

by States Agents

Documenting Human Rights Violations

SEXUAL  
VIOLENCE



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The author wishes to thank Karima Bennoune, Ariane Brunet, Wenona Giles, Cheryl Hotchkiss, Mel James, Alie Miller, Valerie Oosterveld, Donna Sullivan and her colleagues at Amnesty International – London for their contribution.

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Legal Deposit: Bibliothèque nationale du Québec, fourth quarter 1999.  
National Library of Canada, fourth quarter, 1999. ISBN: 2-9220084-22-1

Graphics by Brunel Design  
Revision by Janis Warne  
Printing by Impart Litho inc.

Printed in Canada

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## PREFACE

The international community has increased its efforts towards the integration of women's rights in human rights systems. There have been many developments towards a gender-sensitive interpretation of human rights law, including the 1981 Convention on the Elimination of All Forms of Discrimination against Women; the Declaration on the Elimination of Violence Against Women adopted in December 1993; the appointment of a United Nations Special Rapporteur on Violence against Women, its Causes and Consequences in 1994; and the Platform for Action of the September 1995 Fourth UN World Conference on Women.

In monitoring the adherence of governments and the international community to these agreements and treaties, it is important to have accurate and consistent documentation of women's rights violations. Amnesty International-London, Amnesty International Canada and the International Centre for Human Rights and Democratic Development (Montreal) have joined forces to produce a series of publications that address this need for standardized methods of research and analysis.

Written by Agnès Callamard of Amnesty International-London, this series includes one manual, *A Methodology for Gender-Sensitive Research*, and four case-study booklets \* addressing women's human rights violations perpetrated by the state, in the community, in the family, and in conflict situations.

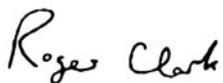
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\* The second and third booklets will be available in the year 2000. The fourth booklet will be available in the year 2001.

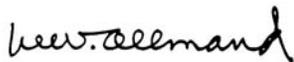
The manual provides a step-by-step description of a gender-sensitive approach to research and suggests ways of addressing the specific challenges faced by women's rights workers. The booklets each focus on the monitoring and documenting of specific categories of women's rights violations. They help the reader prepare for fact-finding missions, provide guidelines for the collection and analysis of evidence, and include a checklist for conducting interviews.

The series will assist local activists and non-governmental organizations, as well as governmental and UN agencies who work to collect and disseminate information on violence against women. The booklets are published in a practical format for field workers.

We are very proud to be contributing to the global efforts to recognize women's rights as human rights. This initiative represents our desire to acknowledge the importance of gender-sensitive research and the standardized methods of documenting violence against women. We hope that this series will be a useful tool for our partners and colleagues in the field who help ensure that women's rights violations do not go unnoticed or unpunished.



Roger Clark, Secretary General  
Amnesty International, Canada



Warren Allmand, President  
International Centre for Human Rights and Democratic Development

## SEXUAL VIOLENCE: DEFINITIONS AND PROHIBITIONS

### 1- DEFINITIONS

Sexual violence includes many different types of acts, such as the following:

- Rape
- Indecent assault (i.e. touching a woman's breast)
- Sexual slavery
- Forced marriage
- Forced impregnation and forced maternity
- Sexual mutilation

All acts of sexual violence constitute crimes of violence against women, aggression and domination. Sex is used as the means of exercising power over the victim. The goal of the offender is to control, degrade and humiliate the victim(s).

There is no international legal definition of what constitutes sexual violence. Each national jurisdiction has developed its own definition of different forms of sexual violence within the criminal law system.

It is therefore very important that you make yourselves familiar with the domestic legal definitions of sexual violence, such as rape, as well as with their possible shortcomings.

Possible definitions of some acts constituting sexual violence are as follows:

Rape consists in the forced or non-consensual penetration of the human body with the penis, or with an object such as a truncheon, stick or bottle.

Sexual slavery consists in women and girls being held against their will and owned by one or several persons in order to provide sexual services to their owner or owners, as well as, quite often, other forms of domestic services. Sexual slavery of women and girls may be preceded by their forced marriage to their owners. The ownership of sexual slaves includes the power to kill them.

Forced (or servile) marriage refers to the following:

- a woman or girl being given in marriage, without the right to refuse, by her parents, guardians, the community;
- or the husband of a woman, his family, or his clan, transferring her to another person;
- or a widow who, on the death of her husband, is inherited by another person.

## 2- INTERNATIONAL PROHIBITIONS

Acts of sexual violence are prohibited under both international human rights law and humanitarian law.

Sexual violence can be an element of almost every major crime prohibited by international human rights law and international humanitarian law.<sup>1</sup>

Sexual violence may have many different names, depending on the circumstances. It may be referred to as torture, cruel, inhuman or degrading treatment, rape, etc.

Many acts of sexual violence, especially rape, sexual slavery or forced marriage may constitute torture. Lesser violent acts may constitute cruel, inhuman or degrading treatment or punishment.

Sexual violence may also constitute an element of a crime against humanity or of genocide. During an armed conflict, it may be considered as a war crime, a violation of the laws and customs of war or a grave breach of the Geneva Convention.

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1 These guidelines do not cover acts of sexual violence committed by governmental troops during war times. Such situations should be the subject of a separate manual.

# SEXUAL VIOLENCE AND TORTURE

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## 1- WHAT IS TORTURE?

The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines “torture” as follows:

*“... an act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”*

The international concept of torture comprises three main elements:

- The **material element**: Severe pain or suffering.
- The **intentional element**: It has to be inflicted intentionally and for a purpose. The list of purposes is not exclusive.
- The **qualified perpetrator element**: Such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

## 2- WHEN DOES SEXUAL VIOLENCE CONSTITUTE TORTURE?

*“Rape by government agents is a common method of torture inflicted on women. It is both a physical violation and injury, and an assault on a woman’s mental and emotional well-being.”<sup>2</sup>*

*“The security forces of the country do not cease to be agents of official persecution because it is not the policy of central government to persecute the victims in question.”<sup>3</sup>*

Rape, or the threat of rape, of women detainees by prison, security or military officials ALWAYS amounts to torture. Other forms of sexual violence committed by law enforcement officials may either constitute torture or cruel, inhuman or degrading treatment.

- Sexual violence is always a deliberate act committed by the perpetrator.
- Many forms of sexual violence cause severe physical and mental suffering.
- The victims of acts of sexual violence are always in some sense “detained or restricted” even where they may not formally be prisoners. As a result, detention should be understood as including the following:
  - prisons, military centres, or other official buildings of security agencies;
  - unofficial or secret detention centres;
  - any other location, such as the victim’s home, a village or a street.

<sup>2</sup> In AI, *Women in the Front Line*, 1991, p.18.

<sup>3</sup> MacDonald and Blake, *Immigration Law and Practice in the United Kingdom*, 1995, 390-391, paragraph 12.40.

- the perpetrators aim, among other things, to intimidate, degrade, or humiliate their victim.

