



Committee on the Elimination of Discrimination against Women
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Information on Ukraine for Consideration by the Committee on the Elimination of Discrimination against Women at its 83rd Session (10 - 28 October 2022)

Introduction

1. We present the following submission in advance of the 83rd Session of the Committee on the Elimination of Discrimination against Women ('the Committee'), taking place between 10 and 28 October 2022, for consideration of Ukraine's ninth periodic report. Our joint submission outlines the challenges in the criminal justice system and the legislation of Ukraine in addressing sexual violence crimes and provides recommendations for improving access to justice for victims and survivors of sexual violence through improving legislation, policy and criminal justice procedures. Despite

progress made through amendments to the Ukrainian Criminal Code ('CCU') in January 2019 following recommendations made by the Committee in its Concluding Observations in 2017,¹ further developments are essential to ensure effective criminal law mechanisms that will better address sexual violence. Such legislative and policy transformations will also provide access to justice to those who have suffered conflict-related sexual violence (CRSV) perpetrated in the context of Russia's war with Ukraine that started in 2014 and was exacerbated and has been ongoing since February 2022. This is also a fundamental step in achieving substantive and transformative equality for all women and girls in Ukraine, ensuring the country is in line with its international human rights obligations.

Information about the authors of the submission

2. **Equality Now** is an international human rights organisation with ECOSOC status working to protect and promote the rights of women and girls worldwide since 1992, including through our membership network of individuals and organisations in over 160 countries. This submission is in reference to Equality Now's 2019 report, "Roadblocks to Justice: How the Law is Failing Survivors of Sexual Violence in Eurasia,"² which identified gaps in the law, thereby allowing for actual and potential impunity for perpetrators of sexual violence crimes.
3. **Center "Women's Perspectives"** is a women's non-governmental organisation based in Lviv, Ukraine. During its 24 years of existence, it has become one of the leading third-sector organisations in Ukraine. The Center registered as an NGO at the Lviv Department of Justice on 6 April 1998. The organization aims to protect women's rights and ensure equal rights and opportunities for women and men in all spheres of life. The organisation provides direct services for women victims of violence and discrimination, in particular, domestic violence; works with law enforcement, the judiciary, and governmental bodies to improve the State's response to issues of violence against women and gender discrimination; conducts research and monitoring; works on preventing violence against women and gender discrimination; actively works on legislation and policies on combatting violence against women and ensuring gender equality development and implementation.
4. **Ukrainian Women Lawyers Association "JurFem"** is one of the first Ukrainian associations of women lawyers. The aim of the organization is to become a platform for the exchange of experience, development and support of women in the legal profession. The mission is to improve the understanding of national and international legislation on equal rights and opportunities for women and men among the legal community to effectively protect women's rights and opportunities in all spheres of public and

¹ Committee on the Elimination of Discrimination against Women ('CEDAW'), 'Concluding Observations on the Eight Periodic Report of Ukraine' (9 March 2017) CEDAW/C/UKR/CO/8

² Please see: https://www.equalitynow.org/roadblocks_to_justice

political life in Ukraine; to uphold the rights and interests of women, including those who have been abused and discriminated or are in other crisis situations; and to monitor and investigate the protection of women's rights in Ukraine, as well as the principle of gender equality and non-discrimination in Ukraine.

5. **Women's Initiatives for Gender Justice (WIGJ)** is an international women's human rights organisation that advocates for gender justice and accountability for sexual and gender-based crimes (SGBC) through the work of the International Criminal Court and domestic mechanisms. In Ukraine, our work has focused on raising awareness about all forms of conflict-related sexual and gender-based violence and on supporting local partners by answering their immediate needs on SGBC-related issues, including guidance on documentation, victim-centered approaches, and SGBC prosecution before national and international courts.
6. **Carolyn Edgerton** is an Associate Member of Guernica 37 Chambers in London. She has three decades of experience in the investigation and prosecution of international crimes, the greatest part within the service of the United Nations, as a Legal Officer and Trial Attorney with the International Criminal Tribunal for the former Yugoslavia. Her practice is now focussed on building capacities of national criminal justice and human rights actors in international criminal, humanitarian and human rights law and best practices.
7. **Ruby Mae Axelson** is a legal consultant specialising in international criminal law, international humanitarian law and international human rights law, with a focus on conflict-related sexual and gender-based violence. She has worked supporting Defence Teams at the International Criminal Tribunal for the Former Yugoslavia and has filed submissions on behalf of victims before the International Criminal Court. Her practice currently focuses on capacity-building local justice actors to ensure the implementation of international best practices in the documentation, investigation and prosecution of international crimes, particularly sexual violence.
8. We reiterate the Concluding Observations of the Committee's previous review of Ukraine,³ and underline, in particular, the recommendations urging Ukraine to accelerate its process of ratification of the Council of Europe's Convention on preventing and combating violence against women and domestic violence ('Istanbul Convention');⁴ to take comprehensive measures to prevent and address violence against women and girls and ensure that perpetrators are prosecuted and adequately punished;⁵ and to amend Article 152 of the Criminal Code to bring the definition of rape in line with international standards.⁶ The government ratified the Istanbul Convention on June

³ Ibid 1

⁴ Ibid 1, para 29(a)

⁵ Ibid 1, para 29(c)

⁶ Ibid 1, para 15(a)

20, 2022,⁷ which is a promising step in demonstrating its commitment to preventing and combating violence against women. To ensure that this expression of commitment is appropriately implemented in practice, the rights and protections foreseen under the Istanbul Convention must be matched with appropriate legislative and policy measures which improve women's access to justice. Whilst amendments to the Criminal Code in January 2019, such as the adoption of a consent-based definition of rape, were made to ensure greater adherence to international human rights standards, there are still concerns regarding their implementation and several other remaining provisions. Concerns, outlined below, include that these provisions have a discriminatory effect on women, who are predominantly affected by sexual violence, since they prevent survivors from accessing justice.

