



Foreign &  
Commonwealth  
Office



Wilton Park



Report

**Sexual Violence in Conflict: Delivering Justice for  
Survivors and Holding Perpetrators to Account**

Monday 25 – Wednesday 27 February 2019 | WP1651



## Report

# Sexual Violence in Conflict: Delivering Justice for Survivors and Holding Perpetrators to Account

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In association with the Foreign and Commonwealth Office

### Executive summary

Achieving justice and accountability for conflict-related sexual violence (CRSV) and putting survivors at the centre of global efforts to do so is a key objective of the UK's Preventing Sexual Violence in Conflict Initiative (PSVI). In the lead up to the PSVI international conference in November 2019, the UK is consulting with a wide range of stakeholders on how to strengthen justice for survivors of conflict-related sexual violence and ensure perpetrators are held to account.

To this end, Wilton Park and the UK Foreign and Commonwealth Office (FCO) hosted a meeting in February 2019, bringing together over 60 experts and practitioners from 23 countries. These included representatives from civil society, governments, academia, survivor networks, the United Nations (UN), the International Criminal Court (ICC) and other international organisations.

The Wilton Park conference was a milestone event that enabled frank and open discussion amongst participants towards concrete recommendations on ways in which to strengthen justice and accountability at both national and international levels. The group exchanged case studies, good practice and lessons learned, and considered mechanisms through which accountability for sexual violence in conflict can be increased. Representatives from Syria, Iraq, Democratic Republic of Congo, Colombia, Sri Lanka and Bangladesh among others gave examples from their work on the issue. The need for a survivor-centred approach to be realised in practice and tailored to national and community contexts was recognised and discussed.

This report sets out the key recommendations coming out of the Wilton Park conference, many of which will need further detailed consideration. They are grouped around the following key themes:

- Taking a survivor-centred approach
- Restorative justice, redress and reparations
- Gaps in accountability
- Strengthening existing mechanisms

“Justice is a priority – justice is very important. It is a removal of guilt from oneself. It is freedom, it is victory”

## Background

1. Many of the proposals and historical legal cases mentioned in this report are discussed in greater detail in the PSVI Framing Paper: Strengthening Justice for Survivors of Sexual Violence in Conflict<sup>1</sup>, drafted by one of the UK PSVI Team of Experts to encourage discussion and ideas at the Wilton Park Conference. Further analysis of patterns, trends and emerging concerns can be found in the Report of the United Nations Secretary General on conflict-related sexual violence.<sup>2</sup>
2. Throughout the conference, participants were reminded of the need to reflect on both the causes of conflict-related sexual violence (CRSV) and the wider structural problems associated with it. There remains an assumption that impunity is one of the main drivers of sexual violence, but consideration should be given to the complexities of a context, for example, whether CRSV is opportunistic, and/or a weapon of war or an extension of peacetime patriarchal norms. As noted by the UN Secretary General<sup>3</sup> it is essential to recognise and tackle gender inequality as the root cause and driver of sexual violence, including in times of war and peace. Nevertheless, participants at Wilton Park recognised that accountability remains elusive and the need to eradicate impunity for perpetrators of CRSV should be at the forefront of judicial processes.

## Taking a survivor-centred approach

3. A truly survivor-centred approach requires the prioritisation of victims/survivors rights, needs, autonomy and wishes in all aspects of responses to CRSV. It requires an understanding that victims/survivors are best-placed to articulate what justice means to them. However, the current focus on an individual survivor’s physical and psychosocial needs and access to justice for that individual, risks overlooking the **collective nature** of harms experienced and the full range of victims of sexual violence. Sexual violence not only affects the person it was perpetrated against, but others including families, communities and those who were forced to witness such crimes take place. For example, prisoners who are forced to witness sexual violence being perpetrated against other prisoners are also affected. Such an approach may also fail to acknowledge that victims are often members of groups, with group identities, including protected groups (e.g. civilians under International Humanitarian Law, or children, with special protections under International Law). Investigators should ask who else was present during an act of sexual violence, as survivors may have assumptions about what they want to hear.
4. Further, **the international community was criticised for ‘talking the talk’ and presenting a survivor-centred approach without putting it into practice.** Survivors must be included in policymaking. Discussions also emphasised the need for more concerted efforts from governments and donors to **support survivor networks, advocates and other civil society organisations** that support survivors, and who do much of the heavy lifting in terms of procuring justice for survivors in various forms. Civil society organisations (CSOs) are usually more trusted than state or international authorities in the way they offer protection, training and support to survivors of sexual violence, including when they are seeking justice and accountability. Consultation with survivors and survivor advocates is key at every stage of a justice-seeking process, including from the outset, when asking what justice means to particular groups and individuals. However, consultation is not enough, with the need for **financial support for grassroots organisations, survivors and survivor networks** seen as crucial going forward.

