The Special Rapporteur on Torture and other forms of Inhuman or Degrading Treatment or Punishment

What is the Special Rapporteur on Torture?

The mandate of the Special Rapporteur on Torture was established in 1985. He or she can:

- a) **Seek and receive information** on torture and instances of inhumane and degrading treatment from different sources (including non-governmental organizations and women's organizations); and
- b) **Sending urgent appeals to governments** to clarify the situation whose circumstances give grounds to fear that torture might occur or be occurring and formulating **relevant recommendations**.

What are the Special Rapporteur's Functions?

Besides country visits and annual reports, the Special Rapporteur receives and analyses:

Urgent appeals: if an individual or a group of individuals is at **risk of torture at the hands, consent, or acquiescence of public officials** (e.g. members of the police, prison guards, the army, paramilitary groups, etc.), such information can be communicated to the Special Rapporteur as an urgent appeal. The Special Rapporteur will **send a letter to the Ministry of Foreign Affairs of the country concerned, urging the government to ensure the physical and mental integrity** of the person(s) in question.

The Special Rapporteur sends urgent appeals concerning the **enactment of legislation that will allegedly undermine the prohibition of torture** (e.g. providing impunity for acts of torture).

Allegation letters: when a case of **torture already occurred**, information can be sent to the Special Rapporteur in the form of an allegation letter. The Special Rapporteur will **request the government to clarify the substance of the allegation and to forward information on the status of any investigation** (e.g. the identity of the persons responsible for the torture, the disciplinary and criminal sanctions imposed on them, and the nature and amount of compensation paid to the victims or their families). **Legislation that has an impact on the occurrence of torture** may also be the subject of an allegation letter (e.g. legal provisions granting amnesty, laws on compensation for torture victims which are not in line with international standards, etc.).

A copy of the model questionnaire in English to be filed by a person alleging torture can be found here: www2.ohchr.org/english/issues/torture/rapporteur/model.htm.

An example

Mrs. A. R. was subjected to rape by a policeman when she went to a police station to report a car accident. Two days later, she filed a complaint against the policeman and underwent medical examination. Notwithstanding all Mr. A.R.' efforts, the perpetrator was acquitted and he even obtained a promotion. Mrs. A.R. is now receiving anonymous phone-calls, whereby she is insulted and threatened with death.

Mrs. A.R. decided to inform the Special Rapporteur on the events and to request his intervention. The Special Rapporteur contacted the Ministry of Foreign Affairs of the State concerned and requested that:

- ▶ information is provided with regard to the facts alleged and that a thorough investigation is carried out to allow the judgment and sanction of the responsible, and that Mrs. A.R. is granted compensation and integral reparation for the harm suffered;
- ▶ all necessary measures to protect Mrs. A.R.' life and personal integrity are undertaken and the responsible for the anonymous phone calls is identified and sanctioned;
- ▶ the Special Rapporteur is periodically informed about the developments concerning the case.

After this Mrs. A.R. also continues updating the Special Rapporteur on the developments concerning her case, informing him of the measures that the State has (or has not) undertaken. The perpetrator has not yet been punished, but the investigation has been reopened and Mrs. A.R. has not received other anonymous threats.

What is the e-mail address of the Special Rapporteur on Torture?

E-mail: sr-torture@ohchr.org

4.1.3 The Special Rapporteur on Human Rights Defenders

Who is a human rights defender?

“Human rights defender” is a term used to describe people who, **individually or with others, act to promote or protect human rights**. To be considered a human rights defender, a person seeks the promotion or protection of human rights (e.g. dealing with torture, violence against women, internally displaced persons, etc.).

In this sense, people working for an association dealing with women victims of rape or sexual violence are human rights defenders.

What is the Special Rapporteur on Human Rights Defenders?

The mandate of the Special Rapporteur on Human Rights Defenders was established in 2000. It is mandated, among others, to:

- ▶ **Seek and receive, examine and respond to information** on the situation of human rights defenders;
- ▶ **Recommend effective strategies to better protect human rights defenders and follow up** on these recommendations.

What are the Special Rapporteur’s Functions?

Besides country visits and annual reports, the Special Rapporteur can receive and analyse:

Urgent appeals: if the situation involves a **violation that is allegedly ongoing or about to occur** (e.g. a human rights defender has received a death threat) this can be referred to the Special

Rapporteur through an urgent appeal. The Special Rapporteur **contacts the government concerned through the State’s diplomatic mission with the United Nations in Geneva and calls for prompt intervention to protect the person concerned**.

