

**“Conflict-related sexual and gender-based violence and crimes as an example of the constant erosion of gender equality and women’s rights: challenges and opportunities.”**

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**Abstract**

Sexual and gender-based violence is rooted in systematic and systemic discrimination of human rights. The scope of analysis in this paper will be narrowed down to the nexus between the violation of women’s rights, lack of gender equality and conflict-related sexual and gender-based violence and crimes against women, mainly because women and girls continue to be disproportionately affected by armed conflict. While recognizing that sexual and gender-based violence against women is still too present in times of peace, this paper will focus on sexual and gender-based violence in times of armed conflict since these acts of violence are exacerbated during armed conflict and can lead to mass atrocity crimes such as genocide, war crimes and crimes against humanity.

While key landmark benchmarks have been accomplished over the decades to equip international law to promote women’s rights and gender justice, mainly due to women’s groups and feminists’ activism, the prevalence of conflict-related sexual and gender-based violence calls for a recalibration of gender-power dynamics and an elimination of the impunity gap for these heinous crimes.

Despite key landmark normative accomplishments, international law remains limited in terms of its implementation and application of the broader gender scope . Furthermore, advocacy to remedy this gap continues to be siloed therefore making all prevention efforts to fail. A set of recommendations as opportunities for further improvement will follow. The paper will conclude with some forward-looking reflections towards gender justice.

## **Framing the issue: definitions and scope**

Sexual and gender-based violence against women is rooted in systematic and systemic discrimination of women's human rights. In other words, it is a direct consequence of gross violations of women's rights and these violations are further exacerbated during times of armed conflict. This erosion, violation of women's rights and gender inequality are a clear precursor of conflict-related sexual and gender-based violence as mass atrocity crimes.

### *Gender-based violence against women*

The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and in particular its independent treaty body, the Committee on the Elimination of Discrimination against Women's recommendations [30](#) (women in conflict), [33](#) (women's access to justice), [35](#) (gender-based violence against women, updating general recommendation 19) and [38](#) (trafficking in women and girls) explicitly attribute gender-based violence against women including sexual violence as a violation of human rights of women (women's rights) and lack of gender equality.

This aspect is further developed in the 2015 framework of prevention of violence against women of the United Nations. "Violence against women (VAW) is a one of the most pervasive human rights violations in the world, rooted in gender inequality, discrimination and harmful cultural and social norms. Discrimination against women and inequality in the distribution of power and resources between men and women are the main root causes of VAW. Discrimination is prohibited in human rights law and governments have an obligation to address it."<sup>1</sup>

The Convention on the Elimination of all Forms of Discrimination Against Women is the key human rights law instrument to address discrimination against women and as such while it does not explicitly mention violence against women, violence against women and girls has to be understood as related to discrimination of women and a violation of their rights. The following constitute the main [provisions](#) of the Convention on the Elimination of all forms of Discrimination Against Women related to combatting discrimination against women.

#### Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity of this obligation;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.

#### Article 5a

States Parties shall take all appropriate measures:

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<sup>1</sup> UNWomen. [A framework to underpin action to prevent violence against women](#). 2015.

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

#### Article 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

The provisions indeed leave room for interpretation which can be positive. However, the CEDAW's treaty body has addressed this ambiguity by issuing a series of general recommendations to assist States Parties in the implementation of the Convention. The Committee on the Elimination of Discrimination against Women's general recommendation 35 mentions that gender-based violence against women is rooted in the inequal and unjust gender power dynamics. Gender-based violence against women is "to be rooted in gender-related factors such as the ideology of men's entitlement and privilege over women, social norms regarding masculinity, the need to assert male control over power roles, or prevent, discourage or punish what is considered to be unacceptable female behaviour. The factors also contribute to the explicit or implicit social acceptance of gender-based violence against women, often still considered as a private matter, and to the widespread impunity for it."<sup>2</sup>

#### *Sexual violence*

Sexual violence which finds its roots in women's and other human rights violations and discrimination is defined by the World Health Organization (WHO) as "any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting."<sup>3</sup> The WHO definition maintains a gender-neutral language which is worth elaborating on. To this regard, the article will explore the limitations of international law in terms of encompassing the whole scope of "gender" later on.

