



Backgrounder: Gender-Based Violence in Libya and Syria

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Gender-based violence (GBV) is an “umbrella term for any harmful act that is perpetrated against a person’s will, and that is based on socially ascribed (gender) differences between males and females.”¹ Sexual violence is a form of GBV and is defined as “any violence, physical or psychological, carried out through sexual means or by targeting sexuality.” GBV affects women and girls most significantly, but men and boys can also be victims, especially of sexual violence.²

This backgrounder describes GBV in conflict settings, with a focus on Libya and Syria. The first two sections survey available information relating to GBV in these two countries. The third part considers GBV in conflict and post-conflict societies more generally. The fourth section examines international law relating to GBV in conflict-affected areas.

1. SYRIA

Since an anti-regime revolt began in March 2011, government forces and members of the Shabbiha—a government-backed militia—have been engaged in intense conflict with anti-government armed groups in Syria.

The Independent International Commission of Inquiry on Syria (“Commission on Syria”), which was mandated by the UN Human Rights Council, has found evidence that Government forces and Shabbiha have committed gross violations of international human rights law and international humanitarian law including unlawful killing, torture, arbitrary arrests and detention, torture, sexual violence, and indiscriminate attacks.³ The Commission on Syria also concludes that there are reasonable grounds to believe that anti-Government armed groups have committed war crimes including torture and unlawful killings.⁴ It notes, however, that the

* This memo was prepared by a law student. It is not legal advice and is not exhaustive. The information provided herein is not a substitute for independent research, legal advice or legal assistance. The memo is up-to-date as of January 11, 2013 and is based on publicly available, English-language materials.

¹ Inter-Agency Standing Committee, “Guidelines for Gender-based Violence Interventions in Humanitarian Settings,” online: (2005) at 7

<http://www.who.int/hac/network/interagency/news/ias_gender_based_violence/en/index.html> [IASC, “Guidelines”]

² UNFPA, “Managing Gender-based Violence Programmes in Emergencies E-learning Companion Guide,” (2012) <<http://www.unfpa.org/public/home/publications/pid/10495>> 8.[UNFPA, Managing GBV Programmes]

³ Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, HRC, 21st Sess, UN Doc A/HRC/21/50 (2012) at paras 52-57, 63-73, 74-86, 126-129

<http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-69_en.pdf> [Commission on Syria].

⁴ Commission on Syria *supra* note 3 at paras 87-89, 58-60.

“gravity, frequency and scale of the violations committed by Government forces and Shabbiha was according to information available, well in excess of those committed by anti-Government armed groups.”⁵

There have been widespread appeals for united international action to end the escalating violence in Syria.⁶ However, China and Russia have vetoed draft Security Council Resolutions backing an Arab League proposal to resolve the crisis,⁷ and threatening sanctions against the Syrian regime if the violence continues.⁸

The conflict has forced many Syrian civilians to leave their homes. As of November 2012, the Syrian Red Cross estimates that 2.5 million people have been internally displaced within Syria.⁹ Refugees inside of Syria, including more than 103,000 registered Iraqi refugees and some 500,000 Palestinian refugees, have also been affected.¹⁰ The UN High Commissioner for Refugees (UNHCR) reports that more than 13,000 Iraqi refugees left Syria in the first half of 2012, most returning to Iraq.¹¹ As of December 2012, more than 500,000 Syrian refugees had been registered or were awaiting registration as refugees, and the actual number of refugees is likely significantly higher.¹² Most Syrian refugees are now in Lebanon, Jordan, and Turkey.¹³

1.1 GBV during the Syrian Conflict

There is evidence of sexual violence being perpetrated against women, men and children in Syria.¹⁴ The full extent of the violence is unknown as researchers have limited access to the country and have been unable to confirm many of the accounts of sexual violence.¹⁵ There are also many reasons why survivors are unwilling or unable to report: those who report receive little to no assistance, face stigma and shame, and may be subjected to threats to their safety.¹⁶ For example, there have been reports of survivors being killed by their families for reasons of “honour.”¹⁷

⁵ Commission on Syria *supra* note 3 at para 51.

⁶ UN News Centre, “Security Council fails to adopt resolution on Syria” (19 July 2012) online: UN News Centre <http://www.un.org/apps/news/story.asp?NewsID=42513&Cr=Syria&Cr1#.UK_PUYZepIE>.

⁷ Security Council, Draft Resolution, SC, UN Doc S/2012/77. (2012).

⁸ Security Council, Draft Resolution, SC, UN Doc S/2012/538. (2012).

Security Council, Draft Resolution, SC, UN Doc S/2011/612. (2011).

⁹ “Syria displaced number 2.5m, says Red Crescent” (13 November 2013) online: BBC News <<http://www.bbc.co.uk/news/world-middle-east-20311194>>.

¹⁰ Commission on Syria *supra* note 3 at paras 33-34.

¹¹ *Ibid* paras 33-34.

¹² “Number of Syrian refugees registered in region tops 500,000 mark,” (11 December 2012) online: UNHCR <<http://www.unhcr.ca/news/2012-12-11c.htm>>.

¹³ *Ibid*.

¹⁴ “Syria: Sexual Assault in Detention” (15 June 2012), online: Human Rights Watch <<http://www.hrw.org/news/2012/06/15/syria-sexual-assault-detention>> [Syria: Sexual Assault in Detention].

¹⁵ “Syria: Sexual Assault in Detention,” *supra* note 14.

¹⁶ *Ibid*.

“Syria: A Regional Crisis,” (January 2013) online: International Rescue Committee <<http://www.rescue.org/sites/default/files/resource-file/IRCReportMidEast20130114.pdf>> at page 7.

¹⁷ Commission on Syria *supra* note 3 at Annex IX para 2.

“Syria: A Regional Crisis,” *supra* note 16 at page 7.

In spite of its limitations, the data from Syria provides important insights into the scope and impact of sexual violence during the conflict. NGO reports indicate that sexual violence is not limited to any one part of the country;¹⁸ and that sexual violence generally arises in two circumstances: (1) during house searches or at checkpoints, or (2) in detention.¹⁹ There have also been several reports of women being abducted in Homs between late February and April 2012.²⁰ Current reports indicate that the violence is being perpetrated by Government forces and the Shabbiha.²¹ As of August 2012, there were no reported incidents of sexual violence committed by anti-Government groups.²²

There are reports of sexual violence, for the most part against women and girls, in homes and checkpoints at various locations in Syria including: Homs, Latakia, Zabadani, Hama, Idlib, and Aleppo.²³ Many of the attacks allegedly involved multiple perpetrators.²⁴ There are some reports of men being made to watch the rape of their wives and daughters.²⁵ For example, one man from Homs describes being forced to watch the gang rape of his wife and his 14 and 11 year-old daughters, before being raped himself:

The men raped [my two daughters] and my wife, forcing them onto the ground to do so. They raped them at the same time. When they began to rape my daughters, they forced me to raise my head and watch. You cannot imagine what that felt like, as a man to sit there and watch them do that. They raped each of them three times. Then they forced me out of the chair and ordered me onto the ground. They raped me as well and ordered my wife and children to watch. The men were jeering and said, "Look at your father." They destroyed me.²⁶

Human Rights Watch has documented accounts from survivors, witnesses, as well as defectors, who claim to have heard perpetrators bragging about committing rape in homes.²⁷ Witness accounts are also presented in the Commission on Syria's report.²⁸

There are also reports of men, women and children being subjected to sexual violence in detention. The data indicates that the vast majority of men subjected to sexual violence faced that violence in detention facilities.²⁹ There are multiple reports of men having been subjected

¹⁸ Lauren Wolfe, "The ultimate assault: Charting Syria's use of rape to terrorize its people" (July 11, 2012), online: Women Under Siege <<http://www.womenundersiegeproject.org/blog/entry/the-ultimate-assault-charting-syrias-use-of-rape-to-terrorize-its-people>>.