The main point of contention has been (and remains in some circles) as to whether sexual violence against a woman detainee by a member of the security, military or police forces could, in some circumstances, be construed as a personal or private act. A number of decisions by international and regional bodies have supported the argument that rape or other forms of sexual abuse by such governmental representatives always amounts to torture.

The following is a series of decisions or declarations that support the argument that the rape of women detainees by officials always constitutes torture. There have been other decisions that have argued the opposite, i.e. that such rape could be analyzed as a private act on the part of the official. However, the overall trend, at both national and international levels, is to consider rape by officials as always constituting torture.

### 2.1 JURISPRUDENCE: TORTURE OF FEMALE DETAINEES

- **The first UN Special Rapporteur on Torture, Pieter Kooijmans**, stated the following:  
*Since it was clear that rape or other forms of sexual assault against women in detention were a particularly ignominious violation of the inherent dignity and right to physical integrity of the human being, they accordingly constituted an act of torture.*<sup>4</sup>

<sup>4</sup> UN Doc. E/CN.4/1992/SR.21 at para. 35.

- **Standard Minimum Rules for the Treatment of Prisoners (1977)**

Article 8 provides for the separation of the different categories of prisoners according to their sex, age, criminal record and other considerations. Additionally, Article 9(1) states that "... it is not desirable to have two prisoners in a cell or room."

Considering that sexual violence may be a form of torture not only when it is inflicted by public representatives and officials of non-governmental entities, but also when it is done with the consent or acquiescence of a public official, the non-compliance of prison officials with respect to rules such as the separation of women and men or young males from adult males in prisons can be tantamount to acquiescence to sexual violence, thus configuring the elements of torture.

- **International Criminal Tribunal for the Former Yugoslavia**

The Tribunal has approved the indictments of individuals for torture based on allegations that the accused raped women in detention. The indictment against Dragan Gagovic and others alleged that the accused committed numerous acts of rape which constituted torture under the definitions in the Statute of Crimes against Humanity (Article 5(f)), grave breaches of the Geneva Convention (Article 2) or violations of the Geneva Convention (Article 3):

*"In this indictment, acts of forcible sexual penetration of a person, or forcing a person to sexually penetrate another are alleged. Sexual penetration includes penetration, however slight, of the vagina, anus or oral cavity,*

*by the penis. Sexual penetration of the vulva or anus is not limited to the penis. Such acts can constitute an element of a crime against humanity, (enslavement under Article 5(c), torture under Article 5(f), rape under Article 5(g)), violations of the laws and customs of war, (torture under Article 3 and Article 3(1)(a) of the Geneva Conventions) and a grave breach of the Geneva Conventions (torture under Article 2(b))."*<sup>5</sup>

- **UN Commission of Experts**

A UN Commission of Experts established to investigate rape and sexual assault in the former Yugoslavia concluded that "[u]nder international humanitarian law, rape and other sexual assaults are in most cases either expressly prohibited as such or can be categorized as torture or... other forms of inhuman or degrading treatment," "wilfully causing great suffering" or "other terms of this nature."<sup>6</sup> The experts especially argue that the enumeration of the "grave breaches" should not be considered as exhaustive. They further point out that during the Tokyo trials, rape was considered a violation of the laws and customs of war. Although the Geneva Conventions did not yet exist, the charge indicates that rape is seen as a crime as serious as torture and killing. Today, such a crime would be considered a grave breach.

5 International Criminal Tribunal for the former Yugoslavia, Case No. IT-96-23-I, June 26, 1996. Judge Lal C. Vohrah.

6 Final Report of the United Nations Commission of Experts established pursuant to Security Council Resolution 780 (1992), *Annex II: Rape and Sexual Assault: A Legal Study*, S/1994/674/Add.2 (Vol. I), December 28, 1994, p. 5.

- **Special Rapporteur on the situation of systematic rape, sexual slavery and slavery-like practices during periods of armed conflicts**

Linda Chavez's preliminary report states that "rape and sexual abuse of women and girls in situations of armed conflict (whether international or internal) constitutes a grave breach of international humanitarian law... Rape and sexual abuse constitutes torture and inhuman treatment which causes suffering and serious bodily injury."<sup>7</sup>

## 2.2 JURISPRUDENCE: OFFICIAL VS. PRIVATE CAPACITY

- **Inter-American Commission on Human Rights, Report No 5/96 Case 10,970 Fernando and Raquel Mejia v Peru** (March 1, 1996)

In its March 1996 decision, the Inter-American Commission on Human Rights found that the rape of a woman at her home by a security official amounted to torture under Article 5 of the American Convention on Human Rights. The Inter-American Commission noted that rape by a State official meets each of the three necessary components of torture under contemporary international law.

- **Article 7, Paragraph 1 of the Statute of the International Tribunal for the Former Yugoslavia**

This statute states that persons other than the physical perpetrators have personal criminal responsibility

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7 Preliminary report of the Special Rapporteur on the situation of systematic rape, sexual slavery and slavery-like practices during periods of armed conflicts, *Contemporary Forms of Slavery*, E/CN.4/Sub.2/1996/26, July 16, 1996, p. 6.

for rape. According to the Commission of Experts for the ICTY:

*"due to the chaos in the former Yugoslavia including many activities carried out by the paramilitaries, it might be difficult to expose lines of command. In consequence, the responsibility of the Governments for the prevention and punishment of crimes will play a crucial part in the proceedings before the ICTY... the authorities can be held responsible for the climate which made it possible for these crimes to be committed."*<sup>8</sup>

## 3- ACTS OF SEXUAL VIOLENCE COMMITTED BY ARMED GROUPS

It shall be recalled that for international human rights law, sexual violence constitutes an act of torture or cruel, inhuman or degrading (CID) treatment only when it is committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting officially.

However, armed groups can also be held responsible for sexual violence committed by their forces, in the same way that they are held accountable for any unlawful acts, such as beatings, mutilations, abductions and killings of civilians.

▶ A large number of non-governmental organizations apply the definition of torture to acts committed by members of armed groups.

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8 Final Report of the United Nations Commission of Experts, Annex II Rape and sexual assault: A legal study; S/1994/674/Add.2 (Vol. I); December 28, 1994, p. 4.

Under a conflict situation, all armed groups are required to abide by the Geneva Convention (as it is applied to internal conflict), which defines the laws and customs of war. The laws of war prohibit all parties to the conflict from perpetrating torture or indecent assault against women.

Armed groups are therefore always responsible for any acts of sexual violence committed by their forces, i.e. rape, sexual assaults, forced marriage, sexual slavery, etc.

- Many such acts of violence committed by the members of armed groups will always be considered as torture, or cruel, inhuman or degrading treatment.
- Such acts may take place in detention centres created by the armed groups, but also any other locations, such as the victim's home, village, a field or a road.

Perpetrators may also be held accountable under domestic law as it relates to torture and/or rape or sexual violence.

#### 4- ACTS OF SEXUAL VIOLENCE COMMITTED BY INDIVIDUALS

These guidelines focus on acts of sexual violence committed by state agents. However, you should be aware that there is an increasing body of jurisprudence and legal commentary, which attribute to the state responsibility for acts of violence committed by private individuals.