#### *Conflict-related sexual and gender-based violence*

Sexual and gender-based violence which is a gross violation of women's rights can constitute an international crime in situations of armed conflict. The definition of the International Committee of the Red Cross (ICRC) depicts well the coercion and power-dynamics between the perpetrator and the victim in times of armed conflict, it also takes on the gender provisions of the Rome Statute with regards war crimes.

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<sup>2</sup> CEDAW recommendation 35 paragraph 19 [CEDAW/C/GC/35](https://www.unhcr.org/refugees/article/43c47624.html).

<sup>3</sup> WHO.int. n.d. *Violence against women*. [online] Available at: <https://www.who.int/news-room/fact-sheets/detail/violence-against-women>.

“The ICRC defines sexual violence as any act of a sexual nature committed against any person by force, threat of coercion. It includes rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other act of comparable gravity. Coercion can be caused by circumstances such as fear of violence, duress, detention, psychological oppression or abuse of power.”<sup>4</sup>

Another reference definition for conflict-related sexual and gender-based violence is the one provided by the United Nations as it is very clear and includes gender to reflect the reality on the ground. Gender is an important targeting factor in times of peace and even more so during times of armed conflict, members of a specific community are targeted based on their sex, gender, gender identity and sexual orientation. Furthermore, the mode in which victims are violated and killed is defined by the perception that their perpetrators have on gender roles and gender power dynamic. For example, Bosnian Muslim men and boys were raped and tortured during the genocide in the former Yugoslavia (refer for example the Duško Tadić case<sup>5</sup>) to destroy the social fabric of this community, it also included a genocidal intent. For these reasons, I will refer to conflict-related sexual and gender-based violence throughout the article.

In the Secretary General’s reports on this very issue, conflict-related sexual (*and gender-based*) violence “refers to rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage, and any other form of sexual violence of comparable gravity perpetrated against women, men, girls or boys that is directly or indirectly linked to a conflict. This link may be evident in the profile of the perpetrator, who is often affiliated with a State or non-State armed group, including those designated as terrorist groups by the United Nations; the profile of the victim, who is frequently an actual or perceived member of a persecuted political, ethnic or religious minority, or targeted on the basis of actual or perceived sexual orientation or gender identity; a climate of impunity, which is generally associated with State collapse; cross-border consequences, such as displacement or trafficking; and/or violations of the provisions of a ceasefire agreement. The term also encompasses trafficking in persons for the purpose of sexual violence and/or exploitation, when committed in situations of conflict.”<sup>6</sup>

It is important to note that not all conflict-related sexual and gender-based violence amounts to a violation of international humanitarian law and international criminal law therefore not constituting a war crime, crime against humanity or genocide. In order for conflict-related sexual and gender-based violence to constitute an atrocity crime it has to have a direct or at least a sufficient link or nexus to armed conflict. Therefore, bringing national legislations and institutions to international standards is key so to address sexual and gender-based violence as a crime at the national level which constitute a women’s rights violation.

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<sup>4</sup> 2021. *Special Appeal: Addressing sexual violence*. ICRC.

<sup>5</sup> ICTY Tadić Case Information Sheet <https://www.icty.org/en/case/tadic/>.

<sup>6</sup> United Nations, Secretary General report on Conflict-related sexual violence OP 4 ([S/2022/272](https://www.un.org/News/Press/docs/2022/S/2022/272.html)).

## Scope

“In Rwanda, between 100,000 and 250,000 women were raped during the three months of genocide in 1994. United Nations agencies estimate that more than 60,000 women were raped during the civil war in Sierra Leone (1991-2002), more than 40,000 in Liberia (1989-2003), up to 60,000 in the former Yugoslavia (1992-1995), and at least 200,000 in the Democratic Republic of the Congo since 1998.”<sup>7</sup>

The scope of the scourge of sexual and gender-based violence during the genocides of Rwanda, the former Yugoslavia as well as during the armed conflicts in Africa was unprecedented and could no longer be ignored or considered as an act “collateral” of war.

This erosion of women’s rights is a direct consequence of the systematic and systemic discrimination against women and gender inequality during times of peace. This gross violation of women’s rights is further exacerbated during times of armed conflict and can lead to mass atrocity crimes. As we will see later on, sexual and gender-based violence and crimes have not been addressed as a violation of international criminal law until mid and late 1990s.