¹⁹ Commission on Syria, *supra* note 3 at para 98.

²⁰ *Ibid.*

²¹ *Ibid* at 101.

²² *Ibid* at Annex IX para 29.

²³ *Ibid* at paras 5-19 .

²⁴ Wolfe, "Ultimate Assault," *supra* note 18.

"Syria: Sexual Assault in Detention," *supra* note 14.

Commission on Syria, *supra* note 3 at Annex IX paras 9, 12, 21, 15.

²⁵ Commission on Syria, *supra* note 3 at para 7.

²⁶ *Ibid* at Annex IX para 7.

²⁷ "Syria: Sexual Assault in Detention," *supra* note 14.

²⁸ Commission on Syria *supra* note 3 at Annex IX paras 5-19.

²⁹ Wolfe, "Ultimate Assault," *supra* note 18.

to sexual torture in detention, including electric shocks to their genitals.³⁰ For example, one man who had been detained in Idlib describes: “[t]hey used two wires hooked up to a car battery to give me electric shocks. They used electric stun-guns on my genitals twice.”³¹ There are also allegations that female detainees have faced sexual violence, with some women reporting brutal rapes during their detention.³² One former female detainee of the Palestine Branch in Damascus recounts: “[t]here were three other women there...They had a schedule. They would take turns with us. More than one man would rape you. It wasn’t every day, but it was regular...”³³ Former male detainees report hearing women’s screams while they were being held in facilities in Homs.³⁴

Troublingly, there are also reports of children being tortured and raped in detention.³⁵ One man who had been detained in the Political Security branch in Latakia notes that: “[t]hey treat the kids even worse than the adults. There is torture, but there is also rape for the boys. We would see them when the guards brought them back to the cell, it’s indescribable...One boy came into the cell bleeding from behind. He couldn’t walk. It was something they just did to the boys. We would cry for them.”³⁶

Syrian refugees may also be vulnerable to further GBV. There are stories of marriages for girls as young as 13 and 14 years old to wealthy men in Jordan and Libya; allegedly men have been seeking out refugee families with young daughters for these purposes.³⁷ Some of these early marriages are justified as part of an effort to overcome the shame of sexual abuse.³⁸

1.2 Support for Syrian Survivors of Sexual Violence

Survivors of sexual violence in Syria have limited access to medical, psychological and other services. One woman providing medical services to survivors of violence told Human Rights Watch that the only services she was able to provide was to give stitches if the victims genital skin was torn from the attack, provide aspirin, and attempt to stop the bleeding.³⁹ Many survivors do not even take advantage of these limited services because they are reluctant to report that they are the survivors of sexual abuse (for the reasons noted above).

³⁰ “Syria: Sexual Assault in Detention,” *supra* note 14.

³¹ “Syria: Sexual Assault in Detention,” *supra* note 14.

³² See for example: “Syria ex detainees allege ordeals of rape and sex abuse,” (25 September 2012) online: BBC News, <<http://www.bbc.co.uk/news/world-middle-east-19718075>>.

“Syria: Sexual Assault in Detention,” *supra* note 14.

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ “Syria: Stop Torture of Children,” (February 3, 2012) online: Human Rights Watch <<http://www.hrw.org/news/2012/02/03/syria-stop-torture-children>>.

³⁶ “Syria: Stop Torture of Children,” *supra* note 35.

³⁷ “Jordan Early Marriage: a Coping Mechanism,” (19 July 2012) online: IRIN Humanitarian News and Analysis <<http://www.irinnews.org/Report/95902/JORDAN-Early-marriage-a-coping-mechanism-for-Syrian-refugees>>.

³⁸ “Syria: A Regional Crisis,” *supra* note 16 at page 7.

Hassan, Hassan, “Online trafficking of Syrian women shames all involved,” (10 September 2012), online: The National, <<http://www.thenational.ae/thenationalconversation/comment/online-trafficking-of-syrian-women-shames-all-involved>>.

“The High Price of the Syrian Conflict on Women,” (2 October 2012) online: The Current, <<http://www.cbc.ca/thecurrent/episode/2012/10/02/the-high-price-of-the-syrian-conflict-on-women/>>

³⁹ “Syria: Sexual Assault in Detention,” *supra* note 14.

Syrian refugees that have fled to neighbouring countries also have limited access to support services.⁴⁰ For example, in the Bekaa region of Lebanon, where there is a concentration of Syrian refugees, community leaders providing assistance to Syrian refugees note that no services were available to victims of sexual abuse.⁴¹ A woman from the Lebanese Council to Resist Violence against Women notes that her organization provides support to individuals, subject to funding constraints: “We will provide [Syrian sexual assault] victims with social, medical and legal services...[but] unfortunately, if we don’t have enough funding we will not be able to continue with the program.”⁴²

Foreign governments including the Canadian, American, and British governments have provided financial assistance to support Syrian refugees with health and emergency services.⁴³ The British Foreign & Commonwealth Office has sought to address the issue of sexual violence in particular.⁴⁴ Foreign Secretary William Hague recently announced that 70 people, including police officers, lawyers, psychologists, doctors, forensic experts, and gender based violence experts will be deployed to conflict areas to assist in the investigation of allegations of sexual violence.⁴⁵

2. LIBYA

After a successful election, the National Transition Council (NTC) in Libya handed over power to the democratically elected General National Congress in August 2012.⁴⁶ Despite this positive development, the country continues to face serious political and security challenges as part of its transition, including the need to disarm rebels and ensure security. Moreover, violations of human rights persist, and there has not been meaningful redress for past crimes.

Conflict-related detentions continue in post-revolutionary Libya, as does the mistreatment and torture of detainees. The United Nations Support Mission in Libya (UNSMIL) estimates in its report on August 30, 2012, that there are approximately 7000 conflict-related detainees being held in facilities run by the Ministry of Justice, Military Council or Supreme Security Committees.⁴⁷ As of August 30, 2012, most detainees had yet to be charged or released.⁴⁸

⁴⁰ “Syria: Sexual Assault in Detention,” *supra* note 14.

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ For UK see: Foreign and Commonwealth Office, “Foreign Secretary statement on Gaza, the Middle East Peace Process and Syria,” (20 November 2012) online: Foreign and Commonwealth Office <<http://www.fco.gov.uk/en/news/latest-news/?view=PressS&id=836858882>>.

For US see: “Syria,” (December 26, 2012) online: USAID < <http://www.usaid.gov/what-we-do/working-crises-and-conflict/responding-times-crisis/where-we-work/syria>>.