Ex-officio (public) Prosecutions

9. The lack of ex-officio (public) prosecutions for sexual violence in the law denies justice to survivors and is contrary to international human rights standards.⁸ As noted by the Committee in its General Recommendation 35, states should “ensure effective access of victims to courts and tribunals; ensure authorities adequately respond to all cases of gender-based violence against women, including by applying criminal law and as appropriate ex officio prosecution to bring the alleged perpetrators to trial in a fair, impartial, timely and expeditious manner and imposing adequate penalties”.⁹
10. In its 2017 review of Ukraine, the Committee recommended that Ukraine should “ensure that women and girls have access to justice and adopt gender-sensitive procedures to investigate sexual violence”.¹⁰ Accordingly, the authors of this submission recommend that Ukraine should amend Article 477 of its Criminal Procedure Code (‘CPCU’),¹¹ to exclude the possibility of private or public/private prosecutions for the following crimes: rape (Article 152 of the Criminal Code) and other forms of sexual violence, in particular: forced marriage (Article 151-2); sexual violence

⁷ ‘Ukraine Writes its History Daily, and Approving the Istanbul Convention is One of the Most Important Pages - Steen Nørlov’ (*Council of Europe* (‘CoE’), 20 June 2022): <https://www.coe.int/en/web/kyiv/-/ukraine-writes-its-history-daily-and-approving-the-istanbul-convention-is-one-of-the-most-important-pages-steen-n-rllov>

⁸ For example, see United Nations Human Rights Council (‘UN HRC’), ‘Rape as a Grave, Systematic and Widespread Human Rights Violation, a Crime and a Manifestation of Gender-Based Violence against Women and Girls, and Its Prevention: Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Dubravka Šimonović’ (19 April 2021) A/HRC/47/26 (‘UN HRC, [Rape as a Grave, Systematic and Widespread Human Rights Violation, a Crime and a Manifestation of Gender-Based Violence against Women and Girls, and Its Prevention: Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Dubravka Šimonović](#)’), paras. 91-94; UN HRC, ‘[A Framework for Legislation on Rape \(Model Rape Law\) Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences](#)’ (15 June 2021) A/HRC/47/26/Add.1 (‘UN HRC, [A Framework for Legislation on Rape \(Model Rape Law\) Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences](#)’), Article 14.

⁹ CEDAW, ‘General Recommendation No. 35 on Gender-Based Violence against Women, Updating General Recommendation No. 19’ (14 July 2017) CEDAW/C/GC/35 (‘CEDAW, General Recommendation No. 35 on Gender-Based Violence against Women, Updating General Recommendation No. 19’), para. 44.

¹⁰ CEDAW, Concluding Observations on the Eight Periodic Report of Ukraine, para. 15(c).

¹¹ Criminal Procedure Code of Ukraine (‘CPCU’), Article 477 (Concept of private criminal proceedings).

(Article 153) compulsion to sexual; intercourse (Article 154; committing acts of a sexual nature with a minor (Article 155); harassment of a child for sexual purposes (Article 156-1); female genital mutilation (Article 121(1) and forced abortion or sterilisation (Article 134). As any of the above-noted acts of violence against women can and often do take place within the context of domestic violence, the offence of domestic violence, contrary to Article 126-1 of the Criminal Code should also be removed from Article 477. This is because the current state of the legislation denies justice to survivors of sexual violence because the survivor, rather than the State, is required to bear the burden of initiating the criminal proceedings by filing the complaint, which is contrary to international human rights standards.¹² International human rights standards¹³ further stipulate that in dealing with sexual violence cases, the withdrawal of the complaint by the victim, taken alone, should not be considered as a reason for terminating the investigation or prosecution. Indeed, a context-based investigation of a report of sexual violence will generally not be wholly dependent on the victim's complaint. Similar to CEDAW Committee, the Istanbul Convention also provides that prosecution of certain offences envisaged in the Convention, including rape and other forms of sexual violence, "shall not be **wholly** dependent upon a report or complaint filed by a victim [...] and that the proceedings may continue even if the victim withdraws her or his statement or complaint."¹⁴ Accordingly, it is recommended that Ukraine should amend Article 284(1.)(7) of the CPCU to ensure that the victim's refusal to give a statement against the alleged perpetrator; withdrawal of their complaint, or their refusal to testify in court should not, taken alone, be considered as a reason for terminating the investigation or prosecution of any sexual or gender-based violence offences, or for issuing the judgement of acquittal. The State, rather than the victim, