



Guide to Teaching the Educational Course

“Conflict-Related Sexual Violence”

February 2026

Путівник з викладання освітнього курсу “Сексуальне насильство, пов’язане з конфліктом” опубліковано в рамках проекту “Координовані дії громадянського суспільства для забезпечення справедливості, притягнення до відповідальності та постійної підтримки тих, хто пережили сексуальне насильство, пов’язане з конфліктом, в Україні”, який реалізується Асоціацією жінок-юристок України “ЮрФем”, Truth Hounds, the International Partnership for Human Rights (IPHR), ГО “Блакитний птах”, Fight for Rights за підтримки United States Department of State Bureau of Democracy, Human Rights and Labor (DRL).

Non-Governmental Organization
“Ukrainian Women Lawyers Association “JurFem””

Guide to Teaching the Educational Course “Conflict-Related Sexual Violence”

Teaching and Methodological Handbook

Electronic Educational Publication

Edited by Olena Kharytonova

Kharkiv
Pravo
2026

G94 **Authors : Albina Basysta, Olha Poiedynok, Anastasiia Slobodianyuk, Olena Kharytonova, Kateryna Shunevych**

G94 **Guide for Teaching the Course "Conflict-Related Sexual Violence : Teaching and Methodological Handbook" : Electronic Educational Publication / [A. Basysta, O. Poiedynok, A. Slobodianyuk, O. Kharytonova, K. Shunevych ; ed. by O. Kharytonova] ; UN Women ; Ukrainian Women Lawyers Association "JurFem". – Kharkiv : Pravo, 2026. – 178 p.**

ISBN 978-617-8617-32-5

This Guide is an interdisciplinary teaching and methodological handbook devoted to the theoretical and practical foundations of addressing conflict-related sexual violence in the context of the Russian Federation's war against Ukraine. It integrates approaches from international and national law, gender studies, and trauma studies, examines international standards, case law, the specific features of the Ukrainian pre-trial investigation of such crimes, and restorative justice approaches. The publication also provides methodological recommendations for trauma-informed and survivor-centred teaching and the professional training of specialists.

The Guide will be useful for lecturers and instructors at higher legal education institutions, students, legal professionals, human rights practitioners, law enforcement officers and judges, as well as everyone working in the fields of human rights protection and the documentation of international crimes.

UDC 341.4:[341.322.5:343.541]"364"(075.8)

The Guide to Teaching the Educational Course “Conflict-Related Sexual Violence” was developed by Ukrainian Women Lawyers Association “JurFem” and UN Women Ukraine with the support of the UN Action Against Sexual Violence in Conflict (<https://www.stoprapenow.org/>).

The UN Action Against Sexual Violence in Conflict supports the Interagency Project “Strengthening National and Community-Based Conflict-Related Sexual Violence Prevention and Response Mechanisms in Ukraine” (UNited Action to Empower Survivors of CRSV). The project is implemented by the UNFPA (United Nations Population Fund), UN Women, the International Organization for Migration (IOM), the United Nations Development Programme (UNDP), the World Health Organization (WHO), and the United Nations Office on Drugs and Crime (UNODC), in cooperation with the Government Commissioner for Gender Policy (beneficiary of international technical assistance) and the Office of the Deputy Prime Minister for European and Euro-Atlantic Integration of Ukraine.

The views, conclusions, or recommendations expressed in this publication are those of the authors and do not necessarily reflect the views of UN Women or JurFem. The authors of this publication bear sole responsibility for its content.

The Non-Governmental Organization Ukrainian Women Lawyers Association “JurFem”, founded in 2017, is an association of female legal professionals, including attorneys, lawyers, judges, law enforcement officers, lecturers, legal experts, and law students. Since the beginning of the full-scale invasion of Ukraine by the Russian Federation in 2022, JurFem has been particularly active in combating and preventing conflict-related sexual violence (CRSV). The organization contributes to the development of CRSV investigation standards and relevant legislation in this field, develops and advocates for survivor-centered justice approaches, and provides high-quality legal aid to CRSV survivors through the “JurFem: Support” free legal aid line.

UN Women is the United Nations organization that advances gender equality and women’s empowerment. Since 2016, UN Women Ukraine has built strong partnerships and achieved significant

results in implementing its triple mandate in development and humanitarian response. Combating CRSV and providing support to its survivors constitute thematic areas of UN Women Ukraine's work.

The Guide to Teaching the Educational Course "Conflict-Related Sexual Violence" is a handbook that provides a comprehensive overview of the theoretical, legal, and methodological principles for studying CRSV in the context of the Russian Federation's war against Ukraine. The publication combines approaches from gender studies, international public, humanitarian, and criminal law, international human rights law, national criminal law and procedure, and trauma-informed research. It offers a coherent interdisciplinary framework for shaping a human-centered and survivor-centered legal perspective.

The publication covers conceptual and methodological principles for understanding CRSV as a structural gendered phenomenon, the evolution of international legal standards and institutional mechanisms for combating and preventing CRSV, the development of international case law regarding the classification and prosecution of CRSV crimes, specifics of Ukrainian pre-trial investigations with a focus on the survivors' safety, rights, and vulnerabilities, restorative justice approaches, interim reparations, and work with various groups of survivors, including children born of CRSV.

The Guide includes methodological guidelines, practical exercises, advice, and recommendations for trauma-informed communication and creation of a safe educational environment. The materials can be used both to teach a full course and to integrate individual modules into relevant curricula on human rights. The publication facilitates the training of specialists capable of providing ethical, sensitive, and evidence-based legal responses to CRSV crimes, as well as of understanding critically and developing coherent and comprehensive combat and prevention policies.

Authors

Olena Kharytonova (Guide's editor, author of Section I "Gender-Sensitive Justice and Conflict-Related Sexual Violence: General Methodological and Legal Framework"), PhD in Law, Associate Professor at Yaroslav Mudryi National Law University, Adviser to the Minister of Education and Science of Ukraine on ensuring equal rights and opportunities for women and men, and member of GREVIO and JurFem.

Olha Poiedynok (author of Section II "Conflict-Related Sexual Violence in International Law: Regulatory and Institutional Infrastructure for Prevention and Response"), PhD in Law, Associate Professor of the Department of International Law at the Educational and Scientific Institute of International Relations of Taras Shevchenko National University of Kyiv, attorney, and member of JurFem.

Anastasiia Slobodianyik (author of Section III "International Humanitarian Law and International Criminal Law: Key Aspects of CRSV Case Law Development"), international lawyer and Manager of Academic Community Development at JurFem.

Kateryna Shunevych (author of Section IV "Procedural Specifics of Pre-Trial Investigation of Criminal Offenses Related to Conflict-Related Sexual Violence: International Standards and National Challenges"), PhD in Law, Teaching Assistant at the Department of Criminal Procedure and Criminalistics of the Faculty of Law at Ivan Franko National University of Lviv, and Head of the Analytical Center "JurFem".

Albina Basysta (author of Section V "Integrating Restorative Justice Principles into the System of Work with CRSV Survivors: Urgent Interim Reparations and Other Prospects"), PhD in Law, Associate Professor of the Department of International Law at the Educational and Scientific Institute of International Relations of Taras Shevchenko National University of Kyiv, human rights defender, co-author of Law of Ukraine "On the Legal and Social Protection of Survivors of Sexual

Violence Related to the Armed Aggression of the Russian Federation Against Ukraine, and the Provision of Urgent Interim Reparations to Them” No. 4067-IX of November 20, 2024, and member of the Interagency Commission on the Application and Implementation of International Humanitarian Law in Ukraine.

Table of contents

Authors	7
Table of contents	9
Foreword. Legal Competence Against CRSV: A Vision for Transforming Educational Goals	11
Editorial Notes	17
 I. Gender-Sensitive Justice and Conflict-Related Sexual Violence: General Methodological and Legal Framework	 24
Conceptual Basis	26
Introduction	26
1. Gender, Law, and CRSV Social Origin	27
2. Conflict-Related Sexual Violence (CRSV) in International and National Legal Regulation	29
3. Modalities of CRSV and Its Determining Factors	36
4. Consequences of CRSV for Individuals, Communities, and Society	38
5. The Ukrainian Context: Policies and Institutional Mechanisms for Combating CRSV	40
Practical Exercises and Methodological Guidelines	55
Recommended Reading List	66
 II. Conflict-Related Sexual Violence in International Law: Regulatory and Institutional Infrastructure for Prevention and Response	 67
Conceptual Basis	69
Introduction	69
1. A Brief History of International Legal Regulation of the Prevention and Counteraction of CRSV. Key International Instruments in the Field of Prevention and Counteraction of CRSV	69
2. The International Institutional Component of the	

Prevention and Counteraction of CRSV	76
3. Contribution of International Criminal Tribunals and the International Criminal Court to the Development of the Modern Approach to CRSV and Accountability	78
4. Correlation and Interplay Between Different International Legal Regimes Regarding CRSV	81
Practical Exercises and Methodological Guidelines	83
Recommended Reading List	90

III. International Humanitarian Law and International Criminal Law: Key Aspects of the Development of Case Law on CRSV

Conceptual Basis	94
Introduction	94
1. International humanitarian law as the basis for the development of the modern system for combating CRSV	96
2. Evolution of Approaches to CRSV Classification: The Contributions of the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia	100
3. The Development of Current International Case Law Regarding CRSV Through the Lens of the Case Law of the International Criminal Court	104
Practical Exercises and Methodological Guidelines	109
Recommended Reading List	116

IV. Procedural Specifics of Pre-Trial Investigation of Criminal Offenses Involving Conflict-Related Sexual Violence:

International Standards and National Challenges

Conceptual Basis	119
Introduction	119
1. Authorities Involved in the Pre-Trial Investigation of Conflict-Related Sexual Violence and Their Powers	121
2. Victim Status	123
3. Striking a Balance Between the Considerations of the Pre-Trial Investigation and the Victims' Interests During Investigative and Procedural Actions	126

Practical Exercises and Methodological Guidelines	131
Recommended Reading List	139

V. Integrating Restorative Justice Principles into the System of Work with CRSV Survivors: Urgent Interim Reparations

and Other Prospects	141
Conceptual Basis	143
Introduction	143
1. Restorative Justice in the International Legal Context: Historical Development, Legal Substance, and Key Principles	143
2. Implementation of Restorative Justice Principles in Cases Involving CRSV Survivors	155
3. Urgent Interim Reparations as Restorative Justice Tools: International Standards and Ukraine's Experience as the Beginning of the Journey to Restoring the Dignity of CRSV Survivors	161
4. Children Born of War and Children Born of CRSV: From Overcoming Stigma to Ensuring Rights	164
Practical Exercises and Methodological Guidelines	167
Recommended Reading List	174
Student Performance Evaluation Criteria	176

Foreword. Legal Competence Against CRSV: A Vision for Transforming Educational Goals

Justice is multidimensional and certainly not limited to court decisions. It is also about recognition, trust, support, protection, and about fair reparation, after all. I would very much like law schools to demonstrate and teach how justice can be empowering and how it can encourage survivors of conflict-related sexual violence to achieve post-traumatic growth. I wish that the “person first” principle would shape future lawyers, judges, and law enforcement officers. First of all, the justice system must hear and see the person, rather than merely the legal norm, the proceedings, the evidence, the status, or the source of information.

By maintaining this perspective today, and recognizing that justice and prosecution of the Russian Federation and its military personnel are an integral part of building a sustainable and just peace in Ukraine, the Ukrainian legal community bears great responsibility and, at the same time, has the opportunity to shape a model of restorative justice that will be specifically effective for us and, accordingly, to pave the way for establishing Russia’s international responsibility through both judicial and non-judicial mechanisms to protect the rights of CRSV survivors.

When teaching students how to apply specific legal norms, it is essential to explain what impact their approaches will have on an individual and their well-being, how they can transform these norms, make them “alive,” and how their expertise can explore new horizons toward restoring justice and prosecuting the Russian Federation for all the evil done.

One of the non-pecuniary and symbolic forms of reparations for CRSV survivors is satisfaction. I am convinced that your efforts to raise awareness of the protection of CRSV survivors in law faculty

classrooms are a clear manifestation that this is truly being realized in Ukraine.

Viktoriia Karpa

Deputy Head of NGO “JurFem,”

Head of the “JurFem: Education” Center, and lawyer

The full-scale war in Ukraine has brought to the forefront issues that might have previously seemed peripheral to legal education. CRSV has become one of the most painful and complex challenges of our time, both for the human rights community and the justice system as a whole. We encounter the consequences of this violence every day in our work at Sema Ukraine. We see how the lack of specialized knowledge among legal professionals – from attorneys to judges – creates additional barriers for survivors.

The lack of proper training among professionals leads to repeated victimization, procedural errors, and survivors’ general distrust of the justice system. Ukraine is currently the focus of unprecedented international attention in the context of documenting war crimes. The International Criminal Court, UN missions, and the national system require the engagement of Ukrainian legal professionals with specialized expertise in CRSV. We risk losing the opportunity to effectively document crimes and ensure justice at both the national and international levels without systematic training of such specialists.

Access to justice for CRSV survivors depends not only on the quality of legislation but also on whether legal professionals are ready to handle such cases. This requires an understanding of psychological trauma, knowledge of international standards for investigating crimes of sexual violence, the ability to conduct trauma-informed interviews, and an understanding of gender aspects. Unfortunately, these competencies often remain outside the scope of traditional law school curricula. It is also important to note that the issue of CRSV is

not limited to wartime. All the above mentioned competencies will be necessary in peacetime as well. They form the basis for building a legal system oriented toward the protection of human rights and the dignity of every individual. CRSV integration into legal education (whether as a separate discipline or as part of other disciplines) is a necessary condition for training specialists capable of ensuring effective protection of survivors' rights. Students who master this knowledge during their studies will be able to provide professional support for CRSV cases.

Decent treatment of survivors of wartime sexual violence demonstrates that the legal system and society as a whole are mature. We are convinced that this topic's integration into curricula is an investment in the future of the Ukrainian legal profession and justice for those who need it most.

Iryna Dovhan

Head of Sema Ukraine

Conflict-related sexual violence is a war crime that is often invisible. Survivors experience trauma and are scared to speak about their experiences. However, we cannot allow the perpetrators to remain unpunished, nor can we allow Russia, the aggressor state, to continue attacking civilians in the temporarily occupied territories.

Investigation of CRSV crimes saves lives and helps restore justice. By speaking about these crimes, we support survivors, break stereotypes, and call on society and the government to act, and on the world to respond to the numerous cases of CRSV committed by the Russian military and representatives of Russian authorities. Only together can we stop the violence and help those who need protection.

The qualified work of legal professionals and law enforcement agencies must be directed toward those who have suffered. It

is crucial not only to investigate the crime but also to provide assistance by offering information, contacts, and advice, and not leaving survivors alone with their physical and psychological trauma.

I know how painful and complex the topic of CRSV is; however, I am confident that together we can restore survivors' sense of freedom, safety, and strength.

Liudmyla Huseinova

Head of “Numo, Sisters!”

The Guide to Teaching the Educational Course “Conflict-Related Sexual Violence” developed by the Ukrainian Women Lawyers Association “JurFem” with the support of UN Women is a major milestone in joint efforts to strengthen Ukrainian legal and academic institutions in response to profound and long-term consequences of CRSV. For the first time, law schools across the country will gain access to a comprehensive and practice-oriented Guide designed specifically for lecturers teaching the next generation of lawyers, prosecutors, judges, and human rights defenders.

UN Women is proud to have played a key role in creating this Guide. Our participation in the national architecture for responding to CRSV and close cooperation with networks of CRSV survivors and women's non-governmental organizations have repeatedly demonstrated that building resilient, survivor-centered justice systems begins with awareness-raising and high-quality education. We are filling a critical gap in Ukraine's legal education by equipping law lecturers with tools to teach international standards, gender-sensitive approaches, ethical interaction with survivors, and the specifics of investigating and prosecuting such crimes.

I am particularly grateful to SEMA Ukraine and Numo, Sisters!, the networks of Ukrainian women who suffered from CRSV, for their contribution. Their leadership, courage, and profound understanding

of the issue remind us that every legal reform, educational program, and policy must be based on the experiences and knowledge of those whose rights we seek to protect and restore. Embedding dignity and justice at the core of legal education is a guarantee of Ukraine's future as a state that consistently upholds the rule of law principles.

As Ukraine continues to promote a comprehensive and survivor-centered approach to CRSV, I hope this Guide will become a cornerstone for educational institutions across the country, supporting lecturers, inspiring students, and contributing to national recovery. UN Women remains committed to its partners in government, non-governmental organizations, survivor networks, and the academic community as we work together to strengthen accountability, protect and restore rights, and ensure that survivors' voices lead the way.

Germán Vega Cortés

Protection Adviser, UN Women

List of Abbreviations

IDP	Internally displaced persons
GBV	Gender-based violence
ECOSOC	United Nations Economic and Social Council
ICL	International Criminal Law
ICC	International Criminal Court
IWG	Interagency Working Group on Combating Sexual Violence Related to Russia's Armed Aggression Against Ukraine and Assistance to the Survivors
UN	United Nations
CRSV	Conflict-related sexual violence
OHCHR	Office of the United Nations High Commissioner for Human Rights
AFRF	Armed Forces of the Russian Federation
EU	European Union
GSV	Global Survivors Fund

Editorial Notes

The educational course “Conflict-Related Sexual Violence” was created in response to the painful and unprecedented challenges faced by Ukrainian society as a result of the Russian Federation’s war against Ukraine. Armed aggression, numerous cases of sexual violence against civilians and servicepersons, and the staggering number of war crimes have confronted Ukrainian legal education with challenges it has never encountered before. This course is designed to support the development of competencies necessary for a sensitive and professional response to crimes of conflict-related sexual violence (CRSV), as well as to strengthen the justice system in the context of current challenges at large. Today, law schools are not merely spaces for learning norms and procedures. They are places where a sensitive, humane, and professionally responsible legal community is established. This community is capable of seeing the person, their experience, trauma, dignity, and right to justice behind every legal structure.

The Guide to Teaching the Educational Course “Conflict-Related Sexual Violence” addresses these needs and is designed primarily as a resource for lecturers at law faculties.¹ The course was originally conceived as a component of the Law degree programs and can be integrated into courses on international public and humanitarian law, criminal law and procedure, human rights, or into interdisciplinary gender studies. The team of authors recognizes that the issue of CRSV extends beyond the strict scope of legal training, so the Guide will also be useful to a broad community of specialists working with CRSV in human rights, social, psychological, and analytical fields. The Guide proposes organizing the educational process within a human-centered perspective, with particular recognition of the experiences and vulnerabilities of CRSV survivors.

¹ The Guide is based on the legal framework applicable as of December 1, 2025.

About the Guide

The content of the Guide is structured to provide lecturers with clear conceptual guidelines, methodological tools, and practical materials necessary for teaching the sensitive and complex topic of CRSV.

The course aims to foster a comprehensive interdisciplinary understanding of CRSV as a phenomenon with legal, social, political, and cultural dimensions. Its goal is to provide students with theoretical, analytical, and practical tools needed to comprehend the structural causes of CRSV, its specific manifestations, and mechanisms for institutional response, rehabilitation, and survivor support.

The present state of education constitutes a complex mosaic of various concepts, approaches, and methods. Many learning models emerge at their intersection. This Guide suggests using the opportunities of the learning environment to develop teaching approaches that are sensitive to the complexity of the topic and the experiences of CRSV survivors.

Section I² establishes a general methodological and legal framework for understanding CRSV, based on an interdisciplinary approach that combines gender theory, international human rights law, international criminal law, national criminal law, and critical studies of sexual violence and trauma. Particular attention is paid to conceptualizing CRSV not only as individual crimes but as a structural phenomenon closely connected with the gendered nature of societies, gender power dynamics, wartime challenges, social inequalities, and the vulnerabilities of survivors.

Section II provides a comprehensive overview of the international legal regulation of the prevention of and response to CRSV from historical development to its current state and the role of international judicial institutions. It emphasizes key international instruments in this field and their most significant provisions, the importance of institutional infrastructure in shaping modern approaches to CRSV

² Each of Sections I–V may be considered as a separate module.

and accountability for it, as well as the correlation and interplay between different international legal regimes regarding CRSV.

Section III analyzes the evolution of case law within international humanitarian and criminal law, including the case law of the International Criminal Court and ad hoc tribunals, which has contributed to engendering standards for the classification and prosecution of CRSV crimes and formed an approach emphasizing the gendered nature of such acts.

Section IV focuses on the procedural specifics of pre-trial investigations of criminal offenses involving CRSV in Ukraine. Particular emphasis is placed on the actors involved in such criminal proceedings, their powers, the rights and safety of victims, confidentiality, and the prevention of secondary trauma, while balancing the considerations of the pre-trial investigation and victims' interests.

Section V emphasizes the possibilities of restorative justice in dealing with survivors. This section is based on the principles of restorative justice in the theory and practice of international legal regulation. They determine a rethinking of traditional justice models – from punitive to restorative. Particular attention is given to the implementation of restorative justice approaches in cases of CRSV. The section examines urgent interim reparations through the lens of international standards and Ukrainian experience. It highlights complex issues concerning the experiences of children born of war and those born of CRSV.

How to Use This Guide

This publication combines *academic, methodological, and practical approaches*.

It provides:

- A clear conceptual basis for academic teaching of relevant topics.
- Methodological guidance for course structure and teaching logic.
- Examples of practical exercises, assignments, and case studies for each topic.
- Detailed recommendations on how to hold practical classes, including principles of a safe educational environment, trauma-informed communication, and moderation of sensitive discussions.
- Sample presentations for each topic and an indicative list of recommended literature.
- Student performance evaluation criteria.
- Flexible scenarios that allow the materials to be adapted to different audiences and varying academic workloads.

Flexible Use

The Guide is designed to enable lecturers to:

- Teach a comprehensive course on CRSV that may be a standalone educational component of the Law degree program.
- Integrate individual modules into existing courses, such as international humanitarian law, international criminal law, criminal law, criminal procedure, gender studies, or human rights subjects.

This makes it possible to promptly and effectively enhance university curricula where it relates to war crimes and other international crimes, human rights, and survivor support. The recommended duration for each module is 4–6 academic hours of lectures and 4 academic hours of practical sessions. However, this timing can be adjusted to meet the needs of each educational audience.

Course Elements as Local Consolidation Nodes for Methodological Innovation

Individual course modules (sections) may serve as local consolidation nodes for methodological innovation within a broader educational context. These components:

- Introduce ethically sensitive approaches to dealing with traumatic topics.
- Provide an environment for balanced reflection and professional decision-making.
- Demonstrate how to improve teaching on complex topics without compromising academic rigor.
- Serve as examples of how local course changes can influence overall educational practices.

Such modules offer tools that foster a responsible and sensitive professional community and may strengthen the development of gender-sensitive regulatory and institutional models of responding to CRSV and other international crimes.

Designing Educational Environment from a Survivor-Centered Perspective

The creation of an educational environment that respects the survivors' dignity, safety, and experiences is a key principle of the course. This involves:

- Avoiding secondary traumatic stress
- Using evidence-based sources and accurate terminology
- Ensuring opportunities for safe discussion of sensitive issues
- Fostering ethical responsibility among all participants in the educational process.

This approach facilitates a coherent educational space to train specialists capable of acting based on an evidence-based scientific approach, ethics, and respect for human dignity.

Why This Matters Today

The issue of CRSV has ceased to be theoretical. It has become a part of contemporary Ukrainian reality requiring professional documentation, classification, investigation, and explanations of what people endured during the war. To achieve this, teaching staff should, apart from having knowledge, take profound responsibility for developing the ability of future professionals to work with complex testimonies, make legal and ethical decisions, avoid re-traumatization, and direct their efforts toward the restoration of justice.

The course content focuses on developing the capacity to critically analyze the contexts in which CRSV occurs, assess the political, legal, social, and cultural conditions of its emergence, and understand the diversity of possible response and prevention models. Particular attention is paid to fostering professional agency, i.e., the ability to make informed decisions in complex situations where legal, ethical, and humanitarian factors intersect. Designing the educational environment using this Guide will not offer ready-made models of the future but will create conditions for meaningful choice, experimentation, and responsible decision-making. The educational practices presented in this course provide students with an experience of co-creating rather than employing knowledge,

paving the way for the development of individuals capable of responding to changes and initiating them.

Within this course, education is a tool for developing critical thinking and social sensitivity. The teaching solutions are designed to enhance students' ability to analyze connections between structural violence, conflict, gender inequalities, and institutional protection mechanisms. Embracing the concept of a “pedagogy of hope,” the course fosters the ability to consider legal opportunities for recovery and change even in challenging humanitarian conditions.

The team of authors hopes that this Guide will become your reliable partner in teaching, help build a professional community grounded in profound knowledge and empathy, and shape a future in which the rights of CRSV survivors are never overlooked.

Editor

Olena Kharytonova

I. Gender-Sensitive Justice and Conflict-Related Sexual Violence: General Methodological and Legal Framework

Author: Olena Kharytonova

This section establishes a general methodological and legal framework for analyzing conflict-related sexual violence (CRSV) through the lens of a gender-sensitive approach to justice. The focus is on the origins, dynamics, and forms of CRSV as a phenomenon manifesting within specific historical, social, cultural, and legal contexts. Various modalities of conflict-related sexual violence are examined: CRSV as opportunism, CRSV as a strategy, and CRSV as a practice. This section analyzes the following key factors influencing its prevalence: individual factors (the “principal-agent” concept), structural factors (the “continuum argument” concept), and group factors (the “horizontal socialization” concept).

Structural gender inequality, impunity, the specifics of military sexualized power, and the consequences of CRSV for individuals, groups, and society at large are examined through the framework of gender sensitivity and the gender blindness of the criminal justice system. This section analyzes the national and international dimensions of CRSV, considering both normative and contextual elements. The limitations and potential of criminal justice at both international and national levels have been considered, with an emphasis on the need to implement survivor-centered, trauma-informed, and intersectional approaches. Particular attention is paid to the challenges of transitional justice, evidentiary issues during wartime, overcoming sociocultural stigma and legal stereotypes, and building sustainable infrastructure to address CRSV while ensuring survivors’ rights to autonomy, dignity, and access to necessary support.

Methodology: The teaching of this topic is based on an interdisciplinary approach that combines tools from gender theory, international human rights law, international criminal law, national criminal law, and critical studies of sexual violence and trauma.

Genuine interdisciplinarity means avoiding “siloed” knowledge by using a range of research and methods that provide different angles on complex phenomena. Since this topic is specifically devoted to conceptualizing CRSV not only as individual crimes but as a structural phenomenon closely linked to the gendered nature of societies, gender power, wartime challenges, social inequalities, and survivors’ vulnerabilities, the curriculum design should include involving colleagues from other departments and fields of knowledge, exploring opportunities for cooperation with civil society and NGOs founded by or dealing with survivors, and fostering student agency while they work through the curriculum within the course implementation process (with a mandatory explanation of the “do no harm” principle). A comprehensive methodological framework that enables the analysis of CRSV as a legal, social, and gender issue while integrating recognized international standards, national practices, and principles of gender-sensitive and human-centered justice will help develop universal visions and skills necessary for working with this topic. In addition, it allows for the adaptation of the program to specific educational contexts, considering the long-term impact such education may have on the sensitization of affected societies.