It should be recalled that in international law, sexual violence is torture only when it is committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting officially. In other words, the Convention against Torture holds states accountable for rape committed by private persons if the state has condoned or acquiesced in that torture. In all other cases, rape is regarded as a common criminal act.

According to the international human rights law expert Donna Sullivan, there is an evolving practice in the treaty bodies and in the work of the Special Rapporteurs, as well as in case law in the regional context, which makes it clear that positive obligations on the part of the state are now an integral part of considering whether or not the state has fulfilled its human rights obligations.<sup>9</sup>

Examples of such an evolution includes the following:

- **Special Rapporteurs on Torture**

From the first appointment to the current one, there have been a number of examples in which torture by private actors in circumstances where the state can be said to have acquiesced have been the subject of ongoing reporting. When he was first appointed, Pieter Kooijmans referred to sexual mutilation as torture even

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<sup>9</sup> She further argues that an analysis of the definition of torture in the Convention against Torture and of current and past practices with regard to the state parties reports tends to show that the concept of acquiescence (present in the Convention against Torture) may be increasingly interpreted by the Human Rights Committee in light of these developments. Donna Sullivan, *State Responsibility Under International Law*, guest-lecture, Expert Meeting on Torture of Women, Amnesty International, February 1997.

where perpetrators are private persons, when the state fails to take action to combat the practices:

*“The authorities’ passive attitudes regarding customs broadly accepted in a number of countries (i.e. sexual mutilation and other tribal traditional practices) might be considered as consent or acquiescence particularly when these practices are not prosecuted as criminal offences under domestic law, probably because the State itself is abandoning its function of protecting its citizens from any kind of torture.”<sup>10</sup>*

- **The Human Rights Committee’s General Comment 20 on Article 7**

This comment called on state parties to report on the penalties that are applicable to torture and CID treatment, whether committed by public officials or other persons acting on behalf of the state or by private persons:

*States’ protection against torture or CID treatment apply “whether [these acts are] inflicted by people acting in their official capacity, outside their official capacity or in a private capacity.”<sup>11</sup>*

- **European Court of Human Rights**

In *X and Y v. Netherlands* (1985), the Court stated that a husband’s impunity from criminal liability for rape was unacceptable to the fundamental objectives of the Convention, the very essence of which is respect for human dignity and human freedom.

- **Inter-American Court of Human Rights**

In the *Velasquez-Rodriguez* case, judgment of July 29, 1988, the Inter-American Court of Human Rights stated the following:

*“An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, because of the lack of due diligence to prevent the violation or respond to it as required by the [American] convention...”*

The Court explained its reasoning as follows: *“The state is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the state apparatus acts in such a way that the violation goes unpunished, and the victim’s full enjoyment of such rights is not restored as soon as possible, the state has failed to comply with its obligations to ensure the free and full exercise of those rights to the person within its jurisdiction. The same is true when the state allows private persons or groups to act freely and with impunity to the detriment of rights recognized by the Convention.”*

- **Standard of due diligence**

The standard of due diligence is used in the text of the Declaration on the Elimination of Violence against Women, the Inter-American Convention on Violence against Women and as well, in the General Recommendation No. 19 of the Committee for the Elimination of All Forms of Discrimination against Women.

10 Report by the Special Rapporteur Pieter Kooijmans, *Torture and other cruel, inhuman or degrading treatment or punishment*, E/CN.4/1986/15, p. 11.

11 General Comment no. 20 (44) Art.7, CCPR/C/21/Rev.1/Add.3

# MEDICAL CONSEQUENCES OF SEXUAL VIOLENCE: A BRIEF OVERVIEW

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## 1- MEDICAL CONSEQUENCES

The medical consequences of sexual violence are often very serious.

Consequences include sexually transmitted diseases (including HIV/AIDS), stomach pains, nausea, vaginal pains, generalized pains, infertility, miscarriage, stillbirth, pregnancy, etc. Victims may also suffer from post-traumatic stress disorder (see below).

Access to medical treatment may be very difficult. Women or girls who have been victims of sexual violence may not be able to gain access to the required medical treatment because of the absence of institutions or professionals working with victims of sexual violence, insensitivity of medical personnel, laws forbidding abortion, lack of access to medical check-ups for sexually transmitted diseases, including HIV, etc.

## 2- RAPE TRAUMA SYNDROME

Rape Trauma Syndrome<sup>12</sup> is a form of post-traumatic stress disorder (PTSD) and shares most of its symptoms to varying degrees. PTSD does not affect all victims of torture, includ-

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12 Excerpt from "Rape Trauma Syndrome" in the New York City/Balkan Rape Crisis Response Team *Training Manual*, September 1993, pp.1-3.

ing rape victims, but the probability of it occurring is very high. It generally follows three phases, with some degree of overlap from one phase to the other:

## 2.1 IMPACT PHASE

**Duration:** Immediately following assault until approximately 24-48 hours post-assault.

**Emotional Reactions:** Wide range. Memory gaps are common; responses are likely to reflect automatic coping styles. The survivor may have concerns about pregnancy, venereal diseases and AIDS. In general, responses can be divided into two broad categories:

- expressed style, in which feelings of fear, anger and anxiety are shown through such behaviour as crying, laughing, restlessness and tenseness;
- controlled style, in which feelings are contained and a calm, composed or subdued affect is demonstrated.

**Intervention:** When dealing with a survivor during the impact phase, it is extremely important to emphasize three things:

- she has been through an extremely frightening experience;
- she is not to blame for what has happened; and
- she is now in a safe place (if it is true).

## 2.2 ACUTE PHASE

**Duration:** Variable — from a few days to six weeks or more. Period of disorganization, predominate feeling is fear, physical symptoms are especially troubling.

**Physical Reactions:** Muscular tension, fatigue, sleep disturbances, stomach pains, nausea, vaginal discharge, itching, burning and generalized pains.

**Emotional Reactions:** Flashbacks, sleep disturbances, nightmares, poor concentration, memory loss, guilt/self-blame, shame, anger, vulnerability, appetite change, fear, anxiety, moodiness, denial, obsessions with details of the rape, lack of trust.

**Intervention:** Some victims are ready to talk about what has happened. It is important to reassure the survivor that she is experiencing normal, expected reactions to a traumatic event. It is also important to reassure the survivor that with time she will get better. Support a non-judgmental attitude that places blame on the rapist.

Some rape victims are not ready to talk immediately. The victim should not be forced to discuss the incident and it will be reassuring for her to know that whatever she chooses to do—to talk or not to talk—is okay.

## 2.3 REORGANIZATION PHASE

**Duration:** Long-term process lasting from one to two years. The effectiveness of the reorganization phase is dependent on many variables, such as ego strength, social supports, and prior history of victimization.

**Emotional Reactions:** With support and/or counselling, the survivor gradually regains control and is able to trust herself and place blame on the perpetrators.