## Women’s groups and feminists in action to equip international law

Women’s and feminist groups as well as like-minded States spared no efforts in advocating for a more just, human rights-based and gender-neutral international criminal law system leading to the Rome Conference and the adoption by the Security Council of resolution 1325 (2000). Three main benchmarks have been accomplished in terms of preventing and addressing conflict-related sexual and gender-based violence and crimes.

### *Women’s rights and gender equality as a prerequisite to sustainable development and international peace and security*<sup>8</sup>

United Nations Security Council resolution 1325, which gave birth to the “Women, Peace and Security (WPS) agenda” in 2000, marked a historic turning point in multilateralism, as gender issues in peace and security were considered for the first time. The resolution not only highlighted the disproportionate impact of armed conflict on women and girls, but also pointed out that women and girls are under-represented in formal peacebuilding and peacekeeping processes.

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<sup>7</sup> United Nations outreach programme on the Rwanda Genocide, Background note on Sexual violence: a tool of war please see <https://www.un.org/en/preventgenocide/rwanda/pdf/Backgrounder%20Sexual%20Violence%202013.pdf>.

<sup>8</sup> Pia-Comella, J (2020), The Women, Peace and Security Agenda as a tool for proving CRSV. *Politorbis: Prévenir les atrocités: vers de nouveaux paradigmes? Preventing atrocities; towards new paradigms?* (N. 68 , pp. 65-70) Federal Department of Foreign Affairs FDFA.

The "Women, Peace and Security" agenda is first and foremost a feminist framework raising a number of issues that women and girls face in situations of armed conflict, reflecting in one way or another the patriarchal discriminatory practices already in place during times of peace. Indeed, the WPS agenda constitutes a true feminist normative and legal framework: it provides for the meaningful participation of women in peace processes, requires that stakeholders in a conflict prevent violations of women's rights (from the perspective of human rights, international humanitarian law and international criminal law). In particular, it requires that conflict-related sexual and gender-based violence be prevented and prosecuted.

At the core of the "Women, Peace and Security" agenda is the concern to balance gender power dynamics, to guarantee equal opportunities, access to justice, and equal participation of women. The WPS agenda thus recalibrates the role of women in societies; they are not only armed conflicts' victims and survivors; women are key and active actors of peace. Indeed, it is the recognition of women as actors of change as well as the respect and promotion of their rights that makes the WPS agenda a transformative tool for promoting the status of women and gender equality.

*Accountability for conflict-related sexual and gender-based crimes a sine qua non condition for prevention and non-recurrence*

Sexual and gender-based violence has been widely present in times of armed conflict and yet, due to patriarchal norms and the unequipped national and international criminal laws and systems, these acts of violence have been underreported and under prosecuted as crimes. According to Rosemary Grey (2019), while sexual and gender-based crimes and its serious consequences have been prevalent in armed conflicts, they have historically been overlooked in instruments of international criminal law and international humanitarian law. In her book she further argues that there has been a tendency on the one hand to underestimate the seriousness of sexual and gender-based violence in times of armed conflict, and in the other hand to overestimate the challenges of investigating it. The result has been an under prosecution of conflict-related sexual and gender-based crimes pre 1990s.<sup>9</sup>

However, the rapes and other cases of sexual and gender-based violence and crimes committed during the armed conflicts of the 1990s, in particular during the genocides in Rwanda and the former Yugoslavia were too widespread to be ignored and, along with other mass atrocity crimes constituted a threat to international peace and security. This led to the creation in 1993 of the International Criminal Tribunal for the former Yugoslavia (ICTY) and in 1994 of the International Criminal Tribunal for Rwanda (ICTR). Both Courts addressed sexual and gender-based crimes and set new case law and best practices for national courts as well as for the International Criminal Court.

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<sup>9</sup> Grey, R. (2019). *The Road to Rome. Prosecuting sexual and gender-based crimes at the ICC: practice, progress and potential*. (Chapter 3, pp. 67-122). Cambridge Studies in International and Comparative Law.