Conceptual Basis

Introduction

The Russian aggression against Ukraine, which began in 2014 and later escalated into a full-scale phase in 2022, has dramatically exposed what often remains semi-visible in peacetime: structural gender inequalities, societal tolerance of harmful gender stereotypes and gender-based violence, and the vulnerability of criminal justice systems to gender blindness that prevents the administration of justice based on fairness, equality, and respect for human dignity. The opposite of gender-blind justice is **gender-sensitive justice**, which accounts for gender inequalities and the specific needs and vulnerabilities of different groups of women, men, and persons of other gender identities to ensure equal access to justice and effective protection of rights, and to prevent discrimination. Within this gender-sensitive context, CRSV appears not as a series of “exceptional” episodes of brutality but as a manifestation of a complex interplay of individual, group, and structural factors operating simultaneously. In this paradigm, CRSV emerges both as a socio-gender phenomenon derived from patriarchal structures, militarized forms of masculinity, a culture of impunity, and social inequalities, and as a legal phenomenon expressed through a system of relevant legal norms, classifications, procedural decisions, policies, practices of prosecution and reparations, etc.

A refusal to perceive this phenomenon solely as a manifestation of wartime and war space is an important methodological prerequisite for understanding the CRSV and developing a system to counter it and respond to it. Armed conflict radicalizes existing hierarchies and power asymmetries rather than creating them from scratch. Therefore, an analysis of CRSV is impossible without looking into gender regimes, economic and social divides, and daily practices of gender-based violence that already existed in particular societies.

1. Gender, Law, and CRSV Social Origin

For centuries, sexual violence was considered an inherent part of war – a trophy, a form of revenge, or a way to humiliate the enemy through “its” women. Patriarchal perceptions of the female body as an object of possession and control provided a basis for perceiving rape as the symbolic destruction of the opponent’s power.

The evolution of approaches to understanding war itself and the development of the “outlawry of war” concept (V. Pella), which contributed to shifts in international criminal law, and the conceptualization of sexual violence in conflict as an extreme form of the same gender-based violence that exists in peacetime society (S. Brownmiller), enabled the emergence of feminist jurisprudence in international war tribunals at the turn of the 20th and 21st centuries. During this period, legal mindset transformations occurred, leading to the recognition that war does not create hatred out of nothing; rather, it radicalizes existing sexist attitudes, reinforces them through militarized discipline and impunity, and transforms sexual violence into a weapon.

Modern societies are deeply gendered: the gendered division of labor in employment and domestic work, political representation, access to resources, and the practice of justice all reflect and reproduce historically established models of gender hierarchy. Within these models, women have historically occupied subordinated positions or have been disproportionately affected. As a social institution, law is often exposed to the risk of legal codification of harmful gender stereotypes and biases, mirroring entrenched societal perceptions. Legal practices sometimes construct a certain “ideal type” of subject (predominantly male, ethnically, socially, and sexually dominant). Women’s behavior is assessed through the lens of moral judgments rather than human rights, and procedures are applied that reinforce stereotypes about “appropriate” female and male behavior. This is particularly acute in cases involving sexual offenses. Norms intended to protect sexual autonomy may become

a source of re-victimization if the focus of the investigation shifts to the victim's behavior, their moral character becomes the subject of scrutiny during the interrogation, or there is an expectation that they conform to the image of an "ideal victim" who is passive, perfect, and has no contradictions in their testimony.

The gendered effects of the war in Ukraine have created a situation in which the war simultaneously:

- Expanded women's participation in the security sector, volunteering, and social and political processes;
- Increased inequality in access to paid labor and intensified the burden of unpaid care work;
- Resulted in rising unemployment among women, especially displaced persons;
- Caused a surge in domestic violence and other forms of gender-based violence (GBV).

In this context, CRSV must be understood as an extreme manifestation of GBV, where structural power imbalances and economic vulnerability combine with militarized masculinity, a culture of impunity, and the risks of gender-blind justice.

Gender-sensitive justice demonstrates that the application of criminal law to cases of sexual violence cannot be reduced to a strictly technical legal exercise. It requires reflection on which gender structures are embedded in the norms, how these norms function in practice, whom they "see/fail to see," how the configuration of power affects particular legal decisions, and whether "protection" turns into victim-blaming and the punishment of survivors. Even the current legal framework allows for the adoption of decisions that prioritize the experiences of female, male, and LGBTIQ+ survivors of CRSV in a fundamentally different way. Sexual violence against men is often aimed at destroying notions of masculinity, strength, and bodily control. It operates through humiliation and stigma,

reinforced by homophobic attitudes. Violence against LGBTIQ+ persons combines gendered and sexual forms of persecution and complicates access to justice due to additional stigmatization. A gender-sensitive interpretation of legal provisions can change the content of judgments and the symbolic function of justice, affirming anti-discrimination values and societal principles.

2. Conflict-Related Sexual Violence (CRSV) in International and National Legal Regulation

According to ICL, CRSV forms include:

- rape;
- sexual slavery;
- enforced prostitution;
- forced pregnancy;
- forced abortion;
- forced sterilization;
- forced marriage;
- any other form of sexual violence of comparable gravity (including sexualized torture, female genital mutilation, forced stripping, etc.).

According to the 2019 report of the UN Secretary-General António Guterres marking the 10th anniversary of the mandate of the Special Representative on Sexual Violence in Conflict, the link between sexual violence and conflict may be evident in the profile of the perpetrator, who is often affiliated with a State or non-State armed group, which includes terrorist entities; the profile of the survivor, who is frequently an actual or perceived member of a

political, ethnic, or religious minority, or targeted on the basis of actual or perceived sexual orientation or gender identity; the climate of impunity, which is generally associated with State collapse, cross-border consequences, such as displacement or trafficking, and/or violations of the provision of a ceasefire agreement. The term also encompasses trafficking in persons for sexual violence or exploitation when committed in situations of conflict.

In December 2022, the Office of the Prosecutor of the International Criminal Court (ICC) presented an updated Policy on the Crime of Gender Persecution³, based on the 2014 Policy Paper on Sexual and Gender-Based Crimes⁴. In December 2023, the Office of the Prosecutor of ICC under Karim Khan introduced a new Policy on Gender-Based Crimes (crimes involving sexual, reproductive, and other GBV)⁵, modifying its approach to prosecuting sexual and gender-based violence. There has been a shift toward using the term “gender-based crimes,” which better reflects the modern understanding of these forms of harm. The Office also defined its operational principles for addressing such violence, prioritizing a “survivor-centered approach,” a “trauma-informed approach,” and an “intersectional approach.”

The updated Policy introduced several conceptual shifts, including consistent integration of a gender perspective into all aspects of its work, noting that all crimes under the Rome Statute are potentially gendered; a broad understanding of GBV as an umbrella term for any harmful act that is perpetrated based on socially ascribed differences related to gender, usually because of a person’s actual or perceived gender, sex, or sexual orientation; the integration of an intersectional approach through the analysis of the intersection of sex/gender with race, ethnicity, age, disability, sexual orientation, etc.; and the obligation for the Office of the Prosecutor to systematically identify and document the gender dimension of crimes during investigations. The Prosecutor hopes that this Policy

³ **Policy** on the Crime of Gender Persecution. OTP ICC. December 2022.

⁴ **Policy** Paper on Sexual and Gender-Based Crimes. OTP ICC. June 2014.

⁵ **Policy** on gender-based crimes. Crimes involving sexual, reproductive and other gender-based violence. The Office of the Prosecutor. ICC. December 2023.

will not only strengthen its overall approach to trauma-informed and survivor-centered investigation and prosecution of gender-based crimes but, in so doing, surface the ways these acts are connected to broader dynamics of violence in armed conflicts, attacks on civilian populations, genocide, and aggression.

In ICL, the principal feature distinguishing CRSV from common sexual crimes is the contextual nexus with an international or non-international armed conflict. At the beginning of the Russian Federation's full-scale invasion, as well as from 2014 to 2021, legal practice included CRSV cases classified within the national justice system not as international crimes but as so-called common crimes provided for in Section IV of the Special Part of the Criminal Code of Ukraine (2001).

I The main distinction between common sexual crimes and those that constitute the most serious international war crimes within the subject-matter jurisdiction of the Rome Statute is the presence in the latter of a contextual element characterized by the following features:

1. the existence of an international armed conflict;
2. the perpetrators' acts took place in the context of and were associated with the international armed conflict;
3. the perpetrator was aware of factual circumstances that established the existence of an armed conflict;
4. a contextual nexus exists between the conduct of the accused and the armed conflict.

The development of the case law of international criminal tribunals has significantly contributed to reinterpreting voluntary consent against the backdrop of coercive circumstances that exclude genuine consent in sexual acts. Coercive circumstances in a situation of armed conflict may substantially limit a person's capacity for sexual autonomy. For example, consent is legally impossible in situations of captivity, occupation, or control by armed

actors, as coercive circumstances preclude a genuine free act and deed. These developments have also influenced Ukrainian criminal legislation: the note to Article 152 of the Criminal Code of Ukraine explicitly stipulates that consent is voluntary only if it is the result of a person's free act and deed, *taking into account the attendant circumstances*.

At the national level of legal regulation, CRSV may be classified as:

- A war crime under Article 438 of the Criminal Code of Ukraine (Article 438 was titled “Violation of the Laws and Customs of War” before Ukraine ratified the Rome Statute and the amendments to the Criminal Code);
- A crime against humanity (Article 442-1 of the Criminal Code of Ukraine, effective from the entry into force of the Law of Ukraine “On Amendments to the Criminal and Criminal Procedure Codes of Ukraine in Connection with the Ratification of the Rome Statute of the International Criminal Court and its Amendments” dated October 9, 2024);
- Genocide (Article 442 of the Criminal Code of Ukraine).

Law enforcement practice primarily applies the first model of criminal classification (Article 438 of the Criminal Code of Ukraine). However, the potential of these criminal instruments remains effective and significant if all elements of a crime against humanity or genocide are present (e.g., when sexual violence is used as a tool to inflict serious harm on a person as a representative of the Ukrainian national group with the intent of its total or partial destruction). Particular attention must be paid to dealing with evidence, training, legal argument systems, and an understanding of intersectional discrimination (e.g., when a survivor is attacked because of their gender and belonging to a specific national group).

In this regard, analyzing the key obligations of states in combating CRSV is crucial. The Dr. Denis Mukwege Foundation, established by

Denis Mukwege, the Nobel Peace Prize laureate, and working with CRSV survivors, has prepared an overview and systematization of state legal obligations under international law in cases of conflict-related sexual violence.⁶ The purpose of this fundamental document is to help states, civil society, and survivors understand exactly what international law requires of states in the context of CRSV. By analyzing obligations defined in international humanitarian law, international human rights law, and UN Security Council resolutions, the document provides a comprehensive description of CRSV-related obligations, recognizing the need for a specialized approach rather than a “general” view of violence.

The document distinguishes the following four clusters of issues:

1. Prevention – state obligations to prevent the occurrence of CRSV.
2. Justice and accountability – obligations related to investigation, prosecution, survivor participation, and the protection of their rights.
3. Humanitarian response – actions the state must take to assist survivors once CRSV has occurred.
4. Reparations – compensation, rehabilitation, guarantees of non-repetition, and fair satisfaction for survivors.

The key obligations include:

- The State must criminalize CRSV in all its forms.
- When criminalizing CRSV, the State must not define sexual violence restrictively. It must characterize sexual violence, in particular rape, as a crime based on the lack of freely given consent and take into account coercive circumstances.
- The State must provide survivors with access to justice

⁶ **Core State Obligations for Conflict-Related Sexual Violence: An Overview of International Law.**

- by removing barriers (e.g., statutes of limitations, the requirement of physical resistance, amnesties).
- The State must provide survivors with adequate comprehensive support (medical, psychosocial, housing, legal, etc.).
- The State must make reparations to survivors: compensation, rehabilitation, and guarantees of non-repetition.

The emphasis on state obligations is important because it shifts the rhetoric of combating impunity into the realm of specific and measurable state actions rather than merely symbolic statements. It helps implement the “gender persecution” category into national codes, facilitates the development of specialized methodologies for investigating CRSV, integrates reparations into criminal justice, and strengthens transitional justice policies. Recent studies of the UN Universal Periodic Review, a global human rights monitoring mechanism under the auspices of the UN Human Rights Council, have shown that condemnation of CRSV in this forum is relatively sparse and selective, and only 5% of all governments take the opportunity to condemn major sexual aggressors.⁷

I The findings of this research significantly adjust expectations on the progress in combating CRSV:

- Only a small percentage of states consistently criticize others for CRSV, even when they are listed in reports of the UN Secretary-General as serious violators.
- Criticism regarding CRSV is often linked to a state's desire to position itself as a leader of the Women, Peace, and Security agenda. The more a state is interested in this

⁷ Johansson K. Talk of shame: Conflict-related sexual violence and bilateral critique within the United Nations. *Journal of Peace Research* 2024, Vol. 61(3) 429-445

agenda⁸, the more it will criticize others for CRSV.

- Silence regarding CRSV is as political as its criticism: states avoid condemning partners with whom they have economic or military interests.

For Ukraine, this means that it cannot rely on automatic and consistent support in prosecuting Russia for CRSV across all international forums. The issue remains silenced and stigmatized. There is a need for targeted diplomatic work with states that declare commitment to the UN Women, Peace, and Security agenda, ensuring they consistently raise the issue of CRSV in Ukraine within various global and regional human rights mechanisms. Finally, national mechanisms (criminal prosecution, reparations, and security sector and criminal justice reform) must be regarded as the primary battlefield against impunity, as the effectiveness of international processes responding to CRSV depends on them.

⁸ Women, Peace and Security Agenda.

3. Modalities of CRSV and Its Determining Factors

The analytical framework that distinguishes three modalities of CRSV allows for a systematic description of its various manifestations:

CRSV as opportunism: exploitation of “windows of impunity” to act on violent and sexualized impulses. Sexual violence is primarily driven by individual motives, yet it is carried out in conditions shaped by conflict. Soldiers use war as a space free of legal and social restraints. Sexual violence emerges as a manifestation of the personality’s dark side – the realization of individual violent inclinations during a social breakdown.

CRSV as strategy: the deliberate use of sexual violence as a tool of war for terror, ethnic cleansing, forced displacement, crushing resistance, and the rupture of the social fabric of communities. It may serve as an element of a policy of intimidation aimed at undermining civilian morale, a punishment for supporting the enemy, a means of demonstrating control over territory and people, and a repressive message to the population. When CRSV is used as a means of war and terror, sexual violence becomes weaponized and used as a cheap and effective weapon.

CRSV as practice: sexual violence is not a direct order but is tolerated or encouraged by commanders, gradually becoming habitual behavior. Horizontal socialization, gang rape, and the use of brutality as a form of branding form a practice that cultivates a culture where violence becomes a marker of belonging to a group and a way for its functioning.

There are no rigid boundaries between these modalities. They intertwine in real conflicts. For example, opportunistic crimes may be fueled by a command-cultivated image of permissiveness and heroicized brutality, as well as a strategy of using sexual violence as a weapon. This triad helps analyze both large-scale systematic CRSV campaigns and individual cases arising from a general culture of violence.

Individual, structural, and group factors are key determinants of CRSV.

Individual factors may be explained through the so-called “principal-agent” concept, which suggests that rank and file exploit the opportunities of war to pursue their selfish motives, release the dark side of their nature, and commit sexual violence. During armed conflict, misogynistic, homophobic, and racist attitudes, a reliance on violence to resolve disputes, a sense of impunity, and personal experiences of trauma and violence may manifest in much more pronounced and acute forms. Soldiers may use war to realize personal motives that would be socially and legally restrained in peacetime.

Structural factors are reflected in the “continuum argument” concept. CRSV is a continuation of pre-war gender inequality within society. Tolerance of domestic violence, sexual harassment, disparaging jokes, humiliations in peacetime, economic and political marginalization of women, and the lack of effective mechanisms of response to GBV lead to gender inequality and power imbalance becoming deeply rooted and passed down through generations, reproducing on a large scale and intensifying during conflict. At the international level, the disproportionate impact of armed conflict on women and girls is now recognized. In particular, the Preamble to UN Security Council Resolution 1325 (2000)⁹ highlights the understanding of this impact and the need for effective institutional protection mechanisms. Differences arise because women, girls, men, and boys have different statuses within their communities, different means of livelihood, and different access to resources necessary for survival and recovery. They are targeted differently, and their traumas have different social and economic consequences. Patriarchal social models often represent women and girls as submissive, passive, and less valuable than men. Entrenched ideals of femininity associated with the perception of women as passive subjects with inherent sexual purity also lead to women being seen as natural victims. Similarly, heteronormative assumptions and stereotypes about

⁹ Women, Peace and Security Agenda.

masculinity and strength may lead to a refusal to acknowledge the existence of male survivors of sexual violence. Both approaches clearly share common roots and hinder justice for all survivors.

Group factors of CRSV are related to dynamics within armed formations, which can be explained by the concepts of “horizontal socialization” and “branding of armed formations.” Gang rape increases cohesion among members of such formations, generating a collective sense of power and superiority and providing guarantees of confidentiality, especially in small groups of three to five persons. Some commanders participate in gang rape themselves to set an example for their subordinates and make their unit known for such behavior. Gang rape is used as a rite of passage. Joint participation in a crime is perceived as the basis of solidarity and a tacit consent between group members and commanders, while sexual violence is used to establish a reputation as a particularly brutal unit.

4. Consequences of CRSV for Individuals, Communities, and Society

CRSV has serious consequences for individuals, communities, and society as a whole, both in the short and long term. These include physical, psychological, and mental harm to survivors, as well as impacts on social relations within and beyond communities.

The physical consequences of CRSV include injuries, in particular pelvic, genital, anal, and oral, which can result in death, disease, sexually transmitted infections, disability, sexual dysfunction, infertility, etc. In the context of armed conflict, access to medical care is extremely limited or entirely unavailable. The traumatic effects of sexual violence may include chronic pain, incontinence, social rejection, avoidance of social contact, and inability to work and serve one's own needs. In cultural contexts where reproductive capacity is considered a woman's primary value, infertility may result in extreme

vulnerability. Physical harm is deeply linked to psychological, mental, and social consequences and is unlikely to be considered separately.

The psychological and mental consequences of CRSV may include acute stress disorders, depression, pathological anxiety, dissociation, emotional numbness, fear, extreme helplessness, despair, shame, guilt, self-blame, low self-esteem, emotional blunting, suicidal tendencies, high-risk health behaviors, including substance abuse, mental illnesses of varying severity, and complex trajectories of grief and loss. Those who have experienced sexual violence often feel a deep distrust toward acquaintances and strangers and dissociate from communities and the outside world. Social and cultural taboos surrounding sexuality complicate their rehabilitation. Moreover, psychological and mental harm affects not only those who have been subjected to sexual violence but also those who were forced to witness such acts (family members, neighbors, fellow detainees, etc.). Barriers to accessing assistance, such as fear of stigma, distrust of institutions, and a lack of gender-sensitive services, are key factors in trauma perpetuation.

The social consequences of CRSV include the survivors' social stigma, the disruption of their relationships with families and communities, the exclusion of victims, and damage to the social fabric, as social order and the intrinsic value of communities are undermined, and patriarchal practices are reinforced. Unwanted pregnancy and children born of CRSV also cause stigma and social rejection, becoming reminders of the collective trauma of war. Children born of CRSV face double stigma and legal uncertainty. Communities experience collective trauma that undermines trust, social capital, and the willingness to participate in peacebuilding and recovery processes.

5. The Ukrainian Context: Policies and Institutional Mechanisms for Combating CRSV

According to the Office of the Prosecutor General of Ukraine, as of 1 December 2025, 389 cases of CRSV against civilians (including 244 women, 145 men, and 23 children) have been recorded. The actual scale is significantly greater, given survivors' distrust of the justice system, fear of stigma and condemnation, risks of re-occupation and retaliation, and the lack of or limited access to temporarily occupied territories.

The Report of the UN Secretary-General on CRSV (S/2025/389 of July 15, 2025)¹⁰ confirms that in 2024, the Human Rights Monitoring Mission in Ukraine documented 209 cases of CRSV, including rape, attempted rape, threats of rape and castration, genital mutilation, electric shocks and beatings to the genitals, and forced nudity, affecting 156 men, 46 women, 6 girls, and 1 boy, perpetrated by Russian armed forces, law enforcement authorities, and penitentiary staff.

According to the report, these cases occurred against Ukrainian civilians and prisoners of war in territories of Ukraine temporarily occupied by the Russian Federation and in the Russian Federation. Ukrainian prisoners of war were subjected to sexual violence during all stages of captivity, which was used to humiliate them and elicit confessions or information. Civilian detainees were subjected to sexual violence during apprehension, admission to hospitals, and subsequent stages of detention. Documented cases involving civilians outside the places of detention in the temporarily occupied territories of Ukraine indicate the complicity of members of the occupying authorities of the Russian Federation, who often forcibly entered homes, sometimes occupying them for prolonged periods, restraining men and raping women in their presence, and in some cases, killing the victims' husbands. In 2024, the Independent

¹⁰ **Conflict-related Sexual Violence.** Report of the UN Secretary General. S/2025/389, 15 July 2025.

International Commission of Inquiry on Ukraine found that members of the occupying authorities of the Russian Federation committed rape and other forms of sexual violence against women and girls aged between 15 and 83 during house searches and in detention in Ukraine. Three years after the 2022 invasion, the Human Rights Monitoring Mission collected reports indicating that Ukrainian prisoners of war had been subjected to systematic torture and ill-treatment, which included widespread sexual violence. Civilian detainees were also subjected to sexual violence. Since 2022, the cases in which members of the Russian authorities, mainly from the Federal Penitentiary Service, the Russian armed forces, and the Federal Security Service, have been implicated, have involved Ukrainian prisoners of war in 50 official and 22 unofficial detention facilities, as well as Ukrainian civilian detainees in 32 official and 40 unofficial facilities in territories of Ukraine temporarily occupied by the Russian Federation and in the Russian Federation proper. Monitoring of cases was significantly hindered due to the Russian authorities' denial of access to UN monitors.¹¹

According to the Report on the Human Rights Situation in Ukraine covering the period from June 1, 2025 to November 30, 2025, prepared by the Office of the United Nations High Commissioner for Human Rights (OHCHR), between the end of May and August 2025, Ukraine and the Russian Federation conducted the largest exchanges of prisoners of war and civilian detainees since 2022, leading to the release of more than three thousand persons from both sides.

Released Ukrainian prisoners of war reported that torture and ill-treatment, including sexual violence, and deaths in custody continued in 2025, particularly in detention facilities inside the Russian Federation, despite periods of respite, including before exchanges.

In total, since February 24, 2022, the OHCHR has documented 664 cases of CRSV perpetrated by Russian officials against 523 men, 124 women, 15 girls, and 2 boys, including 449 Ukrainian prisoners of war (422 men and 27 women), 135 civilian detainees (94 men, 40 women,

¹¹ Ibid.

and 1 boy), and 84 civilians in residential areas (8 men, 60 women, 15 girls, and 1 boy), as well as 79 cases of CRSV perpetrated by Ukrainian officials against 67 men and 12 women, including 48 Russian and third-country national prisoners of war (all men), and 31 conflict-related detainees (19 men and 12 women).¹²

The Ukrainian approach to combating CRSV was being developed even before the Russian Federation's full-scale invasion. Before 2022, Ukraine adopted numerous strategic documents that laid the groundwork for combating GBV and CRSV, focusing not only on reactive response but also on prevention:

- The 2018 Strategy for Prevention of and Response to Conflict-Related Sexual Violence, developed with the support of the UN Women and the UN Human Rights Monitoring Mission in Ukraine, provided recommendations on how to prosecute CRSV and train law enforcement officers and judges.
- The 2021 National Human Rights Strategy provided for bringing legislation on gender-based violence into line with international standards, creating conditions for preventing and combating all forms of GBV, including CRSV, and ensuring effective investigation of crimes committed in temporarily occupied territories.
- The National Action Plan for the Implementation of UN Security Council Resolution 1325 "Women, Peace, and Security" until 2025 (2020, as amended in 2022) paid particular attention to training security forces, prosecution, and the judiciary to respond to CRSV, as well as ensuring survivors' access to justice.

¹² [Report on the Human Rights Situation in Ukraine](#) (June 1, 2025 – November 30, 2025) of the Office of the United Nations High Commissioner for Human Rights (OHCHR).

Such an approach during an active phase of war is atypical, as armed conflicts usually result in post-factum action. In Ukraine, addressing CRSV has effectively become the starting point for the development of a Ukrainian model of transitional justice. The persistence of survivors and human rights defenders clearly demonstrated the fundamental principle of transitional justice, “Nothing about us without us,” to the authorities and society. Ukrainian CRSV survivors, members of a group that is often silenced globally due to strong stigma, have contributed to prompting the state to initiate the development of a regulatory and institutional framework to ensure effective mechanisms for preventing and responding to CRSV.

The State Strategy for Ensuring Equal Rights and Opportunities for Women and Men for the period until 2030 (adopted in 2022 and amended in 2025) includes a goal to combat all forms of violence, including CRSV, through accessible response mechanisms, increasing the scope of legal aid for vulnerable groups, and developing a system for collecting gender-disaggregated data.

The Framework of Cooperation between the Government of Ukraine and the Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, signed in 2022,¹³ became the basis for a comprehensive cooperation mechanism aimed at strengthening Ukraine's national capacity to prevent such crimes, respond effectively to them, prosecute perpetrators, and provide support to survivors. The Framework builds upon the engagement between the Government of Ukraine and the Special Representative of the UN Secretary-General on Sexual Violence in Conflict, the National Action Plan for UN Security Council Resolution 1325 “Women, Peace, and Security,” the relevant UN Security Council resolutions on CRSV “Women, Peace, and Security,” as well as the principles of a survivor-centered approach. The main objectives of the Framework include the following: supporting the development and strengthening of national policies and programs

¹³ **Framework of Cooperation** between the Government of Ukraine and the Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict.

on prevention and response to CRSV; putting in place measures to combat trafficking in persons for the purpose of sexual exploitation, including awareness-raising of military personnel, police, and border guards; strengthening the protection of internally displaced persons, especially women, children, and representatives of vulnerable groups, protection of civilians forced to flee abroad, including the provision of medical, psychological, legal, and social services; protection from sexual violence in detention settings and of prisoners of war in line with international humanitarian law; strengthening health and social service systems for survivors and their family members, and ensuring rapid and comprehensive assistance; strengthening rule of law and accountability for sexual violence crimes through legislative reform, training of law enforcement personnel, and the design of reparation programs; establishing the monitoring and reporting arrangements on CRSV; facilitating evidence-gathering for national and international tribunals; strengthening the capacity of the security and defense sector to prevent sexual violence, implementing a zero-tolerance policy, and training personnel; engaging and supporting civil society organizations, local communities, media, and businesses in preventing violence, supporting survivors, and facilitating their reintegration; raising awareness of survivors' rights and remedies, as well as the plight of CRSV in Ukraine and human trafficking related to sexual exploitation and violence.

The significance of the Framework lies in its structural response to sexual violence in the context of armed conflict, Ukraine's fulfillment of its international human rights obligations, strengthening of survivors' trust in state institutions, and the development of an integrated state policy to address the consequences of CRSV.

To implement the Framework, an Implementation Plan¹⁴ was developed, and the Interagency Working Group on Combating Sexual Violence Related to Russia's Armed Aggression Against Ukraine

¹⁴ **Implementation Plan** for the Framework of Cooperation between the Government of Ukraine and the Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict.

