



When the Head of State Makes Rape Jokes, His Troops Rape on the Ground: Conflict-Related Sexual Violence in Russia's Aggression against Ukraine

Kateryna Busol

Faculty of Law, Department of International and Comparative Law, National University of Kyiv-Mohyla Academy, Kyiv, Ukraine

Introduction

In early February 2022, President Macron flew to Moscow, in yet another attempt to convince Russia to de-escalate its looming all-out offensive on Ukraine. After the lengthy negotiations – that became infamous for the enormously long table,¹ which in itself could give rise to various Freudian interpretations – President Putin and President Macron proceeded to a joint press-conference. One of the issues that unsurprisingly emerged in the discussion were the Minsk Agreements. These controversial arrangements advocated by Russia eroded its role in the conflict in Ukraine's eastern Donbas region since 2014² and were perceived as “peace settlements” anywhere but in Ukraine.³ At the press conference, Vladimir Putin once again emphasized that Kyiv must implement the agreements. However, the Russian President voiced the demand in a rather unconventional form – using sexist wording, which alluded to rape: “My beauty, it's your duty.”⁴

Vladimir Putin's rape joke has a dangerously enabling reverberation, domestically and internationally. Whether the phrase originates in Russian folklore, as the President's spokesman further argued, or in a more contemporary song about necrophilia, does not really matter.⁵ What matters is that the head of state – who sees himself and his country on an (imagined) pedestal of (faux) male superiority – feels entitled to publicly

CONTACT Kateryna Busol  k.busol@ukma.edu.ua  Faculty of Law, Department of International and Comparative Law, National University of Kyiv-Mohyla Academy, 9 Voloska, 02000, Kyiv, Ukraine

¹ Oliver Holmes, “Putin's Massive Table: Powerplay or Paranoia?,” *The Guardian*, 8 February 2022, <https://www.theguardian.com/world/2022/feb/08/vladimir-putin-massive-table>.

² Global Rights Compliance, “International Law and Defining Russia's Involvement in Crimea and Donbas,” 2022, https://globalrightscpliance.com/wp-content/uploads/2022/05/International-Law-and-Russia-Involvement-in-Crimea-and-Donbas.pdf?fbclid=IwAR1uCOkAsEW_T_ZRT7tfCurvdBonx-SgC3MdeKYomxCsjr-u2zDb4wxr1s.

³ Duncan Allan, Kataryna Wolczuk, “Why Minsk-2 cannot solve the Ukraine crisis,” Chatham House, 16 February 2022, <https://www.chathamhouse.org/2022/02/why-minsk-2-cannot-solve-ukraine-crisis>.

⁴ Yuri Safronov, Natalia Danilova, “My Beauty, It's Your Duty!” (Russian original: “Ну нравится, не нравится — терпи, моя красавица!”), *Novaya Gazeta*, 8 February 2022, <https://novyagazeta.ru/articles/2022/02/08/nravitsia-ne-nravitsia-terpi-moya-krasavitsa>; Alex Marquardt, “Vladimir Putin set Russian media abuzz following a crude comment he made about Ukrainian President Zelensky during a news conference,” *CNN*, 9 February 2022 (video), https://m.facebook.com/watch/?v=468320861580772&paipv=0&eav=AfYc8UcplnaHq4APDwVwew2htztjWxEEZpdqsYqQTVZqloSPjHMjWLBj0yR5VhEsg&_rdr; Maria Chuniyhina, “What Is the Origin of the Phrase “My Beauty, It's Your Duty”?,” *Argumenty i Fyty*, 8 February 2022, https://aif.ru/politics/russia/otkuda_poshla_fraza_nravitsya_ne_nravitsya_terpi_moya_krasavica.

⁵ “It's Your Duty” Everyone Now Thinks That Putin Listens to Krasnaya Plesen. In Fact, the President Quoted Chastushkis (That Include Swearing Nevertheless), *Meduza*, 9 February 2022, <https://meduza.io/shapito/2022/02/09/terpi-moya-krasavitsa>.

address another nation – whom he sees as a pretty woman – with an undisguised reference to sexual subjugation.

President Putin's "gendered vulgarism"⁶ echoes Russia's rigid gender hierarchies and culturally ingrained tolerance to violence against women.⁷ Both are apparent in the age-long Russian saying "if he beats you, it means he loves you," recent steps decriminalizing domestic violence despite its spike in the country, the designation of LGBTQI+⁸ movement as "extremist" and a legislative proposal to assign the same "extremist" labelling to feminism.⁹ Such internal tendencies further shape Russia's foreign policy, especially towards former Soviet nations.¹⁰ With imperial and toxic masculine egos combined,¹¹ Russia treats ex-Soviet republics as the "near abroad" with limited sovereignty: those like Georgia, Moldova or Ukraine refusing to be within the remit of the "Russian world" must be subjugated.¹² The tools of such subjugation include direct and proxy hostilities, occupation and atrocities.¹³

⁶ Orysia Kulick, "Gender and Violence in Ukraine: Changing How We Bear Witness to War," *Canadian Slavonic Papers*, 64, 2–3 (2022): 191.

⁷ Melanie O'Brien, Noëlle Quéniwet, "Sexual and Gender-Based Violence against Women in the Russia-Ukraine Conflict," *EJIL: Talk!*, 8 June 2022, <https://www.ejiltalk.org/sexual-and-gender-based-violence-against-women-in-the-russia-ukraine-conflict/> (O'Brien, Quéniwet, "SGBV in the Russia-Ukraine Conflict").

⁸ Lesbian, gay, bisexual, transgender, queer and intersex persons as well as those who associate themselves with the community but use other terms for self-identification.

⁹ Daria Litvinova, "If He Beats You, It Means He Loves You," *The Moscow Times*, 5 August 2016, <https://www.themoscowtimes.com/2016/08/05/if-he-beats-you-it-means-he-loves-you-a54866>; Graeme Reide, "Russia, Homophobia and the Battle for 'Traditional Values'," *Human Rights Watch*, 17 May 2023 <https://www.hrw.org/news/2023/05/17/russia-homophobia-and-battle-traditional-values> (Reide, "Russia, Homophobia and the Battle for 'Traditional Values'"); Radzhana Buyantueva, "A History of LGBTQ Rights in Modern Russia: From Progress to Despair," *LSE Blogs*, 21 February 2023, <https://blogs.lse.ac.uk/europpblog/2023/02/21/a-history-of-lgbtq-rights-in-modern-russia-from-progress-to-despair/> (Buyantueva, "LGBTQ rights in modern Russia"); "Russia: Supreme Court Bans 'LGBT Movement' as 'Extremist'," *Human Rights Watch*, 30 November 2023, <https://www.hrw.org/news/2023/11/30/russia-supreme-court-bans-lgbt-movement-extremist>; Benoît Vitkine, "In Russia, Feminism is Equated with 'Extremist Ideology,'" *Le Monde*, 18 April 2023 https://www.lemonde.fr/en/russia/article/2023/04/18/in-russia-feminism-is-equated-with-extremist-ideology_6023295_140.html# (Vitikine, "In Russia, Feminism is Equated with 'Extremist Ideology'").

¹⁰ "Russia must be seen for what it truly is: an imperialistic, authoritarian regime that aims to destroy the international order and establish a sphere of influence". Russia's behaviour is rooted in "a neo-imperial, post-colonial outlook, which treats neighbouring countries as the "near abroad," a predetermined sphere of influence," Alina Polyakova, Edward Lucas, Mathieu Boulègue, Catherine Sendak, Scott Kindsvater, Ivanna Kuz, Sasha Stone, "A New Vision for the Transatlantic Alliance: The Future of European Security, the United States, and the World Order after Russia's War in Ukraine," Center for European Policy Analysis, 30 November 2023, <https://cepa.org/comprehensive-reports/a-new-vision-for-the-transatlantic-alliance-the-future-of-european-security-the-united-states-and-the-world-order-after-russias-war-in-ukraine/>.

¹¹ On the neo-imperial nature of Russia's policy towards and invasion of Ukraine, see Kostia Gorobets, "Russian 'Special Military Operation' and the Language of Empire," *Opinio Juris*, 25 May, 2022 <http://opiniojuris.org/2022/05/24/russian-special-military-operation-and-the-language-of-empire/>; Sergey Vasiliev, "Watershed Moment or Same Old? Ukraine and the Future of International Criminal Justice," *Journal of International Criminal Justice* 20 (2022): 900; Timothy Snyder, "The War in Ukraine is a Colonial War," *The New Yorker* 28 April 2022, <https://www.newyorker.com/news/essay/the-war-in-ukraine-is-a-colonial-war>; Peter Pomerantsev, "Ukraine Is Our Past and Our Future," *Time*, 6 April 2023, <https://time.com/6164810/ukraine-is-our-past-and-our-future/>.

¹² Cindy Wittke, "Peace and Security for Ukraine and Europe are Not Created on the Drawing Board of the West," *Verfassungsblog*, 13 April 2022, <https://verfassungsblog.de/peace-and-security-for-ukraine-and-europe-are-not-created-on-the-drawing-board-of-the-west/>; Lauri Mälksoo, "Aggression and the 'Civilizational Turn' in Russian Politics of International Law," *Völkerrechtblog*, 25 February 2022, <https://voelkerrechtsblog.org/aggression-and-the-civilizational-turn-in-russian-politics-of-international-law/>; On "Russian world" ("Russkij mir") see also the European Parliament, "Human Rights Violations in the Context of Forced Deportation of Ukrainian Civilians to and Forced Adoption of Ukrainian Children in Russia," 2022/2825(RSP), 15 September 2022, para F. Further on Russia's approaches to and weaponisation of international law see Lauri Mälksoo, *Russian Approaches to International Law* (Oxford, Oxford University Press: 2015).

¹³ Independent International Commission of Inquiry on Ukraine (UN Commission of Inquiry), Conference room paper of the Independent International Commission of Inquiry on Ukraine, 29 August 2023, A/HRC/52/CRP.4 (UN Commission of Inquiry, Conference Room Paper), paras 48–49; Eric Chenoweth, Irena Lasota, "From Chechnya to Crimea, Putin Saw Green Light for His Assault on the World Order," *Just Security*, 18 March 2022, <https://www.justsecurity.org/80726/from-chechnya-to-crimea-putin-saw-green-light-for-his-assault-on-the-world-order/>.

Russia's head of state is also the Supreme Commander-in-Chief of the Russian army.¹⁴ As a political and military leader of his nation, President Putin made his rape joke as the evidence of conflict-related crimes, including sexual violence, committed by the Russian military in Ukraine since the occupation of Crimea in 2014 had been mounting¹⁵ – and as Russia was preparing an all-out assault on Ukraine. The Kremlin was building up the fully-fledged invasion on the years of “dehumanizing propaganda”¹⁶ against Ukraine and Ukrainians.¹⁷ Moscow's human rights compliance domestically and in other situations such as the two Chechen wars, Moldova, Georgia and Syria has been disastrous.¹⁸ Russia's planned *Blitzkrieg* in Ukraine has eventually not only failed but continues unleashing great human, economic and reputational losses. Against this backdrop, the enabling comments from the Russian leadership solidify tolerance to and, in some cases, encouragement of atrocities – including conflict-related sexual violence (CRSV) – against Ukrainian civilians and the military.

This article analyses the weaponization of and responses to CRSV in Russia's aggression against Ukraine in four parts. The article opens with an examination of international law prohibiting CRSV and Ukraine's and Russia's respective obligations. Then, it traces the evolution of CRSV scope and patterns during the first phase of Russia's aggression in 2014–2021 and since the full-scale invasion. After that, the piece discusses the social attitudes and legal responses to violence against women and LGBTQI+ persons in Russia as well as the positioning of females in the Russian army. Through this analysis, the article explains how gender hierarchies and tolerance towards sexual and *other*¹⁹ gender-based violence (SGBV) domestically in Russia co-shape the conduct of its military in

¹⁴ Constitution of the Russian Federation, 1993, Article 87, <https://www.refworld.org/docid/3ae6b59f4.html>.

¹⁵ Report of the Office of the United Nations High Commissioner for Human Rights (OHCHR), Conflict-Related Sexual Violence in Ukraine (14 March 2014 to 31 January 2017) A/HRC/34/CPR.4, 16 March 2017, <https://www.ohchr.org/en/documents/country-reports/conflict-related-sexual-violence-ukraine> (OHCHR, CRSV in Ukraine (2014–2017)); ICC OTP, reports on preliminary examination activities: 2016, paras 174, 183, <https://www.icc-cpi.int/sites/default/files/iccdocs/otp/161114-otp-rep-PE-ENG.pdf>; 2017, para 109, <https://www.icc-cpi.int/sites/default/files/itemsDocuments/2017-PE-rep/2017-otp-rep-PE-ENG.pdf>; 2018, paras 76, 92, <https://www.icc-cpi.int/sites/default/files/itemsDocuments/181205-rep-otp-PE-ENG.pdf>; 2019, para 279, <https://www.icc-cpi.int/sites/default/files/itemsDocuments/191205-rep-otp-PE.pdf>; 2020, para 280, <https://www.icc-cpi.int/sites/default/files/itemsDocuments/2020-PE/2020-pe-report-eng.pdf>; Eastern Ukrainian Centre for Civic Initiatives, War without Rules: Gender-Based Violence in the Context of the Armed Conflict in Eastern Ukraine, 2017, <https://totalaction.org.ua/en/books/3> (EUCCI, War without Rules: GBV in Eastern Ukraine); ADC Memorial, Centre for Civil Liberties, Violation of LGBTQI Rights in Crimea and Donbass: The Problem of Homophobia in Territories beyond Ukraine's Control, 2016, http://adcmemorial.org/wp-content/uploads/lgbtENG_fullwww.pdf; Media Initiative for Human Rights, Female Face of Donbas Hostages, 2021, https://drive.google.com/drive/u/0/folders/1my42YmjQBwTS5f-KIRBl_psqZ69AXWU2 (Female Face of Donbas Hostages).

¹⁶ UN Commission of Inquiry, Conference Room Paper, para 49.

¹⁷ Clara Apt, “Russia's Eliminationist Rhetoric Against Ukraine: A Collection,” *Just Security*, 14 February 2023, <https://www.justsecurity.org/81789/russias-eliminationist-rhetoric-against-ukraine-a-collection/> (Apt, “Russia's Eliminationist Rhetoric Against Ukraine: A Collection”); expert monitors of Russian mass media Julia Davis <https://twitter.com/JuliaDavisNews> and Francis Scarr, https://twitter.com/francis_scarr (Russian media monitors Davis and Scarr); Peter Pomerantsev, “Russia's genocidal propaganda must not be passed off as freedom of speech,” *The Guardian*, 16 October 2022, <https://www.theguardian.com/commentisfree/2022/oct/16/propaganda-russia-ukraine-war-crimes-accountability> (Pomerantsev, “Russia's genocidal propaganda must not be passed off as freedom of speech”).

¹⁸ UN Commission of Inquiry, Conference Room Paper, paras 48–49.

¹⁹ This article follows the approach of Indira Rosenthal, Valerie Oosterveld, Susana SáCouto and uses “the term ‘sexual violence and other gender-based’ crimes” rather than the more common ‘sexual and gender-based crimes’ to indicate that sexual violence crimes are gendered, but they are not the only gendered crimes. Any crime can be gendered whether it has a sexual element or not.” Indira Rosenthal, Valerie Oosterveld, Susana SáCouto, “What Is ‘Gender’ in International Criminal Law?” in *Gender and International Criminal Law*, ed. Indira Rosenthal, Valerie Oosterveld, Susana SáCouto (Oxford: Oxford University Press, 2022) (*Gender in International Criminal Law*, ed. Rosenthal et al.): 12, footnote 3.

Ukraine. Finally, the article explores Ukraine's responses to CRSV perpetrated during Russia's aggression through criminal accountability and wider transitional justice measures, most notably – reparations. The piece concludes that the way Ukraine designs and implements its responses to CRSV and SGBV can solidify Ukraine's more sustainable and gender-sensitive state governance, beyond armed conflict.

Sexual and Other Gender-Based Violence, Armed Conflict and International Law

Sexual violence has been one of the oldest methods of warfare.²⁰ From an imperial and inherently masculine perspective, a conquest of a nation entailed a conquest of everything that belonged to a male adversary, including his property – and his women. Because of that, historically, sexual violence has been associated almost exclusively with rape – and females.²¹ The early modern prohibitions of CRSV under international law – which are still binding on Russia and Ukraine – aimed to invalidate wartime sexual violence against women through the lens of the protection of family honour.²² Such regulation failed to engage with CRSV's grave impact on women's physical and mental health and largely ignored sexual violence against men. In 1919, the Commission on the Responsibility of the Authors of the War and on the Enforcement of Penalties was designed to lay way to prosecuting violations of the laws and customs of war perpetrated during the World War I.²³ In its report presented to the Preliminary Peace Conference, the Commission listed rape and enforced prostitution of women and girls.²⁴ The comprehensive post-World War I prosecutions as envisaged by Article 227 of the Treaty of Versailles did not happen. However, the Commission's accentuation of these two patterns of sexual violence in war and their punishability was important, including – for the burgeoning first express international law prohibition of rape that followed.²⁵

The post-World War II 1949 Geneva Conventions – the most widely ratified international treaties, – and their 1977 Additional Protocols, to all of which Ukraine and Russia are parties, provided further details on the prohibition of CRSV and gendered treatment in warfare, both still largely associated with women. Detained civilian women and female POWs must be treated with due regard to their sex, stationed separately from male detainees and put under the supervision of women.²⁶ Geneva Convention IV on the

²⁰ Dr Denis Mukwege, *The Power of Women* (London: Short Books, 2021), 60, 108–9 (Mukwege, *The Power of Women*).

²¹ Valerie Oosterveld, "Sexual Violence and other Gender-based Crimes in the Jurisprudence of International Criminal Courts and Tribunals," Audiovisual Library of International Law, 2 September 2022, https://legal.un.org/avl/lis/Oosterveld_CLP.html (Oosterveld, Sexual Violence and other Gender-based Crimes in the Jurisprudence of International Criminal Courts and Tribunals).

²² "Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected" in Regulations Respecting the Laws and Customs of War on Land annexed to the Hague Convention (IV) Respecting the Laws and Customs of War on Land, Article 46.

²³ William A. Schabas, "International Prosecution of Sexual and Gender-Based Crimes Perpetrated during the First World War," in *Justice Without Borders: Essays in Honour of Wolfgang Schomburg*, ed. Martin Böse et al. (Leiden: Brill | Nijhoff, 2018), 401.

²⁴ Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties, Report Presented to the Preliminary Peace Conference, 29 March 1919, 114.

²⁵ Patricia Viseur Sellers, Indira Rosenthal, "Rape and Other Sexual Violence," in *The 1949 Geneva Conventions: A Commentary*, ed. Andrew Clapman et al. (Oxford: Oxford University Press, 2015), 348.