The Statute of the ICTY<sup>10</sup> included rape as a crime against humanity (Article 5 (g)). The Statute of the ICTR, stipulated that rape constituted both a war crime and a crime against humanity (Articles 3(g) and 4(e)). Both Tribunals have delivered a wealth of jurisprudence with regards sexual and gender-based violence constituting crimes against humanity, genocide and serious breaches to the Geneva Conventions.<sup>11</sup>

While the two ad hoc tribunals have indeed set a new path for gender justice, their jurisdiction had a limited scope in terms of time and territory. It was not until 1998 that international criminal law was equipped with a universal and permanent jurisdiction to investigate and try conflict-related sexual and gender-based crimes. Indeed, the Rome Statute (RS) is the first and, so far, the only international treaty that criminalizes and explicitly defines sexual and gender-based violence as a crime against humanity beyond the act of rape (Article 7(1) g); war crimes (Article 8 (2) b (xxii) and Article 8 (2) e (vi)) and, to a certain extent, as genocide (Article (6) d). More specifically, the gender provisions of the Rome Statute refer to:

#### Article 6 Genocide

Article (6) d : Imposing measures intended to prevent births within the group

#### Article 7 Crimes against humanity

Article 7(1) g: Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity

#### Article 8 War crimes

Article 8 (2) b (xxii): Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

- Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;

Article 8 (2) e (vi): Other serious violations of the laws and customs applicable in armed conflict not of an international character, within the established framework of international law, namely, any of the following acts:

- Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions.”<sup>12</sup>

Furthermore, the Rome Statute, through its provisions relating to victims, ensures the protection of victims and their right to participate (Article 68), provides for reparations where appropriate and establishes a Trust Fund for Victims (Article 79). In this sense, the Rome Statute offers three main improvements in the fight against impunity for conflict-related sexual and gender-based crimes specifically, and therefore promotes women’s rights overall by providing a new standard internationally and domestically as States have the primary responsibility to

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<sup>10</sup> [Updated Statute of the International Criminal Tribunal for the Former Yugoslavia](#), September 2009.

<sup>11</sup> Seelinger, K. (2020). Close to Home. *Journal Of International Criminal Justice*, 18(2), 219-242.

<sup>12</sup> [The Rome Statute](#), 17 July 1998.

investigate and prosecute Rome Statute crimes:

- Firstly by explicitly defining and criminalizing sexual and gender-based crimes allowing for these crimes to be prosecuted.
- Secondly by ensuring victims'/survivors' protection, participation and reparations. There are examples of protection of victims at the national level that have been inspired by the provisions of the Rome Statute (for example in the Democratic Republic of Congo where conflict-related sexual and gender-based violence has been and continues to be very widespread).<sup>13</sup>
- And thirdly by recognizing sexual and gender-based violence as war crimes, crimes against humanity and crimes constituting genocide and not as collateral acts of war, armed conflict.

Therefore, the Rome Statute not only provides access to justice to victims of the most serious crimes condemned by international law but also sets a new standard for national legal systems to implement. These efforts have been supported by the “Women Peace and Security” agenda with the adoption by the United Nations (UN) Security Council in 2008 of resolution 1820. Adopting resolution 1820 (2008) was a forward-looking decision as the resolution offers a new and very strategic understanding of the peace-justice *nexus*. Resolution 1820 (2008) not only recognizes sexual and gender-based violence as a tactic of war, but also clarifies that conflict-related sexual and gender-based violence can constitute a war crime, a crime against humanity or an act of genocide. It further recognizes the Rome Statute as the landmark instrument in the fight against impunity for mass atrocity crimes. With resolution 1820 (2008) a synergy was born between the “Women, Peace and Security” agenda and international justice.<sup>14</sup>

In order to establish an accountability mechanism, the UN Security Council adopted in 2009 resolution 1888 to establish the mandate of the Secretary General Special Representative on conflict-related sexual violence. Resolution 1888 (2009) also strengthens national preventive mechanisms by establishing the United Nations Team of Experts on the Rule of Law and Sexual Violence in Conflict to be rapidly deployed to places where sexual violence is committed so to combat impunity. This effort is further supported by the establishment of the “list of shame”<sup>15</sup> as per resolution 1960 (2010). Furthermore, resolution 2467 (2019) calls for the strengthening of national legislations, and focuses on the investigation and prosecution of crimes of sexual and

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<sup>13</sup> De Vos, D., 2016. Domestication of International Criminal Law and Sexual Violence #SOU2016. *European University Institute*.

<sup>14</sup> Pia-Comella, J (2020), The Women, Peace and Security Agenda as a tool for proving CRSV. *Politorbis: Prévenir les atrocités: vers de nouveaux paradigmes? Preventing atrocities; towards new paradigms?* (N. 68 , pp. 65-70) Federal Department of Foreign Affairs FDFA.

<sup>15</sup> The “list of shame” is the list of the parties that are credibly suspected of committing or being responsible for acts of rape or other forms of sexual and gender-based violence during conflict. The list is included in the annual Secretary General Reports on conflict-related sexual violence.

gender-based violence related to conflict and post-conflict situations.<sup>16</sup>

### *Survivor-centered approach: intersectionality*

The needs and rights of victims and survivors ought to be taken into consideration in order to address the root causes of systematic and systemic discrimination, a human-rights-based approach is needed to prevent further discrimination of victims.

Resolution 2106 (2013) calls on the United Nations entities and the donors' community to provide victims and survivors of conflict-related sexual violence with health care, including sexual and reproductive health care. Resolution 2467 notes that conflict-related sexual violence also targets men and boys, and urges states to protect them. However, there is no mention of the need for sexual and reproductive health care in resolution 2467 (2019), an yet this is the first time that a UNSC resolution focuses on victims and survivors. This represents a huge step backwards in the full implementation of the WPS agenda.<sup>17</sup>

It also constitutes a violation of international human rights and international humanitarian law. "In addition to encompassing abortion services as non-discriminatory and necessary medical care, IHL also protects the procedure via its guarantee of humane treatment and the right to be free from treat that is cruel and inhuman. (...) The denial of abortion services has also been found to violate the international human rights to humane treatment and to be free from torture."<sup>18</sup> The need to focus on a survivor's human rights approach in order to prevent and address discrimination of survivors based on a violation of international human rights law is explored in the recent UN Secretary General's Report (S/2022/77) on "Women and girls who become pregnant as a result of sexual violence in conflict and children born of sexual violence in conflict". The report highlights the antidiscrimination recommendations of both the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child that countries can implement in order to address the root causes of revictimization, stigma and discrimination that survivors of these heinous crimes face.

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<sup>16</sup>Pia-Comella, J (2020), The Women, Peace and Security Agenda as a tool for proving CRSV. *Politorbis: Prévenir les atrocités: vers de nouveaux paradigmes? Preventing atrocities; towards new paradigms?* (N. 68 , pp. 65-70) Federal Department of Foreign Affairs FDFA.

<sup>17</sup> *Ibid.*

<sup>18</sup> Radhakrishnan, A., Sarver, E. and Shubin, G., 2017. Protecting safe abortion in humanitarian settings: overcoming legal and policy barriers. *Reproductive Health Matters*, 25(51), pp.40-47.

## **The persistence of conflict-related sexual and gender-based violence and crimes calls for a reinvigorated approach to women's rights and gender equality**

### *Women's rights and gender equality are at stake*

Discriminatory practices and their resulting violence, sexual and gender-based violence against women, are still a reality all too present not only during armed conflict but also in times of peace. In 2020, UN Women characterized violence against women as the shadow pandemic: "Even before COVID-19 existed, domestic violence was already one of the greatest human rights violations. In the previous 12 months, 243 million women and girls (aged 15-49) across the world have been subjected to sexual or physical violence by an intimate partner. As the COVID-19 pandemic continues, this number is likely to grow with multiple impacts on women's wellbeing, their sexual and reproductive health, their mental health, and their ability to participate and lead in the recovery of our societies and economy."<sup>19</sup>

As stipulated in the latest Secretary General report on conflict-related sexual and gender-based violence ([S/2022/272](#)), in 2021 "Rising inequality, increased militarization, reduced civic space and the illicit flow of small arms and light weapons also contributed, among other factors, to fuelling widespread and systematic conflict-related sexual violence, even in the midst of a global pandemic. A series of coups d'état, including in several countries that appear in the present report, were another worrying development. Terrorist groups and transnational criminal networks continued to destabilize some of the most fragile contexts, including through the use of sexual violence as a tactic. In some situations, gender-based hate speech and incitement to violence were evident in public discourse, including on digital platforms. Unconstitutional shifts of power in Afghanistan, Burkina Faso, Guinea, Mali, Myanmar and the Sudan were followed by widespread insecurity, economic shocks and human rights violations, including the use of sexual violence in the lead-up to, during, and in the wake of these events, to subjugate and humiliate opposition groups and rival communities. In certain settings, the actors that seized power had been implicated in documented patterns of conflict related sexual violence for several years, such as the Taliban in Afghanistan and the Tatmadaw in Myanmar. Shrinking civic space, coupled with misogynistic threats, were worrying trends observed in Afghanistan, Libya, Myanmar, the Sudan and Yemen, where sexual violence was perpetrated against political activists, including during demonstrations. In Myanmar, a rise in online sexism, including threats of sexual violence, was reported as being directed against politically active women. In Ethiopia, gender-based hate speech and incitement to violence, including various forms of sexual violence, were directed against women on the basis of their actual or perceived affiliation with parties to the conflict."<sup>20</sup>