<sup>1</sup> Provided to conference participants 22 February 2019.

<sup>2</sup> UNSG S/2019/280 published 29 March 2019. Available at <https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2019/04/report/s-2019-280/Annual-report-2018.pdf>

<sup>3</sup> Ibid.

5. The value of **public recognition of victims/survivors**, e.g. through an international day, was put forward, to highlight the important role they play, their bravery and the need to support them. It was suggested that the **International Day to Eliminate Sexual Violence in Conflict** on 19 June be 'reclaimed' by and for survivors, by involving them in event design, planning and attendance, as well as providing the **funding and support for survivors and survivor advocates to participate** at appropriate events worldwide.
6. A **survivors' guide** to inform survivors of sexual violence of their rights when asked to provide testimony about their experience was proposed. This should include a list of suggested questions survivors might ask investigators, journalists and others to ensure they fully understand their rights, the criminal justice processes they may be going through and how their evidence will be used- i.e. true informed consent. The guide should include formats for the illiterate and a template to allow for country and context-specific adaptations. Conference participants requested that those carrying this forward avoid 'yet another leafletting exercise'. It was proposed that this take the form of an **addendum to the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict**.
7. **Enabling safe disclosure** was seen as a crucial first step for all justice processes if survivors' needs are to be addressed. **Increased funding for local organisations and holistic support services**, especially **health and psychosocial services** should be a prerequisite to achieving this. Non-governmental organisations (NGOs) and local actors are well placed to offer safety, protection and medical care in a way that international actors may not. One-off engagement with survivors is rarely sufficient. Instead, long-term and sustained engagement is needed to erode barriers and respond to victims/survivors effectively and ethically, ensuring they are agents of change.

#### Recommendations:

- Fund/increase funding for grassroots organisations, local support, health and psychosocial services and survivor networks.
- Ensure survivors are central to policy-making, awareness-raising and advocacy efforts, while following the *do no harm* principle.
- Involve and fund survivors and survivor advocates in event design, planning and attendance, using or reclaiming marker days for survivors, such as the International Day to Eliminate Sexual Violence in Conflict on 19 June.
- Create a guide to inform survivors of sexual violence of their rights when providing testimony about their experience. This should include a list of suggested questions survivors might ask to ensure they fully understand how their evidence will be used. This could take the form of an addendum to the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict.

#### Restorative justice, redress and reparations

8. The fact that perpetrators of CRSV are rarely held to account and that reparations are primarily tied to criminal or civil court proceedings, means that the right to remedy, restorative or transformative justice remains critically out of reach for most victims/survivors of CRSV crimes. This often leaves them angry, without any sense of closure or unable to move on, and financially bereft, both in the short and long term. Consequently, **separate reparations mechanisms**, divorced from individual convictions, are increasingly being called for by survivors. Experiences from the Global Network of Victims and Survivors to End Wartime Sexual Violence (SEMA) were shared. Administrative reparations for survivors in Kosovo outside of a court context was presented as an example of emerging good practice, although it is under resourced and has little political will behind it. Overall, the development of a range of restorative justice tools, including financial assistance, is seen as a key area where

"The true injustice is that justice relies on the conviction of a perpetrator"

"If I were to have a little bit of money to construct my own house, my own hut, I would live my life proudly"

“As long as I don’t have justice, please call me a victim”

achieving justice for survivors could be significantly progressed. This requires political will and buy-in both at national and international levels, as well as financial commitments from various sources to ensure sustainability, in particular national governments. A pilot project is currently underway in the Democratic Republic of Congo from which lessons will be learned and applied to other contexts.

