

Defining Conflict Related Sexual Violence in Sri Lanka



Centre for Equality and Justice

Printed and published in July 2018 with support from the Office of the High Commissioner for Human Rights and the UN Peacebuilding Fund

The views expressed in this book are those of the persons interviewed and do not necessarily reflect the views and policies of Centre for Equality and Justice, Sri Lanka. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by means, electronic, mechanical, photocopying, recording or otherwise without full attribution.

For further information please contact:

Centre for Equality and Justice
325A1, Thimbirigasyaya Road, Colombo 05, Sri Lanka
Tel/Fax: +94 11 2055404

INTRODUCTION

As Sri Lanka begins on a journey of transitional justice and reconciliation, it is necessary to examine all types of violations of rights. One main category of violence that is not in mainstream discussion forums is conflict related sexual violence (CRSV). Stigma associated with CRSV often leads to silence surrounding such violations. This silence leads to common misconceptions of CRSV that are further fuelled by a lack of a proper definition within the domestic socio-legal context of Sri Lanka.

The definitions, explanations, and descriptions of CRSV incorporated into this Briefing Paper have been drawn from various legal statements, reports, statements, policies, and cases decided in international, regional, and domestic courts of countries where similar violence has occurred.

Which Acts of Sexual Violence Can be Categorized as CRSV?

1. Rape
2. Forcing victims to engage in sexual intercourse with one another.
3. Sexual mutilation
4. Sexual slavery
5. Being detained as ‘comfort women’ (women and girls forced to provide sexual services to military personnel).
6. Forced prostitution
7. Forced pregnancy
8. Forced abortion
9. Enforced sterilization
10. Forced nudity / stripping
11. Forced marriages
12. Other forms of grave sexual violence
13. Groping
14. Sexual humiliation
15. Threatening to commit sexual violence.

Who Are the Victims of CRSV?

Some of the most serious violations such as forced prostitution, forced pregnancy, and forced abortions are committed against women and girls. However, women, men, girls, and boys could be victims of CRSV.

Individuals who are members of ethnic, racial, religious, or political minorities often become targets of CRSV.

“Victims of conflict-related sexual violence include those who, individually or collectively, were subjected to such violence (survivors), but also their family members, such as children, parents or partners, children born as a result of a pregnancy from rape, and other people who depend on the victim.”

-Report of the Office of the United Nations High Commissioner for Human Rights: Conflict Related Sexual Violence in Ukraine, A/HRC/34/CRP.4, at para. 24

Who are the Offenders / Perpetrators of CRSV?

Individuals affiliated with following entities have often been recognized as perpetrators of CRSV:

- Individuals affiliated with State armed forces.
- Individuals affiliated with non-State armed groups.
- Terrorists.
- Other individuals in a position to abuse the powers granted to them during conflicts, political instabilities or climates of impunity.

Definitions of CRSV

Framework Laid by United Nations Security Council Resolutions

- United Nations Security Council Resolutions (UNSCRs) 1820 (2008), 1888 (2009), 1889 (2009), 1960 (2010), 2106 (2013), and 2122 (2013) thematically deal with CRSV. According to UNSCR 2106 (2013) the Secretary General of the United Nations is required to submit annual reports on Resolutions concerning sexual violence in conflict contexts. These reports contain definitions of CRSV. UNSCR 2122 (2013) recognizes the importance of “humanitarian aid and funding to include provisions for the full range of medical, legal, psychological, and livelihood services to women affected by armed conflict and post-conflict situations”. UNSCR 2122 further noted that it is necessary to establish “access to the full range of sexual and reproductive health services, including regarding pregnancies resulting from rape, without discrimination”.

Definitions of CRSV in UNSG Reports

- According to the Report of Secretary General of the United Nations, CRSV refers to:

“rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage, and any other form of sexual violence of comparable gravity perpetrated against women, men, girls or boys that is directly or indirectly linked to a conflict. This link may be evident in the profile of the perpetrator (often affiliated with a State or non-State armed group, including a terrorist entity or network), the profile of the victim (who is frequently an actual or perceived member of a persecuted political, ethnic or religious minority, or is targeted on the basis of actual or perceived sexual orientation and gender identity), the climate of impunity (which is generally associated with State collapse), cross-border consequences (such as displacement or trafficking in persons) and / or violations of the provisions of a ceasefire agreement. The term also encompasses trafficking in person when committed in situations of conflict for the purpose of sexual violence/ exploitation.”