Allegation letters: if the situation involves **violations that have already occurred and for which the impact on the defender affected can no longer be changed** the information can be referred to the Special Rapporteur through an allegation letter. The Special Rapporteur will **contact the government and ask the latter to take all appropriate action to investigate the alleged events and to communicate the results of its investigation to the Special Rapporteur**.

Guidelines in English for the submission of a case to the Special Rapporteur can be found here: www2.ohchr.org/english/issues/defenders/complaints.htm.

What is the e-mail address of the Special Rapporteur on Human Rights Defenders?

E-mail: defenders@ohchr.org

An example

Mrs. K. F. is the Secretary General of an association of women victims of violence. On a number of occasions she has received anonymous phone calls, and she was threatened with being kidnapped or even killed. One day she was followed by two individuals whose identity she ignored and, when one of the two tried to capture her, she luckily managed to escape and was helped by other people in the street to reach a safe place. Although she reported these incidents to the police, no thorough investigation has ever been undertaken and those responsible have not been identified and sanctioned.

One night, thieves entered the office of the association where Mrs. K.F. works. They stole the computer hard-disk as well as the folders containing the documentation of the association. Although in the office there were valuables and money, the thieves intentionally did not steal

them, but limited to misplace them on the desk of Mrs. K.F. Anew, the incident was reported to local authorities, but without meaningful results.

Mrs. K.F. wrote an urgent appeal to the Special Rapporteur on Human Rights Defenders, requesting for her intervention. The Special Rapporteur contacted the authorities of the State where Mr. K.F. lives and works and requested it to adopt all necessary measures to protect Mrs. K.F. life and personal integrity and to allow her and the members of the association to discharge their work without interference. Moreover, the Special Rapporteur also requested the State concerned to periodically inform her on the situation of Mrs. K.F. and the members of her association as well as on the outcome of the investigations on the incidents already reported to authorities.

Since then Mrs. K.F. has not received other threats and continues working for the association.

Warning!

A matter can fall under the mandate of one or more Special Procedures. If this is the case, the matter can be submitted jointly to different relevant Special Procedures. Indeed, it is important to **make it mutually known that the matter has also already been communicated to another Special Procedure**, in order to avoid overlapping or duplication and to facilitate coordination between the mentioned actors.

As already pointed out, Special Procedures **do not use Bosnian/Serbian/Croatian** as working languages. Therefore consider that, to communicate with these bodies, you will have to use English, French or Spanish.

4.1.4 The Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees on non-reoccurrence

In 2011 the United Nations Human Rights Council decided to establish a new Special Procedure: the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of non-reoccurrence. The mandate holder will be nominated and will assume his or her functions in May 2012.

Accordingly, at the time of writing, details such as the e-mail address of the Special Rapporteur or the existence of a form to submit allegations or complaints are yet available.

Nevertheless, it is known that the Special Rapporteur will be mandated, among others, to:

- ▶ Contribute, upon request, to the provision of **technical assistance or advisory services** on the issues pertaining to the mandate;
- ▶ Gather relevant information on national situations, including on the normative framework, on national practices and experiences, and to **make recommendations** thereon;
- ▶ Make **recommendations** concerning judicial and non-judicial measures when designing and implementing strategies, policies and measures for addressing gross violations of human rights; and
- ▶ Conduct **country visits** and to respond promptly to invitations from States.

Thinking Ahead

In view of the fact that in **BiH** the establishment of both a **transitional justice mechanism** and of a **programme of reparations for women victims of sexual violence** during the war is being considered, the Special Rapporteur on Truth, Justice, Reparations and Guarantees of non-reoccurrence may be requested to provide his or her **technical assistance or advisory services**, and to formulate his or her **recommendations** in this regard.

4.1.5 The Working Group on the Issue of Discrimination against Women in Law and in Practice

What is the Working Group on the Issue of Discrimination against Women in Law and in Practice (WGDWLP)?

The WGDWLP was established in 2010. It is composed by five independent experts and is mandated, among others, to:

- ▶ **Develop a dialogue** among different stakeholders, including civil society, to identify, promote and exchange views on **best practices related to the elimination of laws that discriminate against women** or are discriminatory to women and, in that regard, to prepare a compendium of best practices; and
- ▶ **Make recommendations on the improvement of legislation and the implementation of the law**, to contribute to the realisation, among others, of the promotion of gender equality and the empowerment of women.

