

Identifying, Documenting, Investigating and Prosecuting Crimes of Sexual Torture Committed during War and Armed Conflicts, and Rehabilitation for Victims and Survivors

Expert input: General information on the prevalence of sexual torture used by Russian units in the temporarily occupied territories of Ukraine against both men and women

ZMINA conducted a comprehensive analysis of the data reported by direct victims of torture, cruel and degrading treatment, as well as witnesses of such crimes. These statements from 74 (including 1 witness) persons (67 men and 7 women) were obtained during in-depth interviews conducted by Human Rights Centre ZMINA using the methodology developed on the basis of international standards for monitoring the observance of human rights and the Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) and in compliance with the standards of the Murad Code (The Global Code of Conduct for Gathering and Using Information about Systematic and Conflict-Related Sexual Violence), during 13 monitoring visits to de-occupied settlements of Kherson, Kharkiv, and Kyiv regions for the period from November 20, 2022 to December 4, 2023.

In particular, we documented 46 cases of torture and cruel or humiliating treatment (in relation to 42 men and 4 women) in the settlements of Zaporizhzhia, Kharkiv, and Kherson regions, among which 13 cases of sexual violence and 10 cases of threats of such violence were recorded, including 1 threat of rape against a man, as well as 2 cases of forced nudity. In addition, in at least one case, the body of a civilian man was found with stab wounds to the groin, which may indicate sexual torture during his lifetime.

12 of the women we interviewed indicated that the detention, personal search, collection of so-called medical samples, interrogations and other investigative actions were carried out with them by men. Most of the guards in the places of detention were also men. One of the women was blackmailed by the perpetrators of the crime by saying that they would rape her daughter during her detention. One of the interviewed men also reported that he had received threats of rape against himself and other detainees, including women. One of the women who was subjected to electric shock torture had wires attached, including to her breast. Another victim was searched by several men, commenting on her attractiveness and saying that she can perform the duties of a wife. All these actions and threats were perceived by our interviewees as a real threat of the use of sexual violence as a way of influencing their behaviour, and this caused strong consequences in the field of psychological health.

In order to document CRSV cases, ZMINA refers victims of such crimes to law enforcement agencies and specialised organisations that have investigative powers and sufficient resources to support victims of this type of crime. Thus, in particular, the case of Ms. Ya., anonymous, but quite recognizable, was included in the latest report of the UN Human Rights Monitoring Mission in Ukraine “Human Rights situation during the Russian

occupation of territory of Ukraine and its aftermath” (February 24, 2022 - December 31, 2023):

In the Kherson region, in March-April 2022, Russian soldiers repeatedly terrorised a 58-year-old woman and her husband at their home. Soldiers took their property, threatened to rape the woman at gunpoint, shot at the house and husband, and eventually gang-raped her. Also, in the Kherson region in December 2022, a civilian doctor provided assistance to a person who needed it when she was attacked by four Russian soldiers. They threatened her with sexual assault and tried to drag her into a room, only stopping when the woman's colleague intervened¹.

ZMINA also documented the testimony of a civilian man, V., from the Kherson region, who wished to remain anonymous, who reported that during another interrogation, which took place in August 2022 in the premises used as a place of detention for civilians, he was subjected to sexual torture by representatives of the FSB of the Russian Federation, who hid their faces under masks: they undressed him, put him face down on the table and began to touch his bare buttocks with foreign objects and hit him with a rubber stick, threatening to gang rape him. After that, V. lost consciousness, and when he regained consciousness in the cell, he was so depressed that he attempted suicide.

Overview of legislative regulation:

The Rome Statute clearly defines various forms of sexual violence as constituting crimes against humanity and war crimes committed during international and non-international conflicts. They include rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization and other forms of sexual violence of comparable severity. (Rome Statute, Article 7 (1)(g)-2-5; Article 8(2)(e)(vi)).