9. Survivors must be consulted and involved in the design and set-up of any restorative justice programmes from the outset. Further, **adapting the provision of financial assistance to meet the needs of children, adolescents and men** is necessary when designing such programmes. Survivors may understand or consider their right to financial support differently. Looking at survivors in binary terms as either adults or children, or even as a single homogenous group, can be detrimental. For example, adolescent girls may have different financial needs from young children, and may have to care for siblings or their own children. Adult males may consider themselves to have more of a ‘right’ to monetary compensation given potential effects on their status or perceived status as providers for a family or community. A case study was presented from Colombia, where no child has received reparations up to the present day due to concerns that this would cause them to find out they were born of sexual violence. Stigma and reparations remain tied together and further work is needed to consider how reparations are looked at differently by various groups of survivors. In the meantime, the definitions used and the financial assistance sought must be as inclusive as possible and take a community-based approach.
10. The importance of managing expectations of survivors regarding justice was raised, as well as the differing significance of terminology to some. Variant terms used included “survivors’ assistance”, “rectification”, “restitution”, “repair” and “redress”.
11. A proposal from the Dr. Denis Mukwege Foundation - for an International Fund for Survivors of CRSV - was put forward. This would be mobilised through collaboration between survivors, the UN, civil society, the private sector and states. Such a fund would expand access to reparations and other forms of redress, provide technical advice, promote good practices, and influence policy with a view to structural change. Though international in scope, the set-up and application of the fund would be community-driven and survivor-focused from the outset.
12. Acknowledging that criminal justice for individual and groups of survivors of CRSV comes either too late or not at all, other forms of transformative justice, or ‘repair’, were discussed, including rehabilitation (medical, psychological, legal, socio-economic) memorials, commemorations, truth commissions, public apologies, land inheritance, pension schemes, access to asylum and the need to reassess UNHCR vulnerability criteria. The success of repatriation programmes, such as that passed in 2014 by the German state of Baden Württemberg for vulnerable Yazidis in northern Iraq, provided a reminder of the possibilities for protection in exile.
13. Survivor-centred justice is very specific to those it is intended to serve. Several different challenges were highlighted from a number of regions and current conflict and post-conflict settings. Following the final judgement of the International Criminal Tribunal for the Former Yugoslavia (ICTY) in 2017, support is now needed for smaller initiatives focusing on the eradication of **stigma**, which remains prevalent in the region. How to engage with communities that have a **culture of denial** was discussed, with the suggestion that much could be learned from what the HIV community achieved through innovative outreach e.g. via a rural health worker who attends to and has the trust of every household in a community. **Timing** was highlighted as a particular challenge for conflict-affected countries, with victims/survivors in Syria uncertain that they will ever see any form of justice.

#### **Recommendations:**

- Allocate funding for survivor assistance programmes/trust funds for survivors that run parallel or separate to criminal proceedings. Ensure constant communication with survivor networks when designing programmes so that survivors’ wishes are incorporated.