(IWG)¹⁵ was established. The IWG includes such non-governmental organizations as “SEMA-Ukraine”, a network of women who suffered from sexual violence; “Numo, Sisters!”, an association of civilian women held in or released from Russian captivity, as well as women affected by CRSV, torture, and other consequences of Russia’s armed aggression against Ukraine; the Ukrainian Foundation for Public Health; the Andreev Family Foundation; the Women’s Information Consultative Center; the Ukrainian Women Lawyers Association “JurFem”; the Democracy Development Center; the Charity Organization “Kyiv Gender Studies Institute”; the Ukrainian Women’s Fund; La Strada – Ukraine; the Ukrainian Helsinki Human Rights Union; the Dr. Denis Mukwege Foundation; the Global Survivors Fund (GSV); etc. Within the framework of the IWG, five working subgroups were established: Subgroup No. 1 “Trafficking in Persons for the Purpose of Sexual Exploitation in Conflict,” Subgroup No. 2 “Provision of Comprehensive Assistance to Survivors of Conflict-Related Sexual Violence,” Subgroup No. 3 “Access to Justice and Accountability,” Subgroup No. 4 “Strengthening Capacity of Security and Defense Sector to Prevent CRSV,” Subgroup No. 5 “Reparations and Compensations,” co-coordinated by UN Women. An updated Plan for Implementation of the Framework of Cooperation for 2026-2027 was officially approved in late November 2025.¹⁶

The IWG’s activities have become a driving force for the implementation of important initiatives in Ukraine to support survivors. Key achievements of the IWG include:

¹⁵ **Summary documents** adopted following the execution of the Plan for Implementation of the Framework of Cooperation between the Government of Ukraine and the Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict.

¹⁶ **Plan for Implementation of the Framework** of Cooperation between the Government of Ukraine and the Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict for 2026-2027.

Legislative Changes

- Law No. 4067-IX: Legal definition of CRSV, categories of survivors, and the right to urgent interim reparations.
- Law No. 4071-IX: Basis for establishing the Information Accounting System for Damage Caused to Individuals' Personal Non-Property Rights as a Result of the Armed Aggression of the Russian Federation.
- Law No. 4073-IX: Inclusion of CRSV survivors in the category of persons eligible to apply to specialized support services.
- Law No. 3909-IX: Ratification of the Rome Statute of the ICC and its amendments.
- Law No. 4012-IX: Amendments to the Criminal Code and the Criminal Procedure Code in connection with the ratification of the Rome Statute and its amendments.

Expansion of Survivor Support Services

- Ensuring CRSV survivors' access to assistance via hotlines, the National Social Service, Survivor Assistance Centers, a network of specialized services across Ukraine, the "Aurora" online platform for specialized psychotherapeutic support to survivors of violence, including war-related sexual violence, and rehabilitation programs for survivors.

Expansion of Civil Society Organizations Uniting CRSV Survivors

- Eight civil society organizations of CRSV survivors operate.

Advocacy and Information Campaigns

- Three awareness-raising initiatives targeting the public and professional communities regarding CRSV.
- Campaigns on ensuring survivors' access to assistance.
- Advocacy for the inclusion of the Russian Federation in the "list of shame."

Participation in the International Alliance on Preventing Sexual Violence in Conflict

- 2022: Ukraine became a member of the Alliance.
- 2023: Ukraine is the Alliance's Vice-Chair.
- 2025: Ukraine chairs the Alliance.

Key Commitments Fulfilled in 2025

- Five new members joined the Alliance.
- A compendium of best practices in combating CRSV.
- Improvement of the Alliance's constituent documents.

Implementation of the Pilot Project for Urgent Interim Reparations to Survivors of CRSV:

- A total of 1,208 applications were received (819 from men, 362 from women, and 27 regarding children (20 girls and 7 boys)).
- As of November 17, 2025, payments were approved to 978 persons (655 men, 302 women, and 21 children (4 boys and 17 girls)).

- Reparations have been paid to 654 persons¹⁷

Russia's war against Ukraine has increased the visibility of CRSV against Ukrainian men. According to human rights organizations, more than 90% of civilians and servicepersons held in Russian captivity are subjected to torture, much of which is sexualized. These data confirm that GBV is based on power imbalance, and violence serves as a means of maintaining a gender hierarchy. When developing reparation mechanisms, it is essential to consider the specifics of different categories of survivors and the barriers they may face when approaching relevant restorative systems.

Women are less inclined to engage with the public sector, fear stigmatization, feel less self-confident, and lack trust in relevant restorative mechanisms, ending up on the margins of such systems. This may result from deeply entrenched stereotypes that these systems were not designed to meet women's needs. It is necessary to identify what constitutes these barriers for women and how these issues can be overcome.

One of the key objectives of the pilot reparation project mentioned above is to develop a practical model that can subsequently be adapted for establishing a national reparation system for CRSV survivors, as well as for other categories of survivors of the Russian Federation's armed aggression against Ukraine. A distinctive feature of this project is that reparations do not depend on the cessation of all criminal proceedings. Instead, they are initiated alongside administrative procedures as a form of immediate recognition and support based on trust in survivors. The outcomes of this mechanism have been used as a basis for the further development of state policy and institutional reparation tools. On this basis, in November 2024, the Verkhovna Rada of Ukraine adopted the Law

¹⁷ between the Government of Ukraine and the Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict: Achievements and Next Steps (12th Meeting of the Commission for Coordination of Interaction of Executive Bodies to Ensure Equal Rights and Opportunities for Women and Men).

“On the Legal and Social Protection of Survivors of Sexual Violence Related to the Armed Aggression of the Russian Federation Against Ukraine, and the Provision of Urgent Interim Reparations to Them.”¹⁸ These breakthroughs in the development of the protection system for survivors occurred during Russia’s armed aggression have largely become possible due to the courage and strength of CRSV survivors. Further advocacy efforts in Ukraine for work resumption on a holistic transitional justice policy are specifically based on these achievements and important steps. Although the law on reparations entered into force on June 19, 2025, at the time of the Guide’s preparation, it has not yet been effectively implemented due to the lack of bylaws required for its execution. Therefore, further effective efforts in this direction remain a priority task of the government.

Ukraine has established a number of institutional mechanisms to improve the justice system’s response to CRSV:

- In 2022, the Division for Procedural Guidance of Pre-Trial Investigations and Support of Public Prosecution in Criminal Proceedings for Crimes Related to Sexual Violence (CRSV) was established within the Department for Combating Crimes Committed in Armed Conflict of the Office of the Prosecutor General. This specialized unit existed for about three years, initially consisting of two units. Following structural changes, these two units have been merged and unified into a single division with three other units (which deal with issues related to prisoners of war, illegally imprisoned civilians, and cultural heritage). Since, following the reorganization, only one unit will be responsible for CRSV crimes and tasked with reviewing all

¹⁸ **Law of Ukraine** “On the Legal and Social Protection of Survivors of Sexual Violence Related to the Armed Aggression of the Russian Federation Against Ukraine, and the Provision of Urgent Interim Reparations to Them.”

existing cases, coordinating with regional prosecutors, and cooperating with the Coordination Centre for Support of Victims and Witnesses, it is currently crucial to preserve the institutional changes introduced into the system by the specialized unit since 2022.

- In late 2022, mobile groups consisting of investigators, prosecutors, police officers, and psychologists operating in areas liberated from occupation were introduced.
- In 2023, the Strategic Plan on the Implementation of Powers of the Office of the General Prosecutor in the Area of International Crimes was adopted, providing, inter alia, for the protection of vulnerable groups, including CRSV survivors.¹⁹

I The Office of the Prosecutor General is steadily introducing the principles of a survivor-centered and trauma-informed approaches, including the following:

- Adapting investigations to the survivor's specific needs;
- Prioritizing safety, health, and dignity over the interests of rapid evidence collection;
- Ensuring inclusion and preventing discrimination;
- Creating conditions that allow survivors to exercise appropriate control over the processing of their personal data and information about the circumstances of the crime;
- Prohibiting stigmatization and restricting the disclosure of information that could lead to condemnation or humiliation.

¹⁹ **Strategic Plan** on the Implementation of Powers of the Office of the General Prosecutor in the Area of Prosecution for International Crimes for 2023–2025.

When organizing support and response efforts, the specific needs of different categories of CRSV survivors are taken into account. In particular, it is recognized that male survivors often do not identify themselves as victims of sexual violence due to gender stereotypes concerning masculinity. Within the training of investigators and prosecutors, the importance of minimizing the risk of survivors' re-traumatization, especially in cases where crimes were committed in detention facilities (including captivity or other detention settings), is emphasized.

To improve communication with survivors, the Office of the Prosecutor General established the Coordination Center for Support of Victims and Witnesses and nine of its regional branches in January 2024. The Center is intended to ensure:

- Information support at all stages of criminal proceedings;
- Coordination of legal, psychological, medical, and social assistance;
- Measures to prevent repeated victimization.

Despite significant progress, there are a number of systemic issues to be addressed.²⁰ The lack of a nationwide, coordinated policy on GBV and CRSV, as well as inadequate coordination among state bodies in data collection and information exchange, remains a challenge. Access to justice for survivors of GBV and CRSV is undermined by territorial distance from courts and law enforcement agencies and a lack of financial resources to pay for legal assistance. Certain groups (Roma women, internally displaced persons, persons with disabilities, women who live in rural areas, and HIV-infected persons) face multiple forms of discrimination. Existing services require a broader consideration of the diverse experiences of CRSV survivors.

²⁰ Bastick M., Ghittoni M. *Security Sector Reform and Conflict-Related Sexual Violence: Understanding the impacts of peacetime GBV capacity-building.*

Legal challenges in the proper classification of CRSV are sometimes linked to the absence of a specific legislative definition of the term. This creates a risk that such crimes may be misclassified as “ordinary” sexual offenses (Articles 152 and 153 of the Criminal Code of Ukraine) with lighter sanctions. Monitoring found that only a part of registered sexual violence crimes reach the court. CRSV-related cases, as of mid-2024, resulted in few convictions; even in those cases, courts hesitated to define the crime explicitly as CRSV, formulating them as “cruel treatment of civilians.” In Ukraine, judges are not specialized in GBV/CRSV cases, and court proceedings often demonstrate an excessive focus on the rights of the accused without a reasonable balance with the protection of the survivor’s rights. Treatment of victims, especially those affected by CRSV, within the justice system is a litmus test of respect for human dignity. Critics of the current criminal justice system note that the image of the victim is often used within humanitarian discourse as a tool for resource mobilization, institutional legitimization, and the generation of emotional support. A certain aestheticization of suffering occurs, which may deprive survivors of their voice, impose on them the role of passive, helpless, or saintly subjects, create a hierarchy of suffering, and foster competition among survivors.

While research into transitional justice practices indicates that narrating traumatic experiences in court or before truth commissions²¹ may have a therapeutic effect, it must be noted that not everyone is ready to speak openly. The testimony process may be extremely painful; whoever expects complete healing through justice will be doomed to disappointment. The task of legal professionals is to avoid romanticizing the court as a space capable of healing all wounds. At the same time, it is necessary to create conditions where

²¹ Truth commissions are official, temporary, non-judicial bodies established to determine the facts, causes, and consequences of serious human rights violations or other large-scale abuses committed in the past, including by collecting testimonies from survivors and other participants and preparing a comprehensive report and recommendations. This mechanism is often used within restorative justice frameworks, as it aims to acknowledge the harm inflicted, restore the survivors’ dignity, and prevent the recurrence of violence.

participation in proceedings may become part of restoring autonomy and dignity when suffering is acknowledged, the survivor's voice is heard, and the perpetrators receive fair punishment.

These tasks can be fulfilled when specialists are aware of the connection between gender inequality, GBV, and CRSV and recognize not individual episodes but systemic behavioral patterns. It is also important that best practices for gender-sensitive justice remain within the system on an institutional basis. This can be evidenced by the following:

- Recognition of the specifics of CRSV trauma (trauma response may manifest as fragmented memory, contradictory testimony, delayed reporting, detachment, or, conversely, affectivity. These features should not be interpreted a priori as making the survivor's testimony unreliable. They should be considered in light of scientific knowledge about trauma).
- Innovative approaches to evidence collection (a more flexible approach to corroboration of testimony: a survivor's testimony, provided it is reliable, may be sufficient. Expert psychological and psychiatric judgments are used to explain the survivor's behavior).
- Development of safe CRSV reporting channels (anonymous hotlines, remote interviews, etc.).
- Ensuring survivor participation (involvement in investigation planning and trial strategies within legal limits; informing them about the progress of proceedings; providing the opportunity to express their views on the form of reparations).
- Creation of safe conditions for survivor participation (closed hearings, use of audiovisual means and technical means of protection, and minimization of re-traumatization risks).
- Intersectional approach (any analysis must consider the intersection of discrimination axes such as sex, age, ethnicity, disability, social status, sexual orientation,

migration status, etc. In the Ukrainian context, this means paying particular attention to Roma women, IDPs, persons with disabilities, people living in rural areas, LGBTIQ+ persons, prisoners of war, and elderly people).

- Reparations as part of the process, not an add-on (this includes restitution, to the extent possible, compensation, and rehabilitation; symbolic measures (official apologies, memorialization, guarantees of non-repetition); and the functioning of special mechanisms for children born of CRSV).

Certain elements of this methodology have already been integrated into Ukrainian practices (the principles embraced by the Office of the Prosecutor General, the activities of the Coordination Center for Support of Victims and Witnesses, and pilot programs on urgent interim reparations), but its consistent implementation still lies ahead. The legal education system will play a leading role there. Being at the center of attention of international mechanisms regarding CRSV, Ukraine faces a unique and extremely complex task of combining the fight against the aggressor's impunity with a self-reflection on its own national justice system. From this perspective, CRSV is not only a legal category but also a test of the ability of the state and the international community to recognize the most vulnerable forms of violence, transform gendered power structures, and restore human dignity where the war seeks to destroy it.

Practical Exercises and Methodological Guidelines

Exercise 1

(Intermediate Level)

Objective:

SWOT analysis of the Policy on Gender-Based Crimes of the Office of the Prosecutor of the International Criminal Court (2023) / Policy on Gender-Based Crimes, OTP ICC, 2023.

Format:

small group work + presentation + discussion.

Duration:

80 minutes.

Progress

1. Homework Assignment

As a homework assignment, students read:

- Policy on Gender-Based Crimes OTP ICC, 2023



2. Preparation (10 minutes).

The lecturer helps students form four groups. Within each group, roles are assigned, for example, those of the moderator, secretary, speaker, and analyst.

The lecturer provides printouts or a link to the [Policy on Gender-Based Crimes OTP ICC, 2023](#) for use on personal devices and distributes handouts with tasks.

Each group is assigned only one element of the SWOT analysis:

Group 1 – Strengths

Group 2 – Weaknesses

Group 3 – Opportunities

Group 4 – Threats

3. Group Tasks (20 minutes).

Groups analyze the policy text and answer their three thematic questions (recording answers on a flipchart/whiteboard/A3 sheet).

Group 1 – Strengths

Identify 3–5 strengths of the policy.

- Which approaches make this policy robust and give it added value? How does the document enhance the efficiency of investigating conflict-related sexual violence?
- Which provisions offer the best protection for survivors?

Group 2 – Weaknesses

Identify 3–5 weaknesses or gaps.

- What might be problematic in the definitions of “gender” or “gender-based crimes”?
- What are the barriers to the practical application of this policy?
- What remains unclear or overly declaratory?

Group 3 – Opportunities

Identify 3–5 opportunities.

- What new legal or institutional opportunities does this policy create?
- How can it strengthen the role of survivors?
- How might it influence national investigations?

Group 4 – Threats

Identify 3–5 threats or risks.

- What factors might hinder the policy’s application?
- What political, cultural, or legal risks might block the application of its provisions?
- What factors might contribute to the repeated failure to recognize sexual violence?

4. Presentation of Results (30 minutes: 7–8 minutes per group)

Speakers from each group present their outcomes.

Other groups ask 2–3 questions following each presentation.

5. Micro-Debate (15 minutes)

The lecturer asks questions that stimulate a discussion.

- Is the policy's SWOT profile balanced?
- Which of the four analytical areas yielded more points?
- Which threats can be transformed into opportunities?
- Which of the identified aspects require urgent reform?

6. Lecturer's Summary (5 minutes)

The lecturer summarizes key points, including:

- Which elements of the policy appear most effective?
- What are the main gaps?
- How can international legal policy reinforce national investigations of sexual violence?

Outcome: Students became familiar with a key international standard for investigating gender-based crimes, including CRSV, analyzed it through a systematic, structured methodology, worked in groups, formulated arguments, and presented, discussed, and compared their findings.

Exercise 2

(Advanced Level)

Objective:

Based on a real testimony (the interview with survivor Iryna Dovhan, Head of Sema Ukraine),²² identify the government's structural and institutional failures in responding to CRSV and develop a model National Action Plan to Combat CRSV, taking into account existing standards and best practices.

Format:

homework assignment +
introductory discussion + group
work + presentation + integrative
discussion.

Duration:

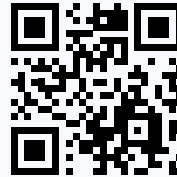
80 minutes.

²² SEMA is the Global Network of Victims and Survivors of Wartime Sexual Violence, **initiated** in 2017 by the Dr. Denis Mukwege Foundation and aimed at ending conflict-related sexual violence. It brings together victims and survivors of wartime sexual violence from 29 countries, operating on the principles of solidarity, collective mobilization, and advocacy for justice and systemic change. In Ukraine, **SEMA** operates as an organization of CRSV survivors, adapting the network's global approaches to the national context.

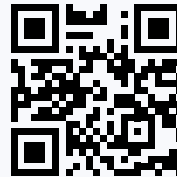
1. Homework Assignment

As a homework assignment, students read:

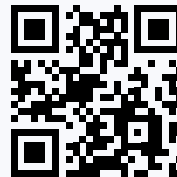
- **Interview** with survivor Iryna Dovhan “The Torturers Were Killed, but the Pain Remains. Eleven Years of Struggle of Iryna Dovhan, Who Survived the ‘Pillar of Humiliation’ in Donetsk and Now Helps Other Women” (Ukrainska Pravda).



- **International Protocol** on the Documentation and Investigation of Sexual Violence in Conflict²³



- **The Murad Code**



²³ **International Protocol** on the Documentation and Investigation of Sexual Violence in Conflict (the Ukrainian translation and printing of the publication were prepared within the institutional capacity-building program under the UN Women project “Gender Equality at the Center of the Reforms, Peace, and Security,” implemented with financial support from Sweden).

2. Introductory Discussion (10 minutes). The case of Iryna Dovhan as an entry point

After reading Iryna Dovhan's interview as a homework assignment, students start with an introductory discussion.

Discussion focus (not on the details of violence):

- What does Iryna's story reveal about the system's inability to protect individuals in conflict?
- What institutional gaps are evident: documentation, witness protection, medical and psychological care, reparations, or investigation?
- Which of these failures are typical for CRSV cases?
- Why are survivors often unable or unwilling to testify?
- How should the state design a system considering the survivors' needs?
- This introduces students to CRSV as a systemic problem rather than an individual crime.

3. Group Task (about 20 minutes of group discussion)

Students are divided into four thematic groups. Each group receives a specific segment of a model for a future National Action Plan to Combat CRSV. They discuss and record their answers on a flipchart/whiteboard/A3 sheet. It is important to explain that their task is not to draft

detailed regulatory approaches but to propose the basic logic, key principles, and priorities based on a survivor-centered approach and realistic conditions. Each group must formulate several key solutions/ideas, without which their segment would fail to function.

Group 1 – Documentation of CRSV Crimes

Task: Propose a basic model for documenting CRSV crimes by answering the following questions:

- Who should collect information about the crimes? (The state, an independent body, international experts? Explain the logic of your choice).
- What key principles must be followed when interviewing survivors?
- What actions are strictly prohibited to avoid causing additional harm?
- What minimum conditions make the collected materials reliable and capable of serving as appropriate evidence (record-keeping, security, independence, etc.)?

Group 2 – Support and Protection of Survivors

Task: Propose a model for a basic support system for CRSV survivors, based on the following questions:

- What types of assistance are critically important above all else?
- Who is responsible for what:
- Who coordinates assistance?
- Who directly provides services?
- Who monitors the quality?
- How can survivor participation in decision-making be ensured (the principle “Nothing about us without us” in practice rather than formally)?

Group 3 – Justice and Accountability

Task: Consider justice from the perspective of survivors and their needs, and try to answer the following questions:

- Why does the investigation of CRSV crimes have specific features?
- What is better for survivors: the regular system or specialists? Why?
- If the state cannot ensure justice on its own, what role can international mechanisms play?
- What conditions must be met for survivors to trust the process?

Group 4 – CRSV Prevention and Infrastructure Preparation

Task: Propose basic preventive solutions based on the following guiding questions:

- What does zero tolerance for CRSV mean in practice, not just in declarations?
- Which specialists must undergo training, and why specifically them?
- What key tools will help prevent crimes or reduce risks (e.g., risk assessment, referrals, cooperation with the civil society sector)?
- Why will this system fail to function without a partnership between the state, NGOs, and international organizations?

3. Presentation of Results (40 minutes: 10 minutes per group)

Each group presents 3–5 key solutions, while others ask critical questions, for instance:

- Have survivors' needs been considered?
- Is the model realistic?
- How is survivor participation provided?
- Does this align with international standards?

4. Integrative Discussion (10 minutes)

The lecturer moderates a discussion in which students align the different parts of the plan.

- Which actors are key to the functioning of the system?
- How do they interact?
- How are survivor organizations included?
- Which solutions are crucial for the entire system?
- What should be prioritized when resources are limited?
- What are the greatest challenges to implementing such a plan?

Outcome: A holistic basic model of the National System for Combating CRSV is developed based on real-life experiences of conflict-related violence. It helps students consider the issue through the lens of human experience, teaches them to work on solutions at the level of policies, state mechanisms, and institutions, and identifies the need for survivor participation in creating and implementing solutions.

Recommended Reading List

Brownmiller S. *Against Our Will: Men, Women, and Rape* [1975]. Fawcett Columbine, 1993. 472 p.

Crawford Kerry F. *Wartime Sexual Violence: From Silence to Condemnation of a Weapon of War*. Washington, DC: Georgetown University Press, 2017. 224 p.

Feminist Judgments: Reimagining the International Criminal Court. Eds Kcasey McLoughlin, Rosemary Grey, Louise Chappell, Suzanne Varrall. Cambridge University Press. 2025. 712 p.

Houge A.B. *Sexualized War Violence Subversive Victimization and Ignored Perpetrators. Masculinities in the Criminological Field / Masculinities in the Criminological Field. Control, Vulnerability and Risk-Taking*. Edited by Ingrid Lander, Signe Ravn, Nina Jon. Routledge. 2014. 268 p.

Kharytonova, O. (2022). *Conflict-Related Sexual Violence in the Russian Federation's War Against Ukraine: Legal Aspects. Criminal Law Responses to the Challenges of Martial Law in Ukraine: Proceedings of the International Scientific Conference, Kharkiv, May 5, 2022*. Compiled and edited by Y. V. Baulin, Y. A. Ponomarenko; Yaroslav Mudryi National Law University; National School of Judges of Ukraine; All-Ukrainian Criminal Law Association; Academician Stashis Scientific Research Institute for the Study of Crime Problems. Kharkiv: Pravo, 2022. pp. 189–202.

Video Project "We Believe You"



II. Conflict-Related Sexual Violence in International Law: Regulatory and Institutional Infrastructure for Prevention and Response

Author: Olha Poiedynok

This section provides a general overview of the development and current state of primary and secondary rules of international law regarding CRSV, covering its regulation history, key legal instruments, and the institutional component, specifically the contributions of international criminal tribunals and the International Criminal Court. It analyzes the interplay between various legal regimes: the prohibition of CRSV in international humanitarian law, the negative and positive (substantive and procedural) obligations of the state arising from the fact that CRSV is classified as a violation of fundamental human rights, and individual criminal responsibility for CRSV within the key categories of crimes recognized by modern international criminal law (war crimes, crimes against humanity, and genocide).

Methodology. It is recommended to teach this material by structuring the session into three logical clusters: the establishment of the CRSV prohibition and institutional mechanisms, the contribution of international tribunals, and the interplay between international humanitarian law, human rights law, and criminal law. Visual aids should be used to explain the connections between these regimes. Reading primary sources is encouraged, and the precision of international legal terminology, which may differ from the national one, should be emphasized. Note that this section prioritizes the term “survivors” (instead of the term “victims,” commonly used in international documents). However, the terminology of international criminal law has not been replaced with terminology inherent to national criminal law.

Given the high sensitivity of the topic, the lecturer must strictly adhere to legal vocabulary, avoiding emotional descriptions and unnecessary details, and should warn the audience about the specific

nature of the content. It is important to immediately explode the myth that wartime CRSV is inevitable and consistently guide the discussion back to legal analysis, transforming emotional reactions into professional crime classification.

Positive evolution of the law and the correct distinction between the responsibility of the state and individual responsibility, with particular attention to contextual crime elements and recent case law, such as the Ntaganda case, should be emphasized in the teaching process. The lecturer's primary goal is to serve as a guide from emotional perception to professional analysis.

Conceptual Basis

Introduction

The goal of this section is to provide lecturers with a comprehensive overview of the regulatory and institutional aspects of international legal regulation of the prevention and counteraction of CRSV. Over the past three decades, this area of international law has undergone a transformation that has few parallels in terms of speed and scope. CRSV has evolved from a topic that was, at best, far from the focus of the international legal community and, at worst, marked by misconceptions about its alleged “inevitability” as a byproduct of war, to being recognized, in the words of UN Secretary-General António Guterres, as “a threat to every individual’s right to a life of dignity, and to humanity’s collective peace and security.”²⁴

1. A Brief History of International Legal Regulation of the Prevention and Counteraction of CRSV. Key International Instruments in the Field of Prevention and Counteraction of CRSV

Although the term “conflict-related sexual violence” was formulated only at the most recent stage of legal regulation addressing these phenomena, **the relevant rules have a long history in international law.**

The evolution of the prohibition of CRSV in international practice

²⁴ Secretary-General, in Message for International Day, Urges Rededication to Ending Sexual Violence in Conflict, on Behalf of Every Survivor, 19 June 2017, SG/SM/18578-OBV/1731.

originates from the 1863 Instructions for the Government of Armies of the United States in the Field, better known as the Lieber Code. It was the first document where rape was explicitly characterized as a serious crime prohibited during war. Article 44 thereof placed rape alongside murder, torture, and other grave offenses against the inviolability of the person, assigning the duty to prevent such acts to commanders. This was a progressive position at the time, as most armies did not have such clear norms regarding sexual violence during hostilities.

The first codification of rules prohibiting CRSV in international law occurred during the Hague Peace Conferences of 1899 and 1907. In particular, the Hague Regulations concerning the Laws and Customs of War on Land (in its first edition, it was the annex to the 1899 Hague Convention II and in the second edition, the annex to the 1907 Hague Convention IV) prohibited offenses against the honor and dignity of civilians, which at the time was understood to include protection of women from sexual violence. However, the wording remained indirect, and the prohibition was derived from general principles rather than explicitly proclaimed. For example, Article 46 of the Regulations provides, “Family honors and rights, individual lives and private property, as well as religious convictions and liberty, must be respected.” For a long time, this provision, particularly the reference to “family honor” (rather than violations of the fundamental rights of survivors of sexual violence), was considered the primary treaty-based prohibition of rape in international humanitarian law. This clearly imperfect wording reflected the moral and political norms of the era and created gaps in legal enforcement.