²⁶ III Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949 (Geneva Convention III), Articles 14, 97; IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949 (Geneva Convention IV), Articles 76, 124; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the

treatment of civilians protects females against “any attack on their honour, in particular rape, enforced prostitution, or any other form of indecent assault.”²⁷ Additional Protocol I, applicable to international armed conflicts and binding upon both Russia and Ukraine, envisages the special respect for women and reiterates prohibitions of rape and other CRSV.²⁸ Children enjoy special respect and are protected against any indecent assaults.²⁹ Customary international humanitarian law (IHL) prohibits rape and other CRSV perpetrated against anyone both in international and non-international armed conflicts.³⁰ The ICC Trial Chamber in the *Ntaganda* case ruled that prohibitions of rape and sexual slavery in times of armed conflicts and peace had attained a status of *jus cogens*³¹ – a peremptory norm of the highest force under international law, from which derogation is not permitted.³²

Civilians and POWs are in all cases protected from physical and mental torture and inhuman treatment, of which sexual violence could be an underlying act.³³ The general impermissibility of torture and inhuman treatment has been useful for expanding CRSV prohibition towards males – and for distilling further forms of CRSV, other than rape, enforced prostitution and indecent assaults. Rape in and of itself may constitute torture or inhuman treatment.³⁴ Sexual violence evidence has considerably contributed to the recognition of the freedom from torture as a *jus cogens* norm.³⁵ Torture and inhuman treatment, biological experiments, and wilful causing of great suffering or injury, all of which can have sexualized aspects, are grave breaches of the Geneva Conventions and their Additional Protocol I, constitute war crimes and must be repressed and prosecuted.³⁶

Rape and other forms of sexual violence can contribute to establishing the constituting genocidal acts such as killing, causing serious bodily or mental harm, inflicting conditions of life targeted to destroy the group, imposing measures to prevent births as well as transferring children of a protected group.³⁷ The analysis of genocide allegations should be

Protection of Victims of International Armed Conflicts, 8 June 1977 (Additional Protocol I), Article 75(5); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 8 June 1977 (Additional Protocol II), Article 5(2)(a).

²⁷ Geneva Convention IV, Article 27.

²⁸ Additional Protocol I, Article 75.

²⁹ Additional Protocol I, Article 77.

³⁰ Rule 93. Rape and other forms of sexual violence are prohibited, in Jean-Marie Henckaerts, Louise Doswald-Beck, *Customary International Humanitarian Law, Volume I: Rules* (New York: Cambridge University Press, 2009) (Henckaerts, *Customary International Humanitarian Law*), 323–7.

³¹ *Prosecutor v. Ntaganda*, Second decision on the Defence’s challenge to the jurisdiction of the Court in respect of Counts 6 and 9, ICC-01/04-02/06 (4 January 2017), para 52.

³² Vienna Convention on the Law of Treaties, 23 May 1969, Article 53.

³³ Geneva Convention III, Articles 17, 87; Geneva Convention IV, Article 32; Additional Protocol I, Article 75.

³⁴ Redress, “Using international jurisprudence on rape as a form of torture or other ill-treatment,” October 2013, <https://redress.org/wp-content/uploads/2017/12/final-rape-as-torture1.pdf>.

³⁵ *Prosecutor v. Ntaganda*, Second decision on the Defence’s challenge to the jurisdiction of the Court in respect of Counts 6 and 9, ICC-01/04-02/06 (4 January 2017), paras 51–52.

³⁶ I Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949 (Geneva Convention I), Article 49; II Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 August 1949 (Geneva Convention II), Articles 50–51; Geneva Convention III, Articles 129–131; Geneva Convention IV, Articles 146–149; Additional Protocol I, Articles 85–86.

³⁷ *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgment (2 September 1998), paras 596, 597; ICC Elements of Crimes specifies that genocide by causing serious bodily or mental harm may include rape and other forms of sexual violence, Article 6 (b), footnote 3; Patricia Viseur Sellers, “Sexual Violence and Peremptory Norms: The Legal Value of Rape,” *Case Western Reserve Journal of International Law* 34, no. 3 (2002) (Sellers, “The Legal Value of Rape”): 295–6; Laurel Baig et al., “Contextualizing Sexual Violence: Selection of Crimes” in *Prosecuting Conflict-Related Sexual Violence at*

even more intrinsically gendered and explore an interplay of various forms and motives of CRSV against women and men and their impact on the establishment of a genocidal intent and genocidal acts.³⁸

Women and girls remain particularly targeted with CRSV nowadays. While recognizing this, treaty and jurisprudential developments have expanded the limiting and stigmatizing association of sexual violence exclusively with females to also include men and non-binary people. The understanding of the spectrum of sexual violence has also become more layered. The International Criminal Court's (ICC) Rome Statute, the most gendered international treaty so far,³⁹ provides an expanded non-exhaustive list of CRSV: rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and other forms of sexual violence of comparable gravity may constitute war crimes and crimes against humanity. Apart from a woman-exclusive crime of forced pregnancy, all other forms of CRSV can be committed against any person.⁴⁰

Conflict-related sexual violence is a form of a wider category of gender-based violence (GBV) – harmful acts aimed at persons because of rigid gender roles socially ascribed to males and females. Both CRSV and GBV affect women, men and non-binary persons of all age, social and other groups. Given the solidifying understanding of the above, the ICC has been empowered to also adjudicate gender-based persecution – a crime against humanity, which can be perpetrated against any human because of gender considerations.⁴¹ At the same time, the ICC Prosecutor recognizes that gender-based persecution reflects decade-long stigmas and inequalities and, thus, particularly affects women, girls and LGBTQI+ persons.⁴² Following an intersectional approach, a nuanced address of CRSV and, wider, GBV requires the examination of an interplay of potentially discriminating factors such as sex, age, gender, sexual orientation, race, ethnicity, disability, religion and class.⁴³

Despite the important developments recognizing the wider spectrum of CRSV and GBV and their victims, these crimes remain underreported. Poor reporting results from shame, social and religious stigma, security considerations and other more pressing issues for survivors such as caretaking obligations.⁴⁴ Concerns around CRSV reporting are often strongly gendered. Women are affected by a stigma, which the endured violence might put on her personal and professional prospects, as well as on her family. Men, affected by toxic masculinity, believe that only a woman can be raped, choose not to see the sexualized aspects of male torture or are concerned that a rape charge brings an unavoidable association with homosexuality. Due to such factors, CRSV remains under-prosecuted in international, universal jurisdiction and traditional domestic

the ICTY, ed. Serge Brammertz and Michelle Jarvis (Oxford: Oxford University Press, 2016), 209–16; Sara Meger, "Sexual Violence as an Element of Genocide," in *Rape Loot Pillage: The Political Economy of Sexual Violence in Armed Conflict* (Oxford: Oxford University Press, 2016), 115–37; Yulia Ioffe, "Forcibly Transferring Ukrainian Children to the Russian Federation: A Genocide?," *Journal of Genocide Research* 25, nos. 3–4 (2023): 7.

³⁸ Patricia Viseur Sellers, "Genocide Gendered: The Srebrenica Cases," *Studies in Transnational Legal Policy* 48, no. 17 (2015): 17–32.

³⁹ Oosterveld, Sexual Violence and other Gender-based Crimes in the Jurisprudence of International Criminal Courts and Tribunals; Sellers, "The Legal Value of Rape": 288, 296.

⁴⁰ ICC Elements of Crimes, Articles 7(1)(g)-1-6, 8(2)(b)(xxii)-1-6; 8(2)(e)(vi)-1-6.

⁴¹ ICC Rome Statute, Article 7(1)(h).

⁴² ICC OTP Policy on the Crime of Gender Persecution, 2022 (ICC OTP Gender Persecution Policy), para 9.

⁴³ ICC OTP, Policy on Gender-Based Crimes (ICC OTP GBC Policy), 2023, para 75; ICC OTP Gender Persecution Policy, 2022, para 33.

⁴⁴ Mukwege, *The Power of Women*, 70–1.

proceedings.⁴⁵ The ICC Office of the Prosecutor (OTP) has recognized such lingering and multi-layered invisibility of SGBV and expressly prioritized this set of crimes in its case-selection.⁴⁶

The post-2000s initiatives have aimed to not only address the CRSV underprosecution, but also provide a wider support to CRSV survivors through reparations and ensure gender-sensitive responses to atrocity situations and post-conflict recovery. The women, peace and security agenda has stressed the urgency to address CRSV and emphasized the special needs and role of women and girls in peacemaking⁴⁷ (albeit “without reference to any international legal complexities” around the implementation of these pursuits).⁴⁸ The expanding international transitional justice⁴⁹ framework has recognized pervasive CRSV⁵⁰ and encouraged victim-sensitive prosecutions⁵¹ and trauma-specific reparations for survivors.⁵² Transitional justice processes should be victims-led and nourished by women’s leadership; they should address the nature, root causes and prevention of atrocities through a gendered prism.⁵³

⁴⁵ ICC OTP Policy Paper on Case Selection and Prioritisation (ICC OTP Case Selection Policy Paper), 2016, para 46; Out of 125 international crimes charged in domestic universal jurisdiction proceedings analysed in the 2021 report, only 17 charges concerned CRSV and GBV – see FIDH, “Universal Jurisdiction Annual Review 2022: Universal jurisdiction, an overlooked tool to fight conflict-related sexual violence,” 4 April 2022, <https://www.fidh.org/en/issues/international-justice/universal-jurisdiction/universal-jurisdiction-review-2022-conflict-related-sexual-violence>; Silke Studzinsky, Alexandra Lily Kather, “Will Universal Jurisdiction Advance Accountability for Sexualised and Gender-Based Crimes? A View from Within on Progress and Challenges in Germany,” *German Law Journal* 22 (2022): 894–913; “Sexual Violence ‘Most Hidden Crime’ Being Committed against Ukrainians, Civil Society Representative Tells Security Council,” Meetings coverage, UN Security Council, 9056th meeting (AM), SC/14926, 6 June 2022, <https://press.un.org/en/2022/sc14926.doc.htm>; as of September 2023, out of 108,904 conflict-related proceedings Ukraine’s Office of the Prosecutor General had 235 CRSV investigations, Office of the Prosecutor General, “Assistance, Accountability, Reparations. Representatives of the Office of the Prosecutor General Discussed Accountability for Conflict-Related Sexual Violence at the UN,” 29 September 2023, <https://www.gp.gov.ua/ua/posts/dopomoga-vidpovidalnist-kompensaciyi-predstavniky-ofsu-genprokurora-v-oon-obgovorili-zabezpechennya-vidpovidalnosti-za-zlocini-seksualnogo-nasilstva-povyazanogo-z-konfliktom> (Office of the Prosecutor General, “Assistance, Accountability, Reparations”).

⁴⁶ ICC OTP Case Selection Policy Paper, 2016, para 46; ICC OTP GBC Policy, 2023, p. 3.

⁴⁷ UNSC Res 1325, S/RES/1325 (2000), paras 8(b), 10; S/RES/1820 (2008); S/RES/1888 (2009); S/RES/1960 (2010); SCR 1889 (2013); S/RES/2106 (2013); SCR 2122 (2013); SCR 2242 (2015); SCR 2493 (2019); S/RES/2467 (2019).

⁴⁸ Christine Chinkin, *Women, Peace and Security and International Law* (Hersch Lauterpacht Memorial Lectures) (Cambridge: Cambridge University Press: 2022), 161.

⁴⁹ Transitional justice is a system of judicial and non-judicial measures that aim to help a particular society or societies reckon with endured situations of mass atrocities or authoritarian regimes. Transitional justice measures usually include reparations, truth-telling, criminal proceedings, memorialisation, guarantees of non-repetition and prevention. Historically, transitional justice processes have largely been launched after the cessation of an armed conflict or the fall of an authoritarian regime. However, increasingly, at least some transitional justice initiatives are launched while an armed conflict or an atrocity situation are still ongoing. See: Thomas Obel Hansen, “The time and space of transitional justice,” in *Research Handbook on Transitional Justice*, ed. Cheryl Lawther et al. (Cheltenham: Edward Elgar, 2017), 37–8; Par Engstrom, “Transitional justice and ongoing conflict,” in *Transitional Justice and Peacebuilding on the Ground, Victims and Ex-Combatants*, ed. Chandra Lekha Sriram et al. (Abingdon: Routledge, 2013), 58; Kateryna Busol, “Mariupol and the Origins and Avenues of Ukraine’s Transitional Justice Process,” *Just Security*, 1 June 2022, <https://www.justsecurity.org/81680/mariupol-and-the-origins-and-avenues-of-ukraines-transitional-justice-process/>.

⁵⁰ UNSC, “The rule of law and transitional justice in conflict and post-conflict societies: report of the Secretary-General,” 23 August 2004, S/2004/616, paras 27, 46, 64.

⁵¹ International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, March 2017; Global Code of Conduct for Gathering and Using Information about Systematic and Conflict-Related Sexual Violence (Murad Code), 13 April 2022.

⁵² UNGA Res. 60/147 “Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,” 21 March 2006, A/RES/60/147, para 10; Guidance Note of the Secretary General “Reparations for Conflict-Related Sexual Violence,” June 2014; UNSC Res. 2467 (2019), S/RES/2467, paras 15, 18, 28.

⁵³ Guidance Note of the Secretary General “Transitional Justice: A Strategic Tool for People, Prevention and Peace,” 2023, 10–11; CEDAW Committee, “Conflict-related sexual violence as gender-based violence against women and girls: CEDAW Convention, General Recommendations (Nos 35 and 30) and practice of the Committee with

These developments have allowed for the earlier and more nuanced – sensitized, gendered, victim-centred – support to a broad range of CRSV survivors. And amid these developments, Russia unleashed its aggression against Ukraine.

Conflict-Related Sexual Violence in the Russia-Ukraine Armed Conflict

2014–2021

The (In)visibility of CRSV

Russia launched its aggression against Ukraine long before the full-scale invasion of 24 February 2022. In early 2014, Russia occupied Ukraine's Crimean peninsula and developed direct and proxy hostilities in and occupation of parts of Eastern Ukraine's Donbas region. The international community's differentiation of Crimea and Donbas situations and the attempted whitewashing of Russia's role there have contributed not only to a slow response to the mounting violations in both areas but to the visibility of such violations in the first place.⁵⁴

In such a setting, CRSV – one of the notoriously stigmatized and underreported crimes globally – was rather invisible and, consequently, got little response, domestically and internationally, in the initial phase of the Kremlin's aggression. The OHCHR published only one report focused on CRSV and gender-based attacks on LGBTQI+ persons in Donbas and Crimea during the first eight years of the Russia-Ukraine armed conflict, covering violations allegedly perpetrated in 2014–2017.⁵⁵ The OHCHR occasionally mentioned sexual violence in its regular reports on the human rights situation in war-affected Ukraine⁵⁶ and dedicated separate sections to CRSV in its analysis of arbitrary detention in 2021.⁵⁷ The UN Secretary-General did not mention Ukraine in his annual CRSV reports in 2014–2022, despite the existence of the above-mentioned specialized OHCHR report on the issue and remarks on sexual violence by the OHCHR in its regular reporting on Ukraine.⁵⁸ In 2014, Ukraine authorized the ICC to exercise its jurisdiction

recommendations and guidance to State parties to the Convention," 2022 (CEDAW Committee, General Recommendations 35 and 30), Section IV.

⁵⁴ Kateryna Busol, "If Ukraine's Fate Is Not a Menu à la carte, then Ukrainian Voices Must Be Heard," *EJIL: Talk!*, 20 June 2022, <https://www.ejiltalk.org/if-ukraines-fate-is-not-a-menu-a-la-carte-then-ukrainian-voices-must-be-heard/>.

⁵⁵ OHCHR, CRSV in Ukraine (2014–2017).

⁵⁶ OHCHR, Report on the human rights situation in Ukraine (16 November 2019 to 15 February 2020), paras 7, 54, 62, 69, https://www.ohchr.org/sites/default/files/Documents/Countries/UA/29thReportUkraine_EN.pdf; OHCHR, Report on the human rights situation in Ukraine (16 August to 15 November 2019), para 96, https://www.ohchr.org/sites/default/files/Documents/Countries/UA/28thReportUkraine_EN.pdf.

⁵⁷ OHCHR, Arbitrary Detention, Torture and Ill-Treatment in the Context of Armed Conflict in Eastern Ukraine (2014–2021), paras 47–48, 68–69, https://www.ohchr.org/sites/default/files/Documents/Countries/UA/UkraineArbDetTorture_EN.pdf (OHCHR, Arbitrary Detention (2014–2021)).

⁵⁸ Reports of the Secretary-General, Conflict-related sexual violence: S/2022/272, 29 March 2022, <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s-2022-272.pdf>; S/2021/312, 30 March 2021, <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s-2021-312.pdf>; S/2020/487, 3 June 2020, <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s-2020-487.pdf>; S/2019/280, 29 March 2019, <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s-2019-280.pdf>; S/2018/250, 23 March 2018, <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s-2018-250.pdf>; S/2017/249, 15 April 2017, <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s-2017-249.pdf>; S/2016/361, 20 April 2016, <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s-2016-361.pdf>; S/2015/203, 23 March 2015, <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s-2015-203.pdf>; S/2014/181, 13 March 2014, <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s-2014-181.pdf>.

over alleged war crimes, crimes against humanity and genocide perpetrated in its territory since November 2013 onwards. In 2016–2020, the ICC OTP noted preliminary allegations of CRSV in both Crimea and Donbas.⁵⁹ The Prosecutor explained that the reporting of what appeared to be a considerable volume of CRSV was delayed for the fear of stigma or reprisals and the lack of support for survivors.⁶⁰ Due to the mentioned reasons – and because of the abundance of other atrocities, – civil society has also largely focused on the documentation of other alleged crimes.⁶¹ Just a few NGOs analysed CRSV (e.g. the Eastern Ukrainian Centre of Civic Initiatives, Centre for Civil Liberties, Truth Hounds, Blue Bird, ADC Memorial and the FIDH)⁶² and even fewer submitted respective communications to the ICC.⁶³ Some NGOs such as the Media Initiative for Human Rights explored a female prism of other conflict-related violations.⁶⁴

With “years of dehumanising propaganda,”⁶⁵ since the beginning of the armed conflict, Russian authorities and their armed groups have used derogatory rhetoric towards Ukrainians, calling them “Nazis” and “ukrops” (“dirty Ukrainians”).⁶⁶ Such names have been weaponized as a dehumanizing denominator of Ukrainians, in all their ethnic, religious and linguistic diversity, as a national group – more precisely, a political nation⁶⁷ – that sees its future within sovereign and independent Ukraine. Such rhetoric has also accompanied Russian atrocities, including CRSV – and emboldened its particularly vicious forms.

Allegations

The underreporting of, the limited domestic investigative and prosecutorial experience in and the connected lack of focus on CRSV during the initial phase of Russia’s aggression

⁵⁹ ICC OTP, reports on preliminary examination activities: 2016, paras 174, 183, <https://www.icc-cpi.int/sites/default/files/iccdocs/otp/161114-otp-rep-PE-ENG.pdf>; 2017, para 109, <https://www.icc-cpi.int/sites/default/files/itemsDocuments/2017-PE-rep/2017-otp-rep-PE-ENG.pdf>; 2018, paras 76, 92, <https://www.icc-cpi.int/sites/default/files/itemsDocuments/181205-rep-otp-PE-ENG.pdf>; 2019, para 279 <https://www.icc-cpi.int/sites/default/files/itemsDocuments/191205-rep-otp-PE.pdf>; 2020, para 280, <https://www.icc-cpi.int/sites/default/files/itemsDocuments/2020-PE/2020-pe-report-eng.pdf>.

⁶⁰ ICC OTP, Report on Preliminary Examination Activities, 2018, para 92, <https://www.icc-cpi.int/sites/default/files/itemsDocuments/181205-rep-otp-PE-ENG.pdf>.

