

**Mandates of the Special Rapporteur on violence against women and girls, its causes and consequences; the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence**

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12 September 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on violence against women and girls, its causes and consequences; Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, pursuant to Human Rights Council resolutions 50/7, 50/10, 52/7 and 54/8.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **Draft Law No. 10132 of the People's Deputies of Ukraine on the status of victims of sexual violence** related to the armed aggression of the Russian Federation against Ukraine and urgent interim reparations (hereafter the Bill).

The Bill has a main objective to provide immediate assistance to victims of conflict-related sexual violence in psychological, healthcare and social aid fields in the framework of the Russian invasion of Ukraine since February 2022.

*Compliance of the draft Bill with International human rights norms and standards*

We welcome the tabling of this Bill at the Parliament in Ukraine, which is an important step to recognize the crime that victims experience during times of conflict and their human right to adequate and appropriate assistance and reparation. We also welcome the Bill providing an extensive list of sexual violence acts.

The Bill commendably reflects key principles enshrined in international human rights instruments, particularly those pertaining to the rights of women and girls. Such initiative aligns with the article 2 of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) ratified by Ukraine in 1981, which obliges State Parties to eliminate discrimination against women through legislative and other measures, including ensuring that women have effective access to justice and reparation.

Additionally, the Bill's focus on ensuring that reparations are comprehensive—encompassing compensation and guarantees of non-repetition—resonates with the principles outlined in the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law. The emphasis on gender-sensitive reparations is particularly commendable and aligns with general recommendation No. 30 of

CEDAW, which highlights the need for reparations to be transformative and address the underlying gender inequalities that exacerbate women's vulnerability to violence in conflict situations.

Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment establishes a right to “the means for as full rehabilitation as possible”. The UN Committee against Torture, through its jurisprudence, has established that the concept of “as full rehabilitation as possible” relates to the victims’ ability to fully recover and not the available resources of States to allocate to rehabilitation services. This means that States, including Ukraine, have an explicit treaty obligation to put in place the means necessary to enable victims to reach as far in their rehabilitation process as they are personally able to take into account their individual experiences of pain, suffering and harm from the sexual torture they have been exposed to.

While the draft law is a robust framework, we respectfully submit the following comments to Your Excellency’s Government, with the aim of contributing to the pursuit of a comprehensive and effective restorative and reparative justice, as well as the guarantees and protection of all individuals in particular women and girls who are victims of sexual violence.

First, we would like to draw attention to the fact that, as its name indicates, this Bill aims to recognize the status of victims of sexual violence related to the armed aggression of the Russian Federation against Ukraine. As has been highlighted throughout this document, in its broadest sense, the right to obtain comprehensive reparation for having suffered a human rights violation or a violation of international humanitarian law is inalienable and inherent to all individuals who have been victims of human rights violations. This leads to the conclusion that victim status is, in principle, an objective recognition based on a series of facts that conclude that a person has suffered sexual violence.

We note that, increasingly, in the context of armed conflicts, courts around the world have recognized the status of victims in cases where it has been proven that combatants have suffered sexual violence. For example, in the Bosco Ntaganda case, the International Criminal Court studied the case of child soldiers who were victims of sexual violence. Specifically, regarding their status as victims, the Court held that “members of an armed force or group are not categorically excluded from protection against the war crimes of rape and sexual slavery under article 8 (2) (b) (xxii) and (2) (e) (vi) of the Statute when committed by members of the same armed force or group (...) it must be established that the conduct in question “took place of and was associated with an armed conflict.” This decision has been replicated in armed conflict contexts by local courts.

Additionally, with regard to ensuring gender-sensitive implementation in order to align with the UN Security Council resolution 1325 on Women, Peace, and Security, it is crucial that the implementation mechanisms are explicitly gender-responsive. This includes not only ensuring that victims have equal access to reparations but also that the process respects their dignity, privacy, and specific needs. The establishment of specialized units or bodies within the implementing agencies, staffed by personnel trained in gender-sensitive approaches, would be a significant step forward.

Additionally, the Bill should incorporate specific provisions to ensure that all women, including those from marginalized or vulnerable groups, have access to adequate reparations. In accordance with the UN Guiding Principles on Internal Displacement and the International Covenant on Economic, Social and Cultural Rights (ICESCR) ratified by Ukraine in 1973, particularly in that all victims are able to access services including outreach programs that actively inform and assist women in remote or conflict-affected areas to access such reparations. The specific needs of victims, including those of diverse sexual orientations and gender identities as well as those that may arise from other grounds must be taken into consideration.