The situation changed significantly after World War II. The 1949 Geneva Conventions, especially the Fourth Convention, as well as the 1977 Additional Protocols, contained explicit **formulations prohibiting rape, enforced prostitution, and other forms of sexual violence as outrages upon personal dignity and as serious breaches of the laws and customs of war. Women were recognized as a particularly protected category of persons, and the prohibition of sexual violence became a clear and mandatory rule.**

The key provisions of these international treaties, which are also a part of customary international humanitarian law, include:

1. **The common Article 3 of the four Geneva Conventions of 1949**, applicable to armed conflicts not of an international character, has eventually come to be understood, under the influence of the practice of the International Court of Justice (in particular, the decision in the Corfu Channel case), as establishing “elementary considerations of humanity” applicable in any armed conflict. It sets out an absolute minimum of humane treatment, prohibiting, inter alia, “violence to life and person, in particular... torture” and “outrages upon personal dignity, in particular humiliating and degrading treatment.” CRSV clearly falls within these prohibitions.
2. **Article 27 of the (Fourth) Geneva Convention Relative to the Protection of Civilian Persons in Time of War**, applicable in international armed conflicts, explicitly requires that civilians be protected from any attack on their honor. Clause 2 specifically states, “Women shall be especially protected against any attack on their honor, in particular against rape, enforced prostitution, and any form of indecent assault.”
3. **Articles of the two 1977 Additional Protocols to the Geneva Conventions establish “fundamental guarantees,”** which may be regarded as minimum standards for the protection of human rights during armed conflicts. In the context of international armed conflicts, these provisions are more detailed. For example, **Article 75(2)(b) of Additional Protocol I** prohibits “outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution, and any form of indecent assault,” while **Article 76(1)**, specifically dedicated to the protection of women, reinforces this protection. In the context of conflicts not of an international character, **Article 4 of Additional Protocol II** similarly prohibits “outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution, and any form of indecent assault.”

The development of international human rights law after World War II was also crucial for establishing the modern international legal prohibition of CRSV. **Unlike international humanitarian law, which applies only during armed conflict, international human rights law applies at all times – both in peace and war. It defines the obligations of states to protect the rights of persons under their jurisdiction, which may be territorial or extraterritorial in nature (the latter is particularly important in the context of states engaged in armed conflicts beyond their borders).**

According to current international law, **CRSV constitutes a gross violation of some fundamental human rights.** Key among them is the prohibition of torture and cruel, inhuman, or degrading treatment or punishment, as provided for in Article 5 of the Universal Declaration of Human Rights, Article 3 of the European Convention on Human Rights, and Article 7 of the International Covenant on Civil and Political Rights. International judicial institutions and treaty bodies (including the European and Inter-American Courts of Human Rights and the UN Human Rights Committee) recognize **CRSV**, especially its most severe forms, such as rape, **as a form of torture or cruel, inhuman, or degrading treatment.** It is important that the prohibition of torture is absolute and non-derogable, so it cannot be derogated even during war or a state of emergency. CRSV also violates the right to life (as it often results in the survivor's death), the prohibition of slavery, the right to respect for private and family life, the right to health, the right to personal integrity, the right to non-discrimination, etc.

A true turning point in the legal classification of sexual violence occurred at the end of the 20th century through the work of the international criminal tribunals for the former Yugoslavia and Rwanda. In their landmark judgments, these courts **for the first time recognized rape not only as a serious violation of the laws and customs of war but also as a crime against humanity and, under certain circumstances, as an act that may be an element of genocide.** For example, the International Criminal Tribunal for Rwanda reached this conclusion in the case of Jean-Paul Akayesu,

the first case in the history of international criminal justice where an individual was convicted of genocide.²⁵ The case law of the tribunals provided precise legal definitions of sexual violence and demonstrated that such crimes may be systematic and widespread, thereby requiring a relevant international response.

The culmination of this development was **the adoption of the 1998 Rome Statute of the International Criminal Court. The list of prohibited acts received there both a broad and specific formulation for the first time, ranging from rape and sexual slavery to forced pregnancy, enforced sterilization, and any other form of sexual violence of comparable gravity. The Rome Statute recognized these acts both as war crimes in international and non-international armed conflicts (Article 8) and crimes against humanity (Article 7),** laying the basis for the universal prosecution of perpetrators.

In addition to international treaties in the fields of international humanitarian law, international human rights law, and international criminal law, the UN Security Council considered in detail the issue of preventing and responding to CRSV in its resolutions. It first addressed the problem of sexual violence in armed conflict in 2000 with the adoption of Resolution 1325 on Women, Peace, and Security.²⁶ In this document, the Security Council recognized that **civilians, “particularly women and children, account for the vast majority of those adversely affected by armed conflict.”** The resolution emphasized the important role of women in conflict prevention, their participation in peace processes and post-war reconstruction, and, for the first time at this level, highlighted the specific threats faced by women and girls during war. In a separate provision, the Security Council called on states and parties to conflict to **“take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse,”** emphasizing the need to end impunity. The document clearly affirmed the responsibility of states to “put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, and war

²⁵ Prosecutor v Jean-Paul Akayesu (ICTR, Judgment, 2 September 1998).

²⁶ UN Security Council, Security Council resolution 1325 (2000) [on women and peace and security], S/RES/1325 (31 October 2000).

crimes, including those relating to sexual and other violence against women and girls.” Although Resolution 1325 did not yet define sexual violence as a distinct threat to international peace and security, it laid the conceptual basis for recognizing the issue as a matter of global security and an obligation of the international community to respond.

In 2008, the Security Council adopted Resolution 1820²⁷, marking an important milestone in addressing CRSV. For the first time, the Security Council explicitly **recognized sexual violence not only as a violation of human rights or humanitarian law but also as a threat to international peace and security**. The document noted that women and girls are “particularly targeted by the use of sexual violence, including as a tactic of war to humiliate, dominate, instill fear... .” The Security Council emphasized that **sexual violence, when used as a method of warfare, “may impede the restoration of international peace and security.”** This statement was fundamentally important: henceforth, sexual violence was considered not only as an individual crime against victims but also as a destabilizing factor for entire regions and societies, thereby violating the Security Council’s mandate to maintain global peace.

Resolution 1820 also contained a categorical demand about “the immediate and complete cessation by all parties to armed conflict of all acts of sexual violence against civilians.” The Council stressed that parties must **prevent such violence, including through enforcing disciplinary measures, training troops, vetting personnel, and creating security conditions for vulnerable groups**. An important new provision was that, according to the case law of international judicial institutions, the UN Security Council clearly defined the legal nature of sexual violence, recognizing that rape and other forms of sexual violence can constitute “a war crime, a crime against humanity, or a constitutive act with respect to genocide.” This directly linked sexual violence to the gravest categories of international crimes, equating its gravity with offenses subject to the severest condemnation and punishment. The resolution also

²⁷ UN Security Council, Security Council resolution 1820 (2008) [on women and peace and security], S/RES/1820 (19 June 2008).

affirmed the inadmissibility of amnesties for such crimes and called upon states to prosecute perpetrators.

Thus, Resolutions 1325 and 1820 laid the basis for current international policy on the prevention of CRSV. Resolution 1325 established the basis for understanding the vulnerability of women and the necessity of their protection, while Resolution 1820 elevated sexual violence to the status of a threat to international peace and security and emphasized its nature as a criminal offence. In subsequent years, these approaches were developed in further Security Council decisions, including Resolutions 1888 (2009)²⁸, 1960 (2010)²⁹, 2106 (2013)³⁰, and 2467 (2019)³¹, which specified mechanisms for monitoring, documentation, prevention, and accountability. However, Resolutions 1325 and 1820 were the turning point. They first defined CRSV as an international security issue and proclaimed the need for active and urgent action by states and the international community to combat it.

Today, the norm of the absolute prohibition of CRSV is one of the most established and developed in international law. It has evolved from a single reference in a national military code into a comprehensive framework of international legal norms, judgments, and accountability mechanisms. This evolution reflects the recognition that **wartime sexual violence is not inevitable but rather a grave crime subject to strict condemnation and prosecution regardless of the circumstances.**

²⁸ UN Security Council, Security Council resolution 1888 (2009) [on acts of sexual violence against civilians in armed conflicts], S/RES/1888 (30 September 2009).

²⁹ UN Security Council, Security Council resolution 1960 (2010) [on women and peace and security], S/RES/1960 (16 December 2010).

³⁰ UN Security Council, Security Council resolution 2106 (2013) [on sexual violence in armed conflict], S/RES/2106 (24 June 2013).

³¹ UN Security Council, Security Council resolution 2467 (2019) [on sexual violence in conflict], S/RES/2467 (23 April 2019).

2. The International Institutional Component of the Prevention and Counteraction of CRSV

The international institutional system for preventing and countering conflict-related sexual violence (CRSV) has primarily developed around the **Women, Peace, and Security Agenda**, initiated by the above UN Security Council Resolutions 1325 (2000) and 1820 (2008). In subsequent Resolutions 1888 (2009), 1960 (2010), 2106 (2013), and 2467 (2019), **the Security Council established a comprehensive institutional architecture encompassing special political, technical, and monitoring mechanisms of response to CRSV and involving a number of specialized UN agencies.**

The Special Representative of the Secretary-General on Sexual Violence in Conflict, a position established by Resolution 1888, plays the key coordinating role. Their mandate involves maintaining political dialogue with states and armed groups, developing action plans to stop sexual violence, and coordinating the UN entities' activities. This work is complemented by the Team of Experts on the Rule of Law and Sexual Violence in Conflict, which supports states in legislative reform, the development of investigative and judicial mechanisms, and capacity-building for law enforcement agencies to address such crimes. UN peacekeeping missions deploy women's protection advisers, who integrate CRSV issues into civilian protection strategies. The Monitoring, Analysis, and Reporting Arrangements (MARA), established by Resolution 1960 (2010), ensure the systematic collection and analysis of information on incidents of sexual violence, which serve as the basis for the annual list of parties to conflict involved in committing such crimes.

A vital element of the institutional framework is international criminal justice (ad hoc international criminal tribunals and the International Criminal Court), which will be addressed below. UN human rights treaty bodies, such as the Committee on the Elimination of Discrimination against Women, the Committee against Torture, and the Human Rights Committee, consistently interpret state obligations regarding the prevention of and response to sexual

violence, strengthening international standards.

Regional organizations also play a significant role in combating CRSV. Through the **Istanbul Convention (Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence)**, the Council of Europe establishes the highest standards for preventing gender-based violence against women, applicable both in peacetime and during armed conflict. **The EU integrates CRSV issues into its Common Foreign and Security Policy** and applies sanction mechanisms for serious human rights violations. **The African Union has developed its own continental CRSV response mechanisms. It actively implements them in response to armed conflicts**, particularly in the Great Lakes, the Sahel, and Central Africa regions. Beyond intergovernmental structures, global initiatives play an important role. Among them, the UK's **Prevention of Sexual Violence in Conflict Initiative (PSVI)** promotes standardized documentation and investigation of CRSV through the relevant international protocol³².

The institutional framework also includes regional human rights courts and commissions (the European and Inter-American Courts of Human Rights, the Inter-American Commission on Human Rights, and the African Court and the African Commission on Human and Peoples' Rights) as bodies authorized to consider individual reports on CRSV cases.

So the current **international institutional framework for countering CRSV is a multi-level and interconnected system combining political, legal, monitoring, and judicial mechanisms**. Its core principle is the recognition of sexual violence in armed conflict not only as a violation of human rights or international humanitarian law but also as a factor posing a direct threat to international peace and security. This system provides the basis for prevention, protection of victims, documentation of crimes, and ensuring accountability.

³² Ukraine actively participates in the PSVI Alliance (in particular, as Co-Chair in 2024 and Chair in 2025). The emphasis on practical justice is a key result of this participation. Ukraine has ensured the institutional support for survivor networks and introduced a mechanism of urgent interim reparations for CRSV survivors even before the end of the war.

3. Contribution of International Criminal Tribunals and the International Criminal Court to the Development of the Modern Approach to CRSV and Accountability

The role of international criminal courts and tribunals in developing provisions of international law and national legal systems concerning CRSV is one of the most visible. Although from the perspective of international legal theory, international criminal law is considered “secondary” in relation to the “primary” international humanitarian law and international human rights law, and the relevant international judicial institutions merely apply the law rather than create it, it is thanks to the work of international criminal justice institutions that the rules of international criminal law and the substance of the relevant “primary” norms have been clarified and developed.

At the initial stage of international criminal justice, the International Military Tribunals in Nuremberg and Tokyo addressed CRSV only marginally. However, **in the 1990s, through the ad hoc tribunals, in particular the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), international legal provisions concerning accountability for CRSV underwent significant development.**

As noted above, the ICTR judgment in the Akayesu case³³, where sexual violence was first classified not only as a crime against humanity but also as an element of genocide, was a true breakthrough. The Tribunal recognized that rape and other forms of sexual violence could be committed to destroy a group by causing serious bodily or mental harm to its members. Concurrently, in the Furundžija³⁴ and Čelebići³⁵ cases, the ICTY established that rape

³³ Prosecutor v Jean-Paul Akayesu (ICTR, Judgment, 2 September 1998).

³⁴ Prosecutor v Anto Furundžija (ICTY, Judgment, 10 December 1998).

³⁵ Prosecutor v Zejnil Delalić et al (Čelebići) (ICTY, Judgment, 16 November 1998).

and sexual violence could be classified as torture and inhuman treatment, and the prohibition of sexual violence is a jus cogens norm. In 2001, in the Kunarac et al. case (also known as the Foča rape camps case)³⁶ the ICTY recognized sexual slavery and enslavement as a distinct form of crimes against humanity, formulating the modern understanding of sexual slavery as a combination of control over a person, the restriction of freedom of movement, and forced engagement in sexual acts.

The tribunals' further case law consolidated important aspects of command and individual responsibility for CRSV. In the Musema³⁷ and Niyitegeka³⁸ cases, the ICTR expanded approaches to proving specific intent in the context of genocide and considered sexual violence as an element of a larger campaign of extermination of civilians. In the Kvočka et al.³⁹, Krstić⁴⁰, and Stakić⁴¹ cases, the ICTY demonstrated that sexual violence may form a part of a widespread or systematic attack against a civilian population and thereby constitute a crime against humanity. In the Krstić case, the Tribunal also recognized that sexual violence committed in Srebrenica was a part of a broader campaign of persecution of Bosnian Muslims as a crime against humanity, given its discriminatory intent.

With the adoption of the Rome Statute of the ICC, the case law regarding CRSV became consistent and universal. **The Rome Statute explicitly classified rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and other forms of sexual violence as crimes against humanity and war crimes (Articles 7 and 8 thereof, respectively).** In international criminal law, the classification of specific acts under one or both of these articles often depends on the presence of relevant contextual elements, in **particular a widespread or systematic attack directed against any civilian population (for crimes against humanity) and/or a nexus with an armed conflict (for war crimes).**

³⁶ Prosecutor v Dragoljub Kunarac et al (ICTY, Judgment, 22 February 2001).

³⁷ Prosecutor v Alfred Musema (ICTR, Judgment, 27 January 2000).

³⁸ Prosecutor v Eliezer Niyitegeka (ICTR, Judgment, 16 May 2003).

³⁹ Prosecutor v Miroslav Kvočka et al (ICTY, Judgment, 2 November 2001).

⁴⁰ Prosecutor v Radislav Krstić (ICTY, Judgment, 2 August 2001).

⁴¹ Prosecutor v Milomir Stakić (ICTY, Judgment, 31 July 2003).

In addition, the ICC has proposed several important approaches to classifying CRSV as war crimes, moving beyond the traditional concept of international humanitarian law, which protects only persons belonging to the opposing party to an armed conflict. **In the Ntaganda case⁴² the ICC recognized sexual violence committed against child soldiers belonging to the same armed group as the perpetrators of this violence as war crimes.** The Court rejected the argument that such acts could not be classified as war crimes in the case of “internal” relations among combatants of the same party. This fundamentally transformed the approach to defining possible victims. **In the Ongwen⁴³ case, the ICC emphasized that CRSV may encompass a wide range of coercion forms and that sexual slavery and forced pregnancy constitute distinct crimes with their own elements.** The judgment also demonstrated that **the same individual could simultaneously be a victim of certain CRSV crimes and a perpetrator of others.**

So the evolution of international criminal case law on CRSV has progressed from episodic references to sexual violence to its comprehensive legal conceptualization and detailed classification within the categories of international crimes enshrined in the Rome Statute of the ICC. The ICTR and ICTY were the first to explicitly classify CRSV as a potential element of genocide, crimes against humanity, and war crimes. In addition, they demonstrated the connection between CRSV and other crimes against humanity, such as torture, enslavement, and persecution. The ICC has systematized these approaches, translated them into universal regulatory provisions, and facilitated the development of a coherent doctrine concerning the elements of crimes, command responsibility, victim protection, and the proving of contextual elements. Today, international criminal justice regards CRSV as one of the gravest violations of international law, requiring prioritized investigation. The established case law serves as guidance for national justice systems, which are increasingly incorporating these standards into their national legislation and case law.

⁴² Prosecutor v Bosco Ntaganda (ICC, Trial Judgment, 8 July 2019).

⁴³ Prosecutor v Dominic Ongwen (ICC, Trial Judgment, 4 February 2021).

4. Correlation and Interplay Between Different International Legal Regimes Regarding CRSV

As discussed in the previous sections, **modern international legal mechanisms for combating CRSV consist of three interrelated legal regimes: international humanitarian law, international human rights law, and international criminal law.** These regimes do not operate in isolation. They function in constant interaction and, ideally, are designed to fill each other's gaps and create a comprehensive protection system that gives perpetrators no chance of evading accountability.

The basis of this system is international humanitarian law, or the law of armed conflict, which is a legal regime specifically designed to apply during wartime. Historically, it has undergone a significant conceptual evolution from the protection of honor to the protection of dignity. This legal regime is crucial because it imposes obligations on all parties to a conflict, including non-state armed groups.

Alongside **international humanitarian law, there is international human rights law, which applies both in peacetime and during armed conflict.** Its main role is to establish state responsibility for both the actions of its representatives and their inaction. As noted above, regional human rights courts, primarily the European Court of Human Rights, as well as UN treaty bodies (including the Committee on the Elimination of Discrimination against Women, the Human Rights Committee, and the Committee against Torture), have clearly classified CRSV as a violation of fundamental human rights in their decisions and opinions. They see manifestations of CRSV as the gravest forms of assault on human dignity and violations of the prohibition of torture and cruel, inhuman, or degrading treatment or punishment. International human rights law also defines CRSV as a violation of other fundamental rights, including the right to life and the prohibition of slavery. **Regarding all these rights, the state bears both negative and positive obligations. Substantive positive obligations include the establishment of liability for acts of CRSV in national legislation, proportionate to the gravity of the crime, as**

well as the adoption of preventive measures. The state's procedural positive obligations in the field of CRSV include the requirement for an effective investigation: prompt, independent, adequate, subject to public scrutiny, involving victims, etc.

The third element of this triad is **international criminal law, which provides for individual criminal liability for the most serious violations of international humanitarian law and international human rights law.** As mentioned above, CRSV can be classified as an element of an act of genocide, as crimes against humanity (either as standalone acts or torture, or persecution), and as war crimes. The selection of one or more classifications under ICL depends on the context in which the CRSV was committed and the prosecution's strategy chosen in view of the available evidence.

The uniqueness of the modern system lies in the interpenetration and cumulative effect of these frameworks. The practice of international judicial institutions demonstrates how concepts from one field enrich another. Regional human rights courts use international humanitarian law to interpret provisions of international human rights law. International criminal courts and tribunals extensively apply provisions of international human rights law. A state's compliance with positive procedural obligations to investigate CRSV determines the level of involvement of international criminal justice bodies in prosecuting perpetrators. Through this approach, **modern international law considers CRSV not as individual incidents but as a systemic phenomenon requiring a comprehensive response from prevention on the battlefield and state protection of survivors to the inevitability of punishment for both organizers and perpetrators.**

Practical Exercises and Methodological Guidelines

Exercise 1

(Basic/Intermediate Level)

Objective:

To teach participants to distinguish and apply the norms of IHL, IHRL, and ICL to a single actual situation, demonstrating their interplay.

Task

1. Participants are presented with the following case (situation).

During an armed conflict between States A and B, the military of State A occupied a city. A unit commander ordered the establishment of an “interrogation center,” where women were subjected to sexual violence to intimidate the population. State A does not investigate these events, referring to the state of war.

2. Participants form three groups, each analyzing the situation through the lens of one legal framework, using the materials from the section.

- IHL (International Humanitarian Law) Group: Which specific norms have been violated? (Hint: Article 27 of the Geneva Convention (IV); Articles 51(2), 75, and 76 of Additional Protocol I).
- IHRL (International Human Rights Law) Group: Which obligations of the state have been violated? (Hint: prohibition of torture; positive procedural obligation to investigate).
- ICL (International Criminal Law) Group: How should the commander's actions be classified? (Hint: the Rome Statute: war crime or crime against humanity? Can tribunal case law be applied to command responsibility?)

Outcome: A joint discussion where the groups create a “map of responsibility,” demonstrating the cumulative effect of the legal frameworks.

Exercise 2

(Advanced Level)

Objective:

To teach participants to analyze the concept of “consent” in the context of armed conflict, to distinguish between sexual relations that do not contain elements of violence and CRSV, and to understand the commander's role in preventing violence.

Task:

1. Participants are presented with the following case (situation) set during World War II.

19-year-old Sofiia lived alone in a village in Vinnytsia Oblast, as her parents had died when she was a teenager and she had no other relatives. Villagers called her "holy fool" Sofiia and, when possible, helped her with food and invited her to work in their households so she could earn a little money.

When the German army occupied the village, Sofiia became pregnant by a German soldier who often stayed overnight in her house. She told her friends how happy she was because "Hans is not like our boys who used to visit me before they went to war. Hans is kind. He brings sweets and does not mock me. If Hans does not stay overnight, Heinrich will come; he is old with a scar across half his face."

When Hans's commander learned about Sofiia's pregnancy, he first sent Hans, who claimed no violation had occurred and that he and Sofiia wanted to start a family, to perform hard labor and deprived him of rest. Later, he transferred him to another settlement and strictly ordered him to cease any contact with Sofiia. Upon hearing this, Sofiia came to the commander, crying and begging him not to shame her before the villagers and to return Hans, as they wanted to "get married and raise the child together, as expected. It was a disgrace for a child to be born without a father."

2. Questions for discussion

- Extrapolate this situation during World War II to current conditions and analyze whether CRSV occurred. Why do you think so? What would you do if you were the commander?
- Analyze the situation, excluding the element of armed conflict. How would the conclusions change?

Methodological Notes for Exercise 2

This exercise is complex and multi-layered, as it addresses a “gray zone”, the issue of consent under occupation and victim vulnerability.

Format: Work in small groups or pairs, followed by a plenary discussion.

Progress and guidance for the instructor

1. Extrapolation to current context (CRSV and non-violent relations)

Question: Did conflict-related sexual violence occur?

Suggested answer and justification:

Classification: With a high degree of probability, this is CRSV (in particular, rape or sexual exploitation).

Reasoning:

- **Coercive environment:** According to modern ICC case law (including the approaches to “coercion” mentioned in the Ongwen case), consent cannot be considered voluntary under an obvious power imbalance. Hans is an armed representative of the occupying army. Sofiia is a civilian in the occupied territory.
- **Victim vulnerability:** Sofiia shows signs of potential mental disability (a “holy fool”). In international law, this calls into question her capacity to give informed consent.
- **Lack of choice:** Sofiia’s words (“If Hans does not stay overnight, Heinrich will come”) mean that she was not choosing between a relationship and its absence, but rather between the lesser and greater evil (the “safer” Hans and the frightening Heinrich). This indicates a survival strategy rather than free choice.
- **Status:** Women are a specially protected category under the Geneva Convention (IV) and Additional Protocol I, and exploitation of their vulnerability is a violation.

Question: Як би ви вчинили на місці командира?

Suggested answer:

- The commander acted correctly from the perspective of preventing a crime. International law imposes a duty on commanders to prevent and punish violence.
- Even if the victim protests (“We want a family”), the commander is obliged to repress a subordinate’s actions that show signs of exploitation of a vulnerable person. The commander’s decisions (disciplining Hans, forbidding contact) align with the duty to end impunity.

2. Analysis of the Situation in Peacetime

Question: Як зміняться висновки, якщо виключити війну?

Suggested answer:

- **Change of legal regime:** The situation shifts from international humanitarian law and war crimes to national criminal law and international human rights law.
- **Classification:** It may constitute a crime (sexual violence/rape), but not a war crime.
- **Vulnerability as a key factor:** If Sofiia is legally incapable or unable to understand the nature of her actions due to certain mental characteristics (a “holy fool”), sexual intercourse with her, even without physical violence, would be classified as rape (exploitation of a helpless state) under most national criminal codes and human rights standards.
- **Difference:** There is no element of a “coercive environment of occupation,” but the element of exploitation of vulnerability remains.

Methodological Guidelines for the Exercise

1. Addressing Myths (“She herself wanted it”)

This is the most challenging part of the case. Participants may say, “This is love. Why ruin their lives?”

Guideline: The instructor should gently but firmly shift the

focus from Sofiia's emotions to the circumstances. Ask: "Could Sofiia have said 'no' to Hans and remained completely safe (from him, Heinrich, or hunger)?" If the answer is "no," there is no free consent.

2. Using Manual Terminology

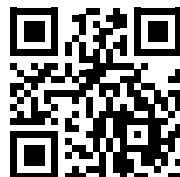
Encourage participants to use terminology from this section. For example, when discussing the commander's actions, they should mention "command responsibility" or the "duty to prevent," and "special protection of women" when discussing Sofiia's actions.

3. Outcome:

Conclude the exercise with the insight that CRSV does not always appear as an armed attack. It is often a quiet exploitation of power and the victim's lack of alternatives. Modern international law allows us to identify a crime where previously people have seen a "wartime romance," and it protects human dignity even when a person does not fully realize their rights have been violated.

Recommended Reading List

International Protocol on the Documentation and Investigation of Sexual Violence in Conflict. Best Practice on the Documentation of Sexual Violence as a Crime or Violation of International Law / Sara Ferro Ribeiro, Danaé van der Straten Ponthoz; UK Foreign & Commonwealth Office. Second Edition. March 2017.

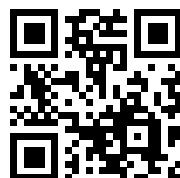


The Oxford Handbook of Women, Peace and Security / Edited by Sara E. Davies and Jacqui True. New York : Oxford University Press, 2019.

Grey, Rosemary. Prosecuting Sexual and Gender-Based Crimes at the International Criminal Court: Practice, Progress and Potential / Cambridge Studies in International and Comparative Law. Cambridge: Cambridge University Press, 2019.

De Brouwer, Anne-Marie. Supranational Criminal Prosecution of Sexual Violence: The ICC and the Practice of the ICTY and the ICTR. Antwerp: Intersentia, 2005.

Legal Guide in Cases of Conflict-Related Sexual Violence. The mobile application “Poradnyk” (Guide) was developed by JurFem and UN Women, with the support of UN Action Against Sexual Violence in Conflict, to provide access to up-to-date basic information on CRSV for paralegals, survivor networks, and all those seeking such information. It contains essential information on the concept of conflict-related sexual violence, interaction with law



enforcement agencies and courts, and the possibilities of obtaining medical, psychological, economic, and legal assistance.