Without support, the acute trauma symptoms tend to lessen over time but the survivor is likely to suffer from one of the following symptoms:

- Isolation/withdrawal
- Lowered self-esteem: feels shameful, dirty, powerless, naive, stupid
- Restricted mobility: phobias, fear of being alone, fear of darkness
- Depression/restricted affect: wary, clamping down on emotions, holding things inside
- Sexual dysfunction: fear of sex, numbing, promiscuity (in some cases)

**Intervention:** Help her identify how existing symptoms are connected to the rape.

## SOCIAL CAUSES AND CONSEQUENCES OF SEXUAL VIOLENCE: A BRIEF OVERVIEW

### 1- CAUSES

Women may be the victims of sexual violence for many reasons: because they are women, as a result of their activities or beliefs, because of their family relationships, etc.

*“The use of rape reflects the inequalities women face in their everyday lives in peacetime. Until governments live up to their obligations to insure equality, and end discrimination against women, rape will continue to be a favourite weapon of the aggressor.”<sup>13</sup>*



The following groups of women may become the victims of sexual violence perpetrated by state or officials of armed groups because of their activities and political beliefs: community leaders, human rights or women’s rights activists, etc.



State or armed groups may target women as a means of pressuring family members and stigmatizing them. Often, women are targeted because they are women (i.e. male relatives may not be targeted or not in the same manner) and because of suspicion that they are somehow involved in the activities of their relatives. There may be a deliberate attempt on the part of

<sup>13</sup> In AI, *Human Rights are Women’s Rights*, 1995, p. 22

armed opposition groups or the government to use women in order to intimidate, get confessions, and humiliate both the activists and the women themselves.

Women may also be targeted solely because of their gender. They may be attacked by members of the state or armed groups, and by members of their family or the community. Within the family and the community, sexual violence may take the form of domestic violence, female genital mutilation, female infanticide, rape.

Women may be the victims of sexual violence in the context of their imprisonment. Sexual violence may be perpetrated by prison officials, or by fellow inmates.

## 2- CONSEQUENCES

Female victims of sexual violence may face stigma, ostracism, divorce, etc. If a woman is declared unfit for marriage as a result of rape, she will also face severe economic and social obstacles to her livelihood. She may become withdrawn, lose self-esteem or turn to prostitution.

In the case of women who have lost their husbands because they have been imprisoned or killed, the consequences of the violations persist, in the form of social and economic hardship, medical problems, etc.

## MONITORING SEXUAL VIOLENCE

Monitoring is the long-term observation and analysis of the human rights situation in a country or region.

- It consists of systematically and consistently collecting information that may be related to human rights violations from a variety of sources.
- This information, collected over a certain period of time, should allow you to insert the cases under investigation within a political and legal context, as well as to identify patterns of sexual violence.
- Monitoring incidents of sexual violence by state agents requires researching and collecting information on the following:
  - political, legal and social context or circumstances;
  - medical and social consequences of sexual violence;
  - availability of legal and medical remedies for the victim.
- This range of information is necessary because the conditions that allow sexual violence of women detainees to occur and to continue are not only similar to those related to torture or ill-treatment (i.e. lack of access to independent legal advice, impunity), but also include social, legal, and cultural considerations related to the status of women and violence against women.

## 1- INFORMATION ON CIRCUMSTANCES AND CAUSES

Contextual information is essential to comprehend the nature and extent of sexual violence. It assists the researcher in the four following ways:

- in assessing evidence;
- in establishing a pattern of violations;
- in demonstrating the presence or absence of impunity;
- when applicable, in reminding the government of its obligations under domestic and international law.

### 1.1. LEGAL INFORMATION

Some of the legal provisions to be specifically researched include the following:

- Provisions regarding torture and ill-treatment:
  - Are all forms of torture and ill-treatment prohibited by law and/or the constitution?
- Provisions regarding rape and sexual assault:
  - What are the legal definitions of rape and sexual assault?
  - What type of evidence is required from the victim?
  - Are sentences set out in the law?
  - Are there separate offences for rape and sexual assault?
  - Are there laws addressing marital rape, violence against women and sexual harassment?
- Provisions regarding forced marriage, female genital mutilation, domestic violence, etc.

- Provisions regarding sexual activities:
  - Is consensual sex between adults prohibited outside marriage?
- Provisions regarding the prosecution and trials of alleged rapists, including those with no involvement with the State:
  - Are women likely to report rape, whether or not it occurred in custody? (social and cultural considerations)
  - How often are rapists brought to justice?
  - What is the most likely sentence?
- Provisions regarding the prosecution and trials of alleged perpetrators of torture:
  - Are victims likely to report torture?
  - How often have alleged perpetrators of torture been brought to justice?
  - What has been the average sentence?
  - Have other forms of “punishment” been used (i.e. moving the alleged perpetrator from one office, city, prison, to another)?
- Which international conventions or treaties, relevant to women or concerning torture, have been ratified? Incorporated into domestic law?

Please refer to Chapter 7, Section 1 of *A Methodology for Gender-Sensitive Research*.

## 1.2 POLITICAL FRAMEWORK

Issues to be specifically researched include the following:

- How did/do government and armed group officials characterize opponents and activities against them?
- How did/do government and armed group officials respond to accusations of torture, including sexual violence?
- How do official speeches and documents define the role of women in the country and society?
- What stereotypes or images respecting women and men inform this discourse?

Please refer to Chapter 7, Section 1 of *A Methodology for Gender-Sensitive Research*.

## 1.3 SOCIAL OR CULTURAL MORES

Issues to be specifically researched include the following:

- How is women's virginity or sexuality considered?
- How is violent behaviour within the family considered? Is it commonly accepted for husbands to batter their wives? Fathers their daughters? Are sanctions exercised against men if they do so?
- Is polygamous marriage customary? Is dowry or bride price a customary requirement for marriage?
- Are forced marriages and/or child marriages practiced?

- What kinds of work or activities are women forbidden to do by custom?
- Which stereotypes inform the representation of women in newspapers, television, etc.?

Please refer to Chapter 7, Section 1 of *A Methodology for Gender-Sensitive Research*.

### Possible Sources of Information

Legal texts, constitutional texts and legal practice; anti-discrimination provisions in law or in the constitution; documents on the status of women put together for the Beijing Conference; lawyers; women's NGOs, rape crisis centres; international organizations such as UNICEF, UNDP.

## 2- INFORMATION ON CONSEQUENCES AND ACCESS TO REMEDIES

The consequences of sexual violence should be investigated and brought to the attention of governments and other actors.

This type of information is very important in several ways:

It allows the researcher to better understand the nature of sexual violence and its impact on victims.

It allows the researcher to refer victims to medical or legal experts who may be in a better position to help the female victim. Such experts may be medi-

cal personnel specializing in medical consequences of sexual violence, counsellors, women's NGOs, lawyers.

## 2.1 MEDICAL CONSEQUENCES AND ACCESS TO REMEDIES

Some of the problems facing victims in need of medical care may include the absence of institutions or professionals working with rape victims, insensitivity of medical personnel, laws forbidding abortion, and lack of access to medical check-ups for sexually transmitted diseases, including HIV.