The WGDWLP held its first session on 1 May 2011 and it is currently working to draft the mentioned compendium of best practices on the elimination of laws that discriminate against women.

What kind of information can be submitted to the WGDWLP?

Among others, if **domestic legislation is drafted in such a way that it discriminates against women and, potentially, against women victims of rape or other forms of sexual violence** (e.g. by not entitling them to obtain adequate compensation or integral reparation for the harm suffered; or by not granting them equality of arms within criminal proceedings) this can be communicated to the WGDWLP.

What is the e-mail address of the WGDWLP?

E-mail: wgdiscriminationwomen@ohchr.org

4.2 The United Nations Treaty-bodies

As seen in chapter 2, within the United Nations system, there are a number of human rights treaties that are binding on those States that ratified them. These treaties also establish a body, usually called "Committee", that is in charge of **monitoring the implementation of the treaty of reference by the States which ratified them (called "States Parties")**.

Committees have different functions, including the consideration of reports submitted by States Parties and, under specific conditions, the consideration of individual communications¹³ relating to alleged violations of the relevant human rights provisions by States Parties.

Warning!

When you consider submitting a communication to one of the United Nations Committees, keep in mind that this would preclude you the possibility to submit the same case to the European Court of Human Rights.

Before taking such decision, consider the existing possibilities on the basis of the characteristics of the case at stake, as well as the potential consequences.

But note that the fact that a case/situation has been reported to one of the United Nations Special Procedures does not preclude that the case is then submitted to one of the United Nations Committees.

¹³ For more information (in English) on the complaint procedures within the United Nations see: www.ohchr.org/Documents/Publications/FactSheet7Rev.1en.pdf.

4.2.1 The Human Rights Committee

What is the Human Rights Committee?

The Human Rights Committee (HRC) monitors the implementation of the International Covenant on Civil and Political Rights (ICCPR). BiH is a State Party to the ICCPR since 1 September 1993, when it succeeded the former Yugoslavia, which ratified the treaty on 2 June 1971.

The HRC is composed by 18 independent experts, who meet 3 times a year. Among its other tasks, the HRC can also receive and examine **individual communications** on alleged violations of rights recognized in the Covenant. This can be done only if the State concerned has ratified the First Optional Protocol to the International Covenant on Civil and Political Rights. BiH ratified this Protocol on 1 March 1995.

After having declared admissible a communication and having examined it, the HRC delivers its views on the case and recommends the measures of reparation that the State concerned should adopt. The views delivered by the HRC are not subjected to any further appeal.

What are the requirements to submit a communication to the Human Rights Committee?

- ▶ The application is not being examined under another international procedure of investigation or settlement (e.g. a case cannot simultaneously be before the European Court of Human Rights and the HRC);
- ▶ The applicant has **exhausted all available domestic remedies** (e.g. you must have submitted your complaint to BiH courts, undergoing all relevant procedures (i.e. the BiH Constitutional Court, or the Appeals Chamber of the BiH Court, etc.). This rule does not apply where the exhaustion of the remedies is unreasonably prolonged.

- ▶ Given that BiH ratified the Optional Protocol on 1995, the alleged violations must have occurred after this date. However, if a violation began before such date, but continues being committed after the mentioned date, then the communication can be submitted to the HRC.

What is the procedure before the HRC and how long does it take?

The procedure before the HRC may take **some years** (e.g. from 2 to 5) from the moment when the communication is received to the time when the views are adopted.

The procedure before the HRC is written and there are no public hearings.

Once it receives the communication, if the latter meets the requirements, the HRC proceeds to register it (this may take up to a few months) and to forward it to the State, which must provide its feedback within 6 months. The State Party receives two reminders after the 6-month deadline has passed. If there is still no reply, the HRC considers the complaint on the basis of the information initially supplied by the applicant.

Once the HRC receives the answer from the State, it forwards it to the applicant and gives him/her 3 months to react on the State's answer.

Once the HRC takes a decision on the case, it is transmitted to the applicant and to the State simultaneously. The text of any final decision on the merits of the case or of a decision of inadmissibility will be posted on the Office of the High Commissioner on Human Rights' Website.

What can be expected from the submission of a communication before the Human Rights Committee?