III. International Humanitarian Law and International Criminal Law: Key Aspects of the Development of Case Law on CRSV

Author: Anastasiia Slobodianyuk

This section enables readers to examine the process of establishing the system of international humanitarian law (IHL), as well as the development of the practice of ad hoc international criminal tribunals and the International Criminal Court concerning various forms of conflict-related sexual violence (CRSV). The section highlights how the prolonged legal vacuum regarding sexual violence in armed conflicts was gradually filled as judgments emerged, starting with the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the former Yugoslavia, and how these judgments shaped modern standards for classifying CRSV as a war crime, a crime against humanity, and genocide. The section highlights key cases and legal principles, including the definitions of “coercion” and “penetration,” and the conditions under which sexual violence may be considered a crime committed during armed conflict.

Methodology. The lecturers are recommended to structure the conceptual framework of the section into three substantive clusters:

1. International humanitarian law as the basis for the development of the modern system for combating CRSV.
2. The evolution of approaches to CRSV classification: the contributions of the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the former Yugoslavia.
3. The development of current international case law regarding CRSV through the lens of ICC jurisprudence.

When designing the teaching framework of the session, it is recommended to use a visual presentation for this section and encourage students to work with primary sources containing judgments and UN Security Council resolutions provided in the footnotes of the section.

Particular attention must be paid to the sensitivity of the CRSV topic. Cases involving sexual violence committed in the context of armed conflict often contain details that may trigger strong emotional reactions. Such materials may be traumatic for the audience and require careful preparation. It is important to warn students about the sensitivity of the topic. In addition, mind the language and approach used when covering CRSV. Individuals who have experienced violence, including CRSV, should be referred to in Ukrainian as “postrazhdali” (“affected persons”), “poterpili” (“victims” in criminal law) (depending on their procedural status under national legislation), or “vtsilili” (“survivors”), rather than “zhertvy” (“victims” in the general sense beyond criminal law). The term “zhertva” (“victim” in the general sense beyond criminal law) may be used regarding a person who has died as a result of the violence inflicted⁴⁴.

⁴⁴ Barrier-Free Handbook.

Conceptual Basis

Introduction

According to data cited in 2024 by the UN Secretary-General António Guterres, women and girls are disproportionately affected by conflict-related sexual violence⁴⁵ accounting for more than 95%⁴⁶ of all survivors. A historical example of such disproportion is the situation that occurred between 1932 and 1945 in Asia, when hundreds of thousands of girls and women were forced into sexual slavery by the Imperial Japanese Army. They were referred to as “comfort women”⁴⁷ – survivors who were exploited to suppress resistance in occupied territories. It was widely believed that soldiers of the Japanese Empire deserved a reward for their military service. Women from Korea, China, Indonesia, Taiwan, and the Philippines were subjected to mass sexual violence.

The idea of international criminal justice as a mechanism for prosecuting such crimes was realized only after World War II, when the fate of the defeated states and the responsibility of their military and political leaders came under consideration. The statutes of the International Military Tribunal at Nuremberg and the International Military Tribunal for the Far East contained no mention of conflict-related sexual violence. So, even practices as massive and systematic as the sexual slavery of “comfort women” were legally invisible to mid-20th-century international justice.

This legal vacuum resulted in a long-standing lack of recognition and legal protection for survivors. Women who survived the crimes committed by the Japanese army began receiving compensation

⁴⁵ Women and girls are disproportionately affected by conflict-related sexual violence.

⁴⁶ 15th report of the United Nations Secretary-General on conflict-related sexual violence.

⁴⁷ The ‘comfort women’ of World War Two. Witness History.

only in the 21st century. The catalyst for change was the public testimony of Kim Hak-soon in 1991. She openly spoke about forced sexual slavery by the Japanese army, breaking decades of silence and triggering mass lawsuits⁴⁸. In 2023, a South Korean court ruled in favor of 16 women who had filed lawsuits against Japan (in most cases, the plaintiffs were represented by relatives, as many survivors had already passed away)⁴⁹. his decision is a testament to how late international and national justice systems began to recognize the scale and gravity of these crimes.

Another important milestone in the development of case law on CRSV was the case of the Prosecutor v. Jean-Paul Akayesu⁵⁰, known for being the first to establish that rape may constitute an element of genocide. Notably, at the beginning of the proceedings, Akayesu was not even charged with rape. This was not due to a lack of evidence (which was substantial and thoroughly documented) but because at that time such crimes were not deemed important enough to justify the time and financial resources of investigators, prosecutors, and court staff⁵¹.

This section aims to illustrate how, step by step, ad hoc international criminal tribunals and the ICC developed the approaches required to be applied in trying CRSV cases in court after the issue remained outside the focus of international legal mechanisms for years. It was underestimated, not reflected in regulatory documents, and not properly investigated.

Only the gradual development of international case law allowed for the recognition of the scale and consistency of these crimes, laying the basis for victim protection. Therefore, it is important to analyze in this section the key judgments of the ICC and ad hoc criminal tribunals to draw the attention of higher education students

⁴⁸ Choe Sang-Hun. **Overlooked No More: Kim Hak-soon, Who Broke the Silence for 'Comfort Women'**. The New York Times. 2021.

⁴⁹ Newton Lou. **Japan ordered to compensate wartime 'comfort women'**. BBC. 2023.

⁵⁰ **Prosecutor v Jean-Paul Akayesu** (ICTR, Judgment, 2 September 1998).

⁵¹ Christina Lamb. **Our Bodies, Their Battlefield**. Kyiv: Publishing House, 2024. 368 p. (Non-Fiction Series).

to the fact that CRSV is a complex legal, humanitarian, and social issue requiring meticulous attention and awareness from the legal community.

The brutal events of the second half of the 20th century prompted the international community to seek effective prosecution mechanisms after decades of CRSV remaining unnoticed in international law. The international criminal tribunals established by the UN Security Council became the first institutions where case law regarding conflict-related sexual violence began to develop systematically and consistently.

1. International humanitarian law as the basis for the development of the modern system for combating CRSV

The system of treaties of international humanitarian law is often criticized for a lack of attention to sexual violence committed during armed conflict. However, the 1949 Geneva Conventions and their 1977 Additional Protocols established the groundwork for protection against sexual violence (although only for women). The Geneva Conventions addressed rape, enforced prostitution, and any form of indecent assault on them.

The first explicit prohibition of rape appeared **in the 1863 Lieber Code**. According to Article 44:

“All wanton violence committed against persons in the invaded country ... all rape, wounding, maiming, or killing of such inhabitants, are prohibited under the penalty of death, or such other severe punishment as may seem adequate for the gravity of the offense. A soldier, officer, or private, in the act of committing such violence and disobeying a superior ordering him to abstain from it, may be lawfully killed on the spot by such superior.”

The Lieber Code imposed the penalty of death as the strict penalty for rape.

In addition, **the 1899 Hague Convention** protected the “family honor and rights” of the population in occupied territories⁵². **The 1929 Convention relative to the Treatment of Prisoners of War** established in Article 3 that female prisoners of war shall be treated with all consideration due to their sex⁵³.

Current IHL treaties prohibit rape and other forms of sexual violence in international and non-international armed conflicts. Article 14 of the **Geneva Convention relative to the Treatment of Prisoners of War** maintains the idea of the 1929 Convention:

“Prisoners of war are entitled in all circumstances to respect for their persons and their honour. Women shall be treated with all the regard due to their sex...”⁵⁴”.

Article 27 of the **Geneva Convention relative to the Protection of Civilian Persons in Time of War** explicitly enshrined the following prohibition:

“Women shall be especially protected against any attack on their honor, in particular against rape, enforced prostitution, or any form of indecent assault”⁵⁵”.

Article 75 of **Additional Protocol I (1977)** guarantees the prohibition at any time and in any place whatsoever of the following acts, whether committed by civilian or military agents:

“outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution, and any form of indecent assault”⁵⁶”.

⁵² **Convention** with Respect to the Laws and Customs of War on Land (The Hague Convention (II)), dated July 29, 1899.

⁵³ **Convention** relative to the Treatment of Prisoners of War, Geneva, 27 July 1929, Art. 3.

⁵⁴ **Geneva Convention** relative to the Treatment of Prisoners of War, dated August 12, 1949.

⁵⁵ **Geneva Convention** Relative to the Protection of Civilian Persons in Time of War, dated August 12, 1949.

⁵⁶ **Protocol Additional** to the Geneva Conventions of August 12, 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977.

Regarding conflicts not of an international character, **Common Article 3 of the Geneva Conventions and Additional Protocol II relating to the protection of victims of conflicts not of an international character** also prohibit rape and enforced prostitution against all persons who do not take a direct part or have ceased to take part in hostilities.

It is important to understand that **not every conflict-related sexual violence automatically falls under the scope of international humanitarian law**. IHL covers only those acts that have a direct or at least sufficient nexus with the conflict⁵⁷.

The notion of nexus helps distinguish war crimes from other violations committed during wartime. It is largely developed in international criminal case law and is used both in IHL and ICL. For better understanding, consider the following example: if the military commander rapes a subordinate soldier in a military barracks and this act has no link to the conflict, IHL would not apply, although national law and international human rights law would prohibit such a crime. However, if a military commander rapes a person detained for reasons connected to the armed conflict, such an act clearly constitutes a violation of international humanitarian law and international human rights law. The nexus with the armed conflict is derived from the identity of the perpetrator (a military commander), the identity of the victim (a person detained for reasons related to the armed conflict), and the context (situation of vulnerability of a detainee to the Detaining Power)⁵⁸.

The practice of international criminal tribunals demonstrates that **an individual approach** is required in each case. Based on the experience of the International Criminal Tribunal for the former Yugoslavia, it can be argued that hostilities do not need to be ongoing at the crime scene to establish a connection with an armed conflict. A close link to hostilities in another part of the territory is sufficient.

⁵⁷ ICTY, Prosecutor v. Duško Tadić, Case No. IT-94-1-T, Judgment (Trial Chamber), 7 May 1997, para. 572.

⁵⁸ **Gaggioli G. Sexual violence in armed conflicts:** A violation of international humanitarian law and human rights law. *International Review of the Red Cross*. 2014. p. 503-538.

Thus, in the Prosecutor v. Dragoljub Kunarac, Radomir Kovac, and Zoran Vukovic (Kunarac), the Appeals Chamber set out criteria that may indicate the existence of a nexus:

“In determining whether or not the act in question is sufficiently related to the armed conflict, the Trial Chamber may take into account, inter alia, the following factors: the fact that the perpetrator is a combatant; the fact that the victim is a non-combatant; the fact that the victim is a member of the opposing party; the fact that the act may be said to serve the ultimate goal of a military campaign; and the fact that the crime is committed as part of or in the context of the perpetrator’s official duties” (para. 59)⁵⁹.

The Elements of Crimes of the ICC Rome Statute also establish that the act must take place in the context of and be associated with an armed conflict,⁶⁰ i.e., a conflict and a nexus must exist, and the perpetrator must be aware of the factual circumstances that establish the existence of the armed conflict. Given the diversity of situations, these criteria need to be assessed based on the specifics of each case.

⁵⁹ Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic (ICTY, Judgment, 22 February 2001).

⁶⁰ **Elements of Crimes** (part of Article 9 of the Rome Statute of the International Criminal Court), September 9, 2002. Translated from English.

2. Evolution of Approaches to CRSV Classification: The Contributions of the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia

The International Criminal Tribunal for Rwanda (ICTR). On November 8, 1994, the ICTR was established to prosecute persons responsible for genocide and other serious violations of international humanitarian law committed in Rwanda.

According to United Nations Security Council Resolution 955 of November 8, 1994 (S/RES/955 (1994)), by which the tribunal was established, the ICTR jurisdiction allowed for the prosecution of persons for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens for crimes committed in the territory of neighboring states during the period from January 1, 1994, to December 31, 1994. During the 100 days of the Rwandan genocide, about 800,000 people out of a population of 8 million were killed. According to the UN Special Rapporteur on Rwanda, between 250,000 and 500,000 rapes (i.e., 250–500 per day) occurred from April 6 to July 12, 1994⁶¹.

The ICTR became a significant milestone for the global legal community due to several landmark cases. Among them, the Akayesu case holds a special place.

Prosecutor v. Jean-Paul Akayesu. Jean-Paul Akayesu, a former teacher and school inspector, became the bourgmestre of the Rwandan commune of Taba in 1993. This position granted him broad powers: control over law enforcement and the communal police, and the maintenance of public order. During his tenure, between early April and late June 1994, hundreds of civilians, including women, sought refuge at the communal bureau in Taba and were subjected

⁶¹ United Nations, Report on the Situation of Human Rights in Rwanda submitted by Mr. René Degni-Ségui, Special Rapporteur of the Commission on Human Rights, under paragraph 20 of the resolution S-3/1 of 25 May 1994, E/CN.4/1996/68, January 29, 1996, p. 7.

to sexual violence on or near the bureau premises by armed local militia members and communal police. These acts of sexual violence were generally accompanied by explicit threats of death or bodily harm. Akayesu, as the bourgmestre, not only knew about these acts but, through his inaction and by virtue of his presence during the commission, encouraged, in fact, these activities.

In this case, the ICTR defined the notion of the “crime of rape” for the first time: *“...a form of aggression and that the central elements of the crime of rape cannot be captured in a mechanical description of objects and body parts” (para. 687) ... “a physical invasion of a sexual nature, committed on a person under circumstances which are coercive. The Tribunal considers sexual violence, which includes rape, as any act of a sexual nature which is committed on a person under circumstances which are coercive. Sexual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact” (para. 688).*

It was emphasized that rape and other forms of sexual violence cause severe physical and psychological harm to victims. Therefore, when such acts are committed with the intent to destroy, in whole or in part, a protected group, they may be qualified as an act of genocide: *“Sexual violence was an integral part of the process of destruction, specifically targeting Tutsi women and specifically contributing significantly to their destruction and to the destruction of the Tutsi group as a whole⁶²”.*

Thus, the Akayesu case is still regarded as the most significant in terms of prosecuting the crime of rape as an international crime.

Another important aspect of this case was the recognition of **forced nudity** as a form of conflict-related sexual violence. In general, the ICTR made its first attempt to define what should be understood by the notion of “coercion.” Akayesu ordered his subordinate to undress a girl and forced her to do gymnastics naked. The Tribunal held that coercive circumstances need not be evidenced by a show of physical force. Threats, intimidation, extortion, and other forms of

⁶² **Prosecutor v Jean-Paul Akayesu** (ICTR, Judgment, 2 September 1998).

duress that prey on fear or desperation may constitute coercion, and coercion may be inherent in certain circumstances, such as armed conflict or the military presence.

International Criminal Tribunal for the former Yugoslavia (ICTY).

In response to massive violations of international humanitarian law during the breakup of Yugoslavia, the UN Security Council established the International Criminal Tribunal for the former Yugoslavia in 1993. One of the landmark CRSV cases within this jurisdiction was the case of the Prosecutor v. Furundžija.

Anto Furundžija, a commander of a paramilitary unit within the Croatian Defense Council, interrogated a female victim at the unit's headquarters. The direct perpetrator forced her to undress and remain naked in front of soldiers, after which he committed rape. Although Furundžija did not commit the rape himself, he was present in the room during its commission and simultaneously interrogated the woman. The Trial Chamber established that under international criminal law, punishment applies not only to rape but also to any serious sexual violence, even in the absence of actual penetration⁶³. It was established that commanders bear responsibility for rape if they fail to take effective measures to control and halt these crimes. The Tribunal also established that one of the elements of rape is sexual penetration accompanied by **coercion, force, or threat of force against the victim or a third person**.

The Furundžija case was the first within the ICTY where the Trial Chamber defined rape as the sexual penetration of the vagina, mouth, or anus by the penis or any other object, committed by force or threat of force against the victim. The Chamber's position regarding the impossibility of valid consent in conditions of deprivation of liberty was significant⁶⁴.

Another significant example of the impact of coercive circumstances on consent during armed conflict is the Prosecutor v. Kunarac case. Between April 1992 and February 1993, the municipality

⁶³ **Prosecutor v Anto Furundžija** (ICTY, Judgment, 10 December 1998).

⁶⁴ *Ibid.*, para 271.

of Foča (now a city in Bosnia and Herzegovina) became a main center of armed conflict between Bosnian Serbs and Bosnian Muslims. The non-Serb population was subjected to mass killings, rape, and other forms of cruel treatment directly connected to the conduct of hostilities.

The conflict was accompanied by a widespread and systematic attack on the non-Serb civil population by the Bosnian Serb army and associated military groups. Its strategic goal was the “cleansing” of the Foča municipality of its Muslim population, achieved through mass detention, forced displacement, and sexual violence against enslaved women. Muslim women were detained in horrific and unsanitary conditions in school buildings and the infamous Partizan Sports Hall, where they were subjected to systematic rape and other forms of cruel treatment. The survivors were aware of both the existence of the armed conflict and the scale of the attack against the non-Serb population, as well as the organized and systemic character of these crimes.

This case was notable for the scale of sexual violence and concerned merely sexual violence within the ICTY. The Court noted that sexual penetration constitutes rape not only when accompanied by coercion, force, or threat of force against the victim or a third person (as stated in the case of Furundžija). Other circumstances that deprive a person of the possibility to express consent freely or that render their participation involuntary are sufficient⁶⁵.

It is noteworthy that the defense argued that the female detention sites, including the Partizan Sports Hall, were located outside the theater of operations and lacked a direct connection to the armed conflict. Therefore, they claimed the acts of the accused persons could not be classified as war crimes. In response, the ICTY prosecutors pointed out that: “...*The laws of war may frequently encompass acts which, though they are not committed in the theater of conflict, are substantially related to it...*” (para. 60).

The Kunarac case demonstrates that in the context of an armed

⁶⁵ Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic (ICTY, Judgment, 22 February 2001).

conflict, coercive circumstances impact the classification of sexual violence, even if such acts are committed outside the immediate theater of operations.

3. The Development of Current International Case Law Regarding CRSV Through the Lens of the Case Law of the International Criminal Court

The law enforcement of the **International Criminal Court**, established under the 2002 Rome Statute, was the next milestone in the development of case law regarding CRSV. The first ICC conviction for sexual violence was delivered in the case of **Prosecutor v. Jean-Pierre Bemba Gombo**⁶⁶ in 2016.

In this case, Jean-Pierre Bemba, president of the rebel Movement for the Liberation of Congo (Mouvement pour la Libération du Congo, MLC), appeared in the Court for crimes committed by his subordinates during the intervention in the armed conflict in the Central African Republic in 2002–2003. As a military commander, he was aware of the crimes committed by his subordinates, exercised effective command and control, yet failed to take any necessary and reasonable measures to prevent their commission. MLC soldiers deliberately and systematically raped women and men of various

⁶⁶ [Prosecutor v. Jean-Pierre Bemba Gombo](#).

ages, sometimes in the presence of their relatives. The Trial Chamber established that the acts of rape and murder were not isolated incidents but part of the military tactic. The civilian population of the Central African Republic was the primary target, and the crimes committed by the MLC constituted part of a widespread attack. Consequently, in 2016, Jean-Pierre Bemba was convicted of rape both as a crime against humanity (Article 7(1)(g) of the Rome Statute) and a war crime (Article 8(2)(e)(vi) of the Rome Statute). In 2018, the ICC Appeals Chamber abolished Jean-Pierre Bemba's sentence. It found that the Trial Chamber had misapplied the concept of command responsibility by imposing on him an excessive and insufficient standard of control over subordinates. In addition, the Trial Chamber had exceeded the scope of the charges by relying on incidents that were vaguely specified in the indictment. In doctrinal commentary, lawyers described the appellate judgment as a turning point in the ICC jurisprudence. Some consider it an important adjustment of an overextension of command responsibility, while others criticize it as a step backward that complicates the prosecution of high-ranking commanders for sexual and other mass violence committed by their subordinates. Feminist scholars observed that survivors of sexual violence were deprived of their right to reparations, and their testimonies and traumatic experiences were questioned or sidelined due to a "technical legal point." Sexual violence has once again been pushed to the periphery of justice, despite the unprecedented scale at which it has been documented. The Appeals Chamber focused on procedural fairness and the balance between substantive and procedural justice⁶⁷.

The case of the **Prosecutor v. Bosco** Ntaganda before the ICC was considered in the context of the prolonged armed conflict in

⁶⁷ Kharytonova, O. (2022). Kharytonova, O. Human Rights in Conflict Zones: The Criminal Law Dimension / International Human Rights Standards in Criminal Law: A Comparative Perspective. Manual: Electronic Educational Edition / [Dmytro Lukianov, Oleksandr Marin, Iryna Sen, Viacheslav Tuliakov, Olena Uvarova, Olena Kharytonova, Olena Shostak]; edited by Olena Kharytonova and Gabriele Schmölzer. Kharkiv: Pravo, 2022. pp. 201–202.

the Democratic Republic of the Congo, particularly in Ituri Province. In 2019, the Court convicted Bosco Ntaganda, one of the major commanders of the armed group Patriotic Forces for the Liberation of Congo (French: Forces Patriotiques pour la Libération du Congo (FPLC)) – the military wing of the Union of Congolese Patriots (French: Union des Patriotes Congolais (UPC)) – of rape, sexual slavery, and a series of other crimes. In 2021, the Appeals Chamber upheld the conviction⁶⁸.

Between November 2002 and December 2003, troops under Ntaganda's command carried out large-scale attacks against the civilian population characterized by extreme brutality. In addition to torture, mass killings, forced displacement, and persecution that accompanied the conflict in the DRC from 1999 to 2003, numerous instances of sexual violence were recorded. Due to the widespread prevalence of CRSV, the DRC has been labeled as the “rape capital of the world.”

The ICC Trial Chamber defined that rape and sexual slavery may be classified as war crimes or crimes against humanity in the presence of certain objective elements. **First, there must be an act of penetration of the victim's body, where the perpetrator's actions create a sense of fear and a threat to the victim's life. Second, the penetration must occur under “coercive circumstances,” where the victim is subjected to the threat of physical force, psychological pressure, or other coercive factors that restrict their free will.**

The Court emphasized that the concept of “penetration” is broad and encompasses various acts beyond sexual intercourse. In the case concerning the actions of UPC/FPLC forces in Ituri Province, it was established that women and girls were forced into sexual intercourse during and immediately after assaults on communities, involving penetration with genitals, other body parts, or foreign objects, thereby meeting the legal threshold of “penetration” in the context of war crimes and crimes against humanity.

Regarding “coercive circumstances,” the Court concluded that the perpetrators used force both during and after the act of

⁶⁸ Prosecutor v Bosco Ntaganda.

penetration. They detained the victims against their will, inflicted bodily harm, and ignored their screams and pleas for help. The Court also took into account the presence of armed individuals within the communities, which generated **fear and anxiety among the civilian population**. All these factors contributed to the creation of coercive circumstances and confirmed the second objective element of rape.

The first judgment in international practice in which forced pregnancy was classified as both a crime against humanity and a war crime (Articles 7(1)(g) and 8(2)(vi) of the Rome Statute) was the **Prosecutor v. Dominic Ongwen case**.

The ICC found Dominic Ongwen, one of the leaders of the rebel Lord's Resistance Army (LRA) in Uganda, guilty on all counts. These included forced marriage, torture, rape, enslavement, unlawful confinement, outrages upon personal dignity, and other CRSV crimes committed against seven women who were abducted and forcibly held in his household. In addition, the ICC recognized Ongwen's responsibility for CRSV crimes committed by his subordinates.

As noted above, in the case of the Prosecutor v. Akayesu, the ICTR established an important approach to understanding coercion, emphasizing that it encompasses not only the use of physical force but also threats, intimidation, blackmail, extortion, and other forms of pressure. The Tribunal observed that coercion may be inherent in armed conflict or the mere military presence, as such circumstances create an atmosphere of fear and powerlessness. In the Ongwen case, the ICC upheld this approach: *"...Coercion may be inherent in certain circumstances, such as armed conflict or the military presence of hostile forces amongst the civilian population. Several factors may contribute to creating a coercive environment, such as the number of persons involved in the commission of the crime, or whether the rape is committed during or immediately following a combat situation, or is committed together with other crimes"*⁶⁹.

⁶⁹ **Prosecutor v Dominic Ongwen** (ICC, Trial Judgment, 4 February 2021).

Thus, in the ICC case law, coercive circumstances in the context of armed conflict constitute a structural condition rather than merely an element of specific conduct. This approach allows for the inclusion of all forms of domination and control, ensuring a comprehensive and conflict-sensitive analysis of sexual violence. It establishes a holistic survivor protection standard and provides clear guidance for national legal systems.

The judgment of the European Court of Human Rights in the inter-State case of *Ukraine and the Netherlands v. Russia* became a significant milestone in the establishment of survivor protection standards.⁷⁰ On July 9, 2025, the Grand Chamber of the ECtHR awarded a landmark judgment in the case that consolidated four applications concerning the actions of the Russian Federation during the occupation of eastern Ukraine since 2014, the downing of Malaysia Airlines flight MH17 in July 2014, and the full-scale invasion launched in February 2022.

In this case, CRSV was recognized as an administrative practice and a form of torture in the context of an international armed conflict, constituting a violation of Article 3 of the European Convention on Human Rights (ECHR). The Court found that from 2014 until September 16, 2022 (the date of Russia's withdrawal from the ECHR), the Russian Federation carried out systematic human rights violations, including unlawful detention, torture, and sexual violence. It emphasized that CRSV was an element of Russia's military strategy aimed at establishing control, dehumanization, and humiliation of the Ukrainian population.

The ECtHR's judgment in the case of *Ukraine and the Netherlands v. Russia* highlights that the Russian Federation uses CRSV as a military tactic in the war against Ukraine.

⁷⁰ *Ukraine and the Netherlands v. Russia*, Applications nos. 8019/16, 43800/14, 28525/20 and 11055/22, Judgment (Merits), 9 July 2025.

Practical Exercises and Methodological Guidelines

Exercise 1

(Basic/Intermediate Level)

Objective:

To develop a clear understanding of coercive circumstances in the context of conflict-related sexual violence and to explore forms of CRSV (in particular those where recognition as sexual violence may be complex).

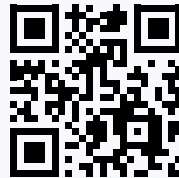
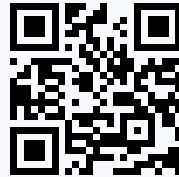
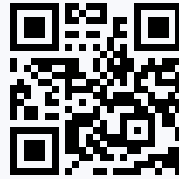
Task

1. Review the situation and provide a legal assessment of the actions taken by servicepersons of State B.

During hostilities in settlement A, individuals identifiable as servicepersons of State B detained three women and held them in a residential building. The soldiers forced some women to undress in front of them and perform household work while naked. Although no physical force was used, the women experienced fear and psychological pressure in the presence of the soldiers.

2. Questions for reflection

- What should be understood as coercive circumstances based on the established case law of international criminal tribunals? (Hint: Refer to the judgments in *Prosecutor v. Jean-Paul Akayesu*, *Prosecutor v. Bosco Ntaganda*, *Dominic Ongwen*)
- Did the servicepersons of State B commit conflict-related sexual violence? If so, what specific form of CRSV is involved?



Explanatory Guidelines for Completing the Exercise

1. Coercive Circumstances in the ICL Case Law

In the case law of international criminal tribunals described in this section, coercive circumstances are considered not only as the use of physical force but much more broadly – as any environment where a person is deprived of a genuine possibility to refuse or resist.

Within this exercise, coercive circumstances include:

- The context of hostilities and general conditions of danger;
- The presence of armed individuals (servicepersons);
- Detention and deprivation of liberty of the survivors;
- Consequently, a constant sense of fear, psychological pressure, and the potential risk of violence against women.

Based on these factors, it can be concluded that the coercive circumstances were present in the described situation.

2. Legal Assessment of the Actions of State B's Servicepersons

Do the actions of State B's servicepersons constitute CRSV?