⁶¹ Wayne Jordash KC, Managing Partner at Global Rights Compliance, speaking at the discussion Conflict-Related Sexual Violence in Ukraine: A Transitional Justice Prism organised by the Equal Opportunities Caucus of the Parliament of Ukraine, 21 June 2021, 1:11:00 <https://www.facebook.com/EqualOpportunitiesCaucus/videos/199124418768235>.

⁶² EUCCI, War without Rules: GBV in Eastern Ukraine; ADC Memorial, Centre for Civil Liberties, “Violation of LGBTQI Rights in Crimea and Donbas: the Problem of Homophobia in Territories beyond Ukraine’s Control,” 2016, (Violation of LGBTQI Rights in Crimea and Donbas) http://adcmemorial.org/wp-content/uploads/lgbtENG_fullwww.pdf.

⁶³ FIDH, “Two NGOs Call for an ICC Investigation into Conflict-Related Sexual Crimes in Eastern Ukraine,” 25 September 2018, <https://www.fidh.org/en/region/europe-central-asia/ukraine/two-ngos-call-for-an-icc-investigation-into-conflict-related-sexual-23647>.

⁶⁴ Female Face of Donbas Hostages.

⁶⁵ UN Commission of Inquiry, Conference Room Paper, para 49.

⁶⁶ EUCCI, War without Rules: GBV in Eastern Ukraine, 50, 52, 92; Female Face of Donbas Hostages, 34.

⁶⁷ Andrew Wilson, “Ukraine at war: Baseline identity and social construction,” 29 *Nations and Nationalism* 5, July 2023: 1; Lydialyle Gibson, “The Return of History,” *Harvard Magazine*, September–October 2023, <https://www.harvardmagazine.com/2023/08/features-serhii-plokhyy-ukraine>; Sergii Plokhyy, Mike Higgins, “Serhii Plokhyy: ‘Russia thought it was invading the Ukraine of 2014,’” Chatham House, 2 June 2023, https://www.chathamhouse.org/publications/the-world-today/2023-06/serhii-plokhyy-russia-thought-it-was-invading-ukraine-2014?utm_source=Chatham%20House&utm_medium=email&utm_campaign=13975477_TWT%20-%20Newsletter%20-%202015.06.23&utm_content=Serhii%20Plokhyy%20interview&dm_i=1S3M,8BJJP,WSM8P6,Y8V38,1; “Snyder on the emergence of a “political nation” in Ukraine,” *Hromadske*, 20 November 2014, https://hromadske.ua/en/posts/Snyder_Political_Nation_Ukraine; “Timothy Snyder – A Ukrainian Political Nation is Being Formed Thanks to the Maidan and War,” *Religious Information Service of Ukraine*, 6 December 2016, https://risu.ua/en/timothy-snyder-a-ukrainian-political-nation-is-being-formed-thanks-to-the-maidan-and-war_n82449; Timothy Snyder, “The War in Ukraine is a Colonial War,” *The New Yorker*, 28 April 2022, <https://www.newyorker.com/news/essay/the-war-in-ukraine-is-a-colonial-war>.

have complicated seeing a holistic picture of these violations from 2014–2021. Even with these limitations, both international organizations and human rights NGOs have recorded CRSV in temporarily occupied territories of Crimea and Donbas.⁶⁸ According to one of the few studies of the issue during the initial years of Russia's aggression, every third female interviewee and every fourth male interviewee has experienced or witnessed SGBV in war-affected Eastern Ukraine.⁶⁹ In both Donbas and Crimea, CRSV was perpetrated predominantly in three settings: in detention, at checkpoints along the contact line and within temporarily occupied territories. CRSV was attributable to the Russian military and its controlled armed groups⁷⁰ and the Ukrainian side, including, at the earlier stages of the war, some of the voluntary battalions.⁷¹ While recognizing that CRSV reporting implicating the Ukrainian military could be affected by solidarity considerations and security concerns, NGOs have found no evidence of systematic CRSV by the Ukrainian side.⁷² Human rights organizations recorded more allegations of CRSV implicating Russian authorities and Russia-controlled armed groups.⁷³ Russian authorities particularly targeted persons who had pro-Ukrainian views and helped, in any way, the Ukrainian side, or were deemed to do so.⁷⁴

CRSV in Detention

According to the OHCHR, the total number of conflict-related detentions in Ukraine in 2014–2021 was about 7,900–8,700, with 60% of detentions taking place during the first two years of the armed conflict.⁷⁵ Both parties detained the military personnel, persons participating in hostilities as well as civilians because of their actual or perceived support of one of the belligerents.⁷⁶ Around 85% detainees were males and 15% – females.⁷⁷ In this first phase of the armed conflict, the OHCHR recorded 340 instances of CRSV in detention (190–230 men and 120–140 women).⁷⁸ CRSV was employed to humiliate, punish, or extract confessions.⁷⁹ Allegations concerning the Ukrainian side include rape, threats of rape, sexualized torture and forced nudity.⁸⁰ Due to the general

⁶⁸ OHCHR, CRSV in Ukraine (2014–2017), paras 8, 108–111; EUCCI, War without Rules: GBV in Eastern Ukraine, 23; Violation of LGBTQI Rights in Crimea and Donbas, 36–7.

⁶⁹ EUCCI, War without Rules: GBV in Eastern Ukraine, 84–5.

⁷⁰ Some early reports on alleged violations in Eastern Ukraine sometimes differentiated armed groups and the Russian Federation or did not mention Russia's alleged implication at all (e.g. Report of the Office of the United Nations High Commissioner for Human Rights, Conflict-Related Sexual Violence in Ukraine (14 March 2014 to 31 January 2017) A/HRC/34/CPR.4 (16 March 2017), para 59). However, in 2023, the European Court of Human Rights confirmed that Russia had exercised effective control over separatist areas of Donbas at least from 11 May 2014. The Court reached its conclusion on the basis of the assessment of Russia's military presence in the region and its crucial military, political and economic support to the self-proclaimed 'republics'. European Court of Human Rights, *Ukraine and The Netherlands v. Russia*, Applications nos. 8019/16, 43800/14 and 28525/20, Decision, 20 November 2022, para 695.

⁷¹ OHCHR, CRSV in Ukraine (2014–2017), paras 65–66, 88.

⁷² EUCCI, War without Rules: GBV in Eastern Ukraine, 73, 76; Ukrainian Centre for Social Reforms, Gender-Based Violence in the Conflict-Affected Regions of Ukraine (2018) (GBV in the Conflict-Affected Regions of Ukraine), 17–18 https://ukraine.unfpa.org/sites/default/files/pub-pdf/gbv%20in%20the%20conflict-affected%20regions%20of%20ukraine_eng.pdf.

⁷³ EUCCI, War without Rules: GBV in Eastern Ukraine, 73–7.

⁷⁴ OHCHR, CRSV in Ukraine (2014–2017), para 86; Female Face of Donbas Hostages, 7; EUCCI, War without Rules: GBV in Eastern Ukraine, 50, 83, 86; GBV in the Conflict-Affected Regions of Ukraine, 18.

⁷⁵ OHCHR, Arbitrary Detention (2014–2021), paras 3–4.

⁷⁶ Ibid., para 3; EUCCI, War without Rules: GBV in Eastern Ukraine, 47.

⁷⁷ Ibid., para 3.

⁷⁸ Ibid., para 10.

⁷⁹ EUCCI, War without Rules: GBV in Eastern Ukraine, 73, 83–6.

⁸⁰ Ibid., 73.

situation of lawlessness in Donbas and the international community's tacit acceptance of Russia's blurring of its control over the armed groups, the latter acted with particular viciousness. CRSV attributable to Russian military and its armed groups include regular gang rapes, sexual slavery, enforced prostitution, forced nudity, forcing to watch sexual violence and robbery of CRSV victims.⁸¹

CRSV, Pregnancy and Other Gendered Considerations Regarding Women in Detention

Russian occupation authorities often failed to keep male and female detainees separately, thus exacerbating the risk of CRSV, especially for women.⁸² Detention authorities often derogatively referred to women underlining their Ukrainian national identity and pro-Ukrainian views and emphasized that they would be re-educated.⁸³ Detained pregnant civilian and POW women hardly received general medical, let alone specialized gynaecological support.⁸⁴ Detention authorities specifically prohibited any sanitary pads, which relatives could send to the colonies.⁸⁵ This not only humiliated women detainees in a deeply gendered way, but also, given with limited access to showers, exposed females to higher health risks due to the imposed inability to maintain basic hygiene during menstruation.

Russian authorities and their armed groups knowingly disregarded special needs of pregnant Ukrainian women in detention and, instead, treated them with particular cruelty. Pregnant detainees were made to carry heavy objects, had limited access to bathrooms (which is particularly needed with a foetus' pressure on a woman's bladder), were deprived of food and water and placed in tiny rooms without windows and often without light for enhanced psychological pressure.⁸⁶ Russian officials and Russia-controlled armed groups knowingly repeatedly beat pregnant females, including on their stomach, and raped them, which often caused miscarriages.⁸⁷ By mistreating pregnant Ukrainian women, Russian forces and their armed groups pursued a two-fold aim. First, to punish, in a very gendered way, an expecting woman for her actual or assumed vision of Ukraine as an independent sovereign nation. And, second, to prevent births of "ideologically wrong" children.⁸⁸

CRSV at Checkpoints

Checkpoints between Ukraine's Government-controlled and occupied territories was the second major setting of potential abuse, including through CRSV, during the first phase of the armed conflict. Numerous civilians, mostly women, children and the elderly, had to

⁸¹ OHCHR, CRSV in Ukraine (2014–2017), para 90; EUCCI, War without Rules: GBV in Eastern Ukraine, 50.

⁸² EUCCI, War without Rules: GBV in Eastern Ukraine, 40.

⁸³ OHCHR, CRSV in Ukraine (2014–2017), para 95; EUCCI, War without Rules: GBV in Eastern Ukraine, 50; Female Face of Donbas Hostages, 34.

⁸⁴ Female Face of Donbas Hostages, 24–5.

⁸⁵ Ibid., 15, 22.

⁸⁶ OHCHR, CRSV in Ukraine (2014–2017), para 95; EUCCI, War without Rules: GBV in Eastern Ukraine, 50.

⁸⁷ EUCCI, War without Rules: GBV in Eastern Ukraine, 50.

⁸⁸ The OHCHR documented the case of five-month pregnant woman who had suffered regular beatings and attempted rape (which she avoided only because she claimed she had a sexually transmitted disease) "so that her 'Ukrop [derogatory term used for Ukrainians] baby would not be born" in OHCHR, CRSV in Ukraine (2014–2017), para 95; the Eastern Ukrainian Centre for Civic Initiatives has documented a case of a Ukrainian woman of Jewish descent, who was three month-pregnant at the time of detention. She reported that she had informed members of pro-Russian armed groups about the pregnancy and they beat her nevertheless. The captors claimed they were "beating an 'ukrop' ['dirty Ukrainian'] out of her" because "the mother is like that, also a Jew and a nationalist, and the father is a member of the armed forces, so it's not a child". "They said it was very good that the 'ukrop' child would die." in EUCCI, War without Rules: GBV in Eastern Ukraine, 50.

queue up for long to cross the contact line to see their relatives, receive social payments or formalize Ukrainian documents. In this setting, few instances of sexual harassment and an attempted rape by Ukrainian authorities were reported.⁸⁹ A rape of a pregnant woman and a gang rape, combined with robbery, of a woman traveling with children by the Russian side were recorded.⁹⁰ In both cases, Russian occupying authorities and their armed groups made comments that both born and unborn children should not have a Ukrainian identity.⁹¹

CRSV in Occupied Territories and Areas with High Military Presence

The risk of CRSV has exacerbated on both sides of the contact line in conflict-affected Donbas region. Some instances of sexual harassment, beating, including of a pregnant woman, and rape implicating the Ukrainian side were reported.⁹² In the Russia-occupied territories, rapes, gang rapes and repeated rapes, combined with murder or robbery, were documented.⁹³ These crimes were often marked by additional discriminative grounds, for instance, when perpetrated against Roma women or aimed against LGBTQI + persons.⁹⁴ LGBTQI + individuals had additional reasons to relocate from occupied territories for lesbian women's fear of "correctional" rapes and the wider community's life concerns given the calls to "kill those spreading the culture of homosexuality."⁹⁵ Due to the dire economic situation in conflict-affected Eastern Ukraine, some local women and girls resorted to survival prostitution.⁹⁶

CRSV in Crimea

CRSV has also been reported in occupied Crimea, especially in the context of detention.⁹⁷ Russia has organized a crackdown on any opposition to the occupation. Ethnic Ukrainians and indigenous Crimean Tatars have been particularly targeted.⁹⁸ In detention, Russia has subjected dissenters to various forms of mistreatment, including the electrocution of genitalia and other forms of sexual violence.⁹⁹ Like in Eastern Ukraine, the principal aim of such treatment was to extract "confessions."¹⁰⁰ Assessing the actual scope of CRSV in Crimea remains problematic due to the lack of access to the Russia-occupied peninsula. Reporting is meagre also due to the fact that the vast majority of detainees and political prisoners in Crimea are men, for whom the discussion of CRSV is particularly stigmatized due to CRSV's alleged encroachment on the traditional vision of masculinity. For Muslim Crimean Tatar detainees, such reporting may be further complicated by religious considerations.

⁸⁹ OHCHR, CRSV in Ukraine (2014–2017), paras 79–81.

⁹⁰ Ibid., paras 99–101.

⁹¹ Ibid., paras 100–101.

⁹² Ibid., paras 83–84; GBV in the Conflict-Affected Regions of Ukraine, 17–18.

⁹³ Ibid., paras 102–106.

⁹⁴ Ibid., paras 105, 107.

⁹⁵ Ibid., para 107; EUCCI, War without Rules: GBV in Eastern Ukraine, 45–7.

⁹⁶ Ibid., para 63.

⁹⁷ OHCHR, Arbitrary Detention (2014–2021), para 34.

⁹⁸ Which already during the initial phase of the armed conflict prompted the ICC Prosecutor to allege a crime against humanity of persecution on political grounds – in ICC OTP, Report on Preliminary Examination Activities, 2020, para 279 <https://www.icc-cpi.int/sites/default/files/itemsDocuments/2020-PE/2020-pe-report-eng.pdf>; Maksym Vishchyk, Anastasiia Moiseieva, "Crimean Tatars: Eight Years of Anything but Marginal Resistance," *EJIL: Talk!*, 25 March 2022, <https://www.ejiltalk.org/crimean-tatars-eight-years-of-anything-but-marginal-resistance/>.

⁹⁹ OHCHR, Arbitrary Detention (2014–2021), para 34; OHCHR, CRSV in Ukraine (2014–2017), paras 108–111.

¹⁰⁰ OHCHR, CRSV in Ukraine (2014–2017), para 109.

2022 Onwards

Introduction

Three general observations are due with respect to conflict-related crimes perpetrated since Russia's full-scale invasion of Ukraine on 24 February 2022. First, many patterns of crimes that have followed since 2022 were first committed – tested – in Crimea and Donbas. Notable examples include enforced disappearances; torture and inhuman treatment; killings; unlawful detention; crimes affecting the environment and cultural heritage; large-scale appropriation of public, municipal and private property; forcible transfer and deportation of civilian population from and to temporarily occupied territories for the purpose of changing the demographics of the captured areas and their larger colonization; sham trials; persecution on political grounds and CRSV. Had there been a more robust – political, legal, military – response to the initial acts of Russia's aggression and crimes in Crimea and Donbas, the scale of the full-scale invasion, if attempted at all, would likely have been different. Second, while many patterns of Russia's crimes were known since the first phase of the war, the all-out invasion has significantly amplified their territorial scope and gravity. Since February 2022, the whole territory of Ukraine has been a target and a battlefield. This has not only increased the number of victims, but also generated practical challenges regarding crime documentation, investigation, prosecution and adjudication. The full-scale invasion has also brought new crimes such as sieges¹⁰¹ and targeting Ukraine's energy and other critical infrastructure. Many Ukrainians' disbelief in and lack of preparedness for the looming invasion and Russia's massive targeting of the whole of Ukraine have amplified civilians' vulnerabilities and their exposure to Russia's atrocity crimes. Finally, while in 2014–2021, among atrocities, various war crimes and crimes against humanity were alleged, the 2022 developments added to them analyses of genocide¹⁰² and direct and public incitement to genocide.¹⁰³

¹⁰¹ E.g. the cities of Mariupol and Chernihiv. OHCHR, Situation of Human Rights in Ukraine in the Context of the Armed Attack by the Russian Federation (24 February – 15 May 2022), 29 June 2022, paras 38–43 <https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-06-29/2022-06-UkraineArmedAttack-EN.pdf>.

¹⁰² Iryna Marchuk, Aloka Wanigasuriya, "Beyond the False Claim of Genocide: Preliminary Reflections on Ukraine's Prospects in Its Pursuit of Justice at the ICJ," *Journal of Genocide Research* (2022) (Marchuk, Wanigasuriya, "Beyond the False Claim of Genocide"); 17, 19, 22; Denys Azarov, Dmytro Koval, Gaiane Nuridzhanian, Volodymyr Venher, "Understating Russia's Actions in Ukraine as the Crimea of Genocide," *Journal of International Criminal Justice* 21 (2023) (Azarov, Koval, Nuridzhanian, Venher, "Understating Russia's Actions in Ukraine as the Crimea of Genocide"); 252–63; Ioffe, "Forcibly Transferring Ukrainian Children: A Genocide?" 25–37; Wayne Jordash, "Genocide in Ukraine," *Ukrainska Pravda*, 28 March 2023, <https://www.pravda.com.ua/columns/2023/03/28/7395377/>; New Lines Institute, "Conflict-Related Sexual Violence in Ukraine: Lessons from Bosnia and Herzegovina and Policy Options for Ukraine, the United States, and the International Community," September 2023, <https://newlinesinstitute.org/gender/conflict-related-sexual-violence-in-ukraine-lessons-from-bosnia-and-herzegovina-and-policy-options-for-ukraine-the-united-states-and-the-international-community/>, (New Lines Institute, "CRSV in Ukraine"); New Lines Institute, "The Russian Federation's Escalating Commission of Genocide in Ukraine: A Legal Analysis," 26 July 2023, <https://newlinesinstitute.org/rules-based-international-order/genocide/the-russian-federations-escalating-commission-of-genocide-in-ukraine-a-legal-analysis/> (New Lines Institute, "The Russian Federation's Escalating Commission of Genocide in Ukraine"); New Lines Institute, "An Independent Legal Analysis of the Russian Federation's Breaches of the Genocide Convention in Ukraine and the Duty to Prevent," 27 May 2022, <https://newlinesinstitute.org/rules-based-international-order/genocide/an-independent-legal-analysis-of-the-russian-federations-breaches-of-the-genocide-convention-in-ukraine-and-the-duty-to-prevent/>; Amanda Macias, "At least 20 torture centers in Kherson were directly financed by the Kremlin, international lawyers say in a new report," *CNBC*, 2 March 2023, https://www.cnbc.com/2023/03/02/ukraine-russia-war-kherson-torture-centers-financed-by-kremlin.html?fbclid=IwAR1UxksZlua1DyHt_UKDIz9EXr26WRhVE6R-qNvA8zDOWCoW7qZ1dHOuYzY (Macias, "At least 20 torture centers in Kherson were directly financed by the Kremlin").

¹⁰³ UN Commission of Inquiry, Conference Room Paper, para 774; Apt, "Russia's Eliminationist Rhetoric Against Ukraine: A Collection"; Russian media monitors Davis and Scarr; Pomerantsev, "Russia's genocidal propaganda must not be passed off as freedom of speech."