The human rights investigator should collect information concerning the following issues:

- What are the medical consequences for the victim in the context of the situation in her country (i.e. prevalence of sexually transmitted diseases, including HIV)?
- Are there any institutions or professionals working with rape victims?
- Are there any facilities for medical check-ups for STDs, including HIV/AIDS?
- What are the facilities and provisions for reproductive health (including abortion)?

## 2.2 SOCIAL AND ECONOMIC CONSEQUENCES AND ACCESS TO REMEDIES

- What are the social and economic consequences (i.e. unable to work because of trauma or pregnancy, ostracism)?

- What are the consequences in terms of her relationship with, or status within, her family or community?
- What are the consequences for the other members of the family or the community?

## 2.3 LEGAL CONSEQUENCES AND ACCESS TO REMEDIES

In many situations, the women may be unable to access remedies, while facing disastrous consequences (i.e. divorce). This situation may originate from a lack of legal literacy and capacity to initiate legal action, community pressures to refrain from reporting or seeking redress for certain abuse, less access than men to the economic resources necessary to pursue redress and government failure to prosecute in cases involving sexual violence. When adequate remedies do exist in law, *de facto* discrimination may deter or obstruct women's recourse to these remedies.

Some of the questions guiding the research include the following:

- Does the constitution include a guarantee of equality between men and women?
- Are there any laws or administrative or other practices that discriminate against women?
- Do women have the same access, in law and in practice, to legal remedies?
- Are women likely to report acts of sexual violence?
- Are there any legal professionals specializing in cases of rape?

- Are rural and/or poor women likely to find access to such professionals?
- Are police officers specially trained to deal with victims of sexual violence?
- Are police officers likely to discourage women who have been raped from filing a complaint?

#### **Possible Sources of Information**

Legal texts, constitutional texts and legal practice; anti-discrimination provisions in law or in the constitution; media, documents on the status of women put together for the Beijing Conference; lawyers; women's NGOs, rape crisis centres; international organizations such as UNICEF, UNDP.

### **3- RECORDING INDIVIDUAL CASES**

By following up on individual cases brought to your attention, you should be able to develop a better understanding of the nature, causes and main perpetrators of acts of sexual violence.

Record and follow up allegations brought to your attention.

Individual cases may be brought to your attention by the victims themselves, their families, witnesses, lawyers, medical personnel, or the media, which often carry stories of sexual violence.

Conduct investigations whenever necessary or possible, to assess allegations.

Develop a filing or database system to access and analyze the information easily.

To facilitate monitoring, it is recommended that you develop a form to record individual cases of alleged sexual violence. You must adapt it to the specific circumstances of your country or region.

#### **1. Victim identification information**

- Name (last and first name, nickname):
- Date of birth or age:
- Gender:
- Profession/occupation:
- Family status:
- Address:
- Nationality:
- Religion:
- Ethnicity:
- Physical description or photograph:

#### **2. Location of the incident**

- Date and time of the alleged incident:
- Precise location (i.e. name of the police station):
- Province:
- District:
- City/village or nearest city/village:
- Street address if applicable:

#### **3. Description of the incident**

#### **4. Circumstances**

Briefly describe the events immediately preceding the incident.

## 5. Alleged perpetrators

### 6. Evidence

- Witnesses:
- Forensic evidence:
- Court record:
- Other:

### 7. Governmental responses

- Complaint lodged:
  - when?
  - where?
- Public statements:
- Official investigation:
- Conclusion:
- Court cases:
- Judgment:

### 8. Your actions

- Identity of first source:
- Date:
- Information compiled by:
- Visit to the scene:            YES                      NO
- done by:                            on:
- Interviews of witnesses:        YES                      NO
- done by:                            on:

## 4- IDENTIFICATION OF PATTERNS

In many parts of the world, acts of sexual violence have a number of common characteristics, also called patterns. You will be able to identify these patterns through the review and analysis of the information collected and allegations brought to your attention. Such patterns may include the following:

### 4.1 PATTERNS WITH RESPECT TO THE IDENTITY OF THE VICTIMS

Who are the most likely victims of sexual violence?

The victims of sexual violence may have a number of common characteristics, such as type of political activities, professional activities or occupations, ethnicity, age group, gender, residency in clearly defined areas and religion.

### 4.2 PATTERNS WITH RESPECT TO THE CIRCUMSTANCES SURROUNDING THE INCIDENTS OR ALLEGATIONS

Are incidents of sexual violence usually preceded by a specific set of events, or do reports of sexual violence increase (or decrease) following specific events?

### 4.3 PATTERNS WITH RESPECT TO THE NATURE OF THE HARM

Are there prevalent forms of sexual violence?

A pattern may emerge in terms of the nature of the acts of sexual violence. For instance, the majority of incidents of sexual violence may consist of rape, gang rape, defilement (rape of under-age girls), incest, sexual slavery.

### 4.4 PATTERNS WITH RESPECT TO THE LOCATIONS OF THE INCIDENTS OF SEXUAL VIOLENCE

Where are incidents most prevalent?

Locations may include specific regions or cities, specific police stations or prisons, military facilities, civilian homes, secret detention centres.

#### **4.5 PATTERNS WITH RESPECT TO THE IDENTITY OF ALLEGED PERPETRATORS**

Does a pattern emerge with regard to the identity of the perpetrators?

If perpetrators are security force agents, which are the principal forces and who are the individual perpetrators most often denounced within these forces?

The alleged perpetrators may also have a number of common points, depending on the nature of the act of sexual violence.

#### **4.6 PATTERNS WITH RESPECT TO THE METHODS USED BY THE PERPETRATORS**

Are similar methods used by the perpetrators?

For instance, many incidents may be preceded by abduction.

How many individuals are usually involved?

#### **4.7 PATTERNS WITH RESPECT TO THE CAUSES BEHIND INCIDENTS OF SEXUAL VIOLENCE**

Can you attribute the majority of incidents to similar direct or indirect causes, i.e. the political activities of the victims, their identities (i.e. relatives of political activists), military presence, uprisings?

#### **4.8 PATTERNS WITH RESPECT TO INCIDENTS IN CUSTODY**

If many cases are reported in the context of detention, such incidents may present a number of common aspects, such as the following:

Patterns regarding the circumstances of the arrest, the individuals or agencies involved, the time and location where sexual violence takes place, the nature of conditions in detention.

#### **4.9 PATTERNS WITH RESPECT TO GOVERNMENTAL RESPONSES TO ALLEGED CASES**

A pattern may emerge over time with respect to government responses to the accusations. Such a pattern may characterize official investigations or lack thereof, public statements following sexual violence, the absence or nature of the investigations, the nature of the procedures, the absence or nature of prosecutions, the identity of the courts responsible for the prosecution, the absence or nature of the verdict.

Are complaints and reports of sexual violence systematically investigated? Or are victims often unable to file a complaint?

Are those alleged to have committed sexual violence charged and prosecuted?