Yes, the servicepersons' actions contain clear elements of CRSV (despite the absence of physical contact).

Reasoning: In the case of Akayesu, the ICTR established that acts of sexual violence encompass not only forced penetration of another person's body but also sexual abuse, such as forced nudity (for more information, [see](#)).



Exercise 2

(Advanced Level)

Objective:

To develop students' skills in analyzing situations where military leaders or commanders are liable for crimes committed by their subordinates, and to understand the criteria of command responsibility in international criminal law.

Task

1. Learn the situation and consider whether the military commander should bear criminal responsibility.

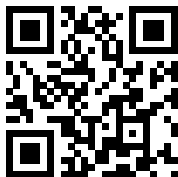
In Region X, where an armed conflict is ongoing, an armed group, "Defense Forces of X," raided civilian settlements. The purpose of the operations is to strengthen control over the territory and demonstrate power over the local population. During the raids, soldiers of the armed group temporarily stayed in a house along with their leader. A family consisting of a mother, a father, a minor daughter, and an adult son lived in that house. The leader of the armed group forbade them from leaving the house and compelled them to cook and launder the soldiers' clothes. One evening, while the soldiers were drinking alcohol in the kitchen, one of the soldiers raped the daughter in front of her father in the house. The military leader was in the kitchen at that time in the company of other members of the armed group.

2. Questions for reflection

- What forms of conflict-related sexual violence are present in this situation?
- Will the military commander be liable for the subordinate's actions in accordance with:
 - *the criminal legislation of Ukraine?*
 - *international criminal law?*

Explanatory Guidelines for Completing the Exercise

1. In this situation, the following forms of CRSV occur: rape and forced witnessing of sexual violence committed against others, in particular family members (refer to the CRSV investigation memoranda developed by the expert group on CRSV within the Interagency Working Group on the Investigation of Crimes Committed in Armed Conflict under the Office of the Prosecutor General, **coordinated** by Ukrainian Women Lawyers Association “JurFem”).



2. Should the military commander be liable for the subordinate's actions?

A) According to the criminal legislation of Ukraine:

Yes, the commander may be liable for the crime provided for in Article 438 of the Criminal Code of Ukraine. Part 1 of Article 31-1 of the Criminal Code of Ukraine explains this:

“...A military commander or person effectively acting as a military commander shall be criminally responsible for any of the crimes provided for in Articles 437–439, 442, and 442-1 of this Code committed by a subordinate who was, at the time of the commission of the crime, under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such a person, where that military commander or person effectively acting as a military commander either knew or, owing to the circumstances at the time, should have and could have known that the subordinate were committing or were about to commit such crimes, and failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to report that crime to the competent authority⁷¹.”

B) According to international criminal law:

According to Article 28 of the ICC Rome Statute, a military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court (CRSV is such a crime) committed by forces under his or her effective command and control or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:

- That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and
- That military commander or person failed to take all necessary and reasonable measures within his or her

⁷¹ Criminal Code of Ukraine No. 2341-III of April 5, 2001.

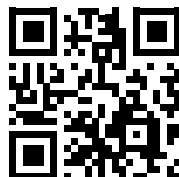
power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

First, the commander (military leader) “knew or should have known” about the risk of the crime, as he was in the house together with the soldiers, created conditions for violence (forcible detention of the family), and allowed the soldiers to drink alcohol.

Second, the commander “failed to take all necessary and reasonable measures” to prevent or punish the act. In particular, he failed to control his subordinates, failed to ensure the protection of civilians, failed to prevent alcohol consumption and disorderly behavior of his subordinates, and ultimately failed to punish the perpetrator.

Recommended Reading List

Gaggioli G. *Sexual violence in armed conflicts: A violation of international humanitarian law and human rights law*. International Review of the Red Cross. 2014. p. 503-538.



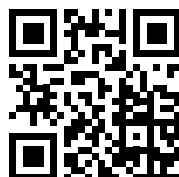
Zheltukha, M. (2025). Conflict-Related Sexual Violence in the ECtHR Judgment in the Case “Ukraine and the Netherlands v. Russia”: A Historic Step Towards Accountability.



Review of International Criminal Court Judgments.



Kharytonova, O. (2022). Kharytonova, O. Human Rights in Conflict Zones: The Criminal Law Dimension / International Human Rights Standards in Criminal Law: A Comparative Perspective. Manual: Electronic Educational Edition / [Dmytro Lukianov, Oleksandr Marin, Iryna Sen, Viacheslav Tuliakov, Olena Uvarova, Olena Kharytonova, Olena Shostak]; edited by Olena Kharytonova and Gabriele Schmölzer. Kharkiv: Pravo, 2022. pp. 194–209.



IV. Procedural Specifics of Pre-Trial Investigation of Criminal Offenses Involving Conflict-Related Sexual Violence: International Standards and National Challenges

Author: Kateryna Shunevych

This section examines the procedural specifics of criminal proceedings in cases involving CRSV, in particular the authorities involved and their powers, special pre-trial investigations, notices of suspicion and actions to be taken to protect the confidentiality of victims' data in such documents, the exercise of the right to representation and free legal aid, and striking a balance between the considerations of the pre-trial investigation and victims' interests during investigative and procedural actions. The section also analyzes trends in applying survivor-centered approaches in criminal proceedings in cases involving CRSV. Particular attention has been paid to the following aspects: specifics of assuming the procedural status of a victim and the guarantees of their participation in proceedings, as well as the conditions for the implementation of such guarantees; measures to protect confidentiality and ensure effective communication with victims (including the issue of informed consent); specifics of investigative and procedural actions with due account for victims' interests; and tools to prevent re-traumatization of victims.

Methodology. It is recommended to apply a comprehensive approach to conducting the training sessions that should combine the analysis of the regulatory framework, the synthesis of investigative and judicial practices, and the study of the relevant procedural standards and recommendations for responding to crimes of conflict-related sexual violence (CRSV). To ensure effective mastery of the material, it is recommended that the lectures be

divided into three sessions (6 hours):

Session 1. General aspects of pre-trial investigations in CRSV criminal proceedings (2 hours).

Session 2. Evidence and proof in CRSV criminal proceedings (2 hours).

Session 3. Tactics and methodology of pre-trial investigations in CRSV criminal proceedings (2 hours).

During practical sessions, it is recommended to use focus group discussions, the case study method, and the analysis of procedural documents (notices of suspicion published on the website of the Office of the Prosecutor General, court judgments, etc.). The purpose of such educational activities is to integrate the principles of survivor-centered justice into the national model of criminal proceedings.

Conceptual Basis

Introduction

Compliance with the formal criminal procedure during the pre-trial investigation of such criminal offenses, including the issue of whether the parties involved in criminal proceedings are real parties in interest, the possibility of exercising their rights and obligations, the procedure for carrying out their activities, including investigative and procedural actions, and the adoption of procedural decisions in accordance with the law, is essential to prosecute perpetrators for criminal offenses involving conflict-related sexual violence.

It should be noted that the Criminal Code of Ukraine does not provide for a standalone provision establishing sole criminal liability for CRSV. According to established practice, such acts are classified under Article 438 of the Criminal Code of Ukraine, “War Crimes.”

According to the Resolution of the Supreme Court in case No. 415/2182/20 of February 28, 2024, acts committed during an armed conflict that fall within the prohibitions established by international humanitarian law and constitute serious violations thereof are to be classified solely under Article 438 of the Criminal Code of Ukraine and do not require additional legal classification under other articles of the Code (clause 127).

Until 2024, Article 438 of the Criminal Code of Ukraine was titled “Violation of the Laws and Customs of War.” The title was changed because the Verkhovna Rada of Ukraine adopted Law No. 4012-IX of October 9, 2024, “On Amendments to the Criminal and Criminal Procedure Codes of Ukraine in Connection with the Ratification of the Rome Statute of the International Criminal Court and Amendments thereto.” By virtue of this Law, the Criminal Code of Ukraine was also supplemented with Article 442-1, “Crimes Against Humanity,” which criminalized rape, sexual exploitation, enforced prostitution, forced pregnancy, enforced sterilization, or any other forms of sexual violence committed as part of a widespread or systematic attack

directed against any civilian population. In addition, acts that fall within the scope of CRSV may be classified under Article 442 of the Criminal Code of Ukraine, “Genocide,” if committed with the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group as such.

In the course of the pre-trial investigation of CRSV-related criminal proceedings, it is necessary to apply rules that are uniform for this category of proceedings (universality) and the same criminal procedural law throughout Ukraine (unity), and accurately and strictly comply with the provisions of criminal procedural law (mandatory nature)⁷².

However, compliance with Ukraine’s national criminal procedural legislation is not always sufficient to restore justice through judgments rendered by national courts. This is due to the specifics of CRSV, the particular vulnerability of victims, and the risks of re-traumatization during investigative and procedural actions conducted in accordance with the Criminal Procedure Code of Ukraine. Therefore, the need to apply, within national criminal proceedings, survivor-centered approaches, the elements of which are found in the EU *acquis* and in the case law of the ECtHR and the ICC, should be taken into account.

In 2023, the ICC Strategic Plan 2023–2025 and the [Office of the Prosecutor Strategic Plan 2023–2025](#) were presented, which form the basis of the ICC’s current policy. Among the strategic goals, the first document identifies increasing the efficiency of the Court’s core activities to protect the safety and well-being of the persons involved, in particular victims and witnesses (Strategic Goal 1), as well as the development of the Court’s approaches to victims in all phases of the judicial proceedings, including (in cooperation with the Trust Fund for Victims) reparations (Strategic Goal 2). According to clause 38 of the ICC Strategic Plan 2023–2025, victim-centered and trauma-informed approaches were listed as being at the center of the Court’s operations.

⁷² Criminal Procedure of Ukraine: Academic Course in Three Volumes. Vol. 1: General Part (2021). V. T. Nor, N. R. Bobechko, M. V. Bahrui et al.; edited by Academician of the National Academy of Legal Sciences of Ukraine, Doctor of Law, Professor V. T. Nor and Doctor of Law, Professor N. R. Bobechko. Lviv: Ivan Franko National University of Lviv, pp. 56–57.

The procedural aspects of criminal proceedings in cases involving CRSV include the following:

- Authorities involved in the pre-trial investigation and their powers;
- Victim status and the special aspects of exercising victims' right to representation and free legal aid;
- Specifics of special pre-trial investigations, including the notices of suspicion and actions to protect the confidentiality of victims' data in such documents;
- Special aspects of investigative and procedural actions related to striking a balance between the considerations of the pre-trial investigation and victims' interests.

1. Authorities Involved in the Pre-Trial Investigation of Conflict-Related Sexual Violence and Their Powers

According to the Criminal Procedure Code of Ukraine, specifically Article 216, investigators of the Security Service of Ukraine shall conduct relevant pre-trial investigations. However, based on the practice established during 2022–2025, investigators of the National Police of Ukraine are also involved in conducting pre-trial investigations of CRSV offenses.

Note! *In 2023, the Verkhovna Rada of Ukraine registered Draft Law No. 9351, “On Amendments to the Criminal Procedure Code of Ukraine Regarding the Improvement of the Procedure for Conducting Pre-Trial Investigation and Court Proceedings in Cases of Sexual Violence Committed*

during Armed Conflict.” It proposes the introduction of an alternative investigative jurisdiction to ensure an effective response to these crimes and to protect victims’ rights (in accordance with the Explanatory Note to Draft Law No. 9351).

Since 2022, there has been a trend toward concentrating the efforts of the Office of the Prosecutor General (OPG) and law enforcement agencies on implementing survivor-centered practices. Certain changes have also occurred at the level of the OPG’s strategic documents⁷³. According to these documents, *new approaches to protecting the interests of victims and witnesses include adaptation to the victim’s personality, prioritization of victims’ safety, ensuring inclusivity and non-discrimination, enabling victims to retain control over their personal information, and prohibition of stigmatization.*

To implement these approaches, in 2022, a new structural unit responsible for procedural supervision and public prosecution in CRSV criminal proceedings was established within the OPG under the name of the Division for Procedural Guidance of Pre-Trial Investigations and Support of Public Prosecution in Criminal Proceedings for Crimes Related to Sexual Violence (In 2025, this was reorganized into the Third Unit of the Second Division for Procedural Guidance and Public Prosecution of the OPG’s Department for Combating Crimes Committed in Armed Conflict). In addition, the Coordination Center for the Support of Victims and Witnesses operates within the OPG to provide informational support to CRSV survivors and ensure effective referral mechanisms.

⁷³ They include the Prosecution Development Strategy for 2021–2023, approved by Order of the Prosecutor General No. 489 of October 16, 2020, the Strategic Plan for the Exercise of the Powers of Prosecution Authorities in the Field of Criminal Prosecution of International Crimes for 2023–2025, the Strategic Plan for the Exercise of Prosecutorial Powers in the Field of Criminal Prosecution of Conflict-Related Sexual Violence, and the Concept for the Implementation of a Support Mechanism for Victims and Witnesses of War Crimes and Other International Crimes. In 2022, the Strategy for Ensuring a Survivor- and Witness-Centered Approach for Handling Cases of Conflict-Related Sexual Violence (CRSV) was presented.

2. Victim Status

A victim in criminal proceedings is an individual who has sustained moral, physical, or material damage as a result of a criminal offense, as well as a legal entity that has sustained material damage as a result of a criminal offense (Part 1 of Article 55 of the Criminal Procedure Code of Ukraine). The practice demonstrates that CRSV survivors may be both women and men. For example, according to official data from the OPG, as of December 1, 2025, 389 incidents of CRSV have been recorded since the beginning of the full-scale invasion of Ukraine by the Russian Federation. In particular, 145 incidents involved men and 244 incidents involved women, including 22 minor girls and 1 minor boy.

To acquire the status of a victim, a person must either report a criminal offense committed against them or request to be involved as a victim in the proceedings. At the same time, **the submission of such a statement does not affect the initiation of criminal proceedings**, because the prosecutor and investigator must, guided by the principle of publicity established in Article 25 of the Criminal Procedure Code of Ukraine and within the scope of their competencies, initiate pre-trial investigation in every instance where elements of a criminal offense have been clearly detected (except in cases where criminal proceedings may be initiated only upon a victim's request) or based on the report (notification) of a criminal offense. **Criminal proceedings concerning CRSV do not fall within the category of private prosecution, so a pre-trial investigation must be initiated regardless of whether the victim has filed a request.**

The victim may initiate the criminal prosecution of the person who committed a criminal offense against them, demand that they be held criminally liable, submit claims for compensation for damage caused by the offense, continue prosecution if the prosecutor refuses to maintain public prosecution (Article 340 of the Criminal Procedure Code of Ukraine), and support prosecution in the form of private prosecution (Articles 26, 477, and 478 of the Criminal

Procedure Code of Ukraine)⁷⁴. It should be noted that victims in such categories of proceedings may be subject to security measures in accordance with the Law of Ukraine “On Ensuring Security of Persons who Participate in Criminal Proceedings” (for example, provision of the confidentiality of personal data in accordance with clause (i), Part 1 of Article 7 of the Law).

However, the victim is not entitled to independently collect evidence, in particular through conducting investigative (search) actions, as such a right is not included in the list of rights provided for in Article 56 of the Criminal Procedure Code of Ukraine. However, according to Part 3 of Article 93 of the Criminal Procedure Code of Ukraine, the victim **may collect** evidence, inter alia, by demanding and obtaining expert reports from state authorities, local governments, enterprises, institutions, organizations, officials, and individuals, as well as by conducting other activities capable of ensuring the production of relevant and admissible evidence in court. According to clause 3, Part 1, and clause 3, Part 2 of Article 56 of the Criminal Procedure Code of Ukraine, the victim may submit evidence supporting their report about the committed criminal offense to the investigator, prosecutor, investigating judge, and court. Clause 14 of Article 56 of the Criminal Procedure Code of Ukraine allows the victim to enjoy other rights provided for by the Code.

Specific provisions of the Criminal Procedure Code deprive the victim of the right to perform certain procedural actions aimed at collecting evidence. For example, this concerns the procedure for engaging an expert to conduct an examination [pp. 179–180].⁷⁵ Since the victim is generally not a party to criminal proceedings, the criminal procedural law does not enable the victim to independently engage

⁷⁴ Shunevych, K. A. Models of Organization and Conduct of Forensic Examination in Criminal Proceedings in European States and Ukraine: Ph.D. Dissertation: 081. Lviv, 2023. pp. 179–180.

⁷⁵ Ibid, pp. 179–180.

an expert to conduct an examination and issue an expert report.

To effectively represent the victim's interests, it is essential to provide them with the possibility of exercising **the right to free representation**. This will help avoid the re-traumatization of victims, as the representative may exercise part of the victim's procedural rights without their active participation during the pre-trial investigation and keep the victim informed about the progress and results.

As those criminal offenses are difficult to investigate, in particular, due to the fact that the suspect or accused may be physically absent from the territory of Ukraine, these proceedings are conducted **through a special pre-trial investigation** with specific aspects provided for in the Criminal Procedure Code of Ukraine. This affects the way of **serving notices of suspicion and the actions to protect the confidentiality of victims' data in such documents**.

Given that the acceptance of all types of international mail destined for the Russian Federation has been suspended and it is impossible to comply with the requirements of the Criminal Procedure Code of Ukraine and international treaties stipulating that necessary action be taken to have legal aid in criminal proceedings provided on the territory of this state, notices of suspicion in these categories of criminal cases are published in advance in nationwide media and on the official website of the Office of the Prosecutor General, in accordance with Article 297-5 of the Criminal Procedure Code of Ukraine. From the moment of publication on such resources, the suspect is considered to have been duly notified of the content of the notice of suspicion. It should be emphasized that when publishing such documents, it is crucial to ensure that information about victims is not disclosed as prescribed by law. According to Article 15 of the Law of Ukraine "On Ensuring Security of Persons who Participate in Criminal Proceedings," security measures may include restricting information about a person in verification materials

(statements, explanations, etc.), records of investigative actions and other materials of criminal proceedings, and replacing the surname, first name, and patronymic in these documents with pseudonyms following a decision that the body conducting investigative activities, the investigator, the inquirer, or the prosecutor may adopt, or a ruling of the investigating judge or court ordering that personal data be changed.

3. Striking a Balance Between the Considerations of the Pre-Trial Investigation and the Victims' Interests During Investigative and Procedural Actions

Given the specifics of the criminal offense in question and the fact that CRSV criminal offenses are investigated under martial law, certain trends can be identified in this regard. As previously mentioned, a practice that prioritizes avoidance of re-traumatization during investigative and procedural actions has become more widespread since 2022. As a result, it impacts decisions ordering that such actions should not be performed. For example, in Resolution No. 337/3528/19 of November 25, 2024, the Supreme Court stated the following:

“...According to international and European standards, victims must be provided with the maximum possible protection from secondary and repeated victimization. The exercise of the victim's right to prevent secondary

victimization aims to preclude their re-traumatization and the risk of psychological, emotional, or physical harm that is not a direct consequence of the crime during the criminal proceedings. Experiencing secondary victimization reinforces the immediate consequences of crimes, prolonging the period of the victim's trauma or aggravating it. Attitudes, behavior, actions, or inaction can make victims feel alienated from society as a whole. Under the circumstances established in the judgment, PERSON_7 grabbed the victim by the arm, began pulling her up the stairs, while threatening to use physical violence and intimidating her with physical assault, forced her to undress, and then repeatedly penetrated the minor victim's mouth with his penis and began to insert his penis into the anus of PERSON_9. In view of the above, the Court considers the refusal to grant the defense's motion for secondary interrogation of the victim to be justified. Under such circumstances, the Court finds no substantial violations of the requirements of the criminal procedural law in these criminal proceedings on the grounds stated by the defense⁷⁶.

To this end, the best international interviewing standards, e.g., those enshrined in the Principles on Effective Interviewing for Investigations and Information Gathering (the Méndez Principles)⁷⁷ are actively applied in practice. It is common practice to interview, in particular, by using the mechanisms provided for in Article 225 of the Criminal Procedure Code of Ukraine, video recording of witnesses' and victims' testimony during interrogation, the recording of interrogations via videoconference during the pre-trial investigation, and video recording of interviews of minors using the "Green Room" methodology.

⁷⁶ **Resolution** of the Supreme Court No. 337/3528/19 in Case No. 337/3528/19 of November 25, 2024.

⁷⁷ **The Méndez Principles**: How the Office of the Prosecutor General Implements These and Other International Standards in the Field of Human Rights and Freedoms.

According to clause 11 of Article 615 of the Criminal Procedure Code of Ukraine, testimony obtained during the interrogation of a witness or a victim, including simultaneous interrogation of two or more already interrogated persons, when martial law is in effect, may be used as evidence in court exclusively when the course and results of such interrogation were recorded using available technical video recording means. In practice, video recordings of interrogations may facilitate forensic psychological examinations of victims in their absence (based on the use of video recordings).

In criminal proceedings involving CRSV, forensic experts may be involved to conduct the following examinations:

1. Forensic medical examination involving the victim (with their consent) or based on available medical documentation (to establish the presence of bodily injuries, their location, nature, and degree of severity).
2. Molecular genetic testing (to establish the genetic characters of available biological samples, including DNA profiling).
3. Immunobiological examination (to determine the species and group attribution of identified biological samples (blood, saliva, semen, etc.)).
4. Forensic trace examination (to establish the mechanism of trace formation, confirm or refute the attribution of certain objects based on available traces (damage to surfaces, clothing, footprints, etc.)).
5. Forensic dactyloscopic examination (to detect and analyze fingerprints and identify the persons who left them).
6. Chemical and analytical examination of biological samples, such as blood, hair, and nails (to identify poisonous, potent, toxic, or contraceptive substances, including those that may contribute to reproductive function disorders, in the submitted biological samples).
7. Forensic psychological examination of the victim (to identify changes in the emotional state as a result of the crime

committed against the person and its psychotraumatic impact, infliction of moral harm, etc.).

8. Forensic psychiatric or comprehensive psychological and psychiatric examination (to establish the sanity of the suspect).

Note! *If a significant period has passed since the commission of CRSV, or if CRSV was committed, for example, in the form of a threat of sexual violence or coercion to witness acts of sexual violence against the victim's family members, conducting a forensic medical examination may be inadvisable.*

In general, given the number of human rights violations resulting from the full-scale invasion of Ukraine by the Russian Federation, mechanisms for prosecuting perpetrators at the national level should be improved by introducing elements of a survivor-centered approach. Discussions regarding the comprehensive implementation of such an approach are ongoing, as this involves a political dimension of the issue: determining who should be considered survivors (for example, as Janine Natalya Clark noted, conflict-related sexual violence “...does not affect only the direct victims/survivors; it also, through connectivities, leaves broader socio-ecological legacies.”)⁷⁸, and how to ensure their participation in justice processes^{79|80}. Within the framework of criminal proceedings, given the specifics of national regulation, this appears possible, as acquisition of the victim status is clearly regulated. Therefore, it is possible to provide a range of procedural guarantees in each specific case. When such guarantees

⁷⁸ Janine Natalya Clark, 'Beyond a 'survivor-centred approach' to conflict-related sexual violence?', *International Affairs*, Volume 97, Issue 4, July 2021, P. 1074.

⁷⁹ *Ibid*, p. 1070.

⁸⁰ Nyseth Brehm, Hollie and Golden, Shannon, *Centering Survivors in Local Transitional Justice* (October 2017). *Annual Review of Law and Social Science*, Vol. 13, p. 106, 2017.

are expanded and practically enforced in terms of access to criminal justice, it can be argued that a survivor-centered approach has been applied at the national level.

Practical Exercises and Methodological Guidelines

Exercise 1

(Basic/Intermediate Level)

Objective:

To develop critical thinking skills in analyzing a case summary and to enhance written argumentation skills based on such analysis.

Task

1. Prepare an essay based on the analysis of the provided case summary during the course on the topic “What are the specifics of communication with minor victims during pre-trial investigation?”.

Up to 4 pages (Tahoma 14, 1.5 spacing). Compliance with the academic integrity rules is mandatory. Any violation of the relevant rules, including plagiarism or the use of AI to prepare the written work, will result in the work not being accepted.

Case summary: During the investigation, Polina, the minor survivor, reported that men dressed in green came to their house and insulted her mother and father. One man forced her to take off her clothes, then began

rubbing his “thing” against her body. It hurt very much, and she cried.

Outcome: Participants will improve their ability to independently process information, analyze it, and provide assessments, conclusions, and recommendations.

Exercise 2

(Advanced Level)

Objective:

To develop skills in analyzing the specifics of procedural and other actions to collect evidence in criminal proceedings involving CRSV, and to identify grounds for declaring evidence inadmissible.

Task

1. Analyze the proposed case summary and discuss the circumstances in a group⁸¹.

⁸¹ This case summary is based on a notice of suspicion published on the website of the Office of the Prosecutor General. To ensure confidentiality, the names of the victims have been changed.

Case summary: *On August 28, 2022, servicemen of a sniper company of the 20th Separate Guards Motor Rifle Brigade of the Armed Forces of the Russian Federation (AFRF) occupied the settlement O. in Kherson Oblast. Russian servicemen immediately began intimidating the local population, conducting raids on households, and seizing cell phones from the villagers. In early September 2022, servicemen of the AFRF, V. Pitin and I. Khoigu, who were well-aware of the places of residence and family compositions of the town's civilians, agreed to jointly commit acts of sexual violence and ill-treatment against civilians. On the morning of September 13, 2022, V. Pitin and I. Khoigu broke into the yard of a house where a family lived, consisting of husband Oles, wife Nataliia, and their minor children: 4-year-old daughter Mariia and 9-year-old son Stepan. Threatening them with firearms, the AFRF servicemen immediately took Nataliia to the kitchen, forced her to kneel, and then took turns committing acts of sexual violence involving vaginal, anal, and oral penetration with their genitals. Subsequently, I. Khoigu left the kitchen and went to the room where the children were. He ordered the boy to leave the room and remain alone with the girl. The AFRF soldier committed acts of sexual violence, such as exposing her genitals, touching her buttocks and neck, and simulating sexual intercourse.*

Questions for discussion: Are there grounds, based on the described factual data, to initiate criminal proceedings involving CRSV against a) Nataliia and b) Nataliia's daughter? Should a) Nataliia, b) Nataliia's daughter, and c) other family members be interrogated/interviewed? What specific elements should these interrogations/interviews include in order to obtain necessary information for the pre-trial investigation while avoiding re-traumatization? What other investigative and procedural actions should

be taken to obtain evidence of CRSV committed against
a) Nataliia and b) Nataliia's daughter? Who will be involved
in the pre-trial investigation?

Progress

To determine the classification of the acts in accordance with the provisions of the Criminal Code of Ukraine, it is necessary to analyze the elements, circumstances, and facts of the committed criminal offense. There are grounds to believe that the servicemen committed a criminal offense under Article 438 of the Criminal Code of Ukraine ("War Crimes," CRSV). CRSV in the form of rape was committed against Nataliia, and CRSV in the form of forced nudity was committed against Nataliia's daughter. Evidence that may be used to confirm these circumstances includes testimony of victims, physical evidence (items containing biological samples of victims or suspects, such as blood or semen), documents (on-site inspection report, medical records following the victim examination, and forensic medical, molecular genetic, immunobiological, and forensic trace examination reports). To prove the facts of forced nudity, victims' testimony and the reports of a forensic psychological examination shall be used. Accordingly, it is necessary to interview victims. However, using tools for preventing re-traumatization of the victims is essential. For example, such an interview may be conducted in accordance with Article 225 of the Criminal Procedure Code of Ukraine. In addition to victims' interviews, investigative and procedural actions to be taken to obtain such evidence may include forensic medical, molecular genetic, immunobiological, and forensic

trace examinations, crime scene inspection (if possible), and review of documents provided by the victims (e.g., medical certificates).

Outcome: Participants will be able to apply skills in analyzing the specifics of procedural and other actions to collect evidence in criminal proceedings involving CRSV and grounds for declaring evidence inadmissible.

Exercise 3

(Advanced Level)

Objective:

To develop skills in preparing investigation plans and outline the investigator's sequence of actions based on the analysis of circumstances that triggered criminal proceedings.

Task

1. Analyze the proposed case summary and discuss its circumstances in a group with a focus on clarifying: a) the sources of evidence that may be used to prove the commission of CRSV, and b) the investigative and procedural actions that may be performed to obtain such evidence. Following the discussion, each student must

draft an investigation plan outlining the investigator's sequence of actions.

Case summary: *In early July 2022, the AFRF took full control of several settlements during hostilities. To regroup military forces and destroy the Ukrainian military and equipment, AFRF servicepersons were deployed in village Kh. of Sumy Oblast, where a civilian population not participating in the armed conflict was present. From July to October 2022, AFRF servicepersons fully controlled the territory of village Kh., deployed military equipment there, moved freely through the streets, used the property of residents, communicated with them, and intimidated them with threats of physical violence to completely subordinate the civilians to the will of the Russian military. On August 16, 2022, at 6.07 p.m., V. Arbuzov, a serviceman of the Russian Federation, openly displaying a weapon, entered the house where Anna Kh. (38 years old) resided. V. ordered Anna to put on her outer clothing and follow him immediately, allegedly for an interrogation. When V. and Anna left the house, the AFRF serviceman grabbed Anna by the hair and dragged her toward the fence of the school located 550 meters away. Upon arrival at their destination, disregarding Anna's resistance and using physical force, V. began touching her intimate body parts and kissing her. After that, V. committed acts of sexual violence involving vaginal penetration of Anna's body using his genitals. Then, V. left the scene. In November 2022, after the de-occupation of village Kh., Anna reported to the National Police officers the criminal offense committed against her. Criminal proceedings were initiated under Article 438 of the Criminal Code of Ukraine.*

Questions for discussion: Analyze the given situation. What sources of evidence may be used to prove the fact that CRSV was committed? What investigative and procedural actions should be performed, and in what sequence, to ensure an effective pre-trial investigation?

Progress

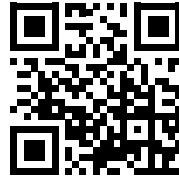
Evidence to confirm these circumstances includes testimony of victims, physical evidence (items containing biological samples of victims or suspects, such as blood or semen), documents (on-site inspection report, medical records following the victim examination, and forensic medical, molecular genetic, immunobiological, and forensic trace examination reports). To prove the facts of forced nudity, victims' testimony and the reports of a forensic psychological examination shall be used. Such evidence may be obtained through the following investigative and procedural actions: forensic medical, molecular genetic, immunobiological, and forensic trace examinations, crime scene inspection (if possible), and review of documents provided by the victims (e.g., medical certificates). It should be noted that performing a crime scene inspection is usually impossible, given that the premises where the illegal actions occurred are mostly located in temporarily occupied territories, or it is difficult to conduct such an inspection and obtain results relevant to the criminal proceedings (as a significant period of time has passed since the criminal offense was committed).

Outcome: Participants will improve their skills in engaging in group discussions as well as preparing written investigation plans.

Recommended Reading List

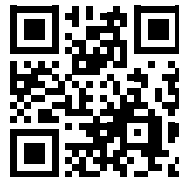
Janine Natalya Clark, Beyond a 'survivor-centred approach' to conflict-related sexual violence?, *International Affairs*, Volume 97, Issue 4, July 2021, Pages 1067–1084.

Nyseth Brehm, Hollie and Golden, Shannon, *Centering Survivors in Local Transitional Justice* (October 2017). *Annual Review of Law and Social Science*, Vol. 13, pp. 101-121, 2017.



Criminal Procedure of Ukraine: Academic Course in Three Volumes. Vol. 1: General Part (2021). V. T. Nor, N. R. Bobechko, M. V. Bahrii et al.; edited by Academician of the National Academy of Legal Sciences of Ukraine, Doctor of Law, Professor V. T. Nor and Doctor of Law, Professor N. R. Bobechko. Lviv: Ivan Franko National University of Lviv, 912 p.

The Méndez Principles: How the Office of the Prosecutor General Implements These and Other International Standards in the Field of Human Rights and Freedoms.



Shunevych, K. A. Models of Organization and Conduct of Forensic Examination in Criminal Proceedings in European States and Ukraine: Ph.D. Dissertation: 081. Lviv, 2023. 351 p.

Shunevych, K. A. Procedural Form of Serving a Notice of Suspicion in the Investigation of Offenses Provided for in Article 438 of the Criminal Code of Ukraine: Selected Aspects: Proceedings

of the X (XXIII) Lviv Forum of Criminal Justice (Lviv, September 19–20, 2024). Compiled by I. B. Hazdaika-Vasylyshyn. Lviv: Lviv State University of Internal Affairs, 2024. pp. 269–273.

Shunevych, K. A. Conflict-Related Sexual Violence as a War Crime: Trends in Criminal Proceedings under National Legislation and Practice. Lviv: Conceptual Avenues of Criminal Proceedings Development and Trends of Its Forensic Support: Collection of Articles Based on the Materials of the All-Ukrainian Research-To-Practice Conference Dedicated to the 25th Anniversary of the Department of Criminal Procedure and Criminology at Ivan Franko National University of Lviv (December 3, 2024, Lviv). Organizing Committee: N. R. Bobechko, I. I. Kohutych, V. T. Nor [et al.]. Ivan Franko National University of Lviv, 2024. pp. 130–140.



V. Integrating Restorative Justice Principles into the System of Work with CRSV Survivors: Urgent Interim Reparations and Other Prospects

Author: Albina Basysta

This section provides a general overview of the integration of the restorative and reparative justice principles into the system of work with CRSV survivors, demonstrating the evolution from general standards for implementing a restorative approach in criminal proceedings to specialized mechanisms of response to CRSV crimes. It covers the historical development of the restorative justice concept and the evolution of its terminological and regulatory framework as embodied in the documents of the United Nations, the Council of Europe, and the European Union, as well as the latest practices in documenting and investigating CRSV. Particular attention is paid to the contribution of the International Criminal Court to shaping a restorative approach in international criminal law, in particular, the system of victim participation and reparation mechanisms in international crime cases. The concept of urgent interim reparations is examined as a vital tool for addressing the immediate needs of survivors. Ukraine's experience in introducing an administrative procedure for providing urgent interim reparations to CRSV survivors is also highlighted. The section also addresses the context that makes children born of war and of CRSV "invisible."

Methodology. It is recommended to present the learning material by structuring sessions into the following four logical clusters reflecting the sequential development of the concept and its practical application: conceptual framework of restorative justice; international standards and specialized documents on how to deal with CRSV survivors; restorative approaches in international criminal law; and urgent interim reparations and children born of CRSV. Visual diagrams should be used to highlight international restorative justice standards, reading primary sources should be

encouraged, and terminology should be clarified. As noted in other sections of this course, preference is given to the terms “poterpili” (“victims” in criminal law) and/or “postrazhdali” (“affected persons” or “survivors.”) Accordingly, when quoting provisions of international instruments that lack an official translation into Ukrainian, the English term “victim” should be translated as “poterpila” or “postrazhdala” depending on the context. Given the sensitivity of the topic, the instructor should use legally neutral language and emphasize ethical standards (a survivor-centered approach, the “do no harm” principle, confidentiality, and informed consent). Restoring the dignity of CRSV survivors rather than the details of the crimes should be the focus. It should also be consistently emphasized that restorative justice is about the active participation of survivors, support, reparations, and recovery, not only about the prosecution of perpetrators. The topic of children born of CRSV, where there is a risk of stigmatization and the harmful use of terms served as labels in various societies, requires particular attention. While the circumstances of their birth cannot be changed, it is possible to promote the protection of their rights and respect for their dignity. The documentary film “Wars Don’t End” is recommended as a tool for discussion and the source of practical case studies.

Conceptual Basis

Introduction

The purpose of this section is to provide lecturers with a comprehensive overview of the restorative justice concept, its historical development, key principles, and modern international legal standards. Particular attention is paid to the transformation of the restorative justice concept under the influence of international instruments at both the universal and regional levels, the case law of the International Criminal Court, and the reasons why a restorative approach is crucial in dealing with CRSV survivors.

1. Restorative Justice in the International Legal Context: Historical Development, Legal Substance, and Key Principles

Historical development. Today, restorative justice is considered not only as a doctrinal legal instrument but also as a practical model of justice. It combines various dimensions – legal, social, psychological, and mental – of response to gross and serious violations of international human rights law and international humanitarian law.

In the international legal context, the concept of restorative justice emerged as a response to the shortcomings and limitations of existing retributive justice models, which often neglected the needs of survivors, the recognition and reparation of the harm suffered, and the restoration of their dignity. Restorative justice shifts the focus away from crime and punishment, centering instead on restoring violated rights and providing forms of reparation for affected persons. The orientation is toward the future rather than

focusing solely on the unlawfulness of past acts.

The historical analysis reveals that **restorative justice has existed across many civilizations throughout history, similarly to retributive justice⁸², and even before the establishment of national criminal systems.** As early as the period of Roman law, remedies already existed in cases of unlawful acts. The traditions of justice from the ancient Arab and Greek civilizations also accepted a restorative approach to serious offenses such as homicide, as did Indian Hindus, ancient Buddhist, Taoist, and Confucian traditions⁸³. However, from the 12th and 13th centuries onward, a gradual and final shift toward a retributive model of responding to criminal behavior occurred. In cases of unlawful acts, the interests of society at large prevailed over those of individual survivors⁸⁴. This resulted from the establishment of national judicial systems, which defined the offender's obligation as being owed to the state rather than to the survivor⁸⁵.

Modern approaches to the concept of restorative justice began to take shape in the second half of the 20th century as a response to criticism of the consistent marginalization of survivors within the criminal process. Human rights defenders, practitioners, and the academic community at both national and international stages contributed to drawing attention to this issue, fostering the victims' rights movement, and rethinking the survivors' role in the

⁸² Cohen, M., 2020. Realizing reparative justice for international crimes: from theory to practice. Cambridge, United Kingdom: Cambridge University Press, P. 18.

⁸³ Braithwaite, J., 2002. *Restorative Justice & Responsive Regulation*. Oxford University Press, P. 3.

⁸⁴ Cohen, M., 2020. Realizing reparative justice for international crimes: from theory to practice. Cambridge, United Kingdom: Cambridge University Press. P. 18.

⁸⁵ Schafer, S., 1968. *The victim and his criminal: A study in functional responsibility*. New York: Random House, 178 p. and Sviatichnyi, I., 2024. Restorative Justice in Countering Juvenile Delinquency: Hermeneutic, Historical, and Psychological Aspects. Transformation of the Legal System and Protection of Human Rights under the Influence of Martial Law. A Scientific Monograph. Edited by V. M. Stratonov. Riga, Latvia: Baltija Publishing, P. 214.

administration of justice⁸⁶. In the 1970s–1990s, the first restorative justice approaches appeared in the criminal laws of many states (e.g., the UK, USA, Canada, Australia, New Zealand, the Netherlands, Finland, Sweden, Norway, Germany, and France). These were aimed at addressing the needs of victims of ordinary crimes and ensuring their meaningful participation in proceedings and national compensation programs. At the international level, these efforts were consolidated in 1985 with the adoption of **Resolution 40/34, containing the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power**⁸⁷ (the 1985 Declaration) by the UN General Assembly, which proclaimed the first universal principles of support and protection for victims of crime. Hence, these processes laid the conceptual basis for and were a turning point in the further development of international legal approaches to restorative justice, reparations, and the formation of relevant standards in 21st-century international law.

Terminological Framework. An analysis of historical developments and the formation of international legal standards of restorative justice requires addressing the definitions of key concepts and terms that shape the substance of this concept. The terminological framework provides the basis for further elaboration of the legal substance of this concept and its key principles, which are of particular importance for ensuring justice and access to justice for CRSV survivors.

Academic literature points out that **the term “restorative justice”** was first used by the American psychologist Albert Eglash in his several academic works in the 1950s. In these works, he distinguished several models of justice: **“retributive justice,” “distributive justice,” and “restorative justice,”** which was based on restitution and the participation of the parties involved – victims and

⁸⁶ Hoyle, C., Ullrich, L., 2014. *New Court, New Justice?* The Evolution of ‘Justice for Victims’ at Domestic Courts and at the International Criminal Court. *Journal of International Criminal Justice*, 12, Oxford University Press, P. 682. Doi:10.1093/jicj/mqu032.

⁸⁷ GA Resolution 40/34 ‘Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power’. 29 November 1985.

offenders⁸⁸. The term “restorative justice” subsequently became widely used in international legal doctrine and documents, forming the basis of the modern understanding of the restorative approach to justice and recognition that justice cannot be limited solely to a punitive function. The expansion of this paradigm also influenced the formation and development of the concepts of “reparative justice,” which focuses on the substance and forms of compensation for harm caused, as well as “transitional justice”/“post-conflict justice,” within which restorative and reparative approaches are fundamental for responding to massive human rights violations and international crimes.

It should be noted that the development of the restorative justice concept in post-conflict societies encompasses a broader approach to responding to massive human rights violations⁸⁹. Restorative justice in this context includes a four-fold core commitment: to restore the dignity of victims, to hold perpetrators accountable, to create social conditions in which human rights will be respected, and to support reconciliation⁹⁰. Understanding this approach is of particular significance in cases of CRSV, where the combination of restorative and reparative mechanisms is a crucial factor in ensuring the dignity and reintegration of survivors.

Legal Substance and Principles of Restorative Justice. At the universal level, some UN documents have shaped the legal framework for implementing restorative justice. Their adoption influenced the development of international legal principles for survivor participation, the prosecution of perpetrators, reparations for survivors, and the reconsideration of traditional models of justice in light of survivors’ needs. Despite the absence of specific provisions concerning CRSV survivors, these documents remain conceptually

⁸⁸ See. Maruna, S., 2014. The role of wounded healing in restorative justice: an appreciation of Albert Eglash. Restorative Justice, No 2(1), C. 9–23 and Petrenko, N., 2025. The Place and Role of Restorative Justice in the Modern Criminal Law System of Ukraine. Electronic Academic Journal “Analytical and Comparative Law”, No. 5, Part 3, P. 230.

⁸⁹ Yalincak, O.H., 2012. The Case for Restorative Justice in the Context of Crimes Against Humanity. P. 7.

⁹⁰ Ibid.

significant, as their provisions are also applicable in the context of CRSV survivors. **So, the key instruments containing general provisions that further developed the approaches established by the 1985 Declaration⁹¹, include:**

The UN Guidelines on the Role of Prosecutors (1990)⁹² and the **UN Basic Principles on the Role of Lawyers (1990)⁹³** established the basis for the treatment of survivors and a sensitive and appropriate response to their needs. In particular, clause 13(d) **of the UN Guidelines on the Role of Prosecutors** states that in the performance of their duties, prosecutors shall “consider the views and concerns of victims when their personal interests are affected and ensure that victims are informed of their rights in accordance with the 1985 Declaration.”⁹⁴ **Clause 15 of the UN Basic Principles on the Role of Lawyers** provides that a lawyer’s duties and responsibilities include “loyal respect of the interests of their clients,” while clause 14 stipulates that in assisting clients, lawyers “shall... uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.”⁹⁵

The United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules) (1990) introduced the possibility of reparative procedures within criminal proceedings (for example, clause 8.2 provides for restitution to the victim or a compensation order), and clause 3.2 states that the selection of a non-custodial measures shall be based on “gravity of the offence ... and the rights of victims.”⁹⁶

⁹¹ **GA Resolution 40/34 ‘Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power’**. 29 November 1985.

⁹² **Guidelines on the Role of Prosecutors**. 07 September 1990. Eight UN Congress on the Prevention of Crimes and the Treatment of Offenders.

⁹³ **Basic Principles on the Role of Lawyers**. 07 September 1990. Eight UN Congress on the Prevention of Crimes and the Treatment of Offenders.

⁹⁴ **Guidelines on the Role of Prosecutors**. 07 September 1990. Eight UN Congress on the Prevention of Crimes and the Treatment of Offenders.

⁹⁵ **Basic Principles on the Role of Lawyers**. 07 September 1990. Eight UN Congress on the Prevention of Crimes and the Treatment of Offenders.

⁹⁶ **General Assembly Resolution 45/110 ‘United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)’**. 14 December 1990.

The Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters (ECOSOC Resolution 2002/12) (the 2002 Basic Principles on Restorative Justice) constituted the first international codification of restorative justice principles. The document aims to inform and encourage States to unify the practices of restorative justice programs within their legal systems.

It emphasizes that:

- Restorative justice programs may be used at any stage of the criminal justice system (clause 6).
- The affected person must be sufficiently informed to make a free and voluntary decision (clause 7).
- Participation in restorative justice must be free from any pressure or coercion (clause 8).
- Power imbalances and cultural differences among the parties should be taken into consideration (clause 9). The safety of the parties shall be considered during the process (clause 10).
- Procedural safeguards guaranteeing fairness should be applied (clause 13).
- Procedures should be confidential as required by national law and the survivor's interest, and should not be disclosed except with the agreement of the parties (clause 14).
- The results of agreements should be judicially supervised or incorporated into judicial decisions (clause 15).
- Facilitators should perform their duties in an impartial manner, and the parties should act with respect towards each other (clause 18), etc⁹⁷.

⁹⁷ UN ECOSOC Resolution 2002/12 "Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters. 24 July 2002.

The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (2005)⁹⁸ (the 2005 Basic Principles) embodied a comprehensive approach to repairing harm to survivors of international crimes, namely gross violations of human rights and serious violations of international humanitarian law at the universal level. They defined the substance of reparations, their possible forms, and the obligations of States to ensure them. Clause 8 of the document establishes a broad interpretation of the category of “victims,” encompassing not only persons who have directly suffered harm but also their immediate family or dependents, as well as persons who have suffered harm in intervening to assist victims or to prevent further violations. Under this approach, restorative justice programs and reparation mechanisms, as their components, cover the entire circle of persons harmed by the violation, regardless of whether the perpetrator is identified, apprehended, or prosecuted. This is a key factor in the context of mass crimes.

In addition, the 2005 Basic Principles **emphasize the need to treat victims with humanity and respect for their dignity, safety, and privacy, as well as those of their families, and avoid re-traumatization in the course of procedures designed to provide justice and reparation (clause 10).**

The document also establishes a consistent approach to State obligations, including the following:

- To respect, ensure respect for, and implement international human rights law and international humanitarian law (clauses 1 and 2).

⁹⁸ **General Assembly Resolution 60/147.** Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. 16 December 2005.

- Not to apply statutes of limitations to gross violations of international human rights law and serious violations of international humanitarian law which constitute crimes under international law (clause 6).
- To ensure victims' right to remedies, which includes equal and effective access to justice; adequate, effective, and prompt reparations; and access to relevant information concerning violations and reparation mechanisms (clause 11).
- To guarantee victims' access to justice by developing procedures to allow groups of victims to present collective claims to receive reparation (clauses 12 and 13), and not to limit victims in the use of any available remedies (clause 14).
- To ensure the right to adequate, effective, and prompt reparation (clauses 15-18), which include the following forms: restitution (clause 19), compensation (clause 20), rehabilitation (clause 21), satisfaction (clause 22), and guarantees of non-repetition (clause 23)⁹⁹.

Alongside the abovementioned international instruments that established the general conceptual framework for restorative justice at the universal level, the UN has also addressed the practical dimension of their implementation. To support States in applying restorative justice approaches in criminal cases, and in light of emerging practices and research, the UN Office on Drugs and Crime (UNODC) **published the first edition of the Handbook on Restorative Justice Programmes**¹⁰⁰ in 2006. However, the further development

⁹⁹ [General Assembly Resolution 60/147](#). Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. 16 December 2005.

¹⁰⁰ [UNODC. 2006](#). Handbook on Restorative Justice Programmes: Criminal Justice Handbook Series. UN New York. 114 p.

of the theory and practice of restorative justice required that the Handbook be updated, prompting a relevant request from States. In November 2017, UNODC convened an expert meeting in Ottawa (Canada) to assess how the States applied the 2002 Basic Principles on Restorative Justice and to discuss new restorative justice approaches. In 2019, during another expert meeting in Bangkok (Thailand), the revised edition of the Handbook was reviewed and discussed. **So, the updated 2020 Handbook on Restorative Justice Programmes**¹⁰¹ reflects developments, emerging trends, and recommendations for States on how to implement restorative programs in criminal cases and serves as a valuable supplement to the international standards embodied in the United Nations documents.

At the regional level, restorative justice standards are embodied in the documents of the Council of Europe and the European Union, which provide detailed guidance for implementation by governments within the legal systems of European states.

Recommendation CM/Rec(2018)8 of the Committee of Ministers to Member States Concerning Restorative Justice in Criminal Matters¹⁰² **(Recommendation (2018)8) and the Commentary**¹⁰³ **thereto** is currently the Council of Europe's comprehensive document in this field. It includes core and other important principles of restorative justice applicable at all stages of criminal proceedings and for all types of crime.

¹⁰¹ UNODC. 2020. Handbook on Restorative Justice Programmes. Second Edition. Thailand Institute of Justice. P. iii.

¹⁰² CM/Rec(2018)8 - Recommendation of the Committee of Ministers to member States concerning restorative justice in criminal matters.

¹⁰³ CM(2018)115-add2 – European Committee on Crime Problems (CDPC) – b. Commentary to Recommendation CM/Rec(2018)8 of the Committee of Ministers to member States concerning restorative justice in criminal matters [1326 meeting].

It lists the following core principles of restorative justice:

- **The principle of stakeholder participation** enables parties to participate actively in the resolution of crime (clause 13).
- **The principle of repairing harm:** responses should be primarily oriented towards addressing and repairing the harm that crime causes to individuals, relationships, and wider society (clause 13).

Other restorative justice principles listed in clause 14 include:

- voluntariness;
- deliberative and respectful dialogue;
- equal concern for the needs and interests of those involved;
- procedural fairness;
- collective and consensus-based agreement;
- a focus on reparation, reintegration, and achieving mutual understanding;
- avoiding domination by any party;
- provision of advance information to the parties about the nature of the process, its possible outcomes, and implications (clause 16);
- confidentiality, except with the agreement of the parties concerned (clause 17);
- the general availability of restorative justice services (clause 18);
- possible provision for self-referral to a restorative justice service (clause 19);
- sufficient autonomy of restorative justice agencies in relation to the criminal justice system (clause 20)¹⁰⁴.

¹⁰⁴ CM/Rec(2018)8 - Recommendation of the Committee of Ministers to member States concerning restorative justice in criminal matters.

It is important to note that **Recommendation Rec(99)19 of the Committee of Ministers concerning Mediation in Penal Matters** was the precursor to modern approaches to restorative justice within the criminal justice systems of Council of Europe member states¹⁰⁵. This document established the initial procedural and conceptual principles for mediation in criminal proceedings, which subsequently influenced the development of European restorative justice standards within the Council of Europe and the EU in **Directive 2012/29/EU**, as well as the formulation of the **2002 Basic Principles on Restorative Justice**¹⁰⁶.

At the level of the European Union, the restorative justice principles are implemented primarily through policies and acts concerning the rights of survivors. **Directive 2012/29/EU**¹⁰⁷ of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, or the Victims' Rights Directive, is the core document that is legally binding for EU Member States. It became the first act of the *acquis* to formally incorporate the restorative justice concept and approaches, focusing specifically on the rights, support, and protection of victims within criminal proceedings.

¹⁰⁵ CoE Committee of ministers Rec N. R (99)19 of the Committee of Ministers to Member States concerning mediation in penal matters. 15 September 1999.

¹⁰⁶ See, Par. A. Commentary to Recommendation CM/Rec(2018)8 of the Committee of Ministers to member States concerning restorative justice in criminal matters [1326 meeting].

¹⁰⁷ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

The principles and basic guarantees concerning access to and use of restorative justice services include:

- Provision of information and advice to victims by competent authorities in simple and accessible language (clause 21).
- Provision of a written acknowledgment from the police confirming receipt of the victim's complaint regarding the crime (clause 24).
- Ensuring respectful treatment and enabling victims to make informed decisions about their participation in proceedings (clause 26).
- Availability of support from the moment the competent authorities first contact the victim and throughout criminal proceedings (clause 37).
- The right to specialist support and legal protection for victims in situations that expose them to a particularly high risk of harm, taking into account the specific needs of victims, the severity of the harm suffered, and other circumstances (clause 38).
- The right to compensation (clause 49).
- Protection of the victim's privacy (clause 54).
- Offering measures to protect victims vulnerable to secondary and repeat victimization during criminal proceedings (clause 58).
- Access to reliable support services that facilitate reporting of crimes and allow victims to break the cycle of repeat victimisation (clause 63)¹⁰⁸.

The EU Strategy on victims' rights (2020–2025)¹⁰⁹ is another document that is important for strengthening the development of European policy on victims. This is the first strategy developed

¹⁰⁸ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

¹⁰⁹ EU Strategy on victims' rights (2020–2025).

at the level of the European Union and designed to ensure more effective implementation of Directive 2012/29/EU. It is aimed at protecting the rights of victims of crime across all EU Member States by empowering victims and enhancing cooperation between the European Commission, Member States, and civil society.

The document presents the following five key priorities:

- Effective communication with victims and a safe environment for victims to report crime (clause 1);
- Improving support and protection to the most vulnerable victims (clause 2);
- Facilitating victims' access to compensation (clause 3);
- Strengthening cooperation and coordination among all relevant actors (clause 4);
- Strengthening the international dimension of victims' rights (clause 6)¹¹⁰.

2. Implementation of Restorative Justice Principles in Cases Involving CRSV Survivors

The list of international legal instruments existing at both universal and regional levels analyzed in the previous section forms a general regulatory framework for applying restorative justice principles, particularly in cases involving CRSV survivors. However, for a comprehensive understanding of the potential of restorative and reparative justice in this field, it is necessary to consider specialized international acts that directly address the investigation, recording,

¹¹⁰ EU Strategy on victims' rights (2020-2025).

response, and support to CRSV survivors. They contain survivor-centered approaches and value-based principles that address the specific nature of CRSV crimes, not merely procedural standards. Such acts include:

The Guidance Note of the UN Secretary-General: Reparations for Conflict-Related Sexual Violence (2014)¹¹¹ is a key document that provides a systematic overview of principles and practical examples concerning reparations to CRSV survivors.

It outlines the following key provisions and principles reflecting the restorative approach:

- Survivor-centered approach and the “do no harm” principle;
- Safety, confidentiality, and the prevention of re-traumatization;
- Combining various forms of reparations proportionate to the gravity of the violence and the harm suffered;
- Utilizing administrative programs as part of the survivors’ right to a remedy;
- Eliminating discriminatory barriers and obstacles to access to justice;
- Complementary individual and collective reparations to prevent stigma;
- Meaningful participation and consultation with survivors to incorporate their experiences into the design, implementation, and monitoring of reparation programs;
- Understanding the cultural and social context of CRSV survivors;
- Reparations should strive to be transformative;
- The implementation of urgent interim reparations for survivors by States;
- Adopting procedural rules for CRSV cases in judicial and

¹¹¹ **GUIDANCE NOTE OF THE SECRETARY GENERAL: Reparations for Conflict Related Sexual Violence.**

administrative proceedings to protect the interests of survivors¹¹², and more.