## Gaps in accountability

14. **Enhancing criminal accountability** was discussed, including not shying away from taking states to court<sup>4</sup> and extraditing suspects. The suggestion of seeking an **advisory opinion from the International Court of Justice (ICJ)** was put forward, to clarify the scope of states' obligations regarding sexual violence crimes, including on amnesties, national immunities and universal jurisdiction. Inter-state complaints before human rights bodies should also be considered. States should be pushed to arrest individuals on their territory for universal jurisdiction crimes (e.g. the recent arrest of Syrian intelligence officers in France and Germany). Setting-up, reinforcing and ensuring war crimes units within national investigating and prosecuting authorities are well staffed is key to tackling universal jurisdiction cases or crimes committed directly on their territory.<sup>5</sup>
15. **Due diligence policies and vetting processes** should be implemented in national military structures so that suspected perpetrators of sexual violence in conflict are removed from positions of power, and a **CRSV-specific due diligence policy**<sup>6</sup> should be drafted and adopted by States at the PSVI International Conference in November. Such policies should include a contextual risk assessment requirement from the outset, and should extend to NATO and other multinational military structures, regional peacekeeping operations, and the private sector (including private military companies, manufacturers of dual-use goods, and companies such as Facebook whose platforms are increasingly used for military communication purposes).
16. The need to construct guarantees of non-repetition as an enforceable right through strategic litigation at the domestic and international levels was discussed, as well as the possibility for interstate-complaints to be brought before human rights bodies such as the European Court of Human Rights (ECHR) or the UN Committee Against Torture (CAT).
17. **Sanctions regimes** were recommended as an effective yet underutilised deterrence mechanism that could significantly impact the current culture of impunity in many states. The **Panels of Experts** that support the UN Security Council (UNSC) Sanctions Committees produce a large amount of information and this should be cross-referenced with the UN Secretary General's annual report on conflict-related sexual violence. Panel members often lack specialist knowledge on CRSV and require **training** on how to interview survivors and report adequately.
18. It was suggested that **stand-alone designation criteria on sexual violence in conflict** be sought for all 14 ongoing sanctions regimes of the UNSC.<sup>7</sup> To have impact, these stand-alone criteria should be accompanied by perpetrator **listings**. Specific perpetrator listings could be taken forward now for Democratic Republic of the Congo and South Sudan, where ample information and momentum exists to inform these listings, as long as support is galvanised within the UNSC.

<sup>4</sup> See *Hissène Habré* case in Senegal

<sup>5</sup> See European Genocide Network model <http://www.eurojust.europa.eu/doclibrary/genocide-network/Pages/genocide-network.aspx>

<sup>6</sup> Modelled on the UN Human Rights Due Diligence Policy (2012) whereby any UN support to non-UN security forces cannot be provided or must stop where there are substantial grounds for believing the beneficiaries have committed or will commit war crimes and crimes against humanity, including CRSV. This policy can result in the suspension of officers allegedly involved, the designation of an investigative body or the opening of a criminal investigation and the exclusion of suspects or whole units from receiving UN support.

<sup>7</sup> Currently, only 5 out of 14 existing UN sanction regimes specify conflict-related sexual violence as a criterion – Central African Republic, Democratic Republic of the Congo, Mali, Somalia, and South Sudan. Of these, only CAR lists CRSV as a key and separate criterion.

19. The lack of UN sanctions regimes for Syria and Myanmar (Burma) was also noted, but it was acknowledged that it was unlikely the UNSC would attempt to secure standalone country-specific sanctions on conflict-related sexual violence for either of these countries.
20. The **freezing of assets** (individual, organisation and state) was discussed, including the potential for national legislative mechanisms that exercised CRSV as a trigger for confiscation proceedings. While the redistribution of assets is unlawful, it was proposed that further consideration should be given to how a percentage of the **court awards from successful proceedings** could be contributed to reparations or CRSV-related mechanisms or responses.
21. Further consideration and support should also be given to ways of **removing the UNSC veto for atrocity crimes including CRSV**, such as via the ACT Code of Conduct and the France/Mexico Veto Restraint Initiative.
22. The proposal for a **permanent, independent international investigatory body** to collect and preserve evidence of CRSV, prepare files and enable criminal proceedings, was put forward for consideration. Following precedents set by the UN Commissions of Inquiry and the new investigatory mechanisms for Syria and Myanmar, it was thought this might standardise investigations and mitigate some of the limitations of ad hoc mechanisms such as lengthy set-up time. However, several concerns were raised on the legality, feasibility and necessity of such a mandated body in practice. First, it would have to secure the cooperation of a state to enter its territory, with no guarantee of access. Second, extracting CRSV crimes from the context in which they occur can cause problems of linkage with wider crimes against humanity and war crimes. Further, such a body risks affecting victim/survivor interviews that exclude crimes not of a sexual nature (a mistake already made by international tribunals) rather than the more effective method of asking questions all together.
23. The potential for duplication of the work of the ICC was also raised as a significant concern. With regard to terminology, it was unclear exactly what crimes would be looked at, and the importance of understanding CRSV in its structural entirety was raised. A lack of clarity on the relationship between such a body and other mechanisms such as the **UN's Special Representative of the Secretary-General (SRSG) on Sexual Violence in Conflict** was also of concern. Overall, it was agreed that the international community should focus on **strengthening existing mechanisms**, including **ICC referrals**, to improve justice and accountability for survivors of CRSV and **focus resources on the provision of services for survivors and survivor advocacy networks**.
24. Nevertheless, the non-investigatory aspects of the proposal were welcomed, including potential **management of a fund for survivors and their families** and the establishment of a 'Centre of Excellence'. Such a centre could act as **an advocacy and information hub for learning, sharing of technical expertise and best practice**. It could connect and provide training and information to institutions, judges, academics, community leaders, survivor advocates and survivors themselves. It could provide capacity building for local NGOs and CSOs, as well as states and international agencies, to help develop their long-term capabilities on the collection of international standard evidence admissible in court and useable for future prosecutions. Such a centre would be a predominantly virtual peer-network but would require a minimal Secretariat with a physical presence. Those with broader human rights expertise should be involved and it was suggested that the UK-led PSVI launch this hub then get buy-in from governments, civil society and others to run as an independent facility outside of any multilateral governance structure.