When the HRC decides that the applicant has been the victim of a violation by the State of his/her rights under the ICCPR, it invites the State to supply information within 6 months on the steps it has taken to give effect to its findings. The HRC often indicates what an appropriate remedy would

be, for instance payment of compensation or release from detention. In the event of failure by the State Party to take appropriate steps, the case is referred to a member of the HRC, the Special Rapporteur on Follow-up of Views, for consideration of further measures to be taken. The Special Rapporteur may, for example, issue specific requests to the State or meet with its representatives to discuss the action taken. Usually the information is published together with the action taken by the Special Rapporteur in an annual report on follow-up. This is crucial to maintain a constant pressure on the State and to prompt it to eventually put an end to ongoing violations and provide an effective remedy.

When the HRC decides that there has been no violation of the treaty or that the complaint is inadmissible, the process is complete once the decision has been transmitted to the applicant and the State.

A concrete example: *McCallum v. South Africa*

This case is particularly interesting as it refers to a man subjected to sexual abuse. Indeed, the principles affirmed apply also to women.

Mr. McCallum is detained in a prison in South Africa. In 2005, after an incident in the detention facility, detainees, including Mr. McCallum, were ordered by prison guards to leave their cells. In the following hours prison guards submitted detainees to grave abuses and humiliations: detainees were forced to lie naked on the wet floor while prison guards beat them and insulted them. Detainees were forced to lie on the ground in a line with their faces in the inner part of the anus of the prisoner lying in front of them. Inmates who looked up were beaten with batons and kicked. Around 20 female warders were present and walked over the inmates, kicking them into their genitals and making mocking remarks about their private parts. At one point, a prison guard inserted a baton into Mr. McCallum's anus. No guard was sanctioned for these events and the inmates did not receive appropriate medical and psychological treatment.

After having exhausted domestic remedies, Mr. McCallum submitted a communication to the HRC claiming a number of violations of his rights under the ICCPR.

In the views delivered on 25 October 2010, the HRC declared South Africa responsible for the violation of numerous provisions of the ICCPR, including article 7 (prohibition of torture). Indeed, the HRC considered that the treatment that Mr. McCallum had been subjected to amounted to torture (and that the insertion of the baton into his anus constituted rape). Moreover, the State had the obligation to investigate over the events, judge and sanction those responsible, as well as to provide adequate compensation and medical assistance to McCallum. Accordingly, the HRC stressed that South Africa must:

- ▶ provide Mr. McCallum with an **effective remedy, including a thorough and effective investigation** of his claims concerning rape and torture, **prosecution of those responsible and full reparation, including adequate compensation.**

Moreover, the HRC indicated that, as long as Mr. McCallum is in prison, he should be **treated with humanity and with respect for the inherent dignity of the human person** and should benefit from **appropriate health care**. Finally, South Africa must prevent similar violations in the future.

4.2.2 The Committee against Torture

What is the Committee against Torture?

The Committee against Torture (CAT) monitors the implementation of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment¹⁴. On 1 September 1993 BiH succeeded the former Yugoslavia, which ratified this treaty on 10 September 1991.

¹⁴To read more on the CAT and its functioning (in English): www.ohchr.org/Documents/Publications/FactSheet17en.pdf.

The CAT is composed of 10 independent experts, who meet twice a year for 3-week sessions. Among its other tasks, the CAT may consider individual communications with regard to alleged violations of the Convention against Torture. This can be done only with regard to States Parties that have made the necessary declaration under article 22 of the Convention against Torture. BiH made this declaration on 4 June 2003.

After having declared admissible a communication and having examined it, the CAT delivers its views on the case and recommends the measures of reparation that the State concerned should adopt. The views delivered by the CAT are not subjected to any further appeal.

What are the requirements to submit a communication to the Committee against Torture?

- ▶ The communication must not refer to a matter that has been or is being examined under another procedure of international investigation or settlement (e.g. the HRC, the ECtHR or the); and
- ▶ The applicant must have exhausted all available domestic remedies, unless the application of the remedies is unreasonably prolonged or it is unlikely to bring effective relief to the victim of the violation of the Convention.

Given that BiH recognized the competence of the CAT in 2003, applications must refer to violations occurred after such date. However, the CAT may admit cases of violations commenced prior to 2003 which are still ongoing after the mentioned date.

Communications to the CAT cannot be anonymous. However, for security or privacy reasons, the applicant may request to the CAT not to disclose his/her identity.

What is the procedure before the Committee against Torture and how long does it take?

From when the communication is submitted to the CAT until the latter deliver its views, the procedure may last **some years** (e.g. 1-2 years).