The International Protocol on the Documentation and Investigation of Sexual Violence in Conflict (2017, second edition)¹¹³ is a methodological guide setting out best practices for documenting CRSV crimes. It aims to facilitate the prosecution and accountability of all perpetrators while ensuring justice for survivors. The document is based on the “do no harm” principle, survivor interests, informed consent, confidentiality, and risk assessment. It provides a detailed overview of all aspects of documentation in practice, approaches to interviewing survivors, collecting/storing/handling information, as well as cross-cutting issues related to understanding trauma resulting from CRSV and cases of CRSV against children, men, and boys. Thus, this Protocol is a practical guide emphasizing the link between proper documentation and the realization of the right to reparations.

The Global Code of Conduct for Gathering and Using Information about Systematic and Conflict-Related Sexual Violence (the Murad Code) (2022)¹¹⁴ establishes an ethical framework for interaction with CRSV survivors through three groups of principles. The overarching principles include requirements to understand survivors as individuals (clause 1), to respect survivor autonomy and right to control their personal history (clause 2), to be responsible and have integrity (clause 3), and to add value or do not do it (clause 4). Before information gathering during the preparation stage, the Murad Code emphasizes the importance of proper preparation (clause 5), understanding the context (clause 6), and building

¹¹² **GUIDANCE NOTE OF THE SECRETARY GENERAL: Reparations for Conflict Related Sexual Violence.**

¹¹³ **International Protocol** on the Documentation and Investigation of Sexual Violence in Conflict.

¹¹⁴ **The Global Code of Conduct** for Gathering and Using Information about Systematic and Conflict-Related Sexual Violence (the Murad Code) (2022).

systems, developing competencies, and ensuring support (clause 7). The initial stage of information collection should be based on the principles of using alternative sources whenever possible (clause 8), ensuring sufficient space and time for interaction (clause 9), and ensuring respectful, sensitive, and safe interactions with CRSV survivors (clause 10).

Restorative Approaches in International Criminal Law and CRSV.

Over the last decades, **the concept of restorative justice has been largely extrapolated into the field of international criminal law** and approaches to responding to massive human rights violations, including those committed during armed conflict, such as CRSV. The restorative approach has become an integral element of modern mechanisms for restoring justice, survivor participation, and the provision of reparations following international crimes. Substantial progress in this area has been achieved through the activities of the International Criminal Court. It was the first international criminal justice body to apply an innovative approach that combines retributive justice with the right of survivors and their family members to reparations as an integral component of international criminal proceedings. Since **CRSV is classified as an international crime for which individuals may be prosecuted at the international level, the mechanisms for survivor participation and reparations enshrined in the ICC Rome Statute¹¹⁵** are paramount for ensuring restorative justice in such categories of cases.

An essential component of the restorative approach in the activities of the ICC **is the right of victims to participate in criminal proceedings, as enshrined in Article 68 of the ICC Rome Statute.** Victims have become separate and independent procedural participants in cases. At the same time, in cases involving victims of sexual violence or a child who is a victim or a witness, the right to participate in proceedings in camera is guaranteed, and the presentation of evidence by electronic or other special means is allowed (part 2). Where the personal interests of the victims are

¹¹⁵ **Verkhovna Rada of Ukraine.** Legislation of Ukraine. Rome Statute of the International Criminal Court (1998). Official Translation.

affected, they may present their views and concerns in a manner that is not prejudicial to the impartial trial (part 3). **Article 68 of the Rome Statute mandates the ICC to “take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses... counselling and assistance,”** and to have regard of all relevant factors in cases of sexual violence (parts 1 and 4), as well as to provide confidentiality (part 5), which are crucial in CRSV cases¹¹⁶.

A key innovation of the Rome Statute in terms of applying restorative justice approaches is **Article 75, which grants victims or their successors the right to reparations for international crimes, including “restitution, compensation, and rehabilitation” (part 1)**. It should be noted that while the ICC adopts decisions on reparations based on the applicable law under Article 21, the ICC independently establishes the principles on which it acts in matters of reparations¹¹⁷.

At the ICC, reparations are designed to alleviate the suffering of survivors and administer justice not only through the conviction of the perpetrator but also by addressing the consequences of genocide, crimes against humanity, and war crimes for survivors or their family members. In fact, **reparations are viewed at the ICC as both a tool and a process**. On the one hand, they constitute a tool of transitional justice, which is part of the restorative justice concept. On the other hand, reparations are a technical process administered by the ICC, which determines when to award reparations to survivors or their successors, as well as their scope and form¹¹⁸.

Regarding the award of reparations within the ICC framework, two distinct mechanisms should be considered. The first mechanism is in place where ICC delivers a decision against a convicted person to provide reparations to victims in an appropriate form. The

¹¹⁶ **Verkhovna Rada of Ukraine.** Legislation of Ukraine. Rome Statute of the International Criminal Court (1998). Official Translation.

¹¹⁷ **Verkhovna Rada of Ukraine.** Legislation of Ukraine. Rome Statute of the International Criminal Court (1998). Official Translation.

¹¹⁸ **See Basysta, A., 2024.** Video Course “Reparations for Survivors of CRSV: Survivor-Centered Approaches.” Lesson 1 Synopsis, Module IV, Center “JurFem: education”, pp. 2–6.

second mechanism concerns **assistance measures for survivors and their family members undertaken by the Trust Fund for Victims (hereinafter the Trust Fund)**. It may administer reparations measures and implement support programs independently of an ICC decision if it is necessary to restore survivors' dignity and facilitate their reintegration. The ICC may award reparations on an individual or collective basis, depending on what the Court considers most appropriate in a specific case¹¹⁹.

The ICC case law on the award of reparations to victims from convicted persons currently covers five cases. However, each reparations decision has significant value as a precedent, as it impacts the subsequent case law and the understanding of this procedure and the possibilities of restorative justice in cases of international crimes. These reparations cases, including those involving CRSV, are *the Prosecutor v. Thomas Lubanga Dyilo*¹²⁰, *the Prosecutor v. Germain Katanga*¹²¹, *the Prosecutor v. Ahmad Al Faqi Al Mahdi*¹²², *the Prosecutor v. Bosco Ntaganda*¹²³ and *the Prosecutor v. Dominic Ongwen*^{124 | 125} cases.

In February 2022, the ICC issued its first reparations judgment in the case of Democratic Republic of the Congo v. Uganda concerning the conflict in Ituri. In this case, in 2005, the Court had previously delivered a judgment on the merits, affirming its jurisdiction to award reparations in international armed conflicts, and subsequently awarded USD 225 million in compensation for damages to victims¹²⁶.

The Trust Fund for Victims, established in accordance with Article

¹¹⁹ See Basysta, A., 2024. Video Course “Reparations for Survivors of CRSV: Survivor-Centered Approaches.” Lesson 1 Synopsis, Module IV, Center “JurFem: education”, pp. 2–6.

¹²⁰ ICC. *The Prosecutor v. Thomas Lubanga Dyilo*. ICC-01/04-01/06.

¹²¹ ICC. *The Prosecutor v. Germain Katanga*. ICC-01/04-01/07.

¹²² ICC. *The Prosecutor v. Ahmad Al Faqi Al Mahdi*. ICC-01/12-01/15.

¹²³ ICC. *The Prosecutor v. Bosco Ntaganda*. ICC-01/04-02/06.

¹²⁴ ICC. *The Prosecutor v. Dominic Ongwen*. ICC-02/04-01/15.

¹²⁵ See Basysta, A., 2024. Video Course “Reparations for Survivors of CRSV: Survivor-Centered Approaches.” Lesson 1 Synopsis, Module IV, Center “JurFem: education”, pp. 2–6.

¹²⁶ See. ICC. *Armed Activities on the Territory of the Congo* (Democratic Republic of the Congo v. Uganda). Overview of the Case.

79(1) of the ICC Rome Statute, began its operations on September 9, 2002. **The Trust Fund is currently engaged in providing reparations and assistance programs in two cases:** the Prosecutor v. Thomas Lubanga Dyilo and the Prosecutor v. Ahmad Al Faqi Al Mahdi. For example, in 2020, the Trust Fund conducted field missions in the Lubanga case to collect applications from victims and identified 854 victims eligible for reparations. In 2021, the payment of collective reparations began in this case. In October 2023, the Trust Fund completed the first reparations program for victims in the case of the Prosecutor v. Germain Katanga, funded through voluntary contributions received by the Trust Fund¹²⁷ | ¹²⁸.

3. Urgent Interim Reparations as Restorative Justice Tools: International Standards and Ukraine's Experience as the Beginning of the Journey to Restoring the Dignity of CRSV Survivors

CRSV survivors suffer multidimensional and often irreparable harm to their mental and physical health, which may manifest in serious bodily injuries, risks of HIV/AIDS and other sexually transmitted infections, consequences for reproductive health, severe psychological trauma, and associated social stigma and discrimination. In most cases, survivors are deprived of access to

¹²⁷ **Trust Fund for Victims.** Background information about the Trust Fund for Victims.

¹²⁸ **See Basysta, A., 2024.** Video Course “Reparations for Survivors of CRSV: Survivor-Centered Approaches,” Lesson 1 Synopsis, Module IV, Center “JurFem: education”, pp. 2–6.

medical and psychosocial services, while time is critical to prevent serious and irreversible consequences for the health of survivors and their family members¹²⁹.

The implementation of comprehensive reparation programs often takes many years after the end of an armed conflict. This is evidenced by the experience of Bosnia and Herzegovina, Croatia, Serbia, Albania, Chile, Kosovo, Colombia, and other states, where legislative regulation of the status of CRSV survivors emerged only 10–20 years later. Therefore, international instruments emphasize the need to introduce urgent interim reparation programs to respond to the immediate needs of CRSV survivors and other vulnerable groups¹³⁰. As mentioned above, **the 2014 Guidance Note of the UN Secretary-General: Reparations for Conflict-Related Sexual Violence**, namely clause 7, explicitly stresses that urgent interim reparations should be introduced even where mechanisms for final reparations have not yet been established¹³¹. Such programs do not replace but rather complement future final reparation programs and do not affect the survivor's right to obtain full reparations from the perpetrator and the aggressor state. Both full and urgent reparations are based on the principle of recognition that CRSV was committed against the person and are aimed at restoring the survivor's dignity.

State practices demonstrate that urgent interim reparations may be provided to CRSV survivors in various ways. For example, it can be done by granting truth commissions a mandate to administer interim reparation programs, awarding urgent reparations based on a court decision, or establishing national administrative interim reparation programs. **The content of such urgent interim reparation programs depends on the nature of the harm caused by CRSV and may include a wide range of services:** medical treatment, dental services, termination of pregnancy, psychosocial support, provision of safe housing or shelters, and other related measures, as well as

¹²⁹ See. **Guidance Note of the Secretary-General: Reparations for Conflict-related Sexual Violence**, June 2014, p. 21.

¹³⁰ See. **Guidance Note of the Secretary-General: Reparations for Conflict-related Sexual Violence**, June 2014, p. 21.

¹³¹ **GUIDANCE NOTE OF THE SECRETARY GENERAL: Reparations for Conflict Related Sexual Violence.**

measures to meet the urgent needs of children born of CRSV¹³².

In this context, Ukraine's experience in introducing a program of urgent interim reparations for CRSV survivors is unique. A year ago, with a constitutional majority of 307 votes, the Verkhovna Rada of Ukraine adopted **the Law of Ukraine “On the Legal and Social Protection of Survivors of Sexual Violence Related to the Armed Aggression of the Russian Federation Against Ukraine and the Provision of Urgent Interim Reparations to Them” No. 4067-IX of 2024**¹³³ (hereinafter Law No. 4067). Since entering into force in June 2025, Law No. 4067 has become one of the first legislative acts in the world to establish a state system of urgent interim reparations for CRSV survivors during an ongoing international armed conflict, namely the war of the Russian Federation against Ukraine.

It is worth noting that the process of drafting the Law also complied with the principles of a restorative approach: it was inclusive, survivor-centered, and based on the survivors' real interests and needs, as well as an understanding of the importance of establishing an administrative procedure for urgent interim reparations. CRSV survivors, national and international non-governmental organizations representing survivors' interests with relevant expertise in supporting survivors, representatives of government authorities, and leading national and international experts were involved in its preparation¹³⁴.

Law No. 4067 establishes an administrative mechanism for applying for recognition as a CRSV victim. It grants the right to receive urgent interim reparations in the form of rehabilitation and compensation (a lump sum), and guarantees the right to respect for honor and dignity, the restoration of violated rights, free legal

¹³² See. **Guidance Note of the Secretary-General: Reparations for Conflict-related Sexual Violence**, June 2014, p. 21.

¹³³ **Verkhovna Rada of Ukraine**. Legislation of Ukraine. Law of Ukraine No. 4067-IX “On the Legal and Social Protection of Survivors of Sexual Violence Related to the Armed Aggression of the Russian Federation Against Ukraine and the Provision of Urgent Interim Reparations to Them” (2024).

¹³⁴ See **Explanatory Note** to the Draft Law of Ukraine “On the Status of Victims of Conflict-Related Sexual Violence Related to the Armed Aggression of the Russian Federation against Ukraine, and Urgent Interim Reparations” Reg. No. 10132 of October 9, 2023, P. 3.

aid, temporary shelter for safe living, and free social services in accordance with state standards.

The Ministry of Social Policy of Ukraine, together with the working group that participated in drafting the Law, is drafting the necessary bylaws and regulations for the implementation of the administrative procedure and the practical realization of Law No. 4067.

4. Children Born of War and Children Born of CRSV: From Overcoming Stigma to Ensuring Rights

Children born of war, as well as children born of CRSV, constitute distinct yet closely related categories of survivors who are among the least protected and least visible groups. Despite differences in the context of their birth, international legal practice long failed to recognize them as independent holders of rights, but rather treated them as a consequence of a crime or evidence of a crime committed against their mothers. As a result, they and their needs remained legally and socially invisible to their communities and states.

The stigma accompanying children born of war and/or CRSV has deep historical roots and has manifested itself through labeling such children as “children of shame” in Kosovo, “children of hate” in Rwanda, “rebel children” in Uganda, “invisible children of

Bosnia,¹³⁵ and “retarded” in Norway¹³⁶. The consequences of such a discriminatory approach may accompany both mother and child throughout their lives, manifesting in isolation, restricted access to rights, exclusion from restorative justice policies and reparations, as well as from social or legal services.

At the international level, it was only in March 2021 that children born of CRSV were recognized as direct victims under international criminal law¹³⁷. In particular, this refers to the ICC judgment in the case of the Prosecutor v. Bosco Ntaganda, which has been mentioned more than once previously.

A notable example is the case of a group of 157 Norwegian children born to relationships between local women and occupying soldiers during World War II. **In 2007, they applied to the ECtHR, alleging that the state had failed to protect them and had allowed decades of discrimination, violence, and institutional inaction,** thereby violating Articles 3, 8, and 14 of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms¹³⁸. Although the ECtHR refused to consider the case on its merits due to procedural grounds, namely the statute of limitations, the case became one of the most powerful international signals of how systemic the vulnerability of children born of war can be and how limited existing legal mechanisms are in providing their protection¹³⁹.

¹³⁵ Mionki, J., 2024. Children Born of Conflict-Related Sexual Violence as Direct Victims under International Criminal Law. *Journal of International Criminal Justice*, Volume 22, Issue 5, November 2024, Pages 847–864.

¹³⁶ Sharp, R., 2008. The chosen ones: The war children born to Nazi fathers in a sinister eugenics scheme speak out. *Independent*.

¹³⁷ See. ICC. Ntaganda case: ICC Trial Chamber VI orders reparations for victims, Press Release: 8 March 2021.

¹³⁸ ECHR. *Decision as to the Admissibility of Application* n. 18712/03 by Werner Hermann Thiermann and Others against Norway.

¹³⁹ Grover, S., 2010. “The Lebensborn Children of Norway and the Silencing of their Voices by an International Court: An Analysis of the 2007 European Court of Human Rights Decision in Werner Hermann Thiermann and others v. Norway.” *The International Journal of Interdisciplinary Social Sciences: Annual Review* 5 (8): 25–36. doi:10.18848/1833-1882/CGP/v05i08/59304.

More than half a century after the war, the Norwegian government officially recognized the historical injustice in 2002. Later, in October 2018, Prime Minister Erna Solberg issued a public apology to the mothers and children **for the discrimination, suffering, and lost childhood they endured**¹⁴⁰. This became one of the few international examples of public recognition of harm caused to children born of armed conflict and an important precedent in the global discussion on their rights and reparations. This very story is highlighted in the documentary **“Wars Don’t End.”**¹⁴¹. It reflects on intergenerational trauma, the continuity of non-recognition, and how the absence of state solutions shapes the destinies of such children.

¹⁴⁰ Magra, I., 2018. Norway Apologizes, 70 Years Later, to Women Who Had Relationships With WWII Germans. The New York Times ra Sharp, R., 2008. The chosen ones: The war children born to Nazi fathers in a sinister eugenics scheme speak out. *Independent*.

¹⁴¹ International Network “Children born of war”. (2017) “Wars Don’t End”, Feature Documentary, 80 min.

Practical Exercises and Methodological Guidelines

Exercise 1

(Basic/Intermediate Level)

Objective:

To develop participants' understanding of the key provisions of the 2014 Guidance Note of the UN Secretary-General: Reparations for Conflict-Related Sexual Violence, the 2017 International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, and the 2022 Murad Code, as well as the ability to apply them in practice.

Task

1. Participants are provided with the following case summary:

A survivor of CRSV has reported to a law enforcement agency. During her interview, the police officer insists on repeated, detailed descriptions of the events, fails to explain the purpose of collecting the information, and does not offer the assistance of a psychologist. In addition, the survivor is invited into an interview room with metal bars installed on the windows. This causes her severe stress and flashbacks to the place where she experienced CRSV.

2. Participants work in four groups, and each group is assigned one role/one task:

Group 1 (Context and Trigger Analysis): Identify the risks of re-traumatization in the case summary (including the room with barred windows) and their impact on the survivor.

Group 2 (International Standards): Determine which provisions of the International Protocol, the Murad Code, and the Guidance Note of the UN Secretary-General were disregarded.

Group 3 (Proper Algorithm of Action): Develop a trauma-informed, safe, and ethical model of interviewing and interaction with the survivor.

Group 4 (Recommendations for Law Enforcement Agencies): Prepare brief proposals for law enforcement agencies on improving procedures.

Outcome: A joint discussion where groups learn to analyze a practical situation through the lens of compliance with international standards, identify risks of re-traumatization, and develop an appropriate trauma-informed approach to action sequence.

Exercise 2

(Advanced Level)

Objective:

To develop participants' skills in designing policy frameworks that comply with international standards, children's rights, restorative approaches, and applicable forms of reparations.

Task

1. Develop, in groups, a brief policy concept for Ukraine regarding children born of war and those born of CRSV, covering the following components:

- Official recognition and possible legal status;
- Potential reparation measures or measures within urgent interim reparations;
- Access to medical, psychological, educational, and social services;
- Security and confidentiality measures;
- Prevention of stigma and institutional support.

Participants work in groups and prepare a one-page policy brief or a short presentation (3–5 minutes).

2. Questions for discussion

- Does Ukraine need a specific legal status for children born of war and those born of CRSV? Or is it sufficient to integrate them into existing protection mechanisms?
- What types of support for these children and their mothers are most urgent in the context of Russia's armed aggression against Ukraine?
- What risks of stigmatization might arise if separate state programs are introduced, and how can they be minimized?
- Should children born as a result of CRSV have access to reparations separately from their mothers?

- Which institutions should play the primary role in the policy implementation: the state, communities, NGOs, or international organizations?
- How can a balance be ensured between the need for data collection and the requirement to guarantee confidentiality, security, and the best interests of the child?
- Can Ukraine's experience shape a new international standard for the protection of children born of war and those born of CRSV?

Outcome: Participants will learn to propose structured policy solutions, integrate different approaches, and formulate a coherent model for the state policy.

Exercise 3

(Advanced Level)

Objective:

To foster a deep understanding of the experiences of children born of CRSV through the analysis of a video featuring survivor testimonies and reflection on the social, legal, and ethical aspects of the issue.

Task

1. Watch a fragment of the BBC documentary “Exploring Grief and Shame with Children Born from Rape – BBC World Service Documentaries | 100 Women” [17:11–23:40], dedicated to the story of Claire and her daughter, born as a result of violence during the genocide in Rwanda. The video requires English language skills and contains sensitive content.

Video [link](#)



Case summary: The documentary fragment presents the story of Claire, a Rwandan woman who survived CRSV during the 1994 genocide. As a result of that violence, Claire gave birth to a daughter.

The video focuses on their personal story and the daily lives of the mother and child, exploring how the mother speaks about the circumstances of her daughter's birth, their relationship, and their life context following the genocide. Claire's daughter knows that she was born of rape. The film captures her reactions and emotions related to this knowledge.

2. After watching the documentary fragment, students work in groups and discuss the following questions:

- What elements of stigmatization and social isolation are most prominent in the video?
- How do the experiences of Claire and her daughter relate to the international legal categories of “children born of war” and “children born of CRSV”?
- Can potential forms of re-traumatization be identified within their life experiences?
- Which needs of such mothers and children remain invisible to the community, the state, and society?
- What elements of restorative justice could support such a group of mothers and children?
- What lessons can Ukraine learn from this case?

Outcome: Participants will develop an ethical understanding of the challenges faced by children born of war and those born of CRSV, learn to connect real-life stories with international standards and theoretical approaches, and formulate their own perspective on supporting survivors.

Methodological Recommendations for the Lecturer

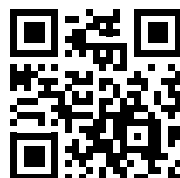
Before watching the documentary fragment, warn participants about the psychologically sensitive nature of the video material. It is important to explicitly state that anyone may leave the room during the watching or choose not to participate without providing any explanation. Emphasize that the video material is used solely for educational purposes to develop an understanding of the social and legal consequences of CRSV and the vulnerability of children born of war and of CRSV.

After watching it, take a short pause and create a safe space for discussion, as participants may have their own experiences of trauma. Participants should not be encouraged or pressured to share personal reflections publicly and should do so only if they wish. It is important to observe participants' non-verbal reactions and respond with sensitivity.

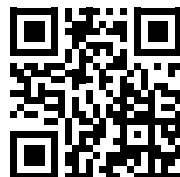
It is recommended to inform participants about the available psychological support resources, such as the university psychologist, crisis services, psychological support hotlines, etc. Emphasize that the emotional well-being of the participants is more important than the completion of the task. At the end of the session, thank the participants for their empathy and respect shown while engaging with the video material.

Recommended Reading and Resources List

Braithwaite, J., 2002. Restorative Justice & Responsive Regulation. Oxford University Press.

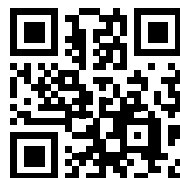


Hoyle, C., Ullrich, L., 2014. New Court, New Justice? The Evolution of 'Justice for Victims' at Domestic Courts and the International Criminal Court. *Journal of International Criminal Justice*, 12, Oxford University Press, P. 682. Doi: 10.1093/jicj/mqu032.



Cohen, M., 2020. Realizing reparative justice for international crimes: from theory to practice. Cambridge, United Kingdom: Cambridge University Press.

Mionki, J., 2024. Children Born of Conflict-Related Sexual Violence as Direct Victims under International Criminal Law. *Journal of International Criminal Justice*, Volume 22, Issue 5, November 2024, P. 847-864.



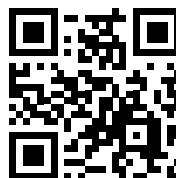
Basysta, A., 2023. The Experience of Balkan States and Ukraine's Path: An Extrajudicial Mechanism for Redressing CRSV Survivors. *Compendium of Materials of the Research-To-Practice Conference "Comparative Legal Experience of Responding to and Countering Cases of CRSV: The Experience of the Balkans and Ukraine,"* Kyiv, pp. 27-30.

Basysta, A., 2024. Perspectives on Reparations for Survivors of Sexual Violence Related to the Armed Aggression of the Russian Federation Against Ukraine. *Materials of the International*

Research-To-Practice Conference for Students, Postgraduates, and Young Scholars “Shevchenkivska Vesna 2024,” Part 1, Kyiv, pp. 85–90.

Basysta, A., 2025. Artificial Intelligence in the Investigation of Conflict-Related Sexual Violence: Challenges and Perspectives of International Legal Regulation. Materials of the International Research-To-Practice Conference for Students, Postgraduates, and Young Scholars “Shevchenkivska Vesna 2025,” Part 1, Kyiv, pp. 140–143.

“Bulo Tak” (It Was So) feedback platform is an online resource designed to collect testimonies from survivors of sexual violence related to the armed aggression of the Russian Federation, as well as other forms of violence. It enables users to share their experiences of interacting with authorities and organizations while seeking assistance, including during investigation and court proceedings, either anonymously or non-anonymously. Personal data are processed and stored by JurFem in accordance with the legislation of Ukraine.



The “ZvlazOK” (Connection) digital self-support application is a digital resource designed for emotional stabilization, stress management, and rebuilding inner resilience. It was primarily developed for those working with survivors of violence, but it is useful for anyone seeking to improve their well-being, learn to stabilize their emotions, regain strength, and build internal resilience.



Student Performance Evaluation Criteria

A

Excellent: Metacognitive skills. Students effectively use the provided materials for independent reflection, learning, and self-evaluation of their decisions within the educational process, thereby improving both their decision-making and practice. They develop their own learning strategies and create new approaches based on the principles studied.

B

Very Good: Students can apply course material and distinguish between proper and improper application of the learned principles. They understand the course theory as a basis for practical solutions.

C

Good: Students understand the topics and can engage in substantive discussions. They are aware of the subject matter but encounter difficulties when attempting to apply the acquired knowledge in practice.

D

Satisfactory: Basic understanding with efforts in mastering the terminology. Existing mistakes are compensated for by a generally correct interpretation of fundamental principles.

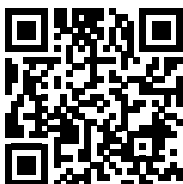
E

Sufficient: Fragmentary understanding with a large number of errors.

FX

Unsatisfactory: Fundamental lack of understanding, lack of effort, or engagement with the educational components.

The accompanying presentation materials are **available** on the website of the Ukrainian Women Lawyers Association “JurFem”. Access the relevant webpage by scanning the QR code.



Навчальне видання

Басиста Альбіна Володимирівна
Поєдинок Ольга Романівна
Слободяник Анастасія Сергіївна
Харитонова Олена Володимирівна
Шуневич Катерина Андріївна

Путівник з викладання освітнього курсу “Сексуальне насильство, пов’язане з конфліктом”

Навчально-методичний посібник

Editor *Olena Kharytonova*

Electronic Educational Publication

поширення через мережу «Інтернет» 09.02.2026. Відповідає формату друкованого видання. Обл.-вид. арк. 6,96. Об’єм _?_ Мб.

Вид. № 50

ТОВ “Видавничий дім “Право”,
вул. Харківських Дивізій, 11/2, м. Харків, Україна
Для кореспонденції: а/с 822, м. Харків, 61023, Україна
Тел.: (050) 409-08-69, (067) 574-81-20, (063) 254-50-84

Вебсайт: <https://pravo-izdat.com.ua>

E-mail для замовників послуг: verstka@pravo-izdat.com.ua

E-mail для покупців: sales@pravo-izdat.com.ua

Свідоцтво суб’єкта видавничої справи ДК № 8024 від 05.12.2023