- *Report of the Secretary General on Conflict Related Sexual Violence (15 April 2017) p.3—*

The definition adopted by the World Health Organization concerning CRSV is similar.

- The definition of CRSV provided in the United Nations Secretary General's (UNSG) Report of 2016 (S/2016/361) is slightly different from the above definition. It is more restrictive than the most recent definition. In the UNSG Report of 2016 the link between the conflict and violence is defined as **temporal** (connected by the time period in which the violence occurred), **geographical** (connected by the place in which the violence occurred), or **causal nexus** (connected by the 'cause' or 'reason' that led to the violence).
- The latest definition of the UNSG Report (Report of 2017) does not restrict CRSV as violations, which are linked to the conflict temporally, geographically, or causally. Removal of the restrictive scope of the definition implies that there are other possible ways of being associated with a conflict. For instance, an act of sexual violence could be linked with a conflict context due to political, social, ethnic, racial, religious, educational, economical, or any other means.
- In the UNSG Report of 2015, the profile of the perpetrator, and the victim has not been explained as has been done in the Reports of 2016 and 2017. Explanations provided to the perpetrators and the victims in later definitions have broadened the scope of CRSV.
- It is important to note that those seeking to prosecute crimes related to CRSV or seek remedies for being victimised by such crimes can rely on the broadened scope as it prevents State or other authorities from restricting the scope of application to a narrow category of perpetrators or victims.
- 2015 UNSG's Report uses the phrase "cross-border dimensions" in its definition of CRSV as opposed to "cross-border consequences" which has been used in the latter definitions. "Consequences" carry a wider meaning than "dimensions". The consistent upgrading of the CRSV definition through the UNSG Reports indicates the UN's commitment to viewing CRSV as an ongoing and significant consequence of conflict that underscores the need for an evolving definition..

Definition of CRSV in Judgments

- "Sexual violence consists of actions with a sexual nature committed with a person without their consent, which besides the physical invasion of the human body, may include acts that do not imply penetration or even any physical contact whatsoever."
 - Miguel Castro-Castro Prison v. Peru (IACtHR, 25 November 2006) at para. 306 -
- Prosecutor v. Katanga and Ngudjolo Chui was a case that was heard by the International Criminal Court. This case concerns the war crimes that were committed in the area named Ituri in the Democratic Republic of Congo.
- Directly attacking civilians and subjecting them to various violations including CRSV was assessed in the Katanga decision. This judgment provides some of the recent definitions of various aspects of CRSV such as rape, sexual slavery, and forced marriage. Those definitions are stated below:

Sexual Slavery

Sexual slavery occurs when “the perpetrator [...] exercise[s] any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending, or bartering such a person or persons, or by imposing on them a similar deprivation of liberty; and cause such person or persons to engage in one or more acts of sexual nature. The instances cited under the first element above do not constitute an exhaustive list.”

- at para. 343-

Forced Marriage as a Type of Sexual Slavery

“Sexual slavery also encompasses situations where women and girls are forced into “marriage”, domestic servitude or other forced labour involving compulsory sexual activity, including rape, by their captors. Forms of sexual slavery can, for example, be practices such as the detention of women in ‘rape camps’ or ‘comfort stations’, forced temporary ‘marriages’ to soldiers and other practices involving the treatment of women as chattel, and as such, violations of the peremptory norm prohibiting slavery.”

- at para. 431-



RELATIONSHIP OF SEXUAL VIOLENCE WITH CONFLICT

“The definition of ‘armed conflict’ is based on factual conditions relating to an armed confrontation between two or more identifiable parties over a sustained period of time at a level of intensity that exceeds ordinary law and order operations (i.e., the use of military force, rather than police forces). ‘Parties’ to armed conflict are organized armed forces under a command structure, with the capacity to sustain military operations. This includes both State and non-State actors.”