The procedure is written and public hearings may be held only in exceptional circumstances.

Upon registration of the complaint, the CAT invites the State to comment within 6 months on the admissibility and merits of the complaint. Depending on the reaction of the State, one of two courses will be followed:

- a) If the State comments only on the admissibility of the complaint within 2 months, the applicant is given 4 weeks to comment on its submissions. The CAT then adopts a decision on admissibility. If the case is considered inadmissible, it is closed. If it is held to be admissible, the State has 4 months to comment on the merits of the case. The applicant then has 6 weeks to comment on the merits, following which the CAT can take a final decision on the substance of the case; or
- b) Alternatively, if the State comments on the admissibility and the merits (usually at the 6-month point), the applicant has 6 weeks to comment on its submissions. The CAT is then in a position to make a combined decision on the admissibility and merits of the case.

What can you expect from the submission of a communication before the Committee against Torture?

When the CAT finds that a State action or proposed action has violated or would violate the State's obligations under the Convention, it forwards its views (wherein the adoption of certain measures of reparation is recommended) to the State with a request for information on their implementation within 90 days. In the light of the information provided, the CAT's Rapporteur on follow-up takes such further action as may be appropriate.

A concrete example: V.L. v. Switzerland

V.L., a Belarusian national, was interrogated and raped by three police officers seeking information about the whereabouts of her husband. During these interrogations, she was also beaten and penetrated with objects. After complaining to the officer-in-charge about the sexual abuse, the complainant suffered a campaign of harassment against her until, one day, the same officers who had raped her, kidnapped her, drove her to an isolated spot and raped her again. The perpetrators of the rapes were never sanctioned. Afterwards, V.L. moved to Switzerland.

In her communication against Switzerland, filed before the CAT, V.L. alleged that if she is returned to Belarus, she would be exposed to the risk of being raped and harassed again.

The CAT found that, in fact, rape amounts to a form of torture and therefore recommended to Switzerland not to remove V.L. to Belarus, as doing so would expose her to the risk of being subjected to torture.

After having declared admissible a communication and having examined it, the CEDAW delivers its **views** on the case and **recommends** the measures of reparation that the State concerned should adopt. The views delivered by the CEDAW are not subjected to appeal.

What are the requirements to submit a communication to the CEDAW?

- ▶ The communication must not refer to a matter which has already been examined by the CEDAW or has been or is being examined under another procedure of international investigation or settlement (e.g. the HRC, the ECtHR, or the CAT); and
- ▶ Before submitting a communication to the CEDAW, all available domestic remedies must have been exhausted; unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief.

Given that BiH ratified the Optional Protocol to the Convention in 2002, communications must refer to violations occurred after such date. However, the CEDAW *may admit cases of violations commenced prior to 2002 which are still ongoing after the mentioned date.*

The CEDAW does not admit communications which are anonymous. However, for security or privacy reasons, the applicant may request that his/her identity is not publicly disclosed.

How is the procedure before the CEDAW and how long does it take?

From when the complaint is submitted to the CEDAW until the latter delivers its views, the procedure may last **some years** (e.g. 1–3 years).

The procedure is written and there are no public hearings.

If the communication is registered, the CEDAW is likely to consider the admissibility and merits of the case simultaneously. The State against whom the complaint is directed will then have 6

4.2.3 The Committee on the Elimination of All forms of Discrimination against Women

What is the Committee on the Elimination of All forms of Discrimination against Women (CEDAW)?

The CEDAW monitors the implementation of the Convention on the Elimination of All Forms of Discrimination against Women. On 1 September 1993 BiH succeeded the former Yugoslavia, which ratified the treaty on 26 February 1982.

The CEDAW is composed by 23 independent experts, who meet twice a year. Among its other tasks, the CEDAW may consider individual communications relating to States Parties to the Optional Protocol to the Convention on the Elimination of Discrimination against Women. BiH ratified this Protocol on 4 September 2002.

months to present its submissions on the admissibility and merits of the communication. Once it has done so, the applicant will be assigned a fixed period within which to comment, following which the case will be ready for a decision by the CEDAW.

Occasionally, the CEDAW will adopt a different procedure to maximize the time at its disposal to consider communications and to spare both States and complainants needless effort. For example, if a State files submissions at an early point that cast serious doubt on the admissibility of the complaint, the CEDAW may invite the applicant to comment on those submissions. It will then take a preliminary decision on admissibility alone and will proceed to the merits stage only if the case is declared admissible. If it is, the State will be given a further period to comment on the merits of the communication and the applicant will in turn be requested to comment thereon.