For Canada see: Syria, (2012) online: CIDA <<http://www.acdi-cida.gc.ca/syria>>.

⁴⁴ Foreign and Commonwealth Office, “Foreign Secretary statement,” *supra* note 43.

⁴⁵ “Speech: Confronting rape as a weapon of war: a challenge for our generation,” (14 November 2012) online: Foreign and Commonwealth Office <<http://www.fco.gov.uk/en/news/latest-news/?view=Speech&id=835131582>>.

⁴⁶ Report of the Secretary-General on the UN Support Mission in Libya, 21st Sess, (2012) UN Doc S/2012/675 <<http://unsmil.unmissions.org/Portals/unsmil/Documents/SGReport30August2012.pdf>>[UNSMIL].

⁴⁷ UNSMIL *supra* note 46 at para 28.

⁴⁸ *Ibid.*

UNSMIL also uncovered 3 deaths on April 13, 2012 as a result of torture, and noted that little has been done to investigate these deaths.⁴⁹

Justice and accountability remain elusive in Libya, and represent a major challenge for the new Libyan government. The UN's International Commission of Inquiry on Libya ("Commission on Libya"), established by the United Nations Human Rights Council in February 2011 to investigate violations of international law, concludes that Gaddafi forces and the rebels were both responsible for serious crimes.⁵⁰ It finds that crimes against humanity and war crimes were committed by the Gaddafi forces during the conflict including: unlawful killing, torture, rape, and enforced disappearance.⁵¹ It also finds that war crimes and breaches of international human rights law were committed by the rebels against those perceived to be members of the Gaddafi forces.⁵² In March 2012, the Commission on Libya criticized the NTC for failing to hold rebels accountable for their crimes during the conflict.⁵³

The ICC has indicted, Abdullah Al-Senussi and Saif al-Islam Gaddafi. It had also indicted Muammar Gaddafi, but proceedings against him were terminated after his death.⁵⁴ The Libyan government has formally challenged the ICC's right to try Saif Al-Islam Gaddafi, and has indicated an intent to challenge the admissibility of the case against Abdullah Al-Senussi.⁵⁵ The indictments are for the crime against humanity of persecution and murder; there are no charges relating to sexual violence.⁵⁶ The ICC Prosecutor recently announced that she is collecting evidence for new war crime charges in Libya, including incidents of sexual violence.⁵⁷

2.1 GBV during the Libyan Conflict

There are reports of sexual violence being used during the conflict against Libyan women, men and children.⁵⁸ However, it has not yet been determined whether rape was part of widespread

⁴⁹ *Ibid* at para 29.

⁵⁰ Report of the Independent International Commission of Inquiry on Libya, HRC, 19th sess, UN Doc A/HRC/19/68 (2012) at para 35-37.[Commission on Libya].

⁵¹ Commission on Libya *supra* note 50 at summary.

⁵² *Ibid* at para 35.

⁵³ *Ibid* at para 815.

⁵⁴ "ICC Weekly Update," (12 November 2012) online: International Criminal Court < http://www.icc-cpi.int/en_menus/icc/press%20and%20media/icc%20weekly%20update/Documents/ED150_ENG.pdf>.

⁵⁵ "International Criminal Court prosecutor calls on Libyan authorities to ensure no impunity," UN News Centre, <<http://www.un.org/apps/news/story.asp?NewsID=43435#.ULJ2K4fLSTw>>.

⁵⁶ "Warrant of Arrest for Abdullah Al-Senussi," (27 June 2011) No. ICC-01/11 at p. 6 <<http://www.icc-cpi.int/iccdocs/doc/doc1099332.pdf>>.

"Warrant of Arrest for Saif Al-Islam Gaddafi," (27 June 2011) No. ICC-01/11 at p. 7 < <http://www2.icc-cpi.int/iccdocs/doc/doc1099329.pdf>>.

⁵⁷ "International Criminal Court prosecutor calls on Libyan authorities to ensure no impunity," (7 November 2012) online: UN News Centre, < <http://www.un.org/apps/news/story.asp?NewsID=43435#.ULJ2K4fLSTw>>: See also: Edith Lederer, "International Court prosecutor collects evidence for new war crimes cases in Libya," (November 10, 2012) online: Ottawa Citizen, <<http://www.ottawacitizen.com/news/International+Court+prosecutor+collects+evidence+crimes+cases+Libya/7531245/story.html>>.

⁵⁸ Commission on Libya *supra* note 50 at para 522.

and systematic attack, and/or whether authorities receive orders to rape.⁵⁹ While most of the reports relate to sexual violence perpetrated by Gaddafi forces, there are also reports of rebels perpetrating sexual violence against Gaddafi loyalists.⁶⁰ The rebels have also been accused of threatening to rape a child in detention.⁶¹

As with Syria, there are significant limitations with the data relating to sexual violence in Libya. Survivors face stigma and risks to their safety by reporting, and those who accept those risks are not offered meaningful services.⁶² Survivors may also be pressured by their families to stay silent: according to one Libyan activist, when survivors don't come forward "it may be—and is, in fact, more likely to be—at the order of men, such as father, brothers, uncle, grandfather and tribal chief."⁶³ Survivors may also be concerned about provisions of Libyan law that punish sexual relations, and pregnancy outside of marriage.⁶⁴ Those who were attacked by rebels may be especially reluctant to come forward, out of a fear that they will appear anti-revolutionary.⁶⁵ Another factor that casts doubt on the reliability of data in Libya is that some former Gaddafi officers claim that they have been tortured by rebels in detention centres and made to confess to various crimes that they did not commit.⁶⁶ The Report by the Office of the Special Representative of the Secretary General on Sexual Violence in Conflict ("Special Representative") in Libya, details accounts of men and boys associated with the former Gaddafi regime who claim to have confessed to rape after being tortured while in detention.⁶⁷

Eman al-Obeidi was instrumental in bringing worldwide attention to the problem of sexual violence in the Libyan conflict. On March 26th, 2011, the 26 year-old burst into the Rixos hotel in Tripoli and gave a horrifying account of being detained at a checkpoint and gang raped.⁶⁸ In recounting her story to foreign journalists she challenged a public taboo against discussing sex crimes publically.⁶⁹ She was forcibly removed from the hotel by security forces and maligned in the state media.⁷⁰ Al-Obeidi was eventually released, and has since been granted refugee status in the United States.⁷¹

⁵⁹ Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, "Executive Summary Final report on sexual violence in Libya," United Nations, [Special Representative, "Final Report"].

⁶⁰ Commission on Libya *supra* note 50 at para 69.

⁶¹ Special Representative, "Final Report," *supra* note 59 at para 32.

⁶² "Libya: Transitional Government Should Support Victims," (September 19, 2011), online: Human Rights Watch, <<http://www.hrw.org/news/2011/09/19/libya-transitional-government-should-support-victims>>.

⁶³ Special Representative, "Final Report," *supra* note 59 at para 4.

⁶⁴ Commission on Libya *supra* note 50 at para 497.

⁶⁵ Diana Wueger, "Conflict Profiles: Libya," (February 8, 2012), online: Women Under Siege, <<http://www.womenundersiegeproject.org/conflicts/profile/libya>>.