Overview

CRSV perpetrated amid Russia's full-scale invasion correlates with the three aforementioned observations. Rooted in the patterns observed during the first phase of the Russia-Ukraine armed conflict, the post-2022 CRSV is graver in terms of the number of persons affected or endangered by it – as well as its variety and viciousness. The UN Commission of Inquiry has established that, during CRSV and other violations committed during the all-out invasion, Russian authorities have demonstrated “the profound disregard for the life and the dignity of the victims.”¹⁰⁴ The mode of perpetration of sexual violence, combined with the accompanying dehumanizing rhetoric,¹⁰⁵ could, in certain cases, be indicative of a genocidal intent.¹⁰⁶

Since 24 February 2022, Russian forces have been perpetrating CRSV in two principal settings: during house-to-house searches in temporarily occupied Ukrainian territories and in detention centres, situated both in the occupied areas of Ukraine and in Russia.¹⁰⁷ Russian forces have often committed CRSV “with brutality, and in combination with other grave violations”¹⁰⁸ such as inhuman treatment, torture, unlawful detention, unlawful confinement, unlawful killings and summary executions.¹⁰⁹ Victims include girls and boys, women and men aged from four to 80.¹¹⁰ Civilian girls and women have been principally targeted during the occupation.¹¹¹ In detention, victims were civilian and POW women and men, the majority of victims being male.¹¹²

The OHCHR has documented 24 CRSV instances (18 men, 6 women) perpetrated in Ukraine-controlled territories during the first year of the full-scale invasion.¹¹³ The OHCHR attributes 13 instances to the Ukrainian military and law enforcement and 11 – to civilians and members of territorial defence. While there are no details about the first group of allegations, the second one concerns the cases of a so-called “punishment” by means of “forced public stripping” of members of both sex suspected of looting their compatriots amid the war chaos or collaborating with the enemy.¹¹⁴ Ukraine's human rights organizations have condemned such practices and called upon the law

¹⁰⁴ Report of the Independent International Commission of Inquiry on Ukraine (Advance Unedited Version), A/78/540, 19 October 2023 (UN Commission of Inquiry, Report, October 2023), para 52 <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiukraine/A-78-540-AEV.pdf>.

¹⁰⁵ UN Commission of Inquiry, Report, October 2023, para 67; UN Commission of Inquiry, Conference Room Paper, para 585.

¹⁰⁶ Liz Cookman, “‘I just want justice’: Ukrainians struggle with hidden war crime of sexual violence,” *The Guardian*, 26 September 2023, <https://www.theguardian.com/world/2023/sep/26/i-just-want-justice-ukrainians-struggle-with-hidden-war-of-sexual-violence> (Cookman, “Hidden War Crime of Sexual Violence”); Christina Lamb, “She Thought She Was Unshockable. Then Two Castrated Soldiers Arrived,” *The Australian*, 18 June 2023, <https://www.thetimes.co.uk/article/ukraine-soldiers-castrated-russia-war-0hf1zhzlv> (Lamb, “Castrated Soldiers”).

¹⁰⁷ UN Commission of Inquiry, Conference Room Paper, paras 569, 577; UN Commission of Inquiry, Conference Room Paper, para 574.

¹⁰⁸ *Ibid.*, para 567.

¹⁰⁹ UN Commission of Inquiry, Report, October 2023, paras 65, 79, 83, 85, 86.

¹¹⁰ UN Commission of Inquiry, Conference Room Paper, para 567.

¹¹¹ *Ibid.*, para 575.

¹¹² *Ibid.*, para 599.

¹¹³ OHCHR, Report on the Human Rights Situation in Ukraine (1 February – 31 July 2023), <https://www.ohchr.org/en/documents/country-reports/report-human-rights-situation-ukraine-1-february-31-july-2023> (OHCHR, Human Rights Situation in Ukraine (1 February – 31 July 2023)), para 62.

¹¹⁴ OHCHR, Human Rights Situation in Ukraine (1 February – 31 July 2023), footnote 20; “A Looter Caught in Mykolaiv: Residents Undressed Him and Tied to a Pole,” *Holos Karpat*, 28 February 2022, <https://goloskarpat.info/society/621c36118fed2/>; “Undressed the Looters to Their Underwear: Security Guards Have Punished the Intruders in Melitopol,” *Apostrophe*, 1 March 2022, <https://apostrophe.ua/ua/news/society/accidents/2022-03-01/razdeli-maroderovo-drosov-v-melitopole-ohrana-magazinov-nakazala-pogromschikov-foto/261050>.

enforcement authorities to prevent lynching and ensure fair investigations pursuant to due process.¹¹⁵

As of September 2023, Ukraine's Office of the Prosecutor General (OPG) had 235 CRSV investigations.¹¹⁶ The UN Commission of Inquiry has established "many instances" of CRSV in all nine Ukrainian regions occupied by Russia and in Russia.¹¹⁷ However, a more realistic assessment of the actual scale of CRSV will be possible only much later. CRSV case reporting is complicated by shame; social and gendered stigmas around sexual violence, which differ for women and men; security concerns; fear of perpetrator's return or reprisals; caring obligations; relocation and other pressing socio-economic concerns, which are particularly acute amid the ongoing warfare; urgent medical issues such as the need to seek abortion; and by no access to victims in Russia-occupied territories.

CRSV during House Searches

The first setting of Russia's CRSV since the full-scale invasion has been civilians' homes. Occupying authorities have been doing house-to-house searches to detect the actual or deemed Ukraine sympathizers, former members of the Ukrainian Armed Forces or their relatives, IDPs from Crimea and Donbas who did not favour life under Russia's rule and relocated as well as potential collaborators.¹¹⁸ Russian forces have also stayed in civilian homes, including those whose owners have not left or could not leave, due to financial situation, logistical difficulties or caring obligations. This increased the contact of the military with the civilians – and the room for abuse.

In occupation, Russian forces have committed a whole range of CRSV: rapes, repeated rapes, gang rapes, rapes followed by mutilation, killing and other acts amounting to torture, attempted rapes, sexual slavery and threats of rape and other forms of sexual violence. Occupying authorities perpetrated these crimes "at gunpoint, with extreme brutality and with acts of torture."¹¹⁹ Some rapes appeared to be genocidal, *i.e.* aiming to destroy Ukrainians in whole or in part: perpetrators infused chemicals into women's vaginas so that they would not be able to have children anymore and expressly said they wanted to stop Ukrainians from reproduction.¹²⁰ Family members would be forced to witness the abuse of their loved ones or sexually assaulted in turn. CRSV was often preceded or accompanied by killings of family members or others willing to prevent the assault.¹²¹

CRSV against Children

Russian servicemen have also sexually assaulted children who remained in occupation. CRSV against children varied. It included one-time incidents such as making a four-year-old girl witness sexual abuse of her parents and then performing oral sex on her

¹¹⁵ Statement by Ukraine. 5:00 am Coalition on Lynching Looters, "No to lynching. Human Rights Defenders Call on Law Enforcement to Respond Appropriately to Humiliation of 'Looters,'" 24 March 2022, <https://zmina.ua/en/statements-en/no-to-lynching-human-rights-defenders-call-on-law-enforcement-to-respond-appropriately-to-humiliation-of-looters/>.

¹¹⁶ Office of the Prosecutor General, "Assistance, Accountability, Reparations."

¹¹⁷ UN Commission of Inquiry, Conference Room Paper, para 567, 569.

¹¹⁸ *Ibid.*, para 579.

¹¹⁹ *Ibid.*, para 580.

¹²⁰ Lamb, "Castrated Soldiers"; Cookman, "Hidden War Crime of Sexual Violence."

¹²¹ UN Commission of Inquiry, Conference Room Paper, para 581.

or making three- and four-year-old boys witness repeated or attempted rapes of their mothers.¹²² In certain instances, CRSV included a spectrum of continuous violations affecting children and their relatives (for instance, Russian servicemen's enforced cohabitation with 14-year-old and 16-year-old girls in the latter's houses, accompanied by repeated rapes and other violence and making their families cook and run households for the abusers).¹²³

CRSV in Detention

In detention, the occupying authorities have often resorted to rape, threats of rape towards detainees or their relatives, making detainees witness CRSV perpetrated on others, beatings of genitalia and buttocks, forced nudity, unwanted touches, unjustified strip searches, castration, threats of castration and sexualized torture.¹²⁴ The electrocution of genitalia is a common torture method and has a special name – a “call to Putin” or a “call to Lenin.”¹²⁵ A video of castration and mutilation of a Ukrainian POW raises viable concerns about their treatment in detention.¹²⁶ Psychologists working with exchanged Ukrainian POWs confirm that some of them have been castrated.¹²⁷ CRSV in detention is used for interrogation, humiliation, punishment, forcing confessions or collaboration. Overcrowdedness, malnutrition and lack of hygiene and medical support make detention conditions inhuman. In such an environment, tortured detainees have even less chances to recover. In certain cases, Russian authorities' violence and chosen non-provision of medical assistance caused detainees' deaths.¹²⁸

CRSV, Pregnancy and Other Gendered Considerations Regarding Women

Neither in occupation, nor in detention Russian forces spared pregnant women and girls. Russians knowingly proceeded with rapes, gang rapes and repeated rapes even when a victim or her relatives told them that the woman was expecting.¹²⁹ Rapes of pregnant women were often accompanied with torture and caused miscarriages.¹³⁰ Detained pregnant civilian women and POWs hardly receive needed medical support and have constant fear about the fate of a future child,¹³¹ especially considering Russia's deportations of Ukrainian youth.¹³²

¹²² Ibid., paras 586, 589, 594.

¹²³ Ibid., para 582.

¹²⁴ OHCHR, Human Rights Situation in Ukraine (1 February – 31 July 2023), paras 54, 57 <https://www.ohchr.org/en/documents/country-reports/report-human-rights-situation-ukraine-1-february-31-july-2023>; UN Commission of Inquiry, Conference Room Paper, paras 599, 601.

¹²⁵ UN Commission of Inquiry, Conference Room Paper, para 528.

¹²⁶ Peter Beaumont, “Video appears to show Russian soldier castrating Ukrainian prisoner,” *The Guardian*, 29 July 2022, <https://www.theguardian.com/world/2022/jul/29/video-appears-to-show-russian-soldier-castrating-ukrainian-prisoner>.

¹²⁷ Lamb, “Castrated Soldiers”.

¹²⁸ UN Commission of Inquiry, Report, October 2023, para 52.

¹²⁹ Ibid., paras 76, 81; UN Commission of Inquiry, Conference Room Paper, paras 580, 591, 638.

¹³⁰ UN Commission of Inquiry, Conference Room Paper, paras 580, 591, 638.

¹³¹ ““Please let me die”: Freed Ukrainian POW describes first thoughts after Russian capture,” *60 Minutes*, 6 March 2023, https://www.youtube.com/watch?v=wpm9ZThwP_U.

¹³² The first two ICC arrest warrants in the Ukraine situation concern the alleged war crimes of unlawful deportation of children and unlawful transfer of children from occupied territories of Ukraine to Russia. International Criminal Court, Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova, 17 March 2023, <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and-maria-alekseyevna-lvova-belova>. Lawyers and policymakers have argued that such children deportations by Russia constitute genocide. See more: Ioffe, “Forcibly Transferring Ukrainian Children: A Genocide?”; New Lines

Neither in occupation, nor in detention, Russian authorities seem to accord women the gendered treatment required, as prescribed by international law. Female civilian detainees and POWs are often strip searched by Russian servicemen and asked to squat in front of them.¹³³ Detained women are frequently held together with male counterparts.¹³⁴ Both situations cause females acute anxiety because of the fear of potential expanded sexual violence. With largely absent separate toilets, detained women and men have to share a designated toilet spot in their small common cell. Embarrassed to do so in front of males, women often try to suppress the need to use the toilet, including by not eating and drinking the available meagre food.¹³⁵ Such self-containment harms females both mentally and physically. The unsanitary conditions, rare access to showers and clean water and the scarcity of sanitary products in detention make women and especially menstruating women particularly prone to various diseases. Females are also haunted by an acute feeling of shame for not being able to tend to themselves as their sex and dignity require. They suffer additional distress for being exposed in such a condition to male detainees. At one penal colony, Russian authorities did not allow women to wash during menstruation.¹³⁶ Russian agents imposed this expressly gendered abuse on women knowingly and willingly, realizing that it would likely subject them to shame, physical discomfort and possible diseases.

Medical, let alone specialized gynaecological support, is limited in occupation and largely inexistent in detention. In occupation, many hospitals are damaged by hostilities, some doctors left and the supply of medicine is limited. This complicates women's access to ordinary and emergency contraception, gynaecological advice and abortion.

CRSV against LGBTQI+ Persons

Sexual and gender-based attacks on the actual or perceived LGBTQI+ persons because of their actual or perceived gender identity or sexual orientation have been documented. Russian authorities detained persons perceived to be gay or lesbian in occupied territories, at victim's homes, offices and in public places, and at checkpoints.¹³⁷ Detentions were accompanied with homophobic statements, rape or threats of rape and killing, other abuses and sometimes robbing.¹³⁸ One attack involving the intimidation, ill-treatment and robbery of four gay men happened in Kyiv; some attackers have been identified.¹³⁹

Legal Assessment

The described patterns of Russian agents' CRSV constitute war crimes, and human rights violations. In certain cases, Russia's CRSV amounts to crimes against humanity and is

Institute, "The Russian Federation's Escalating Commission of Genocide in Ukraine: A Legal Analysis," 26 July 2023, 8, 31, 38, <https://newlinesinstitute.org/rules-based-international-order/genocide/the-russian-federations-escalating-commission-of-genocide-in-ukraine-a-legal-analysis/>; PACE, Resolution 2495 "Deportations and forcible transfers of Ukrainian children and other civilians to the Russian Federation or to temporarily occupied Ukrainian territories: create conditions for their safe return, stop these crimes and punish the perpetrators," 2023, para 10 <https://pace.coe.int/en/files/31776>.

¹³³ UN Commission of Inquiry, Conference Room Paper, para 617.

¹³⁴ *Ibid.*, para 602.

¹³⁵ *Ibid.*, paras 602, 612.

¹³⁶ *Ibid.*, para 614.

¹³⁷ *Ibid.*, para 624; UN Commission of Inquiry, Report, October 2023, para 56.

¹³⁸ *Ibid.*, paras 626–629; *Ibid.*, para 56.

¹³⁹ *Ibid.*, para 625.

indicative of the genocidal intent and genocidal acts. Ukraine's alleged imposition of forced nudity on alleged collaborations or alleged implication in sexualized ill-treatment, torture or killing of Russian POWs, however limited, could constitute war crimes and human rights violations.¹⁴⁰

Russia's weaponization of rape, sexual slavery and other forms of sexual violence perpetrated against civilian and POW women and men constitutes war crimes.¹⁴¹ Sexualized torture or inhuman treatment as well as CRSV intertwined with wilful killing or wilful infliction of suffering or serious bodily or mental harm constitutes the utmost war crimes – the grave breaches of the Geneva Conventions.¹⁴² Sexualized torture and orchestrated inhuman detention conditions with acute gendered targeting also breach Russia's obligations under the wider human rights framework, which remains applicable during armed conflict. This pertains at least to Russia's positive obligations regarding the right to life, paramount prohibition of torture and degrading treatment, equality and non-discrimination and the right to the highest attainable standard of health, all with an underlying gendered prisms.¹⁴³ Russia is bound to investigate any breaches of these human rights and IHL obligations and ensure remedy and reparations to those affected.¹⁴⁴ So far, both the prevention of violations and their prosecution by Russia's authorities seem to remain limited and their fairness is doubtful.¹⁴⁵

The growing evidence of Russia's weaponization of torture, including sexualized torture, suggests that it amounts to a crime against humanity, *i.e.* a widespread or systematic attack on the civilian population unleashed in furtherance of a state or organizational policy.¹⁴⁶ The UN Commission of Inquiry, the UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and human rights lawyers have already concluded that Russia's torture in Ukraine is not incidental but thoroughly designed and widely used in all territories under Russia's control.¹⁴⁷ Torture

¹⁴⁰ Ibid., paras 625, 645–648, 667–668.

¹⁴¹ ICC Rome Statute, 8(2)(b)(xxii)-1-6; Geneva Convention IV, Articles 27, 147; Additional Protocol 1, Articles 76–77.

¹⁴² Geneva Convention I, Article 50; Geneva Convention II, Article 51; Geneva Convention III, Articles 130–131; Geneva Convention IV, Articles 147–148; Additional Protocol I, Articles 85–86; ICC Rome Statute, Articles 8(2)(a)(i)-(iii); Andrew Clapham, "We Need To Talk About Grave Breaches of the Geneva Conventions," *Opinio Juris*, 25 April 2023, <https://opiniojuris.org/2023/04/25/we-need-to-talk-about-grave-breaches-of-the-geneva-conventions/>.

¹⁴³ International Covenant on Civil and Political Rights, Articles 6–10, 24, 26; Human Rights Committee, General Comment No. 36, Article 6: rights to life, CCPR/C/GC/36, 3 September 2019 (Human Rights Committee, General Comment No. 36), paras. 23, 64; International Covenant on Economic, Social and Cultural Rights, Article 12; Convention against Torture, Inhuman or Degrading Treatment or Punishment (Convention against Torture), Article 2; International Convention on the Elimination of All Forms of Racial Discrimination, Articles 2, 4, 5; Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, Articles 1–2, 5, 12; CEDAW Committee, General Recommendations 35 and 30, paras 6–12; Convention on the Rights of the Child, 20 November 1989, Articles 19, 34, 37(a), 38(2).

¹⁴⁴ Geneva Convention I, Article 49; Geneva Convention II, Article 50; Geneva Convention III, Article 129; Geneva Convention IV, Articles 146; Additional Protocol I, Articles 86; Rule 158. Prosecution of War Crimes, Henckaerts, *Customary International Humanitarian Law*; Convention against Torture, Articles 7, 14; Convention on the Rights of the Child, Article 39; International Convention on the Elimination of Racial Discrimination, Article 6; Convention on the Prevention and Punishment of the Crime of Genocide, Articles 4, 6; Human Rights Committee, General Comment No. 36, paras 27–28.

¹⁴⁵ UN Commission of Inquiry, Conference Room Paper, paras 62, 570, 611, 997(b); Maksym Vishchyk, "Trials of Ukrainian Prisoners of War in Russia: Decay of the Combatant's Immunity," *Just Security*, 21 August 2023, <https://www.justsecurity.org/87702/trials-of-ukrainian-prisoners-of-war-in-russia-decay-of-the-combatants-immunity/>.

¹⁴⁶ ICC Elements of Crimes, Article 7, Introduction; *Prosecutor v. Al Bashir*, ICC-02/05-01/09-3, Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir, 4 March 2009, paras 80, 82; *Prosecutor v. Nahimana et al.*, ICTR-99-52-A, Judgement, 28 November 2007, paras 915–921.

¹⁴⁷ UN Commission of Inquiry, Conference Room Paper, para 489; United Nations Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Statement of Preliminary Findings and Recommendations, 10

infrastructure and techniques, including sexual violence, “appear neither random nor incidental, but rather orchestrated as part of a State policy to intimidate, to instil fear, to punish, or to extract information and confessions”.¹⁴⁸

The mode of perpetration of CRSV by Russian agents and the dehumanizing language accompanying sexual violence suggest that Russia is targeting Ukrainians as a national group with a genocidal intent.¹⁴⁹ Russia has been using CRSV here with a two-fold aim. First, to punish Ukrainians, in an inherently gendered way, for seeing their national and state identity as independent from Russia’s. And, second, to stop the spread of such ideas, by impeding reproduction and by raising “ideologically correct” children.