What can you expect from the submission of a communication before the CEDAW?

If the CEDAW finds that there has been a violation of the applicant's rights under the Convention, it will make recommendations. As follow-up procedure, the State concerned is required, within 6 months after receiving the CEDAW's views and recommendations, to submit a written response detailing any action taken thereon. The CEDAW may invite the State to submit further information.

A concrete example: *Vertido v. the Philippines*

In 1996 Mrs. Vertido was assaulted and raped by a colleague from her work. Within 24 hours she was subjected to a medical examination and soon thereafter reported the event to the police, filing a complaint against the perpetrator. The latter was eventually arrested in November 1996 and charged with rape. The trial lasted until 2005, when the accused was eventually acquitted challenging the credibility of the victim's testimony and alleging that she had failed to demonstrate that she had opposed resistance and she had failed to escape even if she apparently had had the opportunity of doing so.

Mrs. Vertido considered that the manner in which the trial was conducted and the outcome concretely revictimised her after she was raped. Accordingly, after having exhausted domestic remedies, she decided to submit her case to the CEDAW.

In the views delivered on 16 July 2010 the CEDAW declared the Philippines responsible of violations of its obligations under the Convention on the Elimination of Discrimination against women because the State Party failed in its obligation to ensure that women are protected against discrimination by public authorities, including the judiciary. Indeed there was a failure by the State Party to comply with its obligation to address gender-based stereotypes that affect women, in particular those working in the legal system and in legal institutions. Moreover, the acquittal is also evidence of the failure of the State Party to exercise due diligence in punishing acts of violence against women, in particular, rape. The CEDAW consequently recommended the Philippines to:

- ▶ Provide **appropriate compensation** commensurate with the gravity of the violations of Mrs. Vertido's rights;
- ▶ Take effective measures to ensure that **court proceedings involving rape allegations are pursued without undue delay**;
- ▶ Ensure that all legal procedures in cases involving crimes of rape and other sexual offences are impartial and fair, and **not affected by prejudices or stereotypical gender notions**. To achieve this, a wide range of measures are needed, targeted at the legal system, to improve the judicial handling of rape cases, as well as training and education to change discriminatory attitudes towards women. Concrete measures include:
- ▶ **Review of the definition of rape in the legislation** so as to place the lack of consent at its centre;
- ▶ **Removal of any requirement in the legislation that sexual assault be committed by force or violence**, and any requirement of proof of penetration, and minimisation of secondary

victimisation of the complainant/survivor in proceedings by enacting a definition of sexual assault that either: a) Requires the existence of “unequivocal and voluntary agreement” and requiring proof by the accused of steps taken to ascertain whether the complainant/survivor was consenting; or b) Requires that the act take place in “coercive circumstances” and includes a broad range of coercive circumstances;

- ▶ **Appropriate and regular training** on the Convention on the Elimination of All Forms of Discrimination against Women, its Optional Protocol and its general recommendations, in particular general recommendation No. 19, **for judges, lawyers and law enforcement personnel**, as well as appropriate training for judges, lawyers, law enforcement officers and medical personnel in understanding crimes of rape and other sexual offences in a gender-sensitive manner so as to avoid revictimisation of women having reported rape cases and to ensure that personal mores and values do not affect decision-making;
- ▶ **Publish the CEDAW’s views and translate** them into the Filipino language and other recognized regional languages, as appropriate, and widely distribute it in order to reach all relevant sectors of society.

4.3 The European Court of Human Rights

What is the European Court of Human Rights?

The European Court of Human Rights (ECtHR) is the judicial body in charge of monitoring the implementation of the European Convention on Human Rights¹⁵. BiH ratified this Convention on 12 July 2002. The ECtHR is based in Strasbourg and it is composed by 47 judges. The ECtHR is a permanent Court that works full-time.

¹⁵ The Web-site of the ECtHR is: www.echr.coe.int/echr/Homepage_EN. To download the application form in Bosnian: www.echr.coe.int/NR/rdonlyres/3BB7E27D-4BB8-4915-A887-C2FB8AE9F71E/0/BIH_PO_pack.pdf.