⁶⁶ Commission on Libya *supra* note 50 at para 68.

⁶⁷ Special Representative, "Final Report," *supra* note 59 at paras 23-27, 32-35.

⁶⁸ "Libya: Immediately Release Woman who Alleged Rape," (March 28th, 2011), online: Human Rights Watch <<http://www.hrw.org/news/2011/03/28/libya-immediately-release-woman-who-alleged-rape>>.

Steven Sotloff, "The Rape of Iman al-Obeidi: The Libyan Regime's Other Crisis," (March 19, 2011), <<http://www.time.com/time/world/article/0,8599,2062007,00.html>>.

⁶⁹ *Ibid.*

⁷⁰ "Libya: Immediately Release Woman who Alleged Rape," *supra* note 68.

⁷¹ "Eman Al-Obeidi's US Resettlement," (January 8th 2011) online: UNHCR <<http://www.unhcr.org/cgi-bin/texis/vtx/refdaily?pass=463ef21123&id=4e37993f5>>.

The cases of sexual violence from Libya generally fit into two categories: (1) women raped by armed men in their homes, or abducted and raped elsewhere, and (2) sexual violence committed against men and women in detention centres.⁷²

Abductions and home attacks were directed primarily at women and girls: survivors report being forcibly taken from their homes, cars, and streets, to unknown places, where they were raped.⁷³ Many of the reports alleged multiple perpetrators and state that the violence persisted over many days.⁷⁴

The UN Special Representative report, summarizes accounts from survivors who were abducted or attacked in their homes or from migrant camps,⁷⁵ as well as from medical and legal professionals who provided services to the survivors.⁷⁶ The Commission on Libya's report also includes seven accounts from survivors who report being abducted or assaulted in their homes.⁷⁷ One survivor describes being abducted from her home, blindfolded and driven to an unknown location where she was repeatedly raped by four men, who also penetrated her with sticks and 14.5mm cartridges.⁷⁸ She also states that one of the perpetrator recorded part of the assault on his cell phone.⁷⁹ Another survivor describes three armed men breaking into her home, beating and raping her.⁸⁰ After the rapes, the woman said her husband would not speak to her, and that he brother-in law told her: "either you commit suicide, we will kill you and make it look like suicide, or an accident will happen..."⁸¹

There were a number of reports of sexual violence in detention centres, where sexual violence was used to extract information, to humiliate, or to punish detainees for their own acts or acts of their family members.⁸² Men have been subjected to violence which includes anal rape with automatic weapons and knives, threats of rape against their families, electric shocks to the genitals, and the pouring of corrosive chemical substances on private parts.⁸³ Sexual violence inflicted against female detainees includes vaginal rape, penetration by bottles, and the burning of breasts with cigarettes.⁸⁴

The Commission on Libya's report details seventeen allegations of sexual violence in detention facilities, five of which came from female detainees.⁸⁵ Most of these reports came from Abu

⁷² Commission on Libya *supra* note 50 at paras 66-67.

⁷³ Special Representative, "Final Report," *supra* note 59 at para 11.

⁷⁴ Special Representative, "Final Report," *supra* note 59 at para 11.

⁷⁵ *Ibid* at paras 12-13, 16-17.

⁷⁶ Special Representative, "Final Report," *supra* note 59 at paras 14-15.

⁷⁷ Commission on Libya, *supra* note 50 at paras 507-514.

⁷⁸ *Ibid* at para 508.

⁷⁹ *Ibid* at para 508.

⁸⁰ *Ibid* at para 508.

⁸¹ *Ibid* at para 508.

⁸² *Ibid* at para 342.

⁸³ Special Representative, "Final Report," *supra* note 59 at para 19.

⁸⁴ Commission on Libya, *supra* note 50 at para 504.

⁸⁵ *Ibid* at para 525.

Salim, or Ein Zara.⁸⁶ The Special Representative's report details incidents of rape against men,⁸⁷ and from a doctor who saw corpses which showed signs of sexual torture.⁸⁸

The Commission on Libya summarizes one male detainee's account of being "suspended from a beam by his wrists; forced to stand in a bucket of water while his genitals were electrocuted with live wires; and beaten with a rubber hose."⁸⁹ The detainee also states that he was sodomized by six men after he refused an order of the guards to rape a female prisoner.⁹⁰ In another account, a female detainee describes being stripped naked and held in a prison in Ein Zara along with other women.⁹¹ She states that she was raped twenty-four times over a two month period, and that her genitals were electrocuted and burnt by cigarettes.⁹²

2.2 Supporting Libyan Survivors of Sexual Violence

Libyan survivors require medical and psychosocial support. While it was in power, the NTC initiated some assistance programs. For example, the NTC created a "Committee on Violence against Women and Men" to assist with assessing the extent of sexual violence in the conflict and to exchange views with NGOs which have worked in this area.⁹³ As of May 2012, the group was inactive.⁹⁴ The NTC also outlined a series of plans for survivors of sexual abuse, including the creation of a "Family Forum" which would provide post-traumatic psychological clinics for families, while monitoring rape survivors confidentially and indirectly.⁹⁵ Another government proposal was to find men who would volunteer to marry survivors of rape.⁹⁶ This proposal has gone forward and, as of August 2012, the organization that developed the program had registered 50 women to be married in Tripoli, Al Zawiyah and Misrata.⁹⁷ This effort and other NTC initiatives have been condemned as "superficial" initiatives that are "bigoted and weak" and "will help neither the women who were sexually assaulted nor the men who will marry them."⁹⁸ NGOs have undertaken important work to assist survivors. For example, groups have provided seminars and radio forums that point out the dangers of sexually transmitted infections and encourage survivors to undergo medical tests.⁹⁹

Little has been done to end legal impunity relating to crimes of sexual violence. For example, the NTC formed a committee tasked with documenting the crimes of the Gaddafi regime, including incidents of sexual violence. As of May 2012, that committee had not documented any cases, nor was it clear that it had the capacity to do so.¹⁰⁰ While limited information is

⁸⁶ *Ibid* at para 525.

⁸⁷ Special Representative, "Final Report," *supra* note 59 at paras 19-21.

⁸⁸ *Ibid* at para 22.

⁸⁹ Commission on Libya *supra* note 50 at para 530.

⁹⁰ Commission on Libya *supra* note 50 at para 527.

⁹¹ *Ibid* at para 527.

⁹² *Ibid* at para 527.

⁹³ Special Representative, "Final Report," *supra* note 59 at para 43.

⁹⁴ *Ibid* at para 43.

⁹⁵ *Ibid* at para 39.

⁹⁶ Special Representative, "Final Report," *supra* note 59 at para 40.

⁹⁷ Commission on Libya *supra* note 50 at para 515.

⁹⁸ Special Representative, "Final Report," *supra* note 59 at para 49.

⁹⁹ *Ibid* at para 46.

¹⁰⁰ *Ibid* at para 43.

available regarding the initiatives of Libya's new government, it is unlikely that they have made significant progress on these issues in the brief time it has been in power.