Russia’s leadership and a considerable proportion of the society have consistently denied the existence of a separate Ukrainian nation.¹⁵⁰ Dr Denis Mukwege, a ground-breaking Congolese gynaecologist and a co-recipient of the 2018 Nobel Peace Prize for combating sexual violence as a weapon of war, recalls an illustrative incident between a Ukrainian CRSV survivor and a Russian diplomat.¹⁵¹ After the woman publicly shared her traumatic experience endured from the Russian military in Donbas, the Russian representative told her that Ukrainians and Russians were one people and that she should be ashamed of spreading unsubstantiated stories.¹⁵² This incident is emblematic: it depicts not only Russia’s deeply rooted denial of Ukrainians’ separate national identity, but also Russia’s ingrained tolerance to violence against women and stigmatizing suppression of speaking out against the established hierarchies.¹⁵³ Those numerous Ukrainians who do see themselves as a distinct national group have been denied existence. Such denial has been implemented, historically and nowadays, through a combination of gendered physical extermination and gradual cultural erasure.¹⁵⁴ A recent addition to these policies includes the labelling of Ukrainians who identify as an independent sovereign

September 2023, <https://www.ohchr.org/sites/default/files/documents/issues/srtorture/statements/20230908-eom-visit-ukraine-sr-torture.pdf> (UN Special Rapporteur on Torture, Statement of Preliminary Findings), 2; Macias, “At least 20 torture centers in Kherson were directly financed by the Kremlin.”

¹⁴⁸ UN Special Rapporteur on Torture, Statement of Preliminary Findings, 2.

¹⁴⁹ Supra 102.

¹⁵⁰ Vladimir Putin, “On the Historical Unity of Russians and Ukrainians,” 12 July 2021, <https://www.legal-tools.org/doc/tt382m/pdf>; Anaïs Marin, “Myth 11: The peoples of Ukraine, Belarus and Russia are one nation,” Orysia Lutsevych, “Myth 12: ‘Crimea was always Russian’” in *Myths and Misconceptions in the Debate on Russia*, Chatham House, 13 May 2021, <https://www.chathamhouse.org/2021/05/myths-and-misconceptions-debate-russia>; Apt, “Russia’s Eliminationist Rhetoric Against Ukraine: A Collection”; Russian media monitors Davis and Scarr; Pomerantsev, “Russia’s Genocidal Propaganda must not be Passed Off as Freedom of Speech.”

¹⁵¹ Mukwege, *The Power of Women*, 141.

¹⁵² Ibid., 142.

¹⁵³ Further analysed in Section “My Beauty, It’s Your Duty”: Sex and Gender in Russia.

¹⁵⁴ Roman Serbyn, “Lemkin on Genocide of Nations,” *Journal of International Criminal Justice* 7, no. 1 (2009): 125–30 (Serbyn, “Lemkin on Genocide of Nations”); Kis, *Ukrainian Women in the Gulag*; Johannes Remy, “The Valuev Circular and Censorship of Ukrainian Publications in the Russian Empire (1863–1876): Intention and Practice,” *Canadian Slavonic Papers* 49, no. 1/2 (2007): 87–110; Volodymyr Dibrova, “The Valuev Circular and the End of the Little Russian Literature,” *Kyiv-Mohyla Humanities Journal* 4, no. 4 (2017): 123–38; Marchuk, Wanigasuriya, “Beyond the False Claim of Genocide”: 17, 19, 22; Azarov, Koval, Nuridzhanian, Venher, “Understnading Russia’s Actions in Ukraine as the Crimea of Genocide”: 252–63; Ioffe, “Forcibly Transferring Ukrainian Children: A Genocide?” 25–37; Wayne Jordash, “Genocide in Ukraine,” *Ukrainska Pravda*, 28 March 2023, <https://www.pravda.com.ua/columns/2023/03/28/7395377/>; New Lines Institute, “CRSV in Ukraine”; New Lines Institute, “The Russian Federation’s Escalating Commission of Genocide in Ukraine”; Maksym Vishchuk, “The Holodomor: Unpunished Genocidal Evil Returns to Ukraine,” *Ukrainska Pravda*, 24 November 2023, <https://www.pravda.com.ua/eng/columns/2023/11/24/7430090/>; Kateryna Busol, “Crimea’s Occupation Exemplifies the Threat of Attacks on Cultural Heritage,” Chatham House, 4 February 2020, <https://www.chathamhouse.org/2020/02/crimeas-occupation-exemplifies-threat-attacks-cultural-heritage>.

nation as “Nazis”.¹⁵⁵ Contemporary Russia’s state ideology is based on a one-dimensional vision of the victory against Nazi Germany during the World War II and the denial of any allegations of crimes by the Red Army.¹⁵⁶ In fighting “Nazis,” actual, in 1941–1945, or imaginary, since 2014, one cannot be a perpetrator – only a liberator.¹⁵⁷ The particular “Nazi” labelling helps define and dehumanize the target – as well as justify a crime. Immediate perpetrators use xenophobic, misogynistic and homophobic slurs widely and claim that “such people [Ukrainians] should be killed.”¹⁵⁸ A former Ukrainian detainee reported that detention authorities threatened him with castration and that they “will put a grenade there for giving birth to Nazis.”¹⁵⁹ Russians castrated a Ukrainian POW, explaining to him that they “are doing this so you can’t have kids.”¹⁶⁰ Human rights lawyers reported that after CRSV, Russians told survivors “You will not be able to have children now” and “We’re doing this to stop Ukrainians from reproducing.”¹⁶¹ Even where physical CRSV was not perpetrated, Russian authorities told detained women “You should all be raped to give birth to Russians for us.”¹⁶²

Russian servicemen’s mode of perpetration of CRSV is at all times acutely gendered. Since 2022, Russian forces have been increasingly committing CRSV in front of a victim’s family or with relatives present in adjacent rooms, being able to hear the ordeal of their assaulted loved one. Rapes in occupation have largely been perpetrated against women, causing them grave mental and physical harm such as serious injuries, miscarriages and fertility issues. Experienced CRSV also impacts women’s positioning in a community, possible stigma around her and her family, readiness to resume her intimate life, choices about (not) having children and physical ability to bear a healthy pregnancy. Combined with Russia’s targeting of adult Ukrainian males, losses of Ukrainian servicemen in the battlefield and injuries incurred there, these factors strongly impact Ukrainians’ ability to procreate and survive as a national group. Additionally, Russians knew that they levied on male family members the trauma of not being able to live up to their traditional “protector” role and spare their loved ones from the ordeal. In some cases, Russians would tell a man that the woman “liked it,” which indicates perpetrators’ resort to traditional gender roles and assertion of their toxic masculinity, over both the

¹⁵⁵ “Our experts decode the Putin speech that launched Russia’s invasion of Ukraine,” Atlantic Council, 22 February 2022, <https://www.atlanticcouncil.org/blogs/new-atlanticist/markup/putin-speech-ukraine-war/>.

¹⁵⁶ Kateryna Busol, “Russia’s Aggression against Ukraine and the Idealised Symbolism of Nuremberg,” *EJIL: Talk!*, 16 June 2022, <https://www.ejiltalk.org/21022-2/> (Busol, “Russia’s Aggression against Ukraine and the Idealised Symbolism of Nuremberg”); Francine Hirsch, “Putin’s Memory Laws Set the Stage for His War in Ukraine,” *Lawfare*, 28 February 2022, <https://www.lawfaremedia.org/article/putins-memory-laws-set-stage-his-war-ukraine>; Gleb Bogush, Ilya Nuzov, “Russia’s Supreme Court Rewrites History of the Second World War,” *EJIL: Talk!*, 28 October 2016, <https://www.ejiltalk.org/russias-supreme-court-rewrites-history-of-the-second-world-war/> (Bogush, Nuzov, “Russia’s Supreme Court Rewrites History of the Second World War”); Ilya Nuzov, “Legislating Propaganda: Russia’s Memory Laws Justify Aggression Against Ukraine,” *Journal of International Criminal Justice* 20 (2022) (Nuzov, “Russia’s Memory Laws Justify Aggression Against Ukraine”): 812.

¹⁵⁷ “Our experts decode the Putin speech that launched Russia’s invasion of Ukraine,” Atlantic Council, 22 February 2022, <https://www.atlanticcouncil.org/blogs/new-atlanticist/markup/putin-speech-ukraine-war/>; Robyn Dixon, “Ominous rhetoric gains ground in Russia as its forces founder in Ukraine,” *Washington Post*, 13 April 2022, <https://www.washingtonpost.com/world/2022/04/13/russias-war-ukraine-founders-ominous-rhetoric-gains-ground/>.

¹⁵⁸ UN Commission of Inquiry, Report, October 2023, para 67; UN Commission of Inquiry, Conference Room Paper, paras 610, 585.

¹⁵⁹ EUCCI, War without Rules: GBV in Eastern Ukraine, 52.

¹⁶⁰ Lamb, “Castrated Soldiers.”

¹⁶¹ Cookman, “Hidden War Crime of Sexual Violence.”

¹⁶² Ievhen Safonov, “‘You Should All Be Raped to Give Birth to Russians for Us’ the Guards Were Saying. Svitlana Vorova (Azov) Speaks about 11 Months of Captivity,” *Ukrainska Pravda*, 8 August 2023, <https://www.pravda.com.ua/articles/2023/08/8/7414562/>.

woman and her husband or male relative. Escalating since 2014, such behaviour represents a perverted assertion of Russians' masculine and neo-imperial authority and the pursued gendered subjugation of those under occupation and in detention – at an individual, family, community and national levels.

“My Beauty, It’s Your Duty”: Sex and Gender in Russia

Russia’s weaponisation of atrocities and, in particular, sexual violence as a means of warfare against Ukraine is strongly shaped by gender dynamics within Russia itself. Such shaping factors include: tolerance to SGBV that acutely affects women and the state-sanctioned persecution of the LGBTQI+ community; strict hierarchies based on toxic masculinity, hazing (“*dedovshchina*”) and the positioning of women in the Russian army; and the lingering lack of accountability of Russian direct perpetrators and their political and military leadership for atrocities, including CRSV, committed domestically and internationally.

SGBV, including domestic violence, both of which disproportionately affect women, are widespread across the globe and no nation has managed to fully eradicate them. Russia, however, largely denies the scale and, indeed, the very issue of SGBV. In 2017, Russia decriminalized some forms of domestic violence, introducing minor administrative penalties for it.¹⁶³ Criminal charges could be pursued only if violent behaviour was the abuser’s second offence. Russian authorities made this decision amid its civil society’s years-long struggle to ensure both an effective legislative response to and the wider public awareness about sexual, physical, psychological, economic and other dimensions of domestic abuse.¹⁶⁴ In *Volodina v. Russia*, the European Court of Human Rights found that Russia had failed to establish the effective legal framework against domestic violence.¹⁶⁵ Even amid the COVID-19 lockdowns, when domestic violence was on the rise internationally, Russia denied the issue. In spring 2020, Valentina Matvienko, the Chairwoman of the Federation Council, the Upper House of the Russian Parliament, said that the pandemic had united the families and they “are going through this difficult period together.”¹⁶⁶ The Chechen leader Ramzan Kadyrov publicly shamed the mother who spoke about what appeared to be the brutal murder of her daughter by the latter’s husband after systematic domestic violence.¹⁶⁷ Kadyrov explained that beatings “can happen in marriage” and women should try better.¹⁶⁸ Not only does Russia not provide

¹⁶³ Ivan Kleimenov, “Not talked about on TV: Five years after Russia decriminalized domestic violence, women’s aid groups are busier than ever. Officials continue to sweep the problem under the rug,” *Meduza*, 7 February 2022, <https://meduza.io/en/feature/2022/02/08/not-talked-about-on-tv>.

¹⁶⁴ Ekaterina Aleynikova, “Domestic Violence in Russia: The Impact of the COVID-19 Pandemic,” Chatham House, 20 July 2020, <https://www.chathamhouse.org/2020/07/domestic-violence-russia-impact-covid-19-pandemic>.

¹⁶⁵ European Court of Human Rights, *Volodina v. Russia*, Application no. 41251/17, 9 July 2019 (*Volodina v. Russia*), paras 75–77, <https://hudoc.echr.coe.int/fre#%7B%22itemid%22%3A%22001-194321%22%7D>. According to the Court, the three-year-long stalking, kidnapping, death threats and beatings of the applicant which resulted in the medically necessitated abortion amounted to inhuman treatment. One of the judges believed, rightly, that the Court should have qualified this domestic abuse and the state’s inaction on it as torture. Ronagh J.A. McQuigg, “The European Court of Human Rights and Domestic Violence: *Volodina v. Russia*,” *International Human Rights Law Review* 10 (2021): 162.

¹⁶⁶ “Matvienko Disagrees with Human Rights Defenders Regarding the Increase of Domestic Violence in the Russian Federation,” TASS, 16 April 2020, <https://tass.ru/obschestvo/8259403>.

¹⁶⁷ Tanya Lokshina, “Chechnya’s Leader Hinders Justice for Domestic Violence Victim,” *Human Rights Watch*, 26 June 2020, <https://www.hrw.org/news/2020/06/26/chechnyas-leader-hinders-justice-domestic-violence-victim>.

¹⁶⁸ Ibid.

effective preventive and redress support for women affected by SGBV, but its authorities impede victims from seeking safety even by their own means.¹⁶⁹

SGBV is also aimed against other groups that do not fit Russia's traditional gender binaries, most notably – the LGBTQI+ persons. Ramzan Kadyrov labels homosexual people as “devils” and “subhuman” and asserts that there are no gay men in Chechnya.¹⁷⁰ These declarations contrast with the evidence of brutal anti-LGBTQI+ persecution, which includes unlawful detention, inhuman treatment, torture, enforced disappearances and extrajudicial killings, in Chechnya and across the rest of Russia.¹⁷¹ In a landmark case *O.N. and D.P. v. Russia* regarding attacks on two lesbian women, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) concluded that Russia should ensure that its prevention and response to GBV addresses “homophobic undertones.”¹⁷²

SGBV against women and LGBTQI+ people in Russia is rooted in rigid gender stereotypes and gender hierarchies, which are presided over by traditional toxic masculinity.¹⁷³ Different Russian officials, including MPs, have proposed labelling feminism and and child-free movements as extremist and introducing limitations on abortions.¹⁷⁴ Russia has also expanded its ban on the so-called “gay propaganda,”¹⁷⁵ which culminated in the November 2023 Supreme Court designation of the LGBTQI+ movement as extremist.¹⁷⁶ These steps followed President Putin's official endorsement of Russia's “traditional spiritual and moral values” in late 2022.¹⁷⁷ The Presidential decree pigeonholes women and men and sees any other “undertones” as deviations. The protection of a “traditional family” means not only the invisibility and vulnerability of gay people, but the very limited

¹⁶⁹ “Moscow Police Detain Chechen ‘Victim of Domestic Violence’ On Her Way Out of Russia,” *Radio Free Europe*, 12 June 2023, <https://www.rferl.org/a/moscow-police-detain-chechen-domestic-violence-victim/32455875.html>; Robert Coalson, “Woman Fleeing Domestic Violence Missing After Being Forcibly Returned To Chechnya,” *Radio Free Europe*, 15 June 2023, <https://www.rferl.org/a/chechnya-fleeing-domestic-violence-returned/32460892.html>

¹⁷⁰ Associated Press, Brook Sopelsa, “We Don't Have Any Gays: Chechen Leader's Remarks Concern White House,” *NBC News*, 19 July 2017 <https://www.nbcnews.com/feature/nbc-out/we-don-t-have-any-gays-chechen-leader-s-remarks-n784356>.

¹⁷¹ Mehdi Hassan, “Chechnya Is Trying to Exterminate Gay People. Our Silence Only Emboldens Vladimir Putin and Ramzan Kadyrov,” *The Intercept*, 28 June 2020, <https://theintercept.com/2020/06/28/welcome-to-chechnya-gay-men/>; “Russia: New Anti-Gay Crackdown in Chechnya,” Human Rights Watch, 8 May 2019, <https://www.hrw.org/news/2019/05/08/russia-new-anti-gay-crackdown-chechnya>; Yekaterina Neroznikova, “There Is No Place for Us Here: LGBT Voices From Russia's North Caucasus Region,” *Radio Free Europe*, 2 June 2023 <https://www.rferl.org/a/russia-caucasus-lgbt-persecution/32441971.html>; Nataliya Vasilyeva, “Ramzan Kadyrov ‘ordered pop star’s execution after discovering he was gay,’” *The Telegraph*, 26 July 2023, <https://www.telegraph.co.uk/world-news/2023/07/26/ramzan-kadyrov-execution-chechen-pop-star-zelimkhan-bakayev/>; Reide, “Russia, Homophobia and the Battle for ‘Traditional Values’”; Buyantueva, “LGBTQ rights in modern Russia”.

¹⁷² *O.N. and D.P. v. Russia*, Committee on the Elimination of All Forms of Discrimination of Violence against Women, CEDAW/C/75/D/119/2017, 24 February 2020, para 9.

¹⁷³ Kay Rollins, “Putin's Other War: Domestic Violence, Traditional Values, and Masculinity in Modern Russia,” *Harvard International Review*, 3 August 2022, <https://hir.harvard.edu/putins-other-war/>.

¹⁷⁴ Vitkine, “In Russia, feminism is equated with ‘extremist ideology’”; “Russia Proposes ‘Extremist’ Label for LGBT, Feminist, Child-Free Movements,” *The Moscow Times*, 30 September 2021, <https://www.themoscowtimes.com/2021/09/30/russia-proposes-extremist-label-for-lgbt-feminist-child-free-movements-a75177>; “Russian Lawmakers to Consider Nationwide Ban on Abortions in Private Clinics,” *The Moscow Times*, 30 November 2023, <https://www.themoscowtimes.com/2023/11/30/ukraine-accuses-russia-of-halting-prisoner-of-war-exchanges-a83272>.

¹⁷⁵ Reide, “Russia, Homophobia and the Battle for ‘Traditional Values’.”

¹⁷⁶ “Russia's Supreme Court Effectively Outlaws LGBTQ+ Activism in a Landmark Ruling,” *Associated Press*, 30 November 2023, <https://apnews.com/article/russia-lgbtq-crackdown-extremist-supreme-court-1b8f4cd8708d1c6cf3486c5f27fd7354>; FIDH, “LGBT persecution in Russia: Ministry of Justice moves to designate the entire LGBT movement as an ‘extremist organisation’,” 29 November 2023, <https://www.fidh.org/en/region/europe-central-asia/russia/lgbtqi-persecution-in-russia-ministry-of-justice-moves-to-designate>.

¹⁷⁷ President of the Russian Federation, Decree “On the Public Policy to Preserve and Strengthen Traditional Spiritual and Moral Values,” 9 November 2022, <http://kremlin.ru/acts/news/69810>.

space for women – and men – to pursue life and career choices which are not in line with established gender stereotypes and hierarchies.