## Recommendations:

- Seek an advisory opinion from the International Court of Justice (ICJ) clarifying the scope of states' obligations regarding sexual violence crimes, including on amnesties and universal jurisdiction.
- Implement due diligence policies and vetting processes to remove suspected perpetrators of sexual violence in conflict from positions of power.
- Use sanctions regimes by seeking standalone designation criteria on sexual violence in conflict for all fourteen ongoing regimes of the UNSC.
- Accompany these with perpetrator listings, including taking this forward for DRC and South Sudan as a first step.
- Consider country-specific sanctions for Syria and Myanmar with a standalone CRSV criterion.
- Train UNSC Sanctions Panels of Experts on CRSV.
- Consider possible linkages between sanctions listings and the freezing of assets (individual, organisation and state), including the potential for national legislative amendments that exercise CRSV as a trigger for confiscation proceedings.
- Consider how a percentage of court awards from successful criminal proceedings could be contributed to reparations or CRSV-related mechanisms or responses.
- Consider new, and support existing ways, to remove the UNSC veto for atrocity crimes including CRSV, such as via the ACT Code of Conduct and the France/Mexico Veto Restraint Initiative.
- Consider the creation of an advocacy and information hub on CRSV for learning, sharing of technical expertise and best practice.
- Consider the creation of a more permanent technical body to enable CRSV criminal proceedings.

## Strengthening existing mechanisms

25. Recent problems with existing accountability mechanisms were acknowledged and explored, with failed international criminal justice proceedings often resulting from either insufficient investigations or inexperienced prosecutors. **Definitions** within the International Criminal Court (ICC) Rome Statute were highlighted as a particular problem, namely 1) "gender" - which may be conflated with sexual identity and limits the ability of certain communities to access justice, e.g. the LGBT community and 2) "sexual slavery" – which requires **indicia of an act of a sexual nature** and so remains tied to rape. The latter thus excludes victims who have suffered through other means e.g. control of reproductive capacity or gynaecological experiments. Other issues and definitions are problematic or even absent from the Statute. The ICC conflates "slavery" with the "slave trade", despite the latter being less burdensome to prove, as well as vital to understanding how, for example, Yazidi women and children were enslaved.
26. Customary International Law (CIL), including *jus cogens*<sup>8</sup> norms, needs to be strengthened to include more *opinio juris*<sup>9</sup> and state practice on CRSV. As one panellist noted, "We should not have had to litigate the common sense position that children within armed groups cannot be raped".

"If you don't ask who else was in the room at the same time, you may not hear about the children who were also raped."

<sup>8</sup> Legal norms accepted by the international community of states from which no derogation is permitted e.g. genocide, slavery, the slave trade.

<sup>9</sup> The belief of states that their practice is required by international law.