#### 4.10 PATTERNS WITH RESPECT TO RESPONSES OF ARMED GROUPS TO ALLEGATIONS OF TORTURE

A pattern may also emerge over time with regard to the responses of the leadership of the armed group to accusations of sexual violence. Such a pattern may be seen through the following:

- nature of public statements issued following the allegations;
- blunt denials;
- promises of investigation;
- justification for the acts of torture;
- putting the blame on the government forces.

## PREPARING FOR A FACT-FINDING MISSION

Fact-finding consists of investigating a specific incident or allegation of human rights violations, collecting or finding a set of facts that proves or disproves that the incident occurred and how it occurred, and verifying allegations or rumours.

### 1- FACTS AND EVIDENCE

#### 1.1 LEARN EVERYTHING YOU CAN ABOUT SEXUAL VIOLENCE

-  Be knowledgeable about the law and standards related to sexual violence. Find out exactly what is prohibited under domestic laws and international human rights agreements.
-  Be familiar with the possible stigma attached to sexuality and sexual violence in the area, as well as the various phases of trauma that victims of sexual violence may experience.
-  Find out about local or national structures (NGOs, hospitals, law firms, etc.) that may provide assistance to victims of torture, including rape.

This knowledge and information may help you in breaking barriers, understanding covert messages

(women survivors' reluctance to talk about it, sense of guilt, verbalization of what happened, mental health and recovery), and addressing some of the pain.

Be knowledgeable about the laws related to torture or CID treatment, find out exactly what is prohibited under domestic laws and international human rights agreements, and seek information from experts.

Be knowledgeable about the patterns related to torture or CID treatment or punishment in your country.

## 1.2 GET THE FACTS

Ask yourselves the following questions: What do you already know about the case? What information is missing? What kind of evidence is lacking?

## 1.3 SEEK EXPERT ADVICE

Get all necessary information or expert advice before going to the scene, i.e. consult with forensic pathologists, lawyers.

## 1.4 PREPARE YOUR INTERVIEW FORMAT

Write down a checklist of the data and facts necessary to assess the allegations.

If this is your first investigation of sexual violence, show the checklist to local contacts who have worked on such cases to get their input: they will often be able to add questions.

Please refer to Chapter 5 of *A Methodology for Gender-Sensitive Research* (Interview Guidelines).

See Appendix One for examples of questions.

## 2- PREPARATION FOR A VISIT TO THE SCENE

Carry out a thorough risk assessment.

List all possible security concerns (i.e. your own physical security and security of your contacts) and develop contingency plans to deal with each one of them (i.e. if evacuation is necessary, how will it be carried out?). If access to and your presence on the scene entails many dangers, identify alternative means of carrying out the research (i.e. rely on a reliable local contact to bring possible witnesses outside the area).

Composition of the delegation.

**Women delegates:** It is crucial that the delegation be composed of women with expertise in carrying out research on sexual violence and interviewing victims of sexual violence.

**Experts:** Identify what type of expertise will be most needed during the investigation. If possible, you should include an expert on this subject in your delegation. If it is not possible, you should meet with experts before going on a fact-finding mission.

### 3- MAIN SOURCES OF INFORMATION

List all possible contacts and sources of information you may need to interview and meet with in order to investigate and corroborate the information.

Identify whom it may be more appropriate to meet first, provided, of course, that you can set up and organize meetings. In any case, you should decide whether and at which point in the investigation you will meet with security officials.

The following is a generic list of individuals and groups that you should attempt to meet:

- Victims
- Eye witnesses
- Other witnesses
- Relatives
- Women leaders
- Women NGOs
- Community leaders
- Lawyers
- Journalists
- Medical personnel
- Local human rights activists
- Members of political parties, civil rights groups, trade unions, ethnic groups, etc.
- Members and officials of the police force
- Prosecutors
- Other police/judicial representatives
- Members and officials of the army
- Members and officials of armed opposition groups

## COLLECTING EVIDENCE

Torture, including rape or other forms of sexual assault, leaves traces. It is the work of the investigator to find and document these traces. The evidence comes in a variety of forms, which carry different levels of weight and pose different problems in evaluation.<sup>14</sup>

### Possible list of evidence

- Medical records
- Photographs
- Official acknowledgement
- Official documents (i.e. police records, court records)
- Autopsy report
- Physical signs or marks
- Mental state of the victim

### 1- ACKNOWLEDGEMENT BY AUTHORITIES

Any statement by a government, government agency, or non-governmental entity that an individual under its authority has engaged in acts of sexual violence represents evidence that torture has occurred.

<sup>14</sup> James Welsh, "Documenting Torture: a Human Rights Approach," presentation at the meeting *Science of Refugee Mental Health: New Concepts and Methods*, Harvard, Massachusetts, USA, September 29-October 1, 1992, p. 2.

## 2- OFFICIAL DOCUMENTS

In some cases sexual violence has been documented by official or highly reputable unofficial sources. The most persuasive example of this is a legal document in which the State itself acknowledges that a woman has been raped. This happens, for example, in states that require a state-run forensic institute to examine prisoners at some point in their period of detention or release.

## 3- MEDICAL CERTIFICATE

In some cases, there may be medical certificates independently sought by the victim upon her release or escape.

Common physical marks of sexual assault include the following:

- Genital trauma (bruising, lacerations, mutilations and damage to surrounding pelvic structures such as the bladder and rectum)
- Bruising in the arms and chest, patches of hair missing from the back of the head, bruising on the forehead
- Rape is often accompanied by beatings and other forms of violence. Therefore there may also be signs of violence to other parts of the body (scars, deformities, burns).

## 4- PHOTOGRAPHS

Sexual violence is often accompanied by beatings or other acts of physical violence, the traces of which may have been photographed. When a victim comes to see you, you may ask for her authorization to take photos of her bruises or any other marks of physical violence. Expert evaluation by trauma or forensic specialists may result in strong evidence.

## 5- TESTIMONY

Access to the victims or witnesses and interviews are crucial to the investigation.

As with all forms of violation, but probably even more so with rape, the researcher will need the assistance of a “gate opener,” someone who has relationships with a segment of the population because of his/her work and activities, who is trusted by the population and can act as an intermediary between the researcher and the victims. Such individuals may work for recognized organizations, such as human rights organizations, medical centres providing services to victims of torture, rape crisis centres and women’s NGOs.

They may also be individuals who, in the course of their life or professional activities have come to know a great deal about the population of a given area. These may be religious officials, medical doctors, community leaders, etc. Usually, through visiting some of the established organizations, the researcher should be able to meet with or identify a “gate opener,” an individual working within one of these organizations, who may arrange for the researcher to meet with victims, provided sufficient trust has been built and an understanding of the nature and possible outcome of the visit have been agreed on.

The main focus of the interviews should include the following:

- Identity of the victim
- Circumstances of the incident
- Causes of the acts of sexual violence, including possible identification of the perpetrators
- Nature of the violence perpetrated against the victim
- Consequences for the victim
- Access to remedies

Please refer to Appendix One for a checklist of possible questions.

## ASSESSING EVIDENCE

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### 1- RELIABILITY OF INITIAL SOURCE

▶ Are your initial sources or contacts reliable?