The societal normalization and policy endorsement of monolithic gender roles in Russia also impact the positioning of women and men in the Russian military.¹⁷⁸ Russian military remains strongly male-dominated, with all the accompanying gender stereotypes. While currently Russia has around 39,000 servicewomen¹⁷⁹ (of whom 1,100 are engaged in the aggression against Ukraine),¹⁸⁰ this number makes up around 5% of the army.¹⁸¹ Many combat positions are unavailable for Russian women due to ingrained stereotypes about male and female physical, emotional and intellectual features and social roles.¹⁸² Acute hierarchies and undisputable subordination in the Russian military are epitomized in *dedovshchina* – the practices of bullying, beating and otherwise punishing or humiliating new or lower ranking servicepersons.¹⁸³ Such widespread hazing has been the principal reason for the reluctance to join the army in the first place.¹⁸⁴ While *dedovshchina* affects servicepersons of both sexes,¹⁸⁵ females – both servicewomen and civilian women who encounter the Russian military – are particularly endangered by hazing and related SGBV. Russian servicewomen engaged in the armed conflict against Ukraine have been forced to become so-called “field-wives” (*pohodno-polevaya zhena*)¹⁸⁶ – the phenomenon known to the Soviet and Russian military since the World War II and Chechen Wars.¹⁸⁷ A “wife” is expected to cook, do the laundry and sexually satisfy her male counterpart, in exchange for protection. A servicewoman’s opposition to sexual advancements results in constant psychological pressure and harsh punishment such as food deprivation, having to sleep outdoors, physical injuries or sending to more dangerous areas.¹⁸⁸ Normalized SGBV against fellow females in one’s own army both lays the foundation for and endorses Russian servicemen’s sexual violence in hostilities they participate in, including in Ukraine.

Finally, Russia’s – state and societal – lack of reckoning with past atrocities and an internalized official ban on the critical examination of certain aspects of its history nourish the continuing legacy of impunity, including for CRSV. Russia has banned books by Raphael

¹⁷⁸ O’Brien, Quénivet, “SGBV in the Russia-Ukraine Conflict.”

¹⁷⁹ “Shoigu Has Named the Number of Servicewomen,” *Gazeta.Ru*, 7 March 2023, <https://www.gazeta.ru/army/news/2023/03/07/19907635.shtml>.

¹⁸⁰ “Shoigu Has Shared How Many Servicewomen Are Participating in the Special Military Operation against Ukraine,” *RIA Novosti*, 7 March 2023, <https://ria.ru/20230307/spetsoperatsiya-1856359328.html>.

¹⁸¹ Mary Chesnut, “Women in the Russian Military,” *Center for Strategic & International Studies*, 18 September 2020, <https://www.csis.org/blogs/post-soviet-post-soviet-women-russian-military> (Chesnut, “Women in the Russian Military”).

¹⁸² Ibid.

¹⁸³ The UN Commission of Inquiry has noted that “Violence [Perpetrated by the Russian Military] is also a Reflection of the Inner Functioning of the [Russian] Army, Where Senior Commanders Routinely Neglect or Abuse Junior Ranks,” UN Commission of Inquiry, Conference Room Paper, para 49.

¹⁸⁴ Chesnut, “Women in the Russian Military.”

¹⁸⁵ Chloe Arnold, “Russia: Conscript’s Prostitution Claims Shed Light on Hazing,” *Radio Free Europe*, 21 March 2007, <https://www.rferl.org/a/1075412.html>.

¹⁸⁶ Anton Starikov, “‘Filed Wife’: Officers Make Life Hell for Women In Russia’s Military, A Female Medic Says,” *Radio Free Europe*, 30 March 2023, <https://www.rferl.org/a/women-russian-military-field-wife/32342221.html> (Starikov, “‘Filed Wife’: Officers Make Life Hell for Women In Russia’s Military”).

¹⁸⁷ Roger D. Markwick, “‘The Motherland Calls’: Soviet Women in the Great Patriotic War, 1941–1945” in *The Palgrave Handbook of Women and Gender in Twentieth-Century Russia and the Soviet Union*, ed. Melanie Illic (London: Palgrave MacMillan, 2018), 226; Carmen Scheide, “‘Unstintingly Master Warfare’: Women in the Red Army,” in *The Palgrave Handbook of Women and Gender in Twentieth-Century Russia and the Soviet Union*, ed. Melanie Illic (London: Palgrave Macmillan, 2018), 241–2; Starikov, “‘Filed Wife.’”

¹⁸⁸ Starikov, “‘Filed Wife’: Officers Make Life Hell for Women In Russia’s Military.”

Lemkin, a jurist who coined the term “genocide” and exemplified this crime with Soviet man-made famine of Ukrainians in the 1932–1933.¹⁸⁹ Russia does not recognize crimes attributable to the Red Army during the World War II: it has criminalized analyses of the war and the Nuremberg Trial which contravene the state-endorsed narrative and banned books exposing Soviet rapes in Berlin.¹⁹⁰ Russian society has largely not challenged its authorities for covering up Soviet extermination policies against the peoples comprising the USSR, including against Russians themselves.¹⁹¹ With the full-scale invasion of Ukraine, Russia has further prohibited “the denial of the ‘decisive role of the Soviet people in the defeat of Nazi Germany and the humanitarian mission of the USSR during the liberation of European countries’”.¹⁹² The “liberator,” Russia asserts, can never be a perpetrator. Such continuous legacy of imposed and internalized amnesia has raised within the Russian society and its military, at best, indifference to atrocities committed for the sake of “liberation” – and, at worst, their endorsement.

Russia has never faced accountability for its direct or proxy violence during the Soviet era, in Chechnya, Moldova, Georgia, Libya, Syria, Mali and during the first phase of its aggression against Ukraine.¹⁹³ The Russian military has consistently “not been fully concerned by civilian deaths.”¹⁹⁴ An intercepted communication alleged that a Russian woman supported her husband in raping Ukrainian females, if he used contraception.¹⁹⁵ With normalized violence and internalized impunity, Russia decriminalized activities helping it colonize the newly occupied Ukrainian territories.¹⁹⁶ In doing so, the Kremlin has unambiguously relieved itself and its agents from accountability for atrocities in Ukraine. Such self-pardoning for international crimes committed elsewhere inevitably reverberates in the levels of violence domestically in Russia. In relation to SGBV, such reverberation includes pardons for convicted rapists granted because of their participation in the war against Ukraine and SGBV by demobilized Russian soldiers, including former convicts.¹⁹⁷

¹⁸⁹ Serbyn, “Lemkin on Genocide of Nations”; Ministry of Justice of the Russian Federation, The List of the Extremist Literature <http://pravo.minjust.ru/extremist-materials?combine=&page=304>.

¹⁹⁰ Bogush, Nuzov, “Russia’s Supreme Court Rewrites History of the Second World War”; Busol, “Russia’s Aggression against Ukraine and the Idealised Symbolism of Nuremberg”; Shaun Walker, “Russian Region Bans British Historians’ Books from Schools,” *The Guardian*, 5 August 2015, <https://www.theguardian.com/world/2015/aug/05/russian-region-bans-british-historians-books-from-schools>.

¹⁹¹ “Russia: Rights Researcher’s Trial Raises Serious Concerns,” *Human Rights Watch*, 21 July 2020, <https://www.hrw.org/news/2020/07/21/russia-rights-researchers-trial-raises-serious-concerns>; Oksana Kis, *Survival as Victory: Ukrainian Women in the Gulag* (Cambridge, MA: Harvard University Press, 2022) (Kis, *Ukrainian Women in the Gulag*).

¹⁹² Nuzov, “Russia’s Memory Laws Justify Aggression Against Ukraine”: 806.

¹⁹³ UN Commission of Inquiry, Conference Room Paper, para 49; Kis, *Ukrainian Women in the Gulag*; “Championing democracy: Nobel Peace Prize Winner Oleksandra Matviichuk’s TED Women speech,” *Hromadske*, 26 October 2023, <https://hromadske.ua/en/posts/championing-democracy-nobel-peace-prize-winner-oleksandra-matviichuks-tedwomen-speech>; “I have a client from Georgia and she was tortured by Russians during the war there [in 2008] and fled to Ukraine. When war started here, she immediately took her kids and left, telling me, ‘I know what they are doing with young girls.’ I didn’t understand then, but now I do,” Lamb, “Castrated Soldiers.”

¹⁹⁴ Ben Tobias, “Is Attacking Ukraine’s Power Grid a War Crime?,” *BBC*, 1 December 2022 <https://www.bbc.com/news/world-europe-63754808>.

¹⁹⁵ Mark Krutov, Valeria Yehoshyna, “Russian Soldier And Wife Discussing Rape Of Ukrainian Women Identified By RFE/RL,” *Radio Free Europe*, 15 April 2022, <https://www.rferl.org/a/ukraine-rape-russian-soldier-wife-bykovsky/31805486.html>.

¹⁹⁶ “Russia: ‘Immunity Law’ Set for Crimes in Ukraine,” *Human Rights Watch*, 20 December 2022, <https://www.hrw.org/news/2022/12/20/russia-immunity-law-set-crimes-ukraine>; Sergii Masol, “Is Criminality a Russian Virtue Worth Cultivating?,” *Verfassungsblog*, 25 January 2023, <https://verfassungsblog.de/is-criminality-a-russian-virtue-worth-cultivating/>.

¹⁹⁷ “Russian man jailed for ex-girlfriend’s brutal murder in 2020 pardoned by Putin following stint in Ukraine,” *Meduza*, 8 November 2023, <https://meduza.io/en/news/2023/11/08/putin-pardons-man-convicted-of-ex-girlfriend-s-brutal>.

Russia's lingering impunity; societal, political and military maintenance of rigid gender roles and hierarchies; the normalization of violence against women, including its own servicewomen; combined with the constant dehumanization of the enemy, have emboldened the Russian military to commit widespread CRSV and other grave crimes in Ukraine.

Aggression as an Unlikely Catalyst: Gendering Ukraine's Responses to CRSV and Larger State Governance

Sex and Gender in Ukraine

Ukraine, like any other country, has been affected by the centuries-long pigeonholed roles for women and men. The nation is still to effectively tackle a gender pay gap and domestic violence, both of which are rooted in gender stereotypes and disproportionately affect females. In terms of social attitudes and state policies, the country is still struggling to embrace gay people – as of December 2023, single-sex partnerships are not yet allowed.

Despite these challenges, Ukraine, as a civil society and a state, has recognized these issues as *issues* – and has been acting upon them. In 2015, Ukraine adopted the law aimed to ensure equal rights and opportunities for women and men.¹⁹⁸ The law introduced definitions of sex-based discrimination, sexual harassment and gender-based violence. It explained that GBV is rooted in stereotypical beliefs about social functions of women and men and causes a spectrum of physical, sexual, psychological, or economic harm, both in public and in private life. Following the consistent demands of the civil society, in 2018, Ukraine adopted its first focused domestic violence legislation.¹⁹⁹ The law develops both prevention and response. It recognizes that domestic violence can be perpetrated not only within marriage and against one's spouse, but among persons who have lived as a couple as well as against wider family members, including the elderly and children. Importantly, the law defines that a child victim is an underage person who has been both directly affected by abuse and witnessed it. To ensure prevention and early response, the law created call-centres and shelters, introduced swift restrictive orders for offenders and prescribed targeted training of the national police to ensure sensitive support to survivors. Ukraine has also introduced overdue changes to its criminal legislation and made the crime of rape gender-neutral, thus recognizing that sexual violence can affect anyone.²⁰⁰ In 2018, Ukraine established the position of the Government Commissioner on Gender Equality Policy – which has been since occupied by a former head of a leading NGO working on gender equality. In 2020, Ukraine joined the Biarritz Partnership.²⁰¹ It obliges

murder-in-2020; Anna Shcherbakova, "A Russian Man, Pardoned after the Participation in the Special Military Operation, Tortured the Fifth-Grade Girl in the Locked Flat," *Lenta.Ru*, 30 November 2023, <https://lenta.ru/news/2023/11/30/pomilovannyi-posle-svo-rossiyanin-istyazal-pyatiklassnitsu-v-zapertoy-kvartire/>.

¹⁹⁸ Law of Ukraine "On Ensuring Equal Rights and Opportunities of Women and Men," No. 2866-IV, 8 September 2005, <https://zakon.rada.gov.ua/laws/show/2866-15#Text>.

¹⁹⁹ Law of Ukraine "On the Prevention and Response to Domestic Violence," No. 2229-VIII, 7 December 2017, <https://zakon.rada.gov.ua/laws/show/2229-19#Text>.

²⁰⁰ Criminal Code of Ukraine, Article 152 defines rape as "the commission of acts of a sexual nature connected with vaginal, anal or oral penetration of another person's body with genitalia or any other object, without free consent of the victim," Criminal Code of Ukraine, <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

²⁰¹ Council of Europe Office in Ukraine, "Status of a member of the "Biarritz Partnership" is another chance for Ukraine to achieve equality in ensuring rights and opportunities for men and women," 19 October 2020, <https://www.coe.int/en/web/kyiv/-/status-of-a-member-of-the-biarritz-partnership-is-another-chance-for-ukraine-to-achieve-equality-in-ensuring-rights-and-opportunities-for-men-and-wome>.

Ukraine, *inter alia*, to address gender pay gap, support men's caring opportunities, including paternal leaves, and enhance educational initiatives on the causes and nuances of gender inequality. In 2021, Ukraine's first female Prosecutor General declared combating domestic violence a key priority for her office.²⁰² Ukrainian civil society has consistently petitioned the Government to ratify the Istanbul Convention²⁰³ – which the state finally did in 2022.²⁰⁴ Since 2017, Ukraine has been eliminating barriers in women's access to certain combat military positions, making all of them available to females in 2023. Since 2019, women may enter military lyceums. In 2023, 42,000 women are serving in Ukraine's military, which is a 40%-increase compared to 2021.²⁰⁵ Ukraine's LGBTQI+ persons have become increasingly more visible, with their important contribution to countering Russia's aggression since 2014 – and with the difficulties such defenders face in realizing their basic rights to have their partners beside them in intensive care units or to inherit after them.²⁰⁶ In response to these developments, Ukrainian civil society has petitioned the President to support a draft law granting basic rights to gay couples.²⁰⁷ The Ministry of Justice has announced that it is developing its own proposals regarding civil partnerships, which it aims to register with the Parliament by the end of 2023.²⁰⁸

None of the above initiatives has been implemented fully. Like in other states across the globe, COVID-19 lockdowns and accompanying – and later escalating – armed conflict have exacerbated domestic violence.²⁰⁹ The number of shelters, especially in rural areas, is not enough, they are not always easily accessible and cannot offer long-term stays.²¹⁰ Law-enforcement authorities are still learning to see various forms of GBV and not to resort to victim blaming.²¹¹ The military is still to accommodate itself

²⁰² Lyudmila Kanaryan, "Prosecutor general names combating domestic violence priority in 2021," *UNIAN*, 9 April 2021 <https://www.unian.info/society/domestic-violence-prosecutor-general-names-combating-abuse-priority-in-2021-11382649.html>

²⁰³ Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, 2011.

²⁰⁴ Asami Terajima, "Ukraine Ratifies Istanbul Convention 11 Years after Signing Treaty to Curb Gender-Based Violence," *The Kyiv Independent*, 19 November 2023, <https://kyivindependent.com/ukraine-ratifies-istanbul-convention-11-years-after-signing-treaty-to-curb-gender-based-violence/>.

²⁰⁵ Ministry of Defence, "The Number of Servicewomen of the AFU [Armed Forces of Ukraine] has increased by 40% in comparison with 2021," official Facebook page, 16 October 2023 <https://www.facebook.com/MinistryofDefence.UA/posts/pfbid03tmS8indArwiUQaomBNR4zXXExBG5mArmdmck2P8MHKyrCZ2sNB5XavT2GpcM2awl>.

²⁰⁶ LGBT military, <https://lgbtmilitary.org.ua/eng>; Natalia Vikhrov, "Ukraine's LGBT+ war veterans boost battle for equality," *Reuters*, 17 February 2020, <https://www.reuters.com/article/us-ukraine-lgbt-rights-feature-trfn/ukraines-lgbt-war-veterans-boost-battle-for-equality-idUSKBN20B0P9>; Pawel Maczewski, "The LGBTQ Soldiers of Ukraine," *Vice*, 23 January 2019, <https://www.vice.com/en/article/9k448e/the-lgbtq-soldiers-of-ukraine>; "A Battle Yet to Be Won: Ukraine's Gay Soldiers Fight Russia – and for Their Rights," *The Economist*, 5 April 2023, <https://www.economist.com/europe/2023/04/05/ukraines-gay-soldiers-fight-russia-and-for-their-rights>.

²⁰⁷ Electronic Petition "For Registered Partnerships for Same-Sex and Different-Sex Couples, in Support of Draft Law 9103 'On the Institute of Registered Partnerships,'" No. 22/185864-ep, 28 March 2023, <https://petition.president.gov.ua/petition/185864>.

²⁰⁸ Valeria Kolomiets, "'Single-Sex Marriages' and Registered Civil Partnerships. Why Ukraine Will Not Have the Former and How It Is Planning To Introduce the Latter," *Ukrainska Pravda*, 7 March 2023, <https://life.pravda.com.ua/columns/2023/03/7/253207/> (Kolomiets, "Registered Civil Partnerships").

²⁰⁹ UN Commission of Inquiry, Conference Room Paper, para 644; Jessie Williams, "'This War Made Him a Monster.' Ukrainian Women Fear the Return of Their Partners," *TIME*, 13 March 2023, <https://time.com/6261977/ukraine-women-domestic-violence/>; "Olena Zelenska told how gender equality is implemented in Ukraine in wartime conditions," President of Ukraine Official website, 29 December 2022, <https://www.president.gov.ua/en/news/olena-zelenska-rozpovila-yak-vtilyuyetsya-genderna-rivnist-v-80133> ("Olena Zelenska told how gender equality is implemented in Ukraine in wartime conditions").

²¹⁰ Kateryna Busol, "Domestic Violence in Ukraine: Lessons from COVID-19," Chatham House, 23 July 2020, <https://www.chathamhouse.org/2020/07/domestic-violence-ukraine-lessons-covid-19>.

²¹¹ Iryna Virtosu, "A Judge on Domestic Violence: 'A Crime Cannot Be a Private Matter,'" *ZMINA*, 19 July 2017 https://zmina.info/articles/suddjia_pro_domashne_nasilstvo_zlochyn_ne_mozhe_buti_privatnojiu_spravojiu/.

fully to the needs of servicewomen.²¹² And big portions of the society are yet to embrace the gradual advancement of the LGBTQI+ rights.²¹³ However, the major difference with such gender-related issues in Ukraine is that Ukraine recognizes them – and engages with them. The Government has acknowledged the problem of domestic violence and has been acting upon it through specialized legislation. The state has further admitted the need for enhanced measures to address the spike in domestic violence amid the full-scale invasion.²¹⁴ Public figures are subjected to strong criticism for sexist comments.²¹⁵ The Ministry of Defence has engaged with allegations of sexual harassment²¹⁶ in the army and the Ukrainian Women Lawyers Association “JurFem” has prepared special guidelines for servicewomen to prevent or report abuse.²¹⁷

Many of Ukraine’s gender equality advancements have been catalyzed by the formal requirements of EU integration process.²¹⁸ However, foundationally, these changes have been coming from consistent demands of Ukraine’s civil society. From its realization that the advancement of women’s and minorities’ rights will enrich the potential of the whole society. From its cooperative yet, where necessary, critical engagement with the Government. And from the desire to juxtapose such inclusive, values-based and rights-oriented, vision of societal and state’s development to those of Russia’s.²¹⁹ It is amid these processes that Ukraine has faced the issue of CRSV.