According to the UN Secretary-General's Guidance Note on the Reparations for Conflict-Related Sexual Violence, victims of CRSV are those who have been personally or collectively subjected to such violence, as well as their family members, such as children, parents or partners, children born as a result of pregnancy from rape and other persons dependent on the victim².

Committing CRSV may also be qualified as an act of genocide, depending on the manner and context of the crimes committed.

¹ Report “Human rights situation during the Russian occupation of territory of Ukraine and its aftermath” by OHCHR:

<https://ukraine.un.org/en/264057-human-rights-situation-during-russian-occupation-territory-ukraine-and-its-aftermath>

² Guidance note of the Secretary General “Reparations for Conflict-Related Sexual Violence”:
<http://www.ohchr.org/Documents/Press/GuidanceNoteReparationsJune-2014.pdf>

Article 438 of the Criminal Code of Ukraine establishes criminal liability for for violations of the laws and customs of war, which includes ill-treatment of prisoners of war or civilians (including sexual violence).

In addition, according to the norms of the Criminal Code of Ukraine, rape is defined only as a forced sexual act (Article 152 of the Criminal Code of Ukraine) or another form of committing acts of a sexual nature (Article 153 of the Criminal Code of Ukraine). Such forms of sexual violence as forced pregnancy and forced sterilization are not criminalized.

On June 20, 2022, Ukraine ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence.

Since then, there have been positive developments regarding the protection of the rights of persons affected by CRSV. In particular, in the autumn of 2022, the Office of the Prosecutor General of Ukraine presented the Strategy for the Investigation of CRSV Cases.

According to this strategy, victims will have quick and proper access to effective legal remedies, including gender-sensitive rehabilitation, restitution, reparation, satisfaction of needs and guarantees of non-repetition of the crime in the future.

In the summer of 2023, the Coordination Center for the Support of Victims and Witnesses of War Crimes began its work, and the first category among them will be precisely those who were subjected to CRSV.

According to the information of the Deputy Prime Minister for European and Euro-Atlantic Integration Olha Stefanishyna, starting from February 29, 2024, a pilot project for urgent interim reparations for victims of sexual violence during the war was launched in Ukraine. During the year, 500 victims will be able to receive a one-time payment of 3,000 euros under conditions of complete confidentiality. This work is done in cooperation with the Attorney General's office, which investigates such crimes, as well as the Ministry of Justice, which forms a register of damages. The partners in the implementation of the project are also rescue centres and specialised public organisations³. Also, to ensure the rights of victims of CRSV, an Interdepartmental Working Group on Combating Sexual Violence Related to Russia's Armed Aggression Against Ukraine and Provision of Assistance to Victims, headed by Kateryna Levchenko, was created. It includes the Ministry of Social Policy, representatives of the Office of the Prosecutor General, the Ministry of Internal Affairs, the National Police, the State Emergency Service, the Ministry of Defense, the Security Service of Ukraine, the Ministry of Health, public and international organisations.

At the legislative level, work is underway on the possibility of providing reparations for victims of CRSV. For example, draft law No. 10256 “On registration of persons whose life and

³ Article “Victims of sexual violence during the war in Ukraine will receive reparations - Stefanyshyna” by Radio Liberty (in Ukrainian):
<https://www.radiosvoboda.org/a/news-zhertvy-seksualnoho-nasylstva-reparatsiyi/32847453.html>

health were harmed as a result of the armed aggression of the Russian Federation against Ukraine” provides for the creation of the Register for Victims of Russian Aggression, which will include information about victims of CRSV. In addition, the possibility of adopting draft law No. 10132 “On the Status of Survivors of Sexual Violence Related to the Armed Aggression of the Russian Federation against Ukraine and Urgent Interim Reparations” is being considered.

On December 27, 2019, the Verkhovna Rada registered draft law No. 2689 “On Amendments to Certain Legislative Acts of Ukraine Concerning the Implementation of Norms of International Criminal and Humanitarian Law”⁴, aimed at harmonising Ukrainian criminal legislation with international humanitarian and criminal law. In particular, the draft law provided for the introduction into the Ukrainian criminal legislation of the category of crimes against humanity, universal jurisdiction, the institution of command responsibility, improvement of the definitions of the crime of genocide and war crimes, etc. The changes also provided for the direct criminalization of rape, sexual exploitation, forced pregnancy, forced sterilization or any other form of sexual violence as war crimes and crimes against humanity. The notes also proposed to define that “serious harm in the context of the crime of genocide” should include rape or other forms of sexual violence.

The introduction of such changes to the Ukrainian legislation would make it possible to properly qualify those international crimes committed within the framework of an armed conflict as war crimes, crimes against humanity and the crime of genocide, to take into account a wider range of actions within the framework of CRSV, in particular, sexual exploitation, forced pregnancy, forced sterilization and other forms of sexual violence. The proposed changes would also contribute to the inevitability of punishment for those who committed these crimes, including in the context of individual responsibility of military commanders.

On June 7, 2021, this draft law was adopted by the Verkhovna Rada of Ukraine and sent to the President for signature. At the moment, the Law has not yet been signed.

At the moment, Ukraine has also not used another way of harmonising the legislation with the standards of international criminal law, namely, it has not ratified the Rome Statute of the International Criminal Court. On May 3, 2022, the Law “On Amendments to the Criminal Procedure Code of Ukraine and other legal acts of Ukraine regarding cooperation with the International Criminal Court” was adopted⁵. This law, however, concerns procedural issues of cooperation - preservation of evidence, compliance with confidentiality standards, transfer of proceedings to the International Criminal Court. It does not contain obligations regarding the harmonisation of Ukrainian criminal legislation with the Rome Statute.

⁴ Draft Law “On Amendments to Certain Legislative Acts of Ukraine Concerning the Implementation of Norms of International Criminal and Humanitarian Law” (in Ukrainian):

https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67804

⁵ Law “On amendments to the Criminal Procedure Code of Ukraine and other legislative acts of Ukraine regarding cooperation with the International Criminal Court” (in Ukrainian):

<https://zakon.rada.gov.ua/laws/show/2236-20#Text>

Separate law enforcement issues related to the investigation of sexual torture in particular and CRSV in general at the national level:

1) Due to the high workload of investigators and the fact that CRSV is a highly latent crime, victims often report about the crime too late and as a result, evidence is lost or distorted.

2) There is a lack of expertise at the local level. At the level of the Office of the Prosecutor General, there is a strategy and vision, but additional training and monitoring of investigations of such types of crimes is carried out only in two regions - Kharkiv and Kherson - which are pilot. At the local level, these crimes are investigated by investigators who are not always aware of the qualification of individual acts as CRSV.

3) The Ukrainian criminal legislation on CRSV and the practice of its application do not provide for the provision of the status of a “victim of a crime” for family members of those who suffered such violence and persons dependent on them, as provided for in the Directive.

4) Of particular concern is the fact that, in accordance with the requirements of the Criminal Procedure Code of Ukraine, suspicions published on the website of the Office of the Prosecutor General may contain the real names of victims of CRSV, who would not want to disclose such information.

5) In addition, in accordance with the provisions of Article 438 of the Criminal Code and the corresponding norms of procedural law, the trial (both in the presence of the defendant and in absentia) is not automatically closed to the public, therefore it is necessary to recommend that Ukrainian courts close such processes in connection with the consideration of cases regarding CRSV, in order not to retraumatize the victims.

Recommendations:

- to recommend the government of Ukraine to change the criminal legislation and the practice of its application and interpret the concept of a “victim” of the crime of CRSV more broadly, because it encompasses and has a negative impact on the entire family, not only on a specific woman or man;

- to recommend the government of Ukraine to ratify the Rome Statute in order to bring the criminal legislation into line and provide an opportunity to qualify cases of the use or threats of sexual torture against civilians;

- to bring the legislation on the protection of personal data of CRSV victims into compliance with international standards;

- to continue working with international partners on the implementation of international standards for the investigation of CRSV.

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