Often the allegations of incidents of sexual violence come from the media, a local organization or individual contacts who have conducted their own fact-finding mission. In your experience, have these sources been reliable and accurate before?

### 2- CONSISTENCY WITH PATTERNS

▶ Is the incident reported to you consistent with what you know about patterns of incidents of sexual violence in the country?

In many countries, the incidents of sexual violence will present strong similarities from which patterns can be noted.

▶ Compare the case under investigation with what you know about patterns of sexual violence.

### 3- CONSISTENCY OF MEDICAL EVIDENCE

Whenever possible, you should get the assistance of medical experts and forward them all medical evidence.

If medical experts are not available, you should be very observant while interviewing victims. Please see “Interview Guidelines” in *A Methodology for Gender-Sensitive Research*.

Are physical marks on the survivor consistent with the allegations?

Physical marks that can occur as a result of sexual violence may have a variety of possible causes. Rarely can medical findings prove beyond doubt that sexual violence has occurred, especially since the passage of time makes this type of evidence difficult to detect. This means describing medical evidence as “consistent with” the sexual violence alleged by the survivor.

What if there are no physical signs of sexual violence?

Sexual violence may not leave physical marks visible to the researcher or, indeed, to a medical professional. Medical evidence may require vaginal and rectal examination, blood and urine analysis (for sexually transmitted diseases, pregnancy), which are not necessarily possible to carry out. Furthermore, torture is increasingly carried out by means that do not inflict long-term physical injury. In such cases, effort is required to elicit a clear description of what happened.

Are psychiatric signs and symptoms consistent with the allegation?

The mental and behavioural consequences of sexual violence are not uniquely caused by it. Depression, withdrawal, anxiety, sleeping, eating, and sexual disorders, suicidal thoughts, etc., can be linked to a variety of traumatic experiences or to pre-existing psychopathology. Nevertheless, the survivor’s description of her/his psychiatric symptoms and other illnesses (see Rape Trauma Syndrome, page 23) should allow you to draw some conclusions as to whether the information is consistent or inconsistent with the allegation of rape.

### 4- RELIABILITY OF TESTIMONY

Does the victim’s testimony appear reliable?

In assessing the testimony, keep in mind the points discussed in “Interview Guidelines,” in *A Methodology for Gender-Sensitive Research*. While interviewing, pay special attention to the following:

- The survivor’s description of the **symptoms following the alleged rape**: What type of physical pains and mental reactions has the woman experienced following the alleged rape?
- The survivor’s description of **current symptoms and illnesses**: What are her current health complaints, both physical and mental?
- The survivor’s account of the **circumstances, location, procedures, individuals involved**, etc.

- The survivor's account of the **sequence and timing of the events**.
- **Consistency of the testimony:** Does the testimony concur with others as well as with any previous pattern of rape in the country/region? Did the survivor contradict himself/herself when asked the same or similar questions?
- **Inconsistencies in the testimony:** Are they the result of the survivor's dishonesty or of memory lapses, exaggeration, unsubstantiated rumours, cultural differences and/or misunderstandings between the interviewer (or interpreter) and the interviewee?

## 5- ASSESSMENT OF THE GOVERNMENT'S RESPONSIBILITY

Does the incident and the government's response to it indicate that the latter is responsible (i.e. through complicity or by negligence) for the incident?

Official responses include official acknowledgements or unofficial statements by representatives of the government or armed groups, court testimony, conclusions of independent investigation bodies or lack of independent investigations.

In assessing this evidence, be aware that political factors may come into play: if abuses have allegedly been carried out by the opposition or other governments, the government of the country considered may issue statements and bring forward evidence that should not necessarily be taken as proof that rape has occurred.

Court testimony in which those accused of sexual violence have testified may help indicate the degree of knowledge and responsibility of officials.

Whenever law enforcement or any other state officials are the perpetrators, the government is responsible. Sexual violence carried out by these perpetrators may constitute torture or cruel, inhuman or degrading treatment.

Furthermore, absence of (independent) investigations for acts of sexual violence committed by state officials and lack of preventive or remedial measures infer a lack of concern in stopping incidents of sexual violence. A continuing pattern of such incidents must then be attributable to the state condoning such acts.

## **CHECKLIST FOR INTERVIEWS OF VICTIMS OF RAPE**

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The following is a list of data and/or evidence you may need to collect in the course of the interviews. Note that this is an extensive list and that not all data mentioned below will be necessary: the type of information required will depend on the objectives of the interview, the circumstances of the interview (conflict zones, danger), your schedule and the survivor's schedule, his/her health. Further, the nature and order of the questions will vary from interview to interview.

### **I. INTERVIEW**

- Date
- Location of the interview
- Interviewer
- Interpreter
- Others present

### **II. OBSERVATION: INJURIES**

- Marks/scars/bruises
- Missing hair

If rape was accompanied by other forms of torture:

- Fractures
- Deformities
- Burns
- Amputations
- Other distinguishing marks
- Medical certificates

### III. OBSERVATION: HOW IS THE INTERVIEWEE BEHAVING?

- Tone of voice (soft, loud, emotionless)
- Gaze (little eye contact)
- Tears (at which point during the interview?)
- Silence or non-stop talk
- Body language (nervous movements, no movements)
- Responses (hesitations after questions, asking for questions to be repeated)
- Other

### IV. PERSONAL INFORMATION

- Surname and first name, nickname
- Gender
- Mother's name and father's name (if relevant)
- Date of birth
- Marital status
- Number of children
- Address
- Nationality
- Ethnic origin
- Region of origin
- Religion
- Occupation

### V. CIRCUMSTANCES OF ARREST OR ATTACK

- When (day, time?)
- Where was the victim at the time?
- Were other persons present?
- Who carried out the arrest/attack? (Description of the individuals involved: number, uniforms, whether they were armed)
- What did they say?
- Was violence used?
- Was the victim the only one arrested/attacked?
- Were there any witnesses?
- In case of an arrest: Was an arrest warrant served?

### VI. CIRCUMSTANCES OF THE RAPE

- Location (detention centre, private prison, home of the victim)
- Were any questions asked?
- Who participated? (number of persons involved; personnel such as security, military, other)
- Was a medical officer present? Did (s)he participate in the torture?
- Did the victim see a medical officer before/after the torture?
- Other forms of physical torture
- Other forms of psychological torture
- Duration and frequency of rape (several times a day, twice a week)
- Physical pains experienced immediately following the rape
- Mental reactions immediately following the rape
- Was the victim made to sign any statements?
- Were charges filed against the victim?
- Did the victim have access to a lawyer during detention?