Ukraine’s Judicial Responses to CRSV

Four justice avenues are available to prosecute crimes, including CRSV, committed amid Russia’s aggression against Ukraine. First, criminal proceedings and wider redress initiatives in Ukraine. Second, the ICC proceedings. Third, procedures before the UN human rights treaty bodies such as the CEDAW Committee and the Committee Against Torture (CAT Committee). Fourth, domestic proceedings in third states based on the principle of universal jurisdiction.

²¹² Yulia Zhukova, “No More Boxers: Ukraine’s Military To Issue Field Uniforms Specially Designed For Female Soldiers,” *Radio Free Europe*, 3 September 2023, <https://www.rferl.org/a/ukraine-female-soldiers-uniforms-/32576432.html>.

²¹³ As of June 2023, 15.5% of Ukrainians have a positive attitude to LGBTQI+ persons, 34% – negative, and the rest are in different. The proportion of those with a positive or indifferent attitude prevails (61%) and has been gradually increasing, while the proportion of persons with a negative attitude has been decreasing (from 38% to 34%). 67% of respondents believe that LGBTQI+ persons “should have the same rights as other citizens”. Even among the respondents with a negative attitude to LGBTQI+ persons, 47% believe that they should have equal rights. Kyiv International Institute of Sociology, “Perception of LGBT and Their Rights in Ukraine, Results of a Telephone Survey Conducted on May 26 – June 5, 2023,” 15 June 2023, <https://kiis.com.ua/?lang=eng&cat=reports&id=1248&page=1>.

²¹⁴ “Olena Zelenska told how gender equality is implemented in Ukraine in wartime conditions”.

²¹⁵ “Kornienko, Arahamiya, Vereshchuk, ZIK and Others Got Anti-Award for Sexism in 2020,” Institute of Mass Information, 8 December 2020, <https://imi.org.ua/en/news/kornienko-arahamiya-vereshchuk-zik-and-others-got-anti-award-for-sexism-in-2020-i36590>.

²¹⁶ Daniel Boffey, “‘Fighting Two Enemies’: Ukraine’s Female Soldiers Decry Harassment,” *The Guardian*, 4 August 2023, <https://www.theguardian.com/world/2023/aug/04/fighting-two-enemies-ukraine-female-soldiers-decry-harassment>; Daniel Boffey, “Ukraine Minister Vows to Act Over Claim of Sexual Harassment in Army,” *The Guardian*, 10 August 2023, <https://www.theguardian.com/world/2023/aug/10/ukraine-minister-vows-to-act-over-claims-of-sexual-harassment-in-army>.

²¹⁷ Leaflet for female military personnel in case of sexual violence during their military service, <https://jurfem.com.ua/wp-content/uploads/2023/03/LEAFLET-for-female-military-personnel.pdf>.

²¹⁸ The Ukraine-EU Association Agreement requires ensuring the sustainable functioning of the rule of law, with gender equality in various fields of life being its inherent component. Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part (2014), Preamble paras 2, 7, Articles 1.2(e), 2, 3, 419, 420(l) [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22014A0529\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22014A0529(01)).

²¹⁹ Kolomiets, “Registered Civil Partnerships”; Lyu Azbel, “LGBT+ Ukrainians Pose a United Front Against Russia,” CEPA, 30 August 2023, <https://cepa.org/article/lgbt-ukrainians-pose-a-united-front-against-russia/>

The ICC has been listing rape and other sexual violence among alleged atrocities in Ukraine, however, its first arrest warrants concern children deportations. Given a wide spectrum of crimes gravely affecting Ukrainian civilians on multiple levels such as infrastructure targeting, sieges, starvation, blowing up the Kakhovka Dam and environmental degradation, the ICC still might have sexual violence charges. However, it is unclear whether CRSV might get a strong focus, and, in any case, the ICC will have just a handful of cases, mostly concerning top perpetrators.

The UN treaty bodies is an important avenue. Both Russia and Ukraine have recognized the power of the CEDAW and CAT Committees to consider individual complaints alleging their respective violations of the Convention on the Elimination of All Forms of Discrimination against Women and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Violations of both treaties can involve sexual violence. However, for a complaint to be admissible for the consideration by the Committees, a claimant must demonstrate the exhaustion of local remedies. In the Russia-Ukraine situation, CRSV survivors will have to explain that no fair justice avenues in Russia are possible and substantiate why proceedings in Ukraine are not a viable alternative (e.g. because of Ukrainian courts' ever-growing armed conflict-related caseload). The Committees are also careful about the number of cases they can take from a particular context given their international mandate and the way it should be reflected in their case-selection. This inevitably impacts the prospects of Ukrainian CRSV survivors' applications. Additionally, the Committees may include their concerns and recommendations regarding CRSV and wider SGBV in their concluding observations on Russia's and Ukraine's reporting on the implementation of the two Conventions. In sum, the CEDAW and CAT Committees may consider some emblematic CRSV cases related to Russia's aggression. The resonance of respective decisions will be high, amplified by the Committees' international stature as the UN human rights treaty bodies. However, as it is unlikely that the Committees might address many individual CRSV complains, this justice avenue remains non-magistral – albeit symbolically important.

Universal proceedings in third states are a crucial supplementing track that can alleviate the enormous caseload of Ukraine's criminal justice system.²²⁰ Investigations by third states have been welcomed by Ukraine's War Crimes Unit and the Parliamentary investigative commission on CRSV.²²¹ More than a dozen of states have opened investigations into atrocities committed in Russia's aggression and, as of December 2023, at least two submissions to German prosecution concern CRSV.²²² However, it will depend on the

²²⁰ As of 1 December 2023, Ukraine had 114,332 proceedings concerning aggression and war crimes, Office of the Prosecutor General, https://twitter.com/GP_Ukraine; Julia Crawford, Thierry Cruvellier, "Philip Grant: 'Ukraine Is Accelerating a Revival of Universal Jurisdiction,'" *JusticeInfo*, 29 November 2022, <https://www.justiceinfo.net/en/109532-philip-grant-ukraine-revival-universal-jurisdiction.html>.

²²¹ Franck Petit, "Yuriy Belousov: 'We Can't Lose Ukraine's Legal Battle,'" *JusticeInfo*, 11 July 2023, <https://www.justiceinfo.net/en/119268-yuriy-belousov-we-cant-lose-ukraine-legal-battle.html>; Regulation of the Verkhovna Rada of Ukraine "On the Establishment of the Temporary Investigative Commission of the Verkhovna Rada of Ukraine on Investigating the Facts of Sexual Violence Perpetrated during the Armed Aggression of the Russian Federation against Ukraine," No. 2602-IX, 20 September 2022, para 2 <https://zakon.rada.gov.ua/laws/show/2602-IX#Text>.

²²² Julian Borger, "German prosecutors handed evidence of Russian war crimes in Ukraine," *The Guardian*, 26 October 2023, <https://www.theguardian.com/world/2023/oct/26/german-prosecutors-evidence-russian-war-crimes-ukraine>; European Center for Constitutional and Human Rights, "Sexual violence by members of the Russian armed forces: Federal Public Prosecutor must investigate," 26 June 2023, <https://www.ecchr.eu/en/press-release/ulag-and-ecchr-file-criminal-complaint-against-russian-military-in-germany/>.

prosecutorial discretion in each state to see what cases to pursue and whether they allege CRSV.²²³

Therefore, as Ukraine has withstood the all-out invasion, with the specialized War Crimes Unit and 80% of its courts functioning,²²⁴ it remains the first responder to CRSV.

As noted above, CRSV was one of the least visible crimes during the first phase of Russia's aggression for Ukraine's Government, human rights NGOs and international stakeholders. Despite Ukraine's active engagement with the ICC in 2014–2021 on a range of other crimes such as torture, forcible transfers or deportations, Ukraine's prosecution was only preparing its *first* ICC communication on CRSV in November 2021 – on the *eighth* year of the aggression. Even with the rise in CRSV brutality and visibility since the all-out invasion, the number of investigations is not high. In September 2023, out of more than 100,000 Ukraine's conflict-related criminal proceedings, only 235 concerned CRSV.²²⁵

The slow dynamics with domestic CRSV reporting and prosecutions in Ukraine is shaped by several factors. First, strong stigmas, inherently gendered: women and men find it difficult to report the endured abuse. Such difficulty might be additionally exacerbated by survivors' regional, social, or religious background (shame about out-of-wedlock sex, concerns how the abuse might impact one's prospect to find a couple or the shame it might inflict on a wider family). Second, the slow realization that CRSV is not limited to women and rape, but has many forms and can affect anyone. For instance, after the first "female POW exchange" in mid-spring 2022, the Government reported that Ukrainian servicewomen, whose hair had been shaved, had been ordered to undress and squat in front of Russian servicemen. While state reporting underlined the resilience of female POWs, it did not stress that they had been subjected to CRSV of forced nudity, that the women could experience severe mental suffering fearing that penetrative CRSV might follow and that, fundamentally, Russians had failed to provide the female-to-female treatment to POWs as required by the Geneva Convention III.

Males also often, intentionally or unintentionally, fail to see all sides of CRSV. Ukrainian male civilian detainees and POWs often report torture but not sexualized aspects of it. Some males feel that it might be more heroic – more masculine – to *survive* torture, but not to *be subjected to* CRSV. Some males believe "that a man cannot be raped". And some males, after all the inflicted harms, simply do not understand that sexual details of their mistreatment matter. Raising awareness about the nuances of victimization in no way diminishes survivors' bravery and resilience – instead, it helps them see the harm caused to them as harm, address it and, hopefully, prevent it for other persons. Third, especially during the first phase of the armed conflict, many Ukrainian CRSV survivors, including men, admitted that would prefer speaking to female investigators and prosecutors – who were lacking in Ukraine's criminal justice system. Finally, CRSV proceedings require intricate professional training and specialized domestic legislation – both of which Ukraine is just developing.

²²³ In 2021, out of 125 leading universal jurisdiction charges of international crimes worldwide, only 17 concerned CRSV. FIDH, "Universal Jurisdiction Annual Review 2022: Universal jurisdiction, an overlooked tool to fight conflict-related sexual violence," 4 April 2022, <https://www.fidh.org/en/issues/international-justice/universal-jurisdiction/universal-jurisdiction-review-2022-conflict-related-sexual-violence>.

²²⁴ Gaiane Nuridzhanian, "Prosecuting War Crimes: Are Ukrainian Courts Fit To Do It?," *EJIL: Talk!*, 11 August 2022, <https://www.ejiltalk.org/prosecuting-war-crimes-are-ukrainian-courts-fit-to-do-it/>.

²²⁵ Office of the Prosecutor General, "Assistance, Accountability, Reparations."

Ukraine's Criminal Code has one main article for conflict-related crimes – article 438 “Violations of the rules and customs of warfare.”²²⁶ It provides a general list of conflict-related crimes such as cruel treatment of POWs or civilian population, engagement of civilians in forced labour, pillage of cultural heritage and employing means of warfare prohibited by international law. The article 438 list of crimes is not exhaustive – it criminalizes also other violations of the rules and customs of warfare envisaged by international treaties, to which Ukraine is a party. The article provides for a stronger punishment if the aforementioned violations are combined with wilful killing. Ukraine's provision on genocide largely follows the established definitions of the Genocide Convention and the Rome Statute.²²⁷ The domestic provision on incitement to genocide is flawed, however, as it lacks a crucial component of a direct call to violence.²²⁸ The Criminal Code does not have provisions on crimes against humanity. Ukraine, however, is a party to the UN and Council of Europe conventions on the non-applicability of statutory limitations to crimes against humanity.²²⁹ Ukraine's joining these two instruments without respective reservations can indicate its recognition of crimes against humanity, including those concerning sexual violence, as international crimes.²³⁰ Finally, Ukraine's criminal legislation does not envisage command responsibility as it has been interpreted under international law, to include not only a direct order to perpetrate a crime, but a failure to prevent or punish it.²³¹

Therefore, currently, Ukraine has no specialized provisions criminalizing the whole spectrum of CRSV. The existing domestic legislation provides for two avenues to prosecute CRSV – using the generic article 438, which allows references to CRSV prohibitions in Ukraine's international treaties, and using the Criminal Code's “peacetime provisions” on rape and other forms of sexual violence.²³² None of the routes is ideal.²³³ Ukrainian criminal justice professionals were reluctant to use article 438 in Donbas cases during in 2014–2021 and wrongly characterized many acts which would qualify as war crimes as terrorist acts.²³⁴ This resulted in the lack of expertise in article 438 application,

²²⁶ Criminal Code of Ukraine, Article 438, <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

²²⁷ Criminal Code of Ukraine, Article 442.1, <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

²²⁸ Ukraine criminalises “public incitement to genocide,” but not “direct and public” as required by international law and established in international jurisprudence, Criminal Code of Ukraine, Article 442.2, <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

²²⁹ Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, 26 November 1968; European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes, 25 January 1974.

²³⁰ Interestingly, the OPG, in its 2023–2025 Strategic Plan, states that Ukraine will ensure “effective investigation and accountability” for actions that may constitute crimes against humanity. Given the discussed absence of a crime against humanity provision in Ukraine's Criminal Code, the OPG might be leaving the door open to the Code's potential reform – as well as be thinking pragmatically about the documentation and evidence sharing with the ICC and other states, for universal jurisdiction proceedings; The Strategic Plan on the Implementation of Powers of the General Prosecutor's Office in the Area of Prosecution for International Crimes for 2023–2025, Introduction, <https://www.gp.gov.ua/ua/posts/strategicnij-plan-shhodo-realizaciyi-povnovazen-organiv-prokuraturi-u-sferi-kriminalnogo-peresliduvannya-za-vcinennya-miznarodnix-zlociniv-na-2023-2025-roki>.

²³¹ ICC Rome Statute, Article 28.

²³² Criminal Code of Ukraine, Articles 152–56, <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

²³³ Maria Zheltukha, “Conflict-Related Sexual Violence in Ukraine: Legislative Regulation,” Ukrainian Women Lawyers Association “JurFem,” 25 July 2022, <https://jurfem.com.ua/en/conflict-related-sexual-violence-in-ukraine-legislative-regulation/>.

²³⁴ Iryna Marchuk, “Domestic Accountability Efforts in Response to the Russia-Ukraine War,” *Journal of International Criminal Justice* 20 (2022): 790; Iryna Marchuk, Alok Waniyasuriya, “Venturing East: the Involvement of the International Criminal Court in Post-Soviet Countries and Its Impact on Domestic Processes,” *Fordham International Law Journal* 3 (2021): 752–3; Ukrainian Legal Advisory Group, “Principle of Complementarity: International Justice in Ukraine,” 2021,

especially in relation to such intricate crimes as CRSV. While the willingness to use article 438 has increased since the full-scale invasion, it will take time to develop respective investigative and prosecutorial expertise at all, especially local, levels. Another issue is a spectrum of international treaties regulating CRSV article 438 refers to. As Ukraine is a signatory but not yet a full party to the Rome Statute, it cannot resort to this most detailed – and unexhaustive – list of CRSV. The main available CRSV sources here would be the Geneva Conventions and their Additional Protocols. As discussed in Section I, as opposed to the Rome Statute, these instruments have rather basic CRSV provisions prohibiting a limited list of crimes, namely rape, enforced prostitution and other forms of indecent assault. Unlike the ICC framework,²³⁵ the Geneva Conventions do not explain the crimes' elements, which further complicates their analysis by domestic investigators and prosecutors. One could argue that Ukraine could use customary law interpretations of CRSV more, however, the resort to unwritten and often jurisprudence-interpreted custom has proved problematic in Ukraine's criminal justice system.

As regards the second route – using Criminal Code's "ordinary" sexual violence provisions to prosecute CRSV, – it is also imperfect. First, prosecutors would have to explain how a broad spectrum of CRSV, especially such a novel crime as gender persecution, fit legislators' initial thinking. Second, "peacetime" sexual violence proceedings, unlike those under article 438, may be initiated only by survivors or their family – not upon prosecutorial discretion after finding respective evidence. This places an unnecessary burden on survivors to either pursue a case, despite their trauma and other concerns, or see justice being stalled. Third, ordinary "peacetime" crimes are subject to statutes of limitations, whereas international ones, prosecuted under article 438, are not.²³⁶ Cancelling a statute of limitations for grave crimes such as CRSV is important – it allows survivors to recover from their trauma and to come out with their experiences years after the abuse. Fourth, the punishment for "ordinary" sexual violence is lower than for CRSV that may be charged under article 438.²³⁷ Finally, international law excludes amnesty for atrocities covered by article 438, whereas amnesty may still be applied to "ordinary" crimes.²³⁸

Ukraine's criminal justice and civil society professionals have been acting upon CRSV around the aforementioned challenges in several ways. First, since 2014, human rights lawyers, survivors and some state officials have demanded the reform of the criminal legislation to include an expanded list of atrocity crimes, including CRSV. The Parliament finally adopted the reform bill in 2021, but, for some political reasons, the President has still not signed it into law. Civil society's demands to ensure proper criminalization of war crimes and crimes against humanity, including those related to CRSV, have increased with

18–19, 29, http://justiceforthefuture.org.ua/uploads/MaterialDocument/ULAG_complementarity_web_en_002_1594211912.pdf.

²³⁵ ICC Elements of Crimes, Articles Article 6(b), footnote 3; 7(1)(g)-1-6, 8(2)(b)(xxii)-1-6; 8(2)(e)(vi)-1-6.

²³⁶ Rule 160 Statutes of Limitation, Henckaerts, *Customary International Humanitarian Law*.

²³⁷ For instance, a "peacetime" rape incurs a three to five-year imprisonment, whereas rape charged under article 438 incurs an eight to twelve-year imprisonment or, if combined with wilful killing, – a life sentence, Criminal Code of Ukraine, Articles 152, 438 <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

²³⁸ UNSC, "The rule of law and transitional justice in conflict and post-conflict societies: report of the Secretary-General," 23 August 2004, S/2004/616, paras 10, 32, 64(c); Rule 158. Prosecution of War Crimes, Rule 159 Amnesty, Henckaerts, *Customary International Humanitarian Law*; Law of Ukraine "On the Application of Amnesty in Ukraine," No. 392/96-VR, 1 October 1996, <https://zakon.rada.gov.ua/laws/show/392/96-%D0%B2%D1%80#Text>.

the avalanche of atrocities of the full-scale invasion.²³⁹ Second, in 2022, the War Crimes Unit, established in 2019, formed the specialized CRSV Department. The Department is headed by a female prosecutor experienced in GBV, including domestic violence, cases. Directly or indirectly responding to survivors' demands, the Department has many female professionals, so that survivors have more freedom to choose who they would like to work with. The Department cooperates with international partners and civil society to ensure that its investigations and prosecutions are victim-centred, trauma-informed and gender-sensitive.²⁴⁰ A CRSV specialization for investigators, prosecutors and law-enforcement professionals has been introduced.²⁴¹ They use best international standards on CRSV investigations translated for them into Ukrainian.²⁴² The War Crimes Unit and the CRSV Department ensure that CRSV charges are brought under article 438, thus developing specialized CRSV expertise and jurisprudence in Ukraine.²⁴³ The quality of such jurisprudence, its sensitization to victims, including children, males and LGBTQI+ persons, remains to be seen. However, Ukraine's strengthening prosecutorial focus on CRSV and partnering with human rights and survivor groups in paving and navigating this path together are important steps forward.