- *UN Action Against Sexual Violence in Conflict: Analytical and Conceptual Framing of Conflict-Related Sexual Violence*, at p. 2

Rape

Rape is: “[invading] the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with an object or any other part of the body; and the invasion must be committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.”

- *Prosecutor v. Katanga and Ngudjolo Chui (ICC, 30 September 2008) at para. 342-*

When is Sexual Violence Related to Conflict?

1. When it is used as a ‘tactic’ of war

This means that sexual violence is strategically linked or intended to be linked with military or political objectives. In such cases the parties to the conflict work under a chain of command which is capable of abstaining from violations yet does not condemn or penalize acts of sexual violence.

“Legislative immunity for members of the armed and security forces can translate in wartime to a “license to rape”. Male control over women’s production and reproduction can pave the way for sexual violence being deemed an acceptable and effective military strategy: a reward, an entitlement and a form of group bonding.”

-*UNSG Report on CRSV 2017, at p. 6-*

UNSCR 1820 notes that:

- “civilians account for the vast majority of those adversely affected by armed conflict; that women and girls are particularly targeted by the use of sexual violence, including as a tactic of war to humiliate, dominate, instil fear in, disperse and/or forcibly relocate civilian members of a community or ethnic group; and that sexual violence perpetrated in this manner may in some instances persist after the cessation of hostilities.”

- The use of the word “including” in the above description implies that CRSV is not only used as a tactic of war and that it may possess wider implications. Further, it is clear that cessation of hostilities may not put an end to CRSV.
- “Sexual violence need not [...] be explicitly orchestrated for military gain to be considered as relevant to the Security Council’s remit. The definition is broader and centres on a combination of who (the profile of victims and perpetrators), what (the elements of the offence), how (the method) and why (the motive)”.

-UN Action Against Sexual Violence in Conflict: Analytical and Conceptual Framing of Conflict-Related Sexual Violence, at p. 2 -

“[United Nations Security Council] Reaffirms 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”.

-UNSCR 1888 (2009), Clause 1-

- In Prosecutor v. Sesay et al the Special Court for Sierra Leone stated that specific offences of sexual slavery and sexual violence have been “designed to draw attention to serious crimes that have been historically overlooked and to recognise the particular nature of sexual violence that has been used, often with impunity, as a tactic of war to humiliate,

dominate and instil fear in victims, their families and communities during armed conflict.”

-Prosecutor v. Sesay et al. (Special Court for Sierra Leone, 02 March 2009) at para. 156-

“It has been acknowledged that during domestic and international armed conflicts the confronting parties used sexual violence against women as a means of punishment and repression”.

- Miguel Castro-Castro Prison v. Peru (IACtHR, 25 November 2006) at para. 224 -

2. Temporality: How the Violation is Linked to the Conflict due to the Time of Occurrence of the Violation

- This refers to the time related nexus between the conflict and the violation. For instance, CRSV has been defined as:
- “conflict-related sexual violence refers to incidents or patterns of sexual violence against women, men, girls or boys occurring in a conflict or post-conflict setting that have direct or indirect links with the conflict itself or that occur in other situations of concern such as in the context of political repression.”

- Guidance Note of the Secretary General: Reparations for Conflict Related Sexual Violence-

- Thus, for a violation of a sexual nature to be CRSV, it should be connected to a conflict or occur in a post-conflict setting. There can be a direct or indirect link with the conflict.

- Sexual violence has also been categorized as CRSV when it occurs in other circumstances having a time related link with the conflict. (Several such instances are mentioned in the Analytical and Conceptual Framing of Conflict-Related Sexual Violence advocacy note.)

Sexual violence is conflict related in the following circumstances when:

- a) the violence occurs in a context of instability that may escalate to an armed conflict.
- b) it occurs during a period of occupation.
- c) it occurs against people deprived of their liberty in connection with conflict.
- d) it takes place in the aftermath of a conflict before State authority / capacity is restored.

CRSV during a Period of Instability

- Instability could be caused by political upheaval, a riot, an insurgency, a system of apartheid or other similar circumstances.