The Security Council debate of April 13, 2022, which took place under the United Kingdom's Presidency, highlighted that gender inequality is recognized as the main root cause of

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<sup>19</sup> UN Women – Headquarters. 2020. *Violence against women and girls: the shadow pandemic*. [online] Available at: <https://www.unwomen.org/en/news/stories/2020/4/statement-ed-phumzile-violence-against-women-during-pandemic>.

<sup>20</sup> S/2022/272 Operative Paragraphs 4 and 10.

conflict-related sexual and gender-based violence and constitutes an obstacle to preventing and addressing it.<sup>21</sup>

### *The impunity gap is still too wide*

Besides the persistent violations of women's rights leading to sexual and gender-based violence and crimes, impunity for these crimes continues to prevail. The Special Representative of the Secretary General on Sexual Violence in Conflict, Ms. Pramila Patten has repeatedly drawn the Security Council's attention to the fact that conflict-related sexual and gender-based crimes continue to be underreported because of fear of stigmatization and reprisals, lack of access to justice. The debate of the Security Council of April 13, 2022 highlighted the need to address the impunity gap for conflict-related sexual and gender-based violence as a preventive mechanism. It also called for the full implementation of the "Women, Peace and Security" agenda and announced the launch of the "Murad Code" which aims at strengthening the documentation of conflict-related sexual and gender-based crimes in support of investigations at the national, regional and international levels.<sup>22</sup>

However, the key treaty addressing conflict-related gender justice, the Rome Statute, is not universally ratified limiting thus the scope of the International Criminal Court in investigating, prosecuting and trying conflict-related sexual and gender-based crimes. Also, the Rome Statute (including its gender provisions) is not fully implemented at the national level posing an obstacle to the principle of complementarity of the Rome Statute System. The RS relies on national courts and when fully implemented equips national legislations and institutions to investigate, prosecute and try ICC-related crimes.<sup>23</sup> The principle of complementarity remains one of the most effective prevention mechanisms to the recurrence of mass atrocity crimes including conflict-related sexual and gender-based crimes.

### *Advocacy continues to be siloed*

The blunt failure to include any mention on sexual and reproductive health and rights in UNSC resolution 2467 (2019) is a reminder that advocacy efforts cannot continue to be siloed as we witness step backs in women's rights, gender equality and gender justice. Hence, advocacy has to take an intersectionality approach and reframe the discussion under a feminist perspective. A comprehensive advocacy is all the more needed to effectively address the rampant cases of ethnically targeted sexual and gender-based violence in the conflicts in the North of Ethiopia, in the genocides of Rohingya women in Myanmar, and Yazidi Women in Iraq/Syria.

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<sup>21</sup> *Procès-verbal* - S/P.V.9016.

<sup>22</sup> *Procès-verbal* - S/P.V.9016.

<sup>23</sup> Bacio Terracino, J. (2007). National Implementation of ICC Crimes: Impact on National Jurisdictions and the ICC. *Journal Of International Criminal Justice*, 5(2), 421-440.

As currently observed, Roma, Sinti women and women of African descent are targeted in the ongoing Ukraine war. The “conflict in Ukraine is disproportionately affecting women and girls, especially women from marginalized groups. (...) Prior to the current crisis, Ukraine had the largest stateless population in Europe. Of this population, an estimated 60% of Roma women and children do not have documentation, and more than 60% of children born in conflict-affected areas do not have a birth certificate. For example, there are reports of Roma women and children being forced to wait in longer lines until all ethnic Ukrainians are processed, and segregation in poor conditions upon arrival in destination countries. Further, discrimination towards Roma people has resulted in Roma women and children generally having fewer economic resources and lacking basic legal documentation, which compounds the challenges they face when seeking to cross the border and limits the options available to them upon arrival in a neighboring country. Lack of documentation is likely to pose an additional barrier when seeking to return to Ukraine in the future.”<sup>24</sup>