The ECtHR considers **individual applications** concerning alleged violations of the rights enshrined in the European Convention on Human Rights and delivers **binding judgments**, where it may **order** the State to guarantee just satisfaction to the applicant (usually in the form of pecuniary compensation). The Committee of Ministers of the Council of Europe monitors the implementation of the judgments delivered by the ECtHR and, if a State fails to adopt the measures of reparation ordered by the ECtHR, the Committee can refer the case again to the ECtHR. The judgments of the ECtHR may be submitted to an appeal within 3 months from their notification to the parties. The judgments are published on the website of the ECtHR.

What are the requirements to submit an application to the European Court of Human Rights?

Among others, the main requirements to submit an application to the ECtHR are:

- ▶ Before submitting an application to the ECtHR an individual must have **exhausted all domestic remedies** (e.g. you must have submitted your complaints to BiH courts, undergoing all relevant procedures). This rule does not apply if domestic remedies do not exist or the domestic procedure is too lengthy.
- ▶ The complaint must be submitted within **6 months from when the final decision at the domestic level** was notified to the applicant.
- ▶ The complaint must **not be the same** as a matter that has already been examined by the ECtHR or has already been submitted to another procedure of international investigation or settlement (e.g. if the complaint has already been submitted to the HRC for instance, it cannot be submitted to the ECtHR).

Remember

A case that has been submitted to one of the United Special Procedures can be the subject of an application before the European Court of Human Rights.

On the contrary, if a case has been submitted to one of the United Nations Committees (e.g. the HRC, the CAT, or the CEDAW), **it cannot** be filed anymore before the European Court of Human Rights.

Given that BiH ratified the European Convention on 12 July 2002, the ECtHR will receive only complaints regarding violations occurred after such date. However, the ECtHR may admit cases of violations commenced before such date if they are ongoing after 12 July 2002.

The ECtHR does not accept anonymous applications. However, in exceptional circumstances (e.g. security or privacy reasons), the ECtHR will maintain confidentiality on the identity of the applicant and use the initials or false letters (e.g. L.M. v. Bosnia and Herzegovina or X.Y. v. Bosnia and Herzegovina). Given the sensitivity of cases relating rape and sexual violence, it will always be possible to request confidentiality.

What is the procedure before the European Court of Human Rights and how long does it take?

The procedure before the ECtHR is lengthy and it will take **some years** (e.g. 4–6 years) from when the application is filed until the ECtHR adopts a decision on the case. Implementation of the judgment is also a lengthy process.

In general, the procedure before the ECtHR is written. Only in exceptional circumstances the ECtHR will hold a public hearing.

When the ECtHR receives an application, it proceeds to register it (this may take some months) and to assign it a file number. Afterwards, the ECtHR examines whether the application is admissible. If the application is declared inadmissible, the decision of the ECtHR is final and cannot be reversed. On the contrary, if the application is declared admissible, the ECtHR will encourage the State and the applicant to reach a friendly settlement. If the latter cannot be reached, the ECtHR will proceed to consider the merits of the case and to deliver its judgment.

What can you expect from the submission of an application before the European Court of Human Rights?

If the ECtHR finds that there has been a violation, it may award to the applicant "just satisfaction", a sum of money in compensation for certain forms of damage. The ECtHR may also require the State to refund the expenses incurred in presented the case by the applicant. As said, the Committee of Ministers of the Council of Europe is in charge of monitoring the implementation of the judgment delivered by the ECtHR and, in this view, it may recommend to the State concerned, the adoption of specific measures to address and repair the violations committed.

If the ECtHR finds that there has not been a violation, the applicant will not have to pay any additional costs.

A concrete example: *Aydin v. Turkey*

When Sukran Aydin was 17 years old, she was deprived of her liberty by Turkish gendarmes. While she was being held in custody, she was ill-treated and raped. Although she reported the events, the author of the crime was not duly judged and sanctioned. After having exhausted domestic remedies, Sukran Aydin decided to bring her case to the ECtHR, claiming the violation of various of her fundamental human rights.

In the judgment rendered on 25 September 1997 the ECtHR declared Turkey responsible for the violation of Articles 3 (prohibition of torture) and 13 (right to an effective remedy) of the Convention and it ordered the State to pay the applicant about 29,000 Euros as just satisfaction for the non-pecuniary damage suffered.

Another concrete example: *M.C. v. Bulgaria*

M.C. was raped by two individuals when she was 14 years old. Due to the manner in which the crime of rape is codified under the Bulgarian Criminal Code, the criminal proceedings against the perpetrators did not lead to any significant result. Thus, after having exhausted domestic remedies, M.C. submitted an application to the ECtHR, alleging that the lack of adoption of an adequate criminal legislation by the State had determined impunity in the case and that this amounted to a violation of her basic human rights.