Peru and Counterinsurgency Measures

- In Miguel Castro-Castro Prison v. Peru, Inter American Court of Human Rights (IACtHR) states that such violations are prohibited “even under the most difficult circumstances, such as war, threat of war, the fight against terrorism and any other crimes, martial law, or a state of emergency, civil commotion or conflict, suspension of constitutional guarantees, internal political instability or other public emergencies or catastrophes.”

“The use of sexual violence in Peru’s counterinsurgency effort was part of a broader context of discrimination against women, who are considered vulnerable and whose bodies are used by the perpetrators with no apparent motive or any strict connection to the internal armed conflict.”

-Espinoza Gonzales v. Peru (IACmHR, 31 March 2011) at para. 86-

South Africa and Apartheid

- In South Africa, apartheid was a system of racial segregation (division) which led to the oppression of black / coloured people by the white minority. Apartheid lasted from 1948 – 1994.
- According to Sue Armstrong “[d]uring the apartheid years [...] rape statistics were escalating and no one was commenting on it. It was unquestionable that rape was intertwined with the racial injustice of the apartheid system.”

-Sue Armstrong, ‘Rape in South Africa: An Invisible Part of Apartheid’s Legacy’, Focus on Gender Vol. 2 No. 2 June 1994, at p. 35-

- In South Africa, sexual violence that was committed during apartheid had mostly been committed against ‘black’ women. The rape of black women had not been considered as serious as the rape of a white woman. Within this system, there was not only sexual violence, but that violence was inflicted on the basis of race. Justice was accessible only based on one’s race.

CRSV during a Period of Occupation

- According to Article 76(1) and (2) of Addition Protocol I (AP I) of 1977 (Protocol Additional to the Geneva Conventions of 12 August 1949):

Women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault.

And;

Pregnant women and mothers having dependent infants who are arrested, detained or interned for reasons related to the armed conflict, shall have their cases considered with the utmost priority.

- When Article 1(3) of AP I is read together with Article 2 common to the four Geneva Conventions, the above stated provision (including all other provisions) is applicable to “all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.”
- However, sufficient attention has not been paid to incidents of sexual violence within occupied territories. Noting this discrepancy, the United Nations Division for the Advancement of Women states that:

[A] series of resolutions on the situation of Palestinian women and children in the occupied Arab territories, as well as the situation of women and children in Namibia, and women and children living under apartheid [...] recognized the poor living conditions of women but did not refer to their vulnerability

to sexual violence. It seems unlikely that, in contrast to the majority of other conflicts throughout history, sexual violence was not a feature of these particular conflicts.

-United Nations Division for the Advancement of Women, Sexual Violence and Armed Conflict: United Nations Response-

CRSV against People Deprived of Their Liberty in Connection with the Conflict

- Miguel Castro-Castro Prison v. Peru is a case heard in IACtHR in 2006. This case concerned, among other violations, the violation of rights of women who were in the Police Hospital during the counterinsurgency efforts of the government in Peru. Facts of Miguel Castro case establish that female detainees in the hospital had been forced to remain nude and had been observed by armed men. In certain cases, they had been sexually molested and raped. This was regarded as an instance where CRSV was committed against women deprived of their liberty in connection with a conflict.
- The decision of the International Criminal Tribunal for Yugoslavia (ICTY) in the case of Prosecutor v. Dusko Tadic reveals instances where Serb forces confined ‘thousands of Muslim and Croat civilians’.

“During confinement both male and female prisoners were subjected to severe mistreatment, which included beatings, sexual assaults, torture and executions.”

-Prosecutor v. Dusko Tadic (ICTY, 7 May 1997) at para. 154-

CRSV against Refugees or Displaced Persons

- People who are displaced or are compelled to become refugees due to reasons of armed conflict are more vulnerable to harm including sexual violence. This is because these people are compelled to live in unfamiliar circumstances.

“The majority of these displaced civilians were Tutsi. While seeking refuge [...], female displaced civilians were regularly taken by armed local militia and/or communal police and subjected to sexual violence”.