3. GBV IN CONFLICT AND POST-CONFLICT SETTINGS

GBV varies considerably from one conflict to another; there are dramatic differences between conflicts with respect to the number of incidents reported, the nature of the violence, and the location where the violence occurs.¹⁰¹

Myriad forms of GBV may be prevalent in times of conflict including rape, sexual abuse, slavery, forced impregnation, trafficking, and forced marriage.¹⁰² An elevated risk of GBV often persists even after the conflict is over: post-conflict societies report high rates of domestic violence, sexual trafficking and forced prostitution.¹⁰³ In the case of domestic violence and trafficking, there may be a greater incidence of violence after a war than there was during the conflict.¹⁰⁴

It is not only combatants that commit acts of GBV during conflict; government actors, non-state militias, community members, and peacekeepers can all be perpetrators.¹⁰⁵ Although it does not receive much coverage, a significant amount of sexual violence committed in conflict zones is perpetrated by family members.¹⁰⁶ Survey data suggests that partners, household members and relatives are the most frequent perpetrators of GBV in war-affected countries.¹⁰⁷

Until relatively recently, GBV was seen as an unfortunate but inevitable part of war,¹⁰⁸ or even as the victor's entitlement as "spoils of war."¹⁰⁹ In recent times, however, a number of theories have emerged to explain the prevalence of GBV in times of conflict. One explanation is that GBV can be used as an intentional tool of war with the goal of destabilizing, humiliating and degrading a population,¹¹⁰ and creating an atmosphere of fear and submission.¹¹¹

Another reason for the rise of GBV is that armed conflicts cause a breakdown of social networks and an increase in militarization.¹¹² These changes are often accompanied by pervasive sense of lawlessness, which may create a sense of impunity among perpetrators.¹¹³

¹⁰¹ For a discussion about possible explanation for these variations, see Elisabeth Wood, "Variation in Sexual Violence during War," (2006) 34: 3 Politics & Society.

¹⁰² Rashida Manjoo and Calleigh McRaith, "Gender-Based Violence and Justice in Conflict and Post-Conflict Areas," (2011) 44:11 Cornell Int'l LJ at 11.

¹⁰³ Manjoo and McRaith, *supra* note 102 at 13.

¹⁰⁴ *Ibid* at 13.

¹⁰⁵ *Ibid* at 11.

¹⁰⁶ Human Security Report Project, *Human Security Report 2012: Sexual Violence, Education, and War: Beyond the Mainstream Narrative*, (Vancouver: Human Security Press, 2012) at 33. online: <<http://www.hsrgroup.org/human-security-reports/2012/text.aspx>>. [Human Security Report, "Beyond the Narrative"]

¹⁰⁷ *Ibid* at 33.

¹⁰⁸ Rhonda Copelon, "Towards Accountability for Violence Against Women in War: Progress and Challenges," in Elizabeth Heineman, *Sexual Violence in Conflict Zones*. (Philadelphia: University of Pennsylvania Press, 2011) at 232.

¹⁰⁹ Manjoo and McRaith, *supra* note 102 at 13.

¹¹⁰ *Ibid* at 14.

¹¹¹ Wood, "Variation in Sexual Violence," *supra* note 101 at 327.

¹¹² Manjoo and McRaith, *supra* note 102 at 15-16.

Conflict GVB may also represent a heightened version of the violence that already exists in a society. This view was asserted by then-UN Deputy Secretary-General Asha-Rose Migiro: "[i]f a culture of violence and discrimination against women and girls exists prior to conflict, it will be exacerbated during conflict."¹¹⁴ Conflict leads to the increased polarization of gender roles, and consequently, to a rise in GBV.¹¹⁵

There are differences between sexual violence perpetrated against males as compared to that perpetrated against females. With men, GBV is more likely to occur in detention, whereas women are more frequently attacked in their homes or abducted.¹¹⁶ The form of GBV also tends to differ. In relation to men, sexual torture, including castration, is more prevalent than sexual intercourse.¹¹⁷ As a result of these differences, sexual violence against men is often not classified as GBV; instead, it is framed as a form of torture.¹¹⁸

Male survivors of sexual violence may also face a different kind of humiliation and stigma: sexual violence is often inflicted with the express purpose of emasculating male victims. As former UN Secretary General Kofi Anan notes: "sexual abuse, torture and mutilation of male detainees or prisoners is often carried out to attack and destroy their sense of masculinity or manhood."¹¹⁹ Like female victims, male victims of GBV are often considered outcasts in society.¹²⁰ They are, however, less likely to be rejected by their families, perhaps because in many societies they are considered to be the head of the household.¹²¹

3.1 The Potential Consequences of GBV

GBV can lead to serious physical harm including the spread of sexually transmitted infections and injury to reproductive organs; and, for women in particular, traumatic fistulas and possible infertility.¹²² Women may also suffer complications from unsafe attempts at abortion, and those who were pregnant when subjected to GBV may suffer a miscarriage.¹²³

Survivors may also suffer severe psychological consequences including depression, somatic distress, shock, memory loss, sexual problems and anxiety.¹²⁴ In some cases, a survivor of sexual violence may experience psychological distress and dysfunction indicative of a mental

¹¹³ *Ibid* at 16.

¹¹⁴ U.N. Deputy Secretary-General Asha-Rose Migiro, Remarks at the Women's International Forum in New York, UN Doc DSG/SM/440-WOM/1711 (2009), online:<
<http://www.un.org/News/Press/docs/2009/dsgsm440.doc.htm>>.

¹¹⁵ Wood, "Variation in Sexual Violence," *supra* note 101 at 325.

¹¹⁶ Solange Mouthan, *International Law and Violence Against Men*, (2011) at 4.
<<http://ssrn.com/abstract=1763795>>

¹¹⁷ Human Security Report, "Beyond the Narrative" *supra* note 106 at 31.

¹¹⁸ Mouthan, "Violence Against Men," *supra* note 16 at 4.

¹¹⁹ Study submitted by the Secretary-General pursuant to Security Council Resolution 1325. (2002) at para 59.
online: < <http://www.un.org/womenwatch/daw/public/eWPS.pdf>>.

¹²⁰ Sandesh Sivakumaran, "Sexual Violence Against Men in Armed Conflict," (2007) 18:2 *European Journal of International Law* at 271.

¹²¹ *Ibid* at 271.

¹²² Manjoo and McRaith, *supra* note 102 at 16.

¹²³ *Ibid* at 16.

¹²⁴ IASC, "Guidelines," *supra* note 1 at 69.

disorder.¹²⁵ GBV can also trigger other serious consequences such as behavioural disorders, substance abuse, and suicide.¹²⁶

GBV can have immense social costs as well. A fear of additional sexual violence may lead survivors to withdraw from society at the expense of education and career opportunities.¹²⁷ Survivors often face intense social stigma, including rejection from their families, which may result in economic hardships.¹²⁸ Where GBV results in an unwanted pregnancy, stigma, and social and economic hardships are heightened.¹²⁹ Single women who are survivors of sexual violence are often unable to find a marriage partner, and married women often see their marriages breakdown.¹³⁰ For example, a study in Liberia found that 25% of married rape victims were divorced by their husbands after their rape.¹³¹

3.2 Supporting Survivors

Support services should be sensitive to the concerns of survivors. They should be provided in an accessible location and be open at convenient times.¹³² Confidentiality ought to be maintained at all times.¹³³ Female staff should be available, as well as staff who speak the local language.¹³⁴

Support programs should do no harm. For example, when dealing with survivors, they should avoid specific targeting, aggressive questioning, re-victimizing, and/or increasing their vulnerability in any way.¹³⁵ Care should also be taken not to undermine or fragment existing support networks.¹³⁶

Support services should be implemented in conjunction with communities, and wherever possible there should be collaboration with family, community, and religious support systems.¹³⁷ Programs should increase community awareness in order to reduce stigma, and should target communities as a whole so as to reach survivors.¹³⁸

3.3 Avenues of Legal Redress

Justice mechanisms can help end impunity, and enable survivors' recovery by promoting social cohesion and facilitating healing of individuals and communities.¹³⁹ Justice can be

¹²⁵ *Ibid* at 69.