In its judgment of 4 December 2003 the ECtHR declared that "any rigid approach to the prosecution of sexual offences, such as requiring proof of physical resistance in all circumstances, risks leaving certain types of rape unpunished and thus jeopardizing the effective protection of the individual's sexual autonomy. In accordance with contemporary standards and trends in that area, the member States' positive obligations under Articles 3 (prohibition of torture) and 8 (right to privacy and family life) of the Convention must be seen as requiring the penalization and effective prosecution of any non-consensual sexual act, including in the absence of physical resistance by the victim" (para. 166).

Accordingly, it found the State responsible of a violation of Articles 3 and 8 of the European Convention and it ordered Bulgaria to pay 8,000 Euros as just satisfaction for the non-pecuniary damage suffered by the victim.

BETWEEN STIGMA AND OBLIVION

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Useful links:

- ▶ Track Impunity Always (in English): www.trial-ch.org/en/home.html; (in Bosnian): www.trial-ch.org/BiH
- ▶ United Nations Action against Sexual Violence in Conflict: www.stoprapenow.org/about/
- ▶ United Nations Entity for Gender Equality and the Empowerment of Women (UN Women): www.unwomen.org/
- ▶ United Nations Population Fund: www.unfpa.org/public/
- ▶ Coalition for Women's Human Rights in Conflict Situations: www.womensrightscoalition.org/site/main_en.php
- ▶ International Centre for Transitional Justice: www.ictj.org/
- ▶ International Committee of the Red Cross: www.icrc.org/eng/
- ▶ Women's International League for Peace and Freedom: www.wilpfinternational.org/
- ▶ Equality Now: www.equalitynow.org/
- ▶ Medica Mondiale: www.medicamondiale.org/index.php?id=7&L=1
- ▶ International Rehabilitation Council for Torture Victims: www.irct.org/

- ▶ United Nations Voluntary Fund for Victims of Torture: www.ohchr.org/EN/Issues/Pages/TortureFundMain.aspx
- ▶ Feminist Majority Foundation: <http://feminist.org/>
- ▶ Torture Abolition and Survivors Support Coalition International (TASSC): <http://tassc.org/blog/>
- ▶ Redress: www.redress.org/
- ▶ World Organization against Torture: www.omct.org/
- ▶ International Federation for Human Rights: www.fidh.org/-english-
- ▶ Amnesty International: www.amnesty.org/
- ▶ Human Rights Watch: www.hrw.org/
- ▶ Centre for Women's Global Leadership: www.cwgl.rutgers.edu/
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This publication is an initiative by **TRIAL** (Swiss Association against Impunity).

TRIAL is a Geneva-based NGO established in 2002 and in consultative status with the United Nations Economic and Social Council (ECOSOC). It is apolitical and non-confessional. Its principal goals are: the fight against impunity of perpetrators, accomplices and instigators of genocide, war crimes, crimes against humanity, enforced disappearances and acts of torture, including sexual violence. TRIAL has set up a litigation programme, born from the premise that, despite the existence of legal tools able to provide redress to victims of international crimes, these mechanisms are considerably underused and thus their usage should be enforced.

Considering that the needs of victims of gross human rights violations during the war, their relatives and the organizations which represent them are sadly overwhelming and that there is no similar initiative in BiH and the region, TRIAL has been active and present in the country since early 2008. TRIAL is thus currently providing legal support to victims of gross human rights violations committed during the war and their relatives who wish to bring their cases before an international human rights mechanism. So far, TRIAL has submitted 40 applications related to gross human rights violations perpetrated during the war to the European Court of Human Rights and to United Nations Human Rights Committee. In 2010 and 2011 respectively, TRIAL has also submitted an alternative report to the United Nations Committee against Torture, and a general allegation to the United Nations Special Rapporteur on Violence against Women, its Causes and Consequences. In both documents reference is made also to the situation of women victims of rape or other forms of sexual violence from the war and to the failure by BiH to fulfil its obligations towards this especially vulnerable category of people.

In 2011 TRIAL was also invited to participate at the meeting of the extended working group for the drafting of a Programme for the Support of Victims of Rape from the War coordinated by the Ministry of Human Rights and Refugees of BiH and the United Nations Population Fund.

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