In accordance with the UN Committee on Economic, Social and Cultural Rights (CESCR) general comment No. 22 on the right to sexual and reproductive health, the Bill should ensure that reparations include long-term medical, psychological, and socio-economic support. This support should not only address the immediate aftermath of violence but also contribute to the long-term empowerment and rehabilitation of survivors. General recommendations Nos. 30 and 35 of the CEDAW Committee also emphasize the importance of ensuring that women, especially survivors of sexual violence, have access to comprehensive sexual and reproductive health services and long-term support as part of their right to health. The Committee also highlight the need for reparations to be holistic and transformative, addressing the full scope of harm experienced by survivors.

Furthermore, it is important to ensure that all victims are aware of their rights under this Bill and the procedures for claiming reparations. A robust awareness campaign, as recommended in the Istanbul Convention, ratified by Ukraine in 2022, should be integrated into the implementation plan. In addition, capacity-building initiatives for legal professionals, healthcare workers, and law enforcement personnel will be vital in ensuring that they can adequately support survivors in claiming their rights.

The Istanbul Convention explicitly recognizes the importance of providing comprehensive support services to victims of violence, including sexual violence, through articles 20, 22, and 25. These provisions mandate that States Parties ensure access to both immediate and long-term medical, psychological, and socio-economic support services. Additionally, the Convention calls for the establishment of specialized services such as rape crisis centres, which are crucial in addressing the specific needs of survivors of sexual violence. These provisions align closely with the goals of ensuring reparations for victims, emphasizing that such support should be both accessible and sustained over time, helping survivors recover and regain their autonomy.

Moreover, the establishment of clear mechanisms for monitoring the implementation and ensuring accountability is crucial under the Bill. This could include the creation of an independent oversight body tasked with regularly reviewing the implementation process and addressing any barriers to access or instances of non-compliance.

In her report on Rape as a grave, systematic and widespread human rights violation, a crime and a manifestation of gender-based violence against women and girls, and its prevention (A/HRC/47/26), the Special Rapporteur on violence against women and girls, its causes and consequences recalled that States should provide adequate services and support to victims of rape, including rape crisis centres,

protection orders and interim relief measures in the context of both peace and conflict, including reparations to victims, in accordance with international human rights standards and reports.

While women and girls bear the brunt of sexual violence committed by male perpetrators, the Special Rapporteur on Torture's wartime sexual torture report (A/79/181) highlights that men and boys are also victims. The stigma and shame experienced by male victims must also be addressed to encourage disclosure and access to help. While article 2 of the Bill provides for ensuring the equal rights and opportunities for women and men, we emphasize the procedures and services must be accessible and customized to all victims.

### *Statute of limitations*

We would recommend that the Bill explicitly states that victims of sexual violence in conflict can come forward and report having been subjected to this violence. International human rights law firmly establishes that sexual violence committed during armed conflicts is among the gravest of crimes, often categorized as war crimes, crimes against humanity, and in some cases, acts of genocide. These crimes are recognized as being so severe that they should not be protected by statutes of limitations, ensuring that perpetrators can be prosecuted regardless of how much time has passed. The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity (1968) explicitly states that no statutory limitation shall apply to war crimes and crimes against humanity. Since various forms of sexual violence are included in these categories, the convention ensures that such offenses remain prosecutable indefinitely.

This principle is reinforced by the Rome Statute of the International Criminal Court (1998), which includes acts such as rape, sexual slavery, and enforced prostitution under the definitions of war crimes and crimes against humanity. The Rome Statute's article 29 explicitly states that these crimes shall not be subject to any statute of limitations, reflecting the international community's stance that the severity of these offenses necessitates perpetual accountability. By ensuring that these crimes can be prosecuted at any time, the Rome Statute aligns with the broader legal and moral imperative to provide justice for victims and to hold perpetrators accountable.

While the Geneva Conventions and their Additional Protocols do not explicitly mention statutes of limitations, they establish the basis for classifying sexual violence as grave breaches of international humanitarian law, further supporting the non-applicability of statutory limitations. Additionally, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) emphasizes the need for effective legal protection against gender-based violence, including in conflict settings, although it does not specifically address statutes of limitations.

States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment have explicit treaty duties to establish all acts of torture as offences under domestic law, to receive complaints and examine them promptly and impartially, and to investigate those allegations promptly and impartially. Defendants cannot rely on orders of a superior or public authority, or states of emergency, to exonerate their actions while any legal mechanisms which interfere with that obligation, such as statutes of limitations, immunities or amnesties,

are considered contrary to the non-derogable nature of the prohibition.

Together with customary international law, these treaties and conventions create a robust legal framework that upholds the principle that the most serious crimes, such as sexual violence during conflict, should remain prosecutable without temporal limitations.

#### *Comprehensive focus on reparations*

In recommending that the Bill on reparation for victims of sexual violence in armed conflict be aligned with the principles of transitional justice, it is crucial to emphasize that transitional justice is not merely about legal redress, but about creating a comprehensive approach to addressing past human rights violations and ensuring non-repetition. The four pillars of transitional justice—truth, justice, reparation, and guarantees of non-repetition—provide a holistic framework that should underpin the draft law, particularly concerning the deeply sensitive issue of sexual violence.