–The Prosecutor v. Jean Paul Akayesu (ICTR, 2 September 1998) at para. 12A-

- Displaced persons or refugees may also be subject to sexual violence and other offences due to discriminatory attitudes of combatants or authorities. Some individuals may be singled out for victimisation based on their race, ethnicity, or religion.
- In Guidelines on the Protection of Refugee Women (1991), the United Nations High Commissioner for Refugees has stated that refugee women could be particularly vulnerable to sexual violence.
- It stated that “National governments should review their charge of protecting refugees and internally displaced, and ensure that the same degree of protection accorded to the general population also applies to refugee and IDP populations. On this basis, improvements in

addressing GBV should be relevant to all those under government jurisdiction.”

–Jeanne Ward, If Not Now, When? Addressing Gender Based Violence in Refugee, Internally Displaced, and Post-Conflict Settings (2002) at p.15-

3. Geography: When the Act of Sexual Violence Occurs in a Place Affected by the Conflict

- For an act of sexual violence to be considered as CRSV, it is also necessary for the violence to have occurred in a geographical location affected by the conflict.
- Sexual violence occurring in non-conflict areas will be dealt with under the general penal laws whereas sexual violence occurring in conflict affected areas may be dealt with specific laws such as the International Humanitarian Law.
- It is necessary to distinguish sexual violence occurring in conflict-affected areas as such acts may be widespread and systematic. If the acts are widespread and systematic, those acts of sexual violence may even amount to genocide, and crimes against humanity.

4. Sexual Violence that Occurs within Post-conflict Contexts

Definition of Post-conflict Contexts

- Marie-Soleil Frère and Nina Wilen state that ‘post-conflict’ is not easy to define due to the politicization of the term:

“Conflicts do not necessarily end with the signing of official peace agreements”. Therefore, it is not easy to define the length and duration of a post-conflict context.

“Often low-intensity conflict replaces violent conflict because one or several actors are either excluded or not content with the peace agreement.”

- Marie-Soleil Frère and Nina Wilen, *INFOCORE Definition: Post-Conflict (2015)*-

- However, the United Nations Human Rights Council (UNHRC) defined post-conflict context as a “situation in which open warfare has come to an end. Such situations remain tense for years or decades and can easily relapse into large scale violence”.

- *Human Rights Council (10 February 2015) A/HRC/28/76, at para. 15-*

- According to the above definition, Sri Lanka can be regarded as being in a post-conflict context despite the end of the armed conflict in 2009. Thus, dealing with CRSV within a transitional justice context is essential. Failure to effectively deal with CRSV can be a contributing factor to the country relapsing into violence.

Sexual Violence Occurring Within Post-Conflict Contexts

- Sexual violence that is targeted at identifiable groups of individuals should also be regarded as CRSV.
- According to Jeanne Ward, individuals who have become vulnerable due to the former conflict contexts could be targeted when they return to their homelands / homes for retributive reasons. Additionally, such individuals

could be subject to domestic violence, sexual exploitation, and trafficking in persons.

-*Jeanne Ward and UN Women, Violence against Women in Conflict, Post-Conflict and Emergency Settings (2013) at p.14-*

Why Should Special Attention Be Paid to CRSV?

CRSV is Linked with Abuse of Power

- CRSV is often a result of the abuse of power by those who are either guilty of committing acts of CRSV, or endorse such acts, or remain silent. In *Espinoza Gonzales v. Peru*, the Inter American Commission of Human Rights has ruled that “sexual rape of a detainee by a state agent is an especially gross and reprehensible act, taking into account the victim’s vulnerability and the abuse of power displayed by the agent.”

- *Espinoza Gonzales v. Peru (IACmHR, 31 March 2011) at para. 191 -*

“[S]oldiers were encouraged by their commanding officers to use the “comfort women” facilities rather than civilian brothels ‘for the purpose of stabilizing soldiers’ psychology, encouraging their spirit and protecting them from venereal infections’.”