### *International law remains limited under a binary approach*

To be inclusive at a normative aspect, the root causes of discrimination and inequality under the whole spectrum of human rights need to be addressed. Not surprisingly so, marginalized groups who are discriminated based on their sex, gender, gender identity and sexual orientation during times of peace become unshielded targets during times of armed conflict. Indeed, as witnessed during the current war in Ukraine “Refugees and asylum seekers include groups of women and girls who face additional risk, such as LGBTQI+ people.”<sup>25</sup>

The definition of gender in the Rome Statute is solely based on the binary and its meaning remains very ambiguous. “For the purpose of this Statute, it is understood that the term “gender” refers to the two sexes, male and female, within the context of society. The term “gender” does not indicate any meaning different from the above.”<sup>26</sup>

This limitation which leaves room for interpretation and “can create normative flexibility by preserving multiple possible meanings of a term at a given moment in time, it also risks creating uncertainty and discordance until a binding interpretation is adopted. (...) despite the reflexive and critical feminist response, the Office of the Prosecutor has recently interpreted the definition of “gender” in a comprehensive manner. (...) However, it is not clear that all of the judges have a similar understanding, and therefore there is still a danger of a judicially-issued narrow analysis emerging.”<sup>27</sup>

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<sup>24</sup> NGO Working Group on Women, Peace and Security. 2022. *Gender Analysis of the Situation in Ukraine - NGO Working Group on Women, Peace and Security*. [online] Available at: <https://www.womenpeacesecurity.org/gender-analysis-situation-ukraine/>.

<sup>25</sup> *Ibid.*

<sup>26</sup> [The Rome Statute](#), 17 July 1998.

<sup>27</sup> Oosterveld, V., 2014. Constructive Ambiguity and the Meaning of “Gender” for the International Criminal Court. *International Feminist Journal of Politics*, 16(4), pp.563-580.

Indeed, this gap at the normative level makes prevention efforts more difficult to achieve. “The invisibility of LGBTQI+ communities from much atrocity prevention architecture normalises, and not only institutionalises assumptions of the cis-heterosexuality of communities facing and experiencing violence, but renders implausible and invisible the fact that atrocity crimes against people on the basis of non-heteronormative sexuality and non-cisgender identities occur across the world. Widespread and systematic violent targeting of LGBTQI+ people can often look different to the widespread and systematic violent targeting of ethnic, religious and racial groups that traditionally dominate the atrocity prevention agenda, but may still meet the conceptual and legal thresholds of crimes against humanity.”<sup>28</sup>

There is therefore an urgent need to adapt international law to encompass the full gender scope, in particular the Rome Statute as it is the key treaty to fight impunity for conflict-related sexual and gender-based crimes. The new ICC Prosecutor, Mr. Karim Khan has a unique opportunity to build on the 2014 Policy Paper on Sexual and Gender-based Crimes commissioned by Former ICC Prosecutor Fatou Bensouda as he has just launched the elaboration of a new policy initiative to advance accountability for gender persecution under the Rome Statute.

### **Advocating for political will to fully implement the human rights legal frameworks**

Conflict-related sexual and gender-based violence and crimes are rooted in systematic and systemic violations of human rights and gender inequality. The existing robust international legal framework is in need of full implementation and improvement so to encompass all the rights of all peoples as enshrined in the Charter of the United Nations and the Universal Declaration of Human Rights. Any deviation from or segregation of these rights set all prevention efforts to fail and foster a culture of impunity.

Victims of conflict-related sexual and gender-based violence and crimes as mentioned by Nobel Peace Prize Laureate, Ms. Nadia Murad during the UN Security Council debate of April 13, 2022, “survivors don’t want pity, they want justice.”<sup>29</sup> The current culture of impunity for these heinous crimes perpetuates the vicious cycle of human rights violations retrograding all efforts towards sustainable development, peace and security.

It is time to join forces and advocate for leadership that has the will to move from commitments and declarations to real action towards gender justice. A gender justice framework rooted in a feminist and human-rights-based prevention approach.

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<sup>28</sup> Protection approaches, 2022. *Queering Atrocity Prevention*. [online] Protection Approaches. Available at: <https://protectionapproaches.org/queeringap>.

<sup>29</sup> *Procès-verbal* - S/P.V.9016.