¹²⁶ Manjoo and McRaith, *supra* note 102 at 17.

¹²⁷ IASC, "Guidelines," *supra* note 1 at 69.

¹²⁸ UNFPA, "Managing GBV Programmes," *supra* note 3 at 7.

¹²⁹ Manjoo and McRaith, *supra* note 102 at 17.

¹³⁰ *Ibid* at 17.

¹³¹ *Ibid* at 17.

¹³² UNFPA, "Managing GBV Programmes," *supra* note 3 at 79.

¹³³ IASC, "Guidelines," *supra* note 1 at 63.

¹³⁴ UNFPA, "Managing GBV Programmes," *supra* note 3 at 79.

¹³⁵ "Mental Health and Psychosocial Support for Conflict-Related Sexual Violence: Principles and Interventions," WHO, (2012) at 18 online: <http://apps.who.int/iris/bitstream/10665/75179/1/WHO_RHR_HRP_12.18_eng.pdf>

¹³⁶ *Ibid* at 2.

¹³⁷ IASC, "Guidelines," *supra* note 1 at 69.

¹³⁸ WHO, "Mental Health," *supra* note 135 at 4.

¹³⁹ UNFPA, "Managing GBV Programmes," *supra* note 3 at 61.

achieved through international mechanisms, national justice systems, customary or traditional mechanisms, or with transitional justice mechanisms.¹⁴⁰

Those assisting survivors with access to justice issues should consider the security and safety of the survivor in assessing the different options, be familiar with the local justice system, ensure that survivors have extensive information about various legal information and the potential risks and benefits, and respect the survivor's choice on issues safety and justice.¹⁴¹

4. GBV IN INTERNATIONAL LAW

4.1 International Humanitarian Law: Moving Away from “the Honour Paradigm”

Early on, international humanitarian law characterized sexual violence as an attack on the honour of women and their families as opposed to an attack on a victim's physical integrity.¹⁴² Radhika Coomaraswamy, the then-Special Rapporteur on Violence against Women, explains the problem as follows: “[b]y using the honour paradigm, linked as it is to concepts of chastity, purity and virginity, stereotypical concepts of femininity have been formally enshrined in humanitarian law When rape is perceived as a crime against honour or morality, shame commonly ensues for the victim, who is often viewed by the community as ‘dirty’ or ‘spoiled’.”¹⁴³

The Geneva Convention and its 1977 Protocols both address the issue of sexual violence. The Fourth Geneva Convention, applicable in the case of international armed conflicts, refers to sexual violence directly using the problematic language of honour: “women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution or any form of indecent assault.”¹⁴⁴ In the case of non-international armed conflict, sexual violence was not mentioned explicitly, though it was generally considered to be part of the prohibition on “outrages upon personal dignity, in particular humiliating and degrading treatment.”¹⁴⁵ With the 1977 Protocols, “enforced prostitution and any form of indecent assault” in times of international conflict are explicitly recognized as “outrages upon personal dignity.”¹⁴⁶ The Protocols also add “rape, enforced prostitution, and indecent assault” to the list of crimes that are “outrages on personal dignity” in non-international conflicts.¹⁴⁷ The Protocols are an improvement of the original text—moving further away from the problematic language of

¹⁴⁰ *Ibid* at 61.

¹⁴¹ UNFPA, “Managing GBV Programmes,” *supra* note 3 at 65.

¹⁴² Manjoo and McRaith *supra* note 102 at 19.

¹⁴³ U.N. Economic and Social Council, Commission on Human Rights, Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, UN Doc E/CN.4/1998/54 (1998), online: <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G98/102/91/PDF/G9810291.pdf?OpenElement>>.

¹⁴⁴ *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 8 June 1977, 75 UNTS 28 at art 27. online: <<http://www.unhcr.org/refworld/docid/3ae6b36d2.html>>.

¹⁴⁵ Rhonda Copelon, “Towards Accountability for Violence Against Women in War: Progress and Challenges,” in Elizabeth Heineman, *Sexual Violence in Conflict Zones*. (Philadelphia: University of Pennsylvania Press, 2011) at 236.

¹⁴⁶ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, 1125 UNTS 609 at art. 75(2) (b). online: <<http://www.unhcr.org/refworld/docid/3ae6b36b4.html>>.

¹⁴⁷ *Ibid*.

honour, and referring to sexual violence more explicitly, but they still fail to characterize sexual violence as a crime of violence.¹⁴⁸

4.2 International Human Rights Law: Recognizing the Threat of GBV in Conflict¹⁴⁹

Human rights instruments have been influential in shaping the protections against GBV in situations of armed conflict, but it has taken a long time for the law to develop in this area. There is no mention of GBV or sexual violence in Universal Declaration of Human Rights or in the International Covenant on Civil and Political Rights (ICCPR).¹⁵⁰ Even the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), does not address directly GBV, except in relation to trafficking and prostitution.¹⁵¹

Since the 1990s, there have been significant developments in the international human rights law relating to GBV in armed conflict. In 1993, the treaty-monitoring body for CEDAW (the CEDAW Committee) adopted General Recommendation 19 which acknowledges that GBV “is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.”¹⁵² It also recognized that women living in the context of war, armed conflict and occupation face a heightened risk of violence.¹⁵³ In 1994, the Declaration on the Elimination of Violence against Women (DEVAW) was adopted; DEVAW explicitly mentions GBV and recognizes vulnerability of women in conflict.¹⁵⁴ Also of note is General Comment 28, adopted in 2000 by the treaty-monitoring body to the ICCPR, the Human Rights Committee, wherein the Committee recognized that women are particularly vulnerable to GBV during internal or international conflict.¹⁵⁵

4.3 International Criminal Law: Sexual Violence as Crimes against Humanity, War Crimes, Genocide and Torture

This section will highlight developments to the subject of GBV and armed conflict stemming from the statutes and decisions of the International Criminal Tribunal for Rwanda (ICTR), the International Criminal Tribunal for Yugoslavia (ICTY), and the International Criminal Court (ICC).

¹⁴⁸ Rhonda Copelon, “Towards Accountability” *supra* note 145 at 237.

¹⁴⁹ This section offers a brief summary of relevant legal instruments.

See UNFPA, “Managing GBV Programmes,” *supra* note 3 Annex 2 for a more comprehensive list of relevant legal instruments.

¹⁵⁰ Rhonda Copelon, “Towards Accountability” *supra* note 145 at 237-238.

¹⁵¹ Manjoo and McRaith *supra* note 102 at 19.

CEDAW, Convention on the Elimination of All Forms of Discrimination Against Women Dec. 18, 1979, 1249 UNTS 13, 19 ILM 33 (entered into force Sept. 3, 1981). at art 6 online:

<<http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>>.

¹⁵² U.N. Comm. on the Elimination of Discrimination Against Women, *General Recommendation*

19: *Violence Against Women*, General Recommendation No. 19 (11th session, 1992) at 1, online:

<<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>>.

¹⁵³ *Ibid* at 16.

¹⁵⁴ Declaration on the Elimination of Violence Against Women, GA Res 48/104, art 1, UN Doc A/48/49, (1993), online: <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/NR0/765/40/IMG/NR076540.pdf?OpenElement>>.

¹⁵⁵ Human Rights Committee, General Comment No. 28, UN Doc CCPR/C/21/Rev.1/Add.10, (2000) at para 8, online: <[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/13b02776122d4838802568b900360e80?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/13b02776122d4838802568b900360e80?Opendocument)>.

4.3.1 The ICTR

The ICTR's statute lists rape as an underlying offence to ground the charge of "crimes against humanity."¹⁵⁶ The statute does not include rape as an underlying offence to ground a charge of genocide,¹⁵⁷ but rape can be encompassed by "causing serious bodily or mental harm or torture."¹⁵⁸

From the ICTR, the leading case is *Prosecutor v. Jean Paul Akeyesu*.¹⁵⁹ The case is significant because it defines rape and sexual violence in international law for the first time, with a conceptual rather than anatomical definition.¹⁶⁰ Rape is defined as a "physical invasion of a sexual nature, committed on a person under circumstances which are coercive."¹⁶¹ The Trial Chamber emphasizes that the traditional definition of rape was insufficient, noting that "rape is a form of aggression and that the central elements of the crime of rape cannot be captured in a mechanical description of objects and body parts."¹⁶² This broadened definition encompasses penetration by objects, and mutilation.¹⁶³ The Trial Chamber also defines sexual violence to include "any act of a sexual nature which is committed on a person under circumstances which are coercive."¹⁶⁴ For both sexual violence and rape, the requirement of coercive circumstances replaced requirements that emphasized force, coercion or the victim's non-consent.¹⁶⁵

Akeyesu is also significant because it was the first decision to recognize rape and sexual violence as crimes that could ground a claim of genocide.¹⁶⁶ The Trial Chamber finds that rape and sexual violence constitute "serious bodily or mental harm," in accordance with the definition of genocide in the Genocide Convention.¹⁶⁷ It notes that "[s]exual violence was a step in the process of destruction of the Tutsi group—destruction of the spirit of the will to live and of life itself."¹⁶⁸

The Chamber ultimately found that Akeyesu was guilty of crimes against humanity, with rape and sexual violence as underlying offences.¹⁶⁹ It found that the requirement that crimes against

¹⁵⁶ *Statute of the International Criminal Tribunal For the Former Yugoslavia*, (updated 2009) at art 5, online : < http://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf> [ICTY statute]

Statute International Criminal Tribunal for Rwanda, (2007) at art 3 online : <<http://www.ictrcaselaw.org/docs/Statute-ENG-FR07.pdf>> [ICTR Statute].

¹⁵⁷ ICTR Statute, *supra* note 157 at art 2 and 4.

¹⁵⁸ *Ibid* at art 2(2).

ICTY Statute, *supra* note 156 at art 4(2) .

¹⁵⁹ *Prosecutor v. Akayesu*, ICTR-96-4-T, Sentencing Judgement, (2 September 1998), (International Criminal Tribunal for Rwanda Trial Chamber)[Akeyesu] online: <<http://www.unhcr.org/refworld/docid/40278fbb4.html>>

¹⁶⁰ Rhonda Copelon, "Towards Accountability" *supra* note 145 at 245.

¹⁶¹ Akeyesu *supra* note 159 at para 598.

¹⁶² *Ibid* at para 597.

¹⁶³ Rhonda Copelon, "Towards Accountability" *supra* note 145 at 245.

¹⁶⁴ Akayesu *supra* note 159 at para 688.

¹⁶⁵ *Ibid* at para 688.

Rhonda Copelon, "Towards Accountability" *supra* note 145 at 245.

¹⁶⁶ Rhonda Copelon, "Towards Accountability" *supra* note 145 at 245.

¹⁶⁷ Akayesu *supra* note 159 at para 731.

¹⁶⁸ *Ibid* at para 732.

¹⁶⁹ *Ibid* at para 695.

humanity be systematic was widespread was satisfied, as incidents of rape formed a part of a systematic attack against a civilian population.¹⁷⁰

The *Akeyesu* judgement made another significant contribution by framing rape as torture: “Like torture, rape is used for such purposes as intimidation, degradation, humiliation, discrimination, punishment, control or destruction of a person. Like torture, rape is a violation of personal dignity, and rape in fact constitutes torture when it 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.”¹⁷¹ This aspect of the judgement is significant, because Article 1 of the Convention against Torture (CAT) had often been used to exclude GBV against women from the definition of torture, on the basis that GBV occurring outside of the context of detention was outside of state control.¹⁷²

4.3.2 The ICTY

ICTY statute treats rape and sexual violence in much the same way as the ICTR. Rape is an underlying crime to ground the charge of “crimes against humanity.”¹⁷³ The statute does not include rape as an underlying crime to ground a charge of genocide,¹⁷⁴ but rape is encompassed by “causing serious bodily or mental harm or torture.”¹⁷⁵

The most significant decision of the ICTY is *Prosecutor v. Kunarac*,¹⁷⁶ in which the Appeals Chamber refused to accept the conceptual definition of rape put forward in *Akeyesu*.¹⁷⁷ The Trial Chamber in *Kunarac* defines the *actus reus* of rape as “the sexual penetration, however slight: (a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or (b) of the mouth of the victim by the penis of the perpetrator; where such sexual penetration occurs without the consent of the victim. Consent for this purpose must be consent given voluntarily, as a result of the victim’s free will, assessed in the context of the surrounding circumstances.”¹⁷⁸ The *mens rea* is the intention to effect sexual penetration, and knowledge that it occurs without the consent of the victim.¹⁷⁹ The Appeals Chamber accepted this definition.¹⁸⁰ It retains lack of consent as an element of the offence, but recognizes that in most contexts where war crimes or crimes against humanity are alleged “true consent will not be possible.”¹⁸¹

¹⁷⁰ *Ibid* at para 695.

¹⁷¹ *Ibid* at para 597.

¹⁷² Manjoo and McRaith *supra* note 102 at 21

¹⁷³ ICTY Statute, *supra* note 156 at art 5.

ICTR Statute, *supra* note 157 at art 3.

¹⁷⁴ ICTY Statute *supra* note 156 at art 4.

¹⁷⁵ *Ibid* at art 4(2).

¹⁷⁶ Rhonda Copelon, “Towards Accountability” *supra* note 145 at 246.

¹⁷⁷ *Ibid* at 247.

¹⁷⁸ *Prosecutor v. Kunarac*, IT-96-23& IT-96-23/1-A-T, Judgement (22 February 2001) at para 460, (International Criminal Tribunal for the Former Yugoslavia Trial Chamber) online: <<http://www.icty.org/x/cases/kunarac/tjug/en/kun-tj010222e.pdf>>

¹⁷⁹ *Ibid* at para 460.

¹⁸⁰ *Prosecutor v. Kunarac* IT-96-23& IT-96-23/1-A, Judgement (12 June 2002) (International Criminal Tribunal for the Former Yugoslavia Appeals Chamber) at para 128. online: <<http://www.icty.org/x/cases/kunarac/acjug/en/kun-aj020612e.pdf>>.

¹⁸¹ *Ibid* at para 130.

Kunarac also clarifies how sexual violence can qualify as war crimes and crimes against humanity. It states that rape itself need not be used on a massive or systematic scale—it can be one of many crimes constituting a systematic or widespread attack on a civilian population.¹⁸² To constitute a war crime, sexual violence need not be a policy or tool of war.¹⁸³ One act of rape can be a war crime, so long as the existence of a conflict “played a substantial part in the perpetrator’s ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed.”¹⁸⁴

4.3.3 The ICC

A significant development in international criminal law came with the Rome Statute of the ICC, which codifies the prohibition on sexual and gender based violence.¹⁸⁵ Underlying offences to ground a crime against humanity under the Rome Statute includes: “rape, sexual slavery, enforced prostitution, forced pregnancy, forced sterilization, or any other form of sexual violence of comparable gravity.”¹⁸⁶ The Rome Statute also explicitly recognizes rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and other forms of sexual violence as war crimes.¹⁸⁷ Rape and sexual violence are offences to ground a charge of genocide, but can be included as part of “serious bodily or mental harm.”¹⁸⁸

The Elements of a Crimes annex defines rape with a mechanical rather than conceptual definition.¹⁸⁹ It also defines sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and sexual violence as a crime against humanity,¹⁹⁰ and a war crime.¹⁹¹ The definitions for the crimes of rape and sexual violence focus on the presence of force, the threat of force or coercion, which makes it impossible for victims to give genuine consent.¹⁹²

The Rome Statute, and its accompanying Rules of Procedure and Evidence Annex also contain important provisions designed to protect the safety, and privacy of victims and witnesses and to ensure that sexual violence is properly prosecuted.¹⁹³ For example, the Court can take measures to protect the safety, physical and psychological well-being, dignity and privacy of victims, particularly victims of sexual violence.¹⁹⁴ Rules of evidence stipulate that no

¹⁸² *Ibid* at para 58-59.

¹⁸³ *Ibid* at para 58.

¹⁸⁴ *Ibid* at para 58.

¹⁸⁵ Rhonda Copelon, “Towards Accountability” *supra* note 145 at 248.

¹⁸⁶ UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, GA, 1998, UN Doc A/CONF.183/9 online: at art 7 <<http://untreaty.un.org/cod/icc/statute/romefra.htm>>[Rome Statute].

¹⁸⁷ Rome Statute, *supra* note 186 at art 2) (b) xxii.

¹⁸⁸ *Ibid* at art 6.

¹⁸⁹ International Criminal Court (ICC), *Elements of Crimes*, online: (2011) at art 7 (1) (g)-1 <<http://www.unhcr.org/refworld/docid/4ff5dd7d2.html>>.

¹⁹⁰ *Ibid* at art 7 (1) (g)-1-6,

¹⁹¹ *Ibid* at art 8(2)(b)(xxii) 1-6.

¹⁹² *Ibid* at art. 7(1)(g)-6 (1) 8(2)(b)(xxii)-6(1) .

¹⁹³ Rhonda Copelon, “Towards Accountability” *supra* note 145 at 250.

¹⁹⁴ Rome Statute, *supra* note 186 at art 68.

corroboration of sexual crimes is required,¹⁹⁵ and that evidence about prior sexual conduct is inadmissible.¹⁹⁶

4.4 Security Council Resolutions on GBV in Conflicts¹⁹⁷

The two most important Security Council resolutions relating to GBV in conflict are resolution 1325 adopted in 2000,¹⁹⁸ and resolution 1820 adopted in 2008,¹⁹⁹ both of which focus on the victimization of women and girls.²⁰⁰ Resolution 1325 acknowledges "the need to implement fully international humanitarian and human rights law that protects the rights of women and girls during and after conflicts,"²⁰¹ and calls on "all parties to armed conflict to take special measures to protect women and girls from gender-based violence, and particularly rape and other forms of sexual abuse."²⁰² Resolution 1820 is significant because the Security Council clearly links sexual violence to international peace and security by noting that "sexual violence, when used or commissioned as a tactic of war in order to deliberately target civilians or as a part of a widespread or systematic attack against civilian populations, can significantly exacerbate situations of armed conflict and may impede the restoration of international peace and security."²⁰³ In addition, resolution 1820 states that sexual violence can constitute "a war crime, a crime against humanity, or a constitutive act with respect to genocide."²⁰⁴ It also stresses that sexual violence should be excluded from post-conflict amnesty provisions.²⁰⁵

5. CONCLUSION

This backgrounder has identified some of the challenges relating to sexual violence in Libya and Syria, as well as in conflict and post-conflict settings more broadly. The latest reports suggest that sexual violence is an ongoing problem in Syria, and to a lesser extent, in Libya as well. Putting an end to the violence is the utmost priority, but there is also a pressing need to provide meaningful support and protection for survivors. That support may encourage survivors to come forward, which will in turn make it possible for legal redress to be sought, either through national or international mechanisms.²⁰⁶

¹⁹⁵ Preparatory Commission for the International Criminal Court, "Rules of Evidence and Procedure," UN Doc PCNICC/2000/1/Add.1 (2000) 63(4), (2000) <<http://www2.icc-cpi.int/NR/rdonlyres/F1E0AC1C-A3F3-4A3C-B9A7-B3E8B115E886/284955/RPE4thENG08Feb1200.pdf>>.

¹⁹⁶ *Ibid* at 71.

¹⁹⁷ This section focuses on the two leading Security Council Resolutions. See UNFPA, "Managing GBV Programmes," *supra* Annex 3 for a summary of the other relevant Security Council Resolutions.

¹⁹⁸ UN Security Council resolution 1325 (2000) [on women and peace and security], 4213th meeting, S/RES/1325 (2000). [SC 1325]

¹⁹⁹ UN Security Council, Security Council resolution 1820 [on acts of sexual violence against civilians in armed conflicts], SC, 5916th meeting. S/RES/1820 (2008). [SC 1820]

²⁰⁰ Mouthan, "Violence Against Men" *supra* note 16 at 5.

²⁰¹ SC 1325 *supra* note 198 at preamble.

²⁰² *Ibid* at 10.

²⁰³ *Ibid* at 1.

²⁰⁴ SC 1820 *supra* note 199 at 4.

²⁰⁵ *Ibid* at 4.

²⁰⁶ Edith Lederer, "International Court prosecutor collects evidence for new war crimes cases in Libya," (November 10, 2012) Online: Ottawa Citizen, <<http://www.ottawacitizen.com/news/International+Court+prosecutor+collects+evidence+crimes+cases+Libya/7531245/story.html>>.

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