-*United Nations Division for the Advancement of Women, Sexual Violence and Armed Conflict: United Nations Response-*

- In the Akayesu decision, the International Criminal Tribunal stated that Akayesu (a Rwandan who held a position similar to that of a Mayor) had reasons to believe that sexual violence was occurring and “aided and abetted [...] acts of sexual violence, by allowing them to take place [...] and by facilitating the commission of such sexual violence through his words of encouragement [...], by virtue of his authority, sent a clear signal of official tolerance for sexual violence, without which these acts would not have taken place.”

-The Prosecutor v. Jean Paul Akayesu (ICTR, 2 September 1998) at para. 694 -

In 1971 ‘East Pakistan’ (Present-day Bangladesh) sought to establish a separate State. This led to a liberation war between ‘East Pakistan’ and ‘West Pakistan’. Members of the Pakistani armed forces are alleged to have subjected Bengali women to sexual violence during the war.

“Many women were raped by Pakistani armed forces and auxiliary forces under cover of military operations, and indeed, several high-ranking officers were accused of rape and other sexual crimes. Despite the widespread practice, it appears that the army took no effective steps to stop it.”

*-Redress Trust, Torture in Bangladesh 1971
- 2004: Making International Committees a Reality and Providing Justice and Reparations to Victims, at p. 8.-*

Inability to Lodge Complaints against CRSV

- Victims often do not feel safe to lodge a complaint regarding an act of CRSV due to fear of further persecution or the fear of being subject to further violence. Fear of lodging a complaint could be well-founded because CRSV may have been committed with impunity, either because of the encouragement / command of or, due to their silence concerning the offences.
- Differences in culture and attitudes towards sexual violence may make it even more difficult to lodge complaints regarding incidents of CRSV. For instance, the following was noted by the International Criminal Court (ICC) in Prosecutor v. Al Bashir:

“The violations of the rights of women, rape and sexual violence, even though denied by government, have been committed during the Darfur conflict. Generally speaking, women would not talk about such painful experiences, because such acts violate their sense of dignity and honour. The culture of the Sudanese women in Darfur, who are Muslims, makes it even more difficult for the latter to talk in public about sexual violence they underwent.”

- Prosecutor v. Al Bashir (ICC, 19 March 2010) at para. 115-

Lack of Prosecutions and Punishments

- Victims’ inability to lodge complaints regarding CRSV leads to fewer prosecutions and punishment of perpetrators. The Inter American

Commission of Human Rights (IACmHR) stated that:

“...the vast majority of [incidents of sexual violence] were never punished, either because of the shame felt by the victims or their fear of lodging a complaint, or because of the obstacles and deceptions put in place by the authorities of the military justice system in investigations into serious human rights violations.”

- *Espinoza Gonzales v. Peru* (IACmHR, 31 March 2011) at para. 91 -

“[United Nations Security Council]” condemns all violations of applicable international law committed against women and girls in situations of armed conflicts and post-conflict situations, [... and] emphasizes the responsibility of all States to put an end to impunity and to prosecute those responsible for all forms of violence committed against women and girls in armed conflicts, including rape and other sexual violence.

-UNSCR 1889 (2009), Clause 3-

- In the description of UNSCR 1888 (2009), the Security Council noted with concern “that only limited numbers of perpetrators of sexual violence have been brought to justice, while recognizing that in conflict and in post-conflict situations national justice systems may be significantly weakened”. Due to the fewer number of complaints and intricacies and inefficiencies of the justice system, there are limited prosecutions of perpetrators committing CRSV.

“[...] in spite of the widespread use of sexual violence in the counterinsurgency effort, only a very small number of members of the National Police and the armed forces were prosecuted”.

- *Espinoza Gonzales v. Peru* (IACmHR, 31 March 2011) at para. 92 -

Extent of Harm Caused by CRSV

- CRSV results in long-term physical and mental damage. In *Espinoza Gonzales v. Peru*, the IACmHR referred to the explanation given to CRSV’s impact by the IACtHR in various cases:

“The Inter American Court has said that sexual violence against women has physical, emotional, and psychological consequences that are devastating for the victims [...]. [CRSV is] an extremely traumatic experience that can have serious consequences and that causes great physical and psychological damage, which leaves the victim ‘physically and emotionally humiliated’ - a situation that in contrast to other traumatic experiences, is difficult to overcome with time”.

- *Espinoza Gonzales v. Peru* (IACmHR, 31 March 2011) at para. 191 -

“An accused can be found guilty of causing serious bodily harm even if the injury suffered by the victim is not of a permanent or irremediable nature.”

- *Prosecutor v. Tharcisse Muvunyi* (ICTR, 12 September 2006) at para. 487-

- In *Prosecutor v. Tharcisse Muvunyi*, the International Criminal Tribunal for Rwanda (ICTR) stated that serious bodily harm includes “acts of sexual violence [...] that seriously injure the health of the victim, cause disfigurement, or result in serious injury to the victim’s senses or organs”.
- The Muvunyi case also described ‘serious mental harm’ as “a significant injury to the mental faculties of the victim”. In assessing what remedies should be granted to victims of sexual violence, it is important to adopt a broad definition of physical and mental harm as held in this judgment.

Stigmatization and Ostracization of victims of CRSV

- Society often stigmatizes and ostracizes victims of sexual violence, and victims of CRSV may be subject to added stigmatization due to the context of their victimization.
- From 1996 - 2006, the Government of Nepal was at war with the Communist Party of Nepal (Maoists). During this conflict, many killings, disappearances, and sexual violence were committed against the civilian population. To this date, many women who were subject to CRSV remain ostracized from society.
- The Office of the High Commissioner for Human Rights states that “[s]ocial and cultural taboos make victims reluctant to share their stories out of shame or for fear of being blamed. This is exacerbated by a lack of support, protection and redress mechanisms that existed during

the conflict period, and the fear of repercussions or further victimization if perpetrators were reported.”

-OHCHR, *Nepal Conflict Report – Executive Summary (2012)* at p. 11-

“Victims of sexual violence were ostracised, husbands left their wives, and daughters and young girls were unable to marry within their community.”

-*Prosecutor v. Sesay et al. (Special Court for Sierra Leone, 02 March 2009)* at para. 1349-

- Conflicts in Northern Uganda resulted in CRSV against women and girls. Some such victims bore children as a result of wartime rape. Ladisch explains the extent of impact caused to such women and children due to stigma, marginalisation, and poverty.

“A lack of redress compounded by the intersection of multiple factors—discriminatory cultural norms for women who have children out of wedlock; abject poverty and scarce resources, including a lack of land for cultivation; patrilineal systems of identity; and stigma and rejection due to perceived association with rebels—leads to serious challenges that impede mothers and their children born of sexual violence from integrating into the community and becoming self-sufficient citizens who live with dignity.”

-*Virgine Ladisch, From Rejection to Redress: Overcoming Legacies of Conflict Related Sexual Violence in Northern Uganda, (ICTJ 2015)*-

Loopholes in Laws and the System of Justice

- Whenever there is an armed conflict, States which are parties to the Geneva Conventions and their Additional Protocols are obliged to apply International Humanitarian Law (IHL) principles and standards mentioned in the said Conventions and Protocols. However, sexual violence that occurs within conflict contexts has not been expressly listed as a grave breach of IHL.
- In Sexual Violence and Armed Conflict: United Nations Response, the provisions of the Geneva Conventions and their Additional Protocols are criticized for characterising sexual offences against women as attacks against the “honour” of women.
- When the definitions or explanations of a sexual offence against women and girls refer to “honour” or “an outrage upon the personal dignity”, “the implication is that “honour” (or dignity) is something

lent to women by men, and that a raped woman is thereby dishonoured.”

- Specific laws are unavailable to provide redress to women who have been forcibly impregnated and to provide for children born of wartime rape.

“[A] problem with provisions of the Geneva Conventions and Additional Protocols is that they characterize rape and other forms of sexual violence as attacks against the “honour” of women, or at most as an outrage upon personal dignity. [...] Failure of these instruments to categorize sexual violence as a violent crime that violates bodily integrity, presents a serious obstacle to addressing crimes of sexual violence against women. It directly reflects and reinforces the trivialization of such offences.

-United Nations Division for the Advancement of Women, Sexual Violence and Armed Conflict: United Nations Response