### VII. CIRCUMSTANCES FOLLOWING THE RAPE

- How long did the victim remain in detention?
- Access to a lawyer
- Access to a medical professional (name, gender, day of the first examination, other examinations)
- Type of examination and diagnostic
- Date and circumstances of the release
- Did the victim file charges?
- Did the government investigate the victim's accusations?
- Circumstances of the trial

### VIII. CURRENT SITUATION AND SYMPTOMS

- Victim’s state of health before the arrest (i.e. past illnesses, previous injuries)
- Feelings and other symptoms which the victim noted at various intervals (i.e. one week afterwards, one month)
- Current physical symptoms
- Current mental symptoms
- Medical or other treatment the victim is currently receiving

### RECOMMENDATIONS REGARDING PROTECTION

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Amnesty International (AI) makes recommendations to governments aimed specifically at protecting women from rape and other sexual abuse. These measures, as summarized in the organization’s “Fifteen Steps to Protect Women’s Human Rights,” include the following:

- Female guards should be present during the interrogation of female detainees, and should be solely responsible for carrying out any body searches of female detainees.
- There should be no contact between male guards and female detainees without the presence of a female guard.
- Female detainees should be held separately from male detainees.
- A medical examination, by a female doctor wherever possible, should be provided immediately for any woman in custody who alleges she has been raped.
- Victims of rape and sexual abuse in custody should be entitled to fair and adequate compensation and appropriate medical care.
- Law-enforcement personnel and other government agents should be instructed that the rape of women in their custody is an act of torture and will not be tolerated.

- Law-enforcement personnel and other government agents should receive adequate training on standards for the protection of women’s human rights, and how to enforce them properly.
- In procedures for determination of refugee status, governments should provide interviewers trained to recognize the specific protection needs of women refugees and asylum-seekers.
- The principle of “non-refoulement” should extend to those in reasonable danger of being raped in custody if forced to return to their country.

AI urges states and non-governmental entities to ratify and abide by relevant international instruments related to the prevention of violence against women, including the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Convention on the Elimination of All Forms of Discrimination against Women, Convention on the Rights of the Child, Convention and Protocol relating to the Status of Refugees.

AI urges states and non-governmental entities to take due account of various non-treaty instruments relating to women’s rights, such as the Vienna Declaration and Program of Action, and the Declaration on the Elimination of Violence Against Women.

AI urges states and non-governmental entities to support fully the work of intergovernmental bodies that monitor human rights violations against women, such as the UN Special Rapporteur on violence against women, UN Commission on the Status of

Women, the Committee on the Elimination of Discrimination Against Women (CEDAW), and the UN Commission on Human Rights (UNCHR).

Finally, AI calls on the UN to adopt methods of work appropriate to gender differences, and to pay greater attention to the kinds of human rights violations of which women are the principal victims, including rape.

## INTERNATIONAL DECLARATIONS AND PRINCIPLES

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### Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Although violence against women was not originally included in the CEDAW, drafted in 1979, subsequent recommendations by the Committee on the Elimination of all Forms of Discrimination against Women explicitly requested that violence against women be integrated within the reporting process.

Article 1 defines discrimination against women as: “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

In General Recommendation 12, adopted in 1989, the Committee requested that States include in their reports information about violence against women and the measures taken to eliminate such violence.

General Recommendation 19, formulated in 1992, defines gender-based violence as “violence directed against a woman because she is a woman or which affects women disproportionately.”

### The Declaration on the Elimination of Violence against Women

Article 1 defines violence against women as: “*any act of gender-based violence that results in, or is likely to result in,*

*physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.”*

The preamble to the Declaration locates the roots of gender-based violence in historically unequal power relations between men and women and recognizes that “violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.” The Preamble also identifies groups of women who are especially vulnerable to violence, including women belonging to minority groups, refugee women, migrant women, women living in rural or remote communities, destitute women, women in detention, female children, women with disabilities, elderly women and women in situations of armed conflict.

Article 2 of the Declaration identifies various forms of violence against women, including physical, sexual and psychological violence in the family, within the general community and violence perpetrated or condoned by the state wherever it occurs.

### **The Universal Declaration of Human Rights (1948)**

Article 3 declares that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”

### **The International Covenant on Civil and Political Rights (1966)**

Article 7 declares that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment ...”. Besides Article 7, it must be noted that the Covenant, in its Article 10, number 1, declares that “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

### **The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)**

### **The Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1975)**

### **Standard Minimum Rules for the Treatment of Prisoners (1977)**

This body of international law provides important basic rules for the treatment and accommodation of prisoners. This instrument is especially relevant with respect to rape as torture. Indeed, Article 8 provides the separation of the different categories of prisoners according to their sex, age, criminal record and other less relevant considerations. Additionally, Article 9 (1) states that “... it is not desirable to have two prisoners in a cell or room.”

### **Basic Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988)**

This body of principles was adopted by the General Assembly of the United Nations in an attempt to further improve the situation of persons under any form of detention or imprisonment. Important articles of this set of principles are: a) Principle 1, which provides that “All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person”; b) Principle 6, which outlaws torture and other cruel, inhuman or degrading treatments or punishment in detention centres or prisons and declares that these practices are always to be avoided, without exceptions; and c) Principle 35, which provides compensation for detained or imprisoned persons who have suffered “damage incurred because of acts or omissions by public officials contrary to the rights contained in these principles.”

These standards reinforce the idea that the officials in charge of a detention centre or prison must ensure that all persons deprived of their liberty are treated in a humane manner, which, with respect to the practice of rape, means that officials in these places are not only to avoid committing those acts, but also to actively take reasonable measures in order to insure that women and minors will not be exposed to the practice of rape by other detainees and convicted persons.

### **United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990)**

Number 29 of the Rules states that “[i]n all detention facilities juveniles should be separated from adults, unless they are members of the same family.”

### **Code of Conduct for Law Enforcement Officials (1979)**

Article 5 mandates the following: “No law enforcement official may inflict, instigate *or tolerate* any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment. Article 6 declares that “Law enforcement officials shall *ensure the full protection of the health of persons in their custody...*”

These two articles are of particular importance. Given the situation of deprivation of liberty of detainees and prisoners these rules of international law require the officials in charge of these places to take a more active role in the protection of the people under their responsibility. The relatively common case of juveniles who are raped by adult inmates while in detention together can thus be seen as a case of rape as torture, inflicted with the tolerance of the officials who made the decision of detaining juveniles with adult inmates.







**AMNESTY**  
INTERNATIONAL

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**Amnesty International** is a worldwide voluntary activist movement working towards the observance of all rights as enshrined in the Universal Declaration of Human Rights and other international standards. The focus of its campaigning work is to free all prisoners of conscience, ensure fair trials for all political prisoners, abolish the death penalty, torture and other ill-treatment of prisoners, and end political killings and "disappearances". Amnesty International is a democratic, self-governing movement. It is funded largely by its worldwide membership and by donations from the public. No funds are sought or accepted from governments for Amnesty International's work in documenting and campaigning against human rights violations. Amnesty International has more than a million members and supporters in over 140 countries and territories.

**The International Centre for Human Rights and Democratic Development** is an independent organization with an international mandate, created by the Parliament of Canada in 1988. It works with civil society and governments in Canada and abroad to promote human rights and democratic development through dialogue, advocacy, capacity building and public education. It focuses on four themes: democratic development and justice, women's rights, indigenous peoples' rights, and globalization and human rights in a dozen core countries in the Americas, Africa and Asia.