27. Recent prosecutions at local courts against low-key defendants<sup>10</sup> were welcomed. Nevertheless, the existence of **inherent stigma** within criminal justice systems was acknowledged, in numerous cases affecting both the treatment of victims and the outcomes of prosecutions against perpetrators. Sexual violence in general remains misunderstood by judiciaries, with existing community-level stigmas often being perpetuated in court. Some groups may face additional intersectional discrimination e.g. the LGBT community. As such, **training of judges and prosecutors** is necessary to change attitudes and behaviours and a **review of criminal justice systems** should be carried out to see where changes can be made.
28. Over-, under- and duplication of **documentation of CRSV crimes** was highlighted as a critical issue that has led to the re-traumatisation of survivors and the *do no harm* principle not being upheld. Documentation practices at Cox's Bazar have shown that better **coordination structures** and **improved interface with humanitarians and human rights advocates** is urgently needed, with coordination mechanisms a potential requirement of donor funding.
29. The International Protocol on Documentation and Investigation of Sexual Violence in Conflict (IP2)<sup>11</sup> contains information on how to de-conflict methodology of documentation of CRSV for non-criminal evidentiary purposes, yet this is not well-known and inconsistently implemented. Short, clear **deconfliction protocols** should be made part of all investigative programme design, to be implemented and evidenced through monitoring and evaluation indicators. Further, the *purpose* of documentation should constantly be questioned, as not all actors should be documenting CRSV crimes, and mapping is required to ensure **role clarity**.
30. **Evidence gathering** should follow stringent ethical guidelines e.g. children should not be interviewed when there are insufficient resources to ensure psychosocial support. Strict witness selection criteria should be implemented and limits enforced on the number of crime-based interviews investigators carry out. Specific "linkage" evidence should be gathered, e.g. what language the perpetrator speaks, what uniform they wear etc. as useful **corroboration evidence**. The concept of an '**evidence pyramid**' was put forward with three levels of evidence gathering. At the top sits survivor testimony, underneath documents (e.g. orders given to commit acts of a sexual nature, evidence of a policy linked to CRSV or genocide etc.) and non-survivor testimony (including insiders). At the bottom of the pyramid lie types of evidence that show the scale and significance of a crime, e.g. pattern evidence, medical/legal and impact evidence. Major arrests in France and Germany have been made based partly on evidence collected using this model. **Trained translators** sensitive to correct methods of questioning are crucial when investigating CRSV so as to ensure open and detailed responses.
31. Implementation of the **Murad Code** to enhance co-ordination and improve international standards for gathering evidence from survivors of sexual violence is considered crucial. This would help safeguard survivors, ensuring fully informed consent, safe support service referral pathways, risk assessments, confidentiality and security measures. Contractual adherence to this ethical code of conduct should be incorporated into **donor funding requirements** to necessitate compliance.
32. **Shifting the focus away from testimony** was also noted as necessary if the needs of survivors are to be met and re-traumatisation avoided. Participants were reminded that not all survivors of sexual violence wish to pursue criminal justice proceedings, and may just want to be listened to and/or have their views heard. For those that do want to, however, alternative sources of evidence from expert witnesses such as **forensic and medical expert documentation** may be more appropriate.

<sup>10</sup> Trial at Bosnian State Court of the trial of Dušan Spasojević, a former Bosnian Serb soldier suspected of rape in 1992

<sup>11</sup> 2<sup>nd</sup> Edition (2017)

33. The disadvantages of parachuting in foreign investigators for short-term periods and the need to build local/national capacity were also highlighted. Lessons were learned from organisations working in Iraq and Syria, where **local investigative cadres** trained in gender-based violence had a greater understanding of risks and consequences (e.g. with the discovery of prevalent male sexual violence in Syria).

### **Recommendations**

- Revisit/enhance definitions of CRSV crimes in the ICC Rome Statute.
- Develop legal definitions and jurisprudence by national courts and tribunals other than the ICC.
- Conduct a review of criminal justice systems to identify inherent stigma and isolate where changes can be made.
- Deliver training for judges and prosecutors in CRSV to tackle related stigma.
- Improve coordination structures and interface with humanitarians and human rights advocates.
- Establish deconfliction protocols as part of investigative programme design, implemented and evidenced through monitoring and evaluation indicators. Consider actor mapping to ensure role clarity.
- Collate best practice guidelines on evidence gathering for CRSV investigations and implement as part of the Murad Code. Design donor funding requirements to incorporate the Murad Code once established.
- Endorse and encourage the use of alternative forms of evidence from expert witnesses such as forensic and medical expert documentation.

### **Stephanie Shillinglaw**

Wilton Park | September 2019

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