Ukraine's Non-Judicial Responses to CRSV

When Ukraine's criminal justice focus on CRSV was only building up, CRSV and wider gender issues have played a visible role in Ukraine's Women, Peace and Security (WPS) agenda, transitional justice policymaking and, in particular, emerging reparations framework. All these processes have been a collaboration between Ukraine as a state, its civil society, survivor groups and international partners.

Ukraine's WPS National Action Plans (NAPs) for 2016–2020 and 2021–2025 have highlighted the need to address CRSV against women and girls, men and boys.²⁴⁴ The NAPs

²³⁹ An appeal to President Zelenskyy to ensure Ukraine's ratification of the Rome Statute and to sign into the law the amendments to Ukraine's Criminal Code concerning international crimes, 21 January 2022, <https://www.pgaction.org/pdf/2022/pga-ccl-statement-2022-jan.pdf>; 5 am Coalition, An Appeal to President Zelensky on the Need to Ratify the Rome Statute of the International Criminal Court and Sign the Law "On Amending Certain Legislative Acts of Ukraine regarding the Implementation of the Norms of International Criminal and Humanitarian Law" №2689, 21 March 2022, <https://www.helsinki.org.ua/appeals/zvernennia-do-prezydenta-ukrainy-volodymyra-zelenskoho-pro-neobkhidnist-ratyfikatsii-rymskoho-statutu-ta-pidpysannia-zakonu-pro-vnesennia-zmin-do-deiakikh-zakonodavchikh-aktiv-ukrainy-shchodo-implement/>.

²⁴⁰ Office of the Prosecutor General, "A Prosecutor Is not an Accuser, But a Defender of Survivors – the Office of the Prosecutor General Presented New Approaches to Proceedings regarding Conflict-Related Sexual Violence," 14 October 2022, (OPG, "New Approaches to CRSV"), <https://www.gp.gov.ua/ua/posts/prokuror-ne-obvinuvac-a-zaxisnik-postrazdalix-v-ofisi-genprokurora-prezentovali-novi-pidxodi-do-vedennya-sprav-shhodo-seksualnogo-nasilstva-povyazanogo-z-konfliktom>; Global Rights Compliance, "Ukrainian Conflict-Related Sexual Violence Integrated Support Mechanism," <https://globalrightscpliance.com/project/ukrainian-conflict-related-sexual-violence-integrated-support-mechanism/>.

²⁴¹ OPG, "New Approaches to CRSV."

²⁴² International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, March 2017, Ukrainian version: https://nmc-vfpo.com/wp-content/uploads/2022/05/mizhnarodnyj-protokol-iz-dokumentuvannya-ta-rozsliduvannya-seksualnogo-nasylstva-v-konflikti-2017_compressed.pdf; Global Code of Conduct for Gathering and Using Information about Systematic and Conflict-Related Sexual Violence (Murad Code), 13 April 2022, Ukrainian version: <https://static1.squarespace.com/static/5eba1018487928493de323e7/t/63ac31b3331b2b017493839e/1672229300825/220413MuradCodeUKRAINIAN4websiteRevision221220.pdf>.

²⁴³ Iryna Domashchenko, "Ukraine: First Rape Trial of Russian Soldier," Institute for War & Peace Reporting IWPR, <https://iwpr.net/global-voices/ukraine-first-rape-trial-russian-soldier>. Indeed, Ukraine's first post-full-scale invasion trial in absentia was on repeated rape perpetrated during the occupation of the Kyiv region, Iryna Marchuk, "Domestic Accountability Efforts in Response to the Russia-Ukraine War," *Journal of International Criminal Justice* 20 (2022): 793.

²⁴⁴ Order of the Cabinet of Ministers of Ukraine No. 113-r "On the Approval of the National Action Plan for the Implementation of the UN Security Council Resolution 1325 on Women, Peace, and Security for the period until 2020," 28 February 2016, <https://zakon.rada.gov.ua/laws/show/113-2016-p#Text> (2016–2020 WPS NAP); Order of the Cabinet of

imply an intersectional approach, stressing that, in this process, age, disabilities and other characteristics should be considered.²⁴⁵ While none of the NAPs expressly discusses the additional layers LGBTQI+ persons face in CRSV, the instruments' mentioning of "other characteristics" and "gender stereotypes" could be used to ensure nuanced support of sexual minorities. Both NAPs stress the need to address medical and psychological implications of CRSV and list responsible local authorities. Importantly, both NAPs prioritize prevention. Even before the full-scale invasion, when the awareness about and focus on CRSV were rather low, the first WPS NAP envisaged CRSV trainings for the law-enforcement authorities and the military, including their commanders, before deployment to combat zones.²⁴⁶ While it is hard to find information about the number and consistency of such trainings during the first phase of the armed conflict, they have increased since 2022, with the Ministry of Defence also adopting a concise guidance for its troops on the interaction with CRSV survivors.²⁴⁷ Admitting that Ukrainian females were critically under-represented in the pre-2022 peace process, the NAPs recognize women's crucial role in post-conflict recovery.²⁴⁸ Finally, the 2021–2025 WPS NAP is among Ukraine's first policy instruments to mention transitional justice, women's role in it and confirm that transitional justice measures should be implemented both in- and post-conflict.²⁴⁹

Ukraine had developed but not managed to approve a framework transitional justice policy before the full-scale invasion.²⁵⁰ However, some adjacent instruments such as the National Human Rights Strategy and the Strategy on the De-Occupation and Reintegration of Crimea have endorsed both the country's transitional justice path and its gendered lens.²⁵¹ Soon after the all-out invasion, Ukraine concluded the cooperation agreement with the Secretary-General's Special Representative on Sexual Violence in Conflict.²⁵² The instrument lists the additional threats of conflict-related human trafficking for the purposes of prostitution and the need for additional protection for women, children and vulnerable groups, including through access to new employment options and education.²⁵³

Ministers of Ukraine No. 1544-r "On the Approval of the National Action Plan for the Implementation of the UN Security Council Resolution 1325 on Women, Peace, and Security for the period until 2025," 28 October 2020, <https://www.kmu.gov.ua/storage/app/sites/1/18%20-%20Department/18%20-%20PDF/2023/29.03.2023/updated-nap-1325-women-peace-and-security-until-2025.pdf> (2021–2025 WPS NAP).

²⁴⁵ 2016–2020 WPS NAP, I.1; 2021–2025 WPS NAP, Strategic Goal 2, 13.3.

²⁴⁶ Ibid.

²⁴⁷ Ministry of Defence, Memo on interaction with civilians affected by conflict-related sexual violence, <https://www.mil.gov.ua/content/pdf/PROTECT-memo-EN.pdf>.

²⁴⁸ Order of the Cabinet of Ministers of Ukraine "On Amending the Order of the Cabinet of Ministers of Ukraine of 28 October 2020," No. 1150-r, 16 December 2022, <https://zakon.rada.gov.ua/laws/show/1150-2022-p#n2>.

²⁴⁹ 2021–2025 WPS NAP, General Issues, Strategic Goal 3.

²⁵⁰ Kateryna Busol, "Mariupol and the Origins and Avenues of Ukraine's Transitional Justice Process," *Just Security*, 1 June 2022, <https://www.justsecurity.org/81680/mariupol-and-the-origins-and-avenues-of-ukraines-transitional-justice-process/>; Kateryna Busol, Rebecca Hamilton, "Transitional Justice in Ukraine: Guidance to Policymakers," *Just Security*, 2 June 2022, <https://www.justsecurity.org/81719/transitional-justice-in-ukraine-guidance-to-policymakers/>.

²⁵¹ Order of the President of Ukraine "On the National Human Rights Strategy" №119/2021, 24 March 2021, paras 10, 27, <https://zakon.rada.gov.ua/laws/show/119/2021#Text>; Order of the President of Ukraine "On the Decision of the National Security and Defence Council of Ukraine of 11 March 2021 "On the Strategy of the De-Occupation and Reintegration of the Temporarily Occupied Territory of the Autonomous Republic of Crimea and the City of Sevastopol," No. 117/2021, 21 March 2021, paras 12, 38, 97, <https://www.president.gov.ua/documents/1172021-37533>.

²⁵² Framework of Cooperation between the Government of Ukraine and the United Nations on the Prevention and Response to Conflict-Related Sexual Violence, 3 May 2022, <https://reliefweb.int/report/ukraine/framework-cooperation-between-government-ukraine-and-un-prevention-and-response>.

²⁵³ Ibid., paras II, III.

The agreement stresses that CRSV should be reflected in any peace accords and transitional justice measures, in particular – in reparations programmes for victims.²⁵⁴

Already before the full-scale invasion, Ukraine was implementing minor steps towards individual reparations. The state provided “limited schemes of governmental assistance” for victims of torture in detention, which touched upon a CRSV trauma.²⁵⁵ In 2021, the first in-depth study of the needs and reparations preferences of CRSV survivors was conducted.²⁵⁶ The study showed survivors’ demand for accountability, for using courts of law and due process for naming and shaming Russia and its actors as perpetrators, exposing their actions and motives (many of interviewees were subjected to CRSV because of their pro-Ukrainian position). The study further exposed the urgency of other reparations, to address survivors’ pressing medical, psychological, dental, housing, and financial needs. SEMA Network Ukraine, the association of women who have endured CRSV, has been a strong catalyst of advancing respective measures.²⁵⁷ Together with Ukrainian policymakers, human rights NGOs and international partners, they developed and registered with the Parliament in October 2023 a draft law on victim registry and urgent interim reparations.²⁵⁸ The instrument envisages a simplified administrative application for reparations, not conditioned on survivors’ (non-)participation in respective CRSV criminal proceedings. The draft law also expands reparation rights to victims’ families and, importantly, children born out of CRSV. Urgent interim redress is a part of a wider individual reparation framework²⁵⁹ but does not make survivors wait until the latter is introduced. The urgent interim reparation route has been recommended, *inter alia*, by the UN Commission of Inquiry, international studies and Ukrainian and foreign

²⁵⁴ Ibid., paras VI, X.

²⁵⁵ Amal Nassar, Kateryna Busol, Alexa Sydor-Czartorysky, “Ukraine Study on the Status of and Opportunities for Reparations for Survivors of Conflict-Related Sexual Violence,” Global Survivors Fund, May 2022, 61 https://static1.squarespace.com/static/5ff7d9f4dd4cdc650b24f9a4/t/62c3d1610bf4cc740f73fb56/1657000313991/GSFReporUkraine_ENG.pdf (Nassar, Busol, Sydor-Czartorysky, “Ukraine Study on Reparations for CRSV Survivors”).

²⁵⁶ Ibid.

²⁵⁷ Valentyna Samchenko, Maryna Synhaivska, “Sexual Violence in Occupied Territories – an Element of Terrorism and the Suppression of Resistance. How to Bring Perpetrators to Justice?,” *Ukrinform*, 14 August 2023, <https://www.ukrinform.ua/rubric-society/3747968-seksualne-nasilstvo-na-okupovanih-teritoriah-element-terorizmu-i-prignicenna-sprotivuk-pokarati-zlocinciv.html>.

²⁵⁸ Draft Law “On the Status of Persons Affected by Sexual Violence Related to the Armed Aggression of the Russian Federation against Ukraine and Urgent Interim Reparations,” No. 10132, 9 October 2023, <https://itd.rada.gov.ua/billInfo/Bills/Card/42862>.

²⁵⁹ The wider reparations frameworks for individual survivors and for Ukraine as a state are being developed – and often mixed up. On 16 May 2023, the Committee of Ministers of the Council of Europe, together with the representatives of the EU, Canada, Japan and the US, established the Register of Damage Cause by the Aggression of the Russian Federation against Ukraine, for the initial three years. The Register is “the first component of a future international compensation mechanism”. Information about damage to physical persons may be submitted to the Register. It appears that this can include CRSV-caused harms. These developments are commendable. However, while the actual effectiveness of the Register for recording various harms and, eventually, serving as a basis for remedying them will be assessed with time, one crucial shortcoming is already apparent. Currently, only the damage “caused on or after 24 February 2022” may be registered. Therefore, it appears that a wide spectrum of harms, including CRSV, caused during the first phase of the Russia-Ukraine armed conflict in 2014–2021, is not covered by the Register and any future related international compensation mechanism. Such an approach would detrimentally disadvantage Crimea and Donbas atrocity victims assaulted before the full-scale invasion and impact their equal access to reparations. If true, this concern should be addressed, and any damage registries and compensation mechanisms should be equally available to all persons affected by conflict-related violations since the beginning of Russia’s aggression in 2014. Council of Europe, Committee of Ministers, Resolution establishing the Enlarged Partial Agreement on the Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine, CM/Res(2023)3, 12 May 2023; Anna Myriam Roccatoello, Fernando Traves, “An International Register of Damages for Ukraine Promises Accountability, But Could Victims Be Left Behind?,” International Center for Transitional Justice, 6 February 2023, <https://www.ictj.org/latest-news/international-register-damages-ukraine-promises-accountability-could-victims-be-left>.

lawyers.²⁶⁰ This is the route Ukraine is able to implement to meaningfully help survivors, in a gender-sensitive manner, with their basic needs – even amid the ongoing warfare.

Conclusion

The behaviour in wartime is in many ways an extension – and an amplification – of peacetime norms and prejudices. This is particularly true for SGBV. A gender ideology of a perpetrator and their society matters.²⁶¹ Such ideology shapes a perpetrator's understanding of what an infliction of sexual violence would mean to a particular individual or group, how this conduct will be perceived by their own community and, ultimately, impacts a decision about (not) unleashing atrocities. A gender ideology of an affected community is equally important. Not only does it impact how survivors of CRSV and other crimes might feel about sharing their traumatic experience. But also – how the society might transform the endured individual and collective horror into something life-affirmative, how it might engage with that darkness – for the sake of creation.²⁶²

Russia's aggression against Ukraine is inherently neo-imperial – and inherently gendered. Public statements of Russian leadership, the rhetoric of direct perpetrators and the mode of commission of atrocities, including CRSV, expose how Russia's pursued subjugation of Ukraine is driven by underlying toxic masculine dimensions. The fusion of amplified imperial and masculine egos is rooted in Russia's rigid gender hierarchies, normalized violence against women and persecution of LGBTQI+ persons. The lack of state and societal reckoning with past and ongoing atrocities and seeing neighbouring independent nations as the "near abroad" that must remain in the remit of the "Russian world" both are nourished by and catalyze the imperial and toxic masculine attitude to Ukraine. Without the consideration of these underlying factors that shape a gender ideology of alleged Russian perpetrators and their commanders, the analysis of the motives and modes of Russia's atrocities in Ukraine will be detrimentally incomplete. The combined application of imperial and gendered lenses is particularly important for investigating Russia's alleged genocidal intent and persecutorial policy.

Ukraine has gone through the transformative 2013–2014 Revolution of Dignity – which marked civil society's robust resolve to move away from Russia's sphere of influence – with the motto "Human Rights Above Everything."²⁶³ Since then, with this thinking in mind, despite the ongoing aggression, civil society has catalyzed Ukraine's advancements

²⁶⁰ UN Commission of Inquiry, Conference Room Paper, paras 972–976; Hrystyna Kit, "Helping Ukraine's Sex-Crime Survivors," *The World Today* 74, no. 1 (2023): 32–34; Erin Farrell Rosenberg and Amal Nassar, "Response to Conflict-related Sexual Violence in Ukraine: Accountability and Reparations," *Opinio Juris*, 21 June 2022, <https://opiniojuris.org/2022/06/21/response-to-conflict-related-sexual-violence-in-ukraine-accountability-and-reparations/>; Global Survivors Fund, "Ukraine: The promise of survivors' voices and joint work on reparation," 6 June 2023, <https://www.globalsurvivorsfund.org/latest/articles/ukraine-the-promise-of-survivors-voices-and-joint-work-on-reparation/>; Pip Cook, "Seeking justice for survivors of sexual violence in Ukraine," *Geneva Solutions*, 16 December 2022, <https://genevasolutions.news/peace-humanitarian/seeking-justice-for-survivors-of-sexual-violence-in-ukraine/>; Nassar, Busol, Sydor-Czartorysky, "Ukraine Study on Reparations for CRSV Survivors," 7, 77; New Lines Institute, "CRSV in Ukraine," 13, 20.

²⁶¹ Expert Voices on Atrocity Prevention Episode 15: Patricia Sellers (Global Centre for the Responsibility to Protect, 25 October 2022), 16:30, <https://www.youtube.com/watch?v=LAR4udJ0Hog>; Mukwege, *The Power of Women*, 65.

²⁶² This is a paraphrase of a poem by Rabindranath Tagore from the *Fireflies* collection: "Light accepts darkness for his spouse for the sake of creation," <https://www.poetryverse.com/rabindranath-tagore-poems/fireflies>.

²⁶³ Ukrainian original: "Права людини понад усе," The National Memorial of the Heroes of the Heavenly Hundred, The Museum of the Revolution of Dignity, "Places of the Revolution of Dignity: The Mykhailivska Square," <https://maidanmuseum.org/uk/storinka/miscya-revoluciyni-gidnosti-myhaylivska-ploshcha>.

regarding gender equality, domestic violence, LGBTQI + rights, women's actual access to all military professions and a holistic transitional justice vision. It is up for Ukraine, as a state and civil society, to continue this gender sensitization in the meaningful support of CRSV survivors. It should include victim-centred intersectional investigations and prosecutions of CRSV committed against women and girls, but also men, boys and LGBTQI + persons. It is of a paramount importance that Ukraine investigates allegations, however meagre, implicating its own military. In addressing crimes perpetrated by all parties, Kyiv will demonstrate its genuine commitment to all victims – and will solidify its resolve to build the rule of law-oriented society and state. Support to CRSV and other survivors, however, should go beyond criminal justice and include urgent interim reparations and, later, holistic individual reparations, both of which should consider nuances of victims' trauma and needs. These efforts should be part of the wider transitional justice thinking, which Ukraine should resume, in a collaboration with the civil society, survivor groups and international partners. The way Ukraine develops and implements elements of its transitional justice policy, especially urgent interim reparations, amid the ongoing warfare could be guiding for other nations affected by armed conflicts and atrocity situations. Finally, Ukraine, as a society and a state, should emerge from this aggression constantly living up to the ethos of the "Human Rights Above Everything" thinking. This incurs embracing the contributions of everyone – women, men, LGBTQI + individuals – to countering Russia's aggression – and ensuring that all such persons enjoy equal rights and opportunities in the country they defended and want to co-shape.

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Notes on Contributor

Kateryna Busol is a Ukrainian lawyer. She is an Associate Professor at the National University of Kyiv-Mohyla Academy and a British Academy Research Fellow at the British Institute of International and Comparative Law. As a scholar and practitioner, Kateryna has worked on different issues concerning Russia's aggression against Ukraine with a particular focus on the weaponisation of cultural heritage, conflict-related sexual violence, direct and public incitement to genocide and Ukraine's transitional justice process. She has worked with Clooney Foundation for Justice, UN Women, Global Survivors Fund and Global Rights Compliance. Kateryna has collaborated with Ukrainian NGOs such as the Media Initiative for Human Rights and Truth Hounds and has advised Ukrainian prosecutors and judges on armed conflict-related proceedings. She was a visiting researcher at the Leibniz Institute for East and Southeast European Studies, a Robert Bosch Stiftung fellow at Chatham House and a Visiting Professional at the Office of the Prosecutor of the International Criminal Court.