Considering the above considerations, we would like to emphasize the importance of laws that include reparations for victims of sexual violence to integrate and strengthen the four forms of reparation, namely: Restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. Furthermore, such reparations they should be composed in a way that ensures unity and harmony within the law—for example, not merely naming forms of reparation as compensations and, in addition, rights of the victims; but rather, recognizing these rights of the victims as other types of reparation.

It is also crucial that measures are coherent and proportional to the severity of the violations, such as, in the case of the Bill from Your Excellency's Government, measures that are proportional and reparative for women who have had children born of rapes and are intended to support these women and their children.

We draw your attention to the reports of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence [A/HRC/42/45](#) and [A/75/174](#) which provide comprehensive guidance regarding the design and implementation of domestic reparation programmes and the adoption of a gender perspective to reparations for victims of gross violations of human rights and humanitarian law.

#### *Standard of Proof in reparation processes for cases of sexual violence and statute of limitations*

We would like to highlight a legal issue regarding the burden of proof and the evidentiary standard that could benefit from further clarification in the proposed Bill. Specifically, we wish to underscore the important distinction between: (i) the evidentiary standard in a criminal process—beyond a reasonable doubt, which is not within the scope of this Bill—and the evidentiary standard in a reparations process; and (ii) the flexibility in presenting evidence to meet the required standard.

While we comment that the Bill addresses reparations for victims and not a criminal process, we would like to remind your Excellency's Government the standard of proof in reparations cases, as foreseen in the UN Guidance Note of the Secretary General on Reparations for Conflict-Related Sexual Violence that "Courts

hearing reparations claims for sexual violence should be encouraged to consider adopting a lower standard of proof than that required for criminal conviction.”

Additionally, with regard to the evidentiary standard for accessing reparations in cases of sexual violence, it is crucial to be explicitly noted in the Bill that decisions granting of reparations and compensation, as well as the Commission's determinations on victim status for those who have suffered sexual violence, do not affect the criminal process. In other words, recognizing victim status does not imply criminal liability. Should a criminal process be initiated for the same facts, all principles inherent to criminal procedure and the evidentiary standard of the criminal process must still be met. This is important to manage victim’s expectations, as well as to avoid creating perverse incentives for accessing the law and the incorrect use of the criminal system. Likewise, there should be no expectation that victims participate in any criminal process to receive reparations.

In the context of Ukraine, transitional justice tools can be highly useful. International human rights law highlights the importance of combining extrajudicial mechanisms, such as truth commissions, with judicial procedures. These tools must be respected and utilized to uncover the truth and determine institutional, social, and political responsibilities during critical historical periods. While both institutions are essential, it is equally important to respect their differentiation, functions, and independence.

#### *On Technical use of legal terminology*

Finally, considering that Ukraine is a party to the UN Convention on the Rights of Persons with Disabilities and its optional protocol since its signature in 2008 and its subsequent accession in 2010, we consider that the use of the legally defined term “persons with disabilities” in the Bill would be more correct than the term “incapacitated persons.” We agree with the proposal that the term “victim” should be used for survivors of sexual violence in conflict, bearing in mind that the term “victim” has been broadly defined and used by the UN General Assembly Resolution 40/34 on the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, to refer to those who “individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that violate criminal laws operative within Member States, including those laws proscribing criminal abuse of power.” Meanwhile, the term “survivor” may be more ambiguous, especially when it comes to declaring rights. In order to ensure clarity on the terminology used in the bill, particularly the legal need to use the term “victim” as opposed to “survivor”, it would be important to define in article 1 on “Definitions of Terms”, paragraph 1, section 5 either in the Bill itself or in a footnote.

In the light of these observations, we invite your Excellency’s Government to continue our dialogue and to provide responses to the abovementioned comments. We encourage the Government to take all necessary steps to carry out a detailed review of the proposed Acts, to amend the provisions that do not meet international norms related to freedom of opinion and expression and to ensure its implementation does not result in undue restrictions of this fundamental freedom. We stand ready to provide your Excellency’s Government with any technical support it may require in this context.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the current status of the Bill.
2. Please provide information on any measures that your Excellency's Government has taken or intend to take to ensure that the main provisions of the Bill, namely with regard to the four pillars of transitional justice, are in compliance with international human rights law, in particular, the right to a reparation and the guarantees of non-repetition.
3. Please provide information on any measures that your Excellency's Government has taken or intends to take, to implement the court rulings and orders on transitional justice mentioned in this communication.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

A copy of this letter will be sent to the Permanent Mission of the Russian Federation.

Please accept, Excellency, the assurances of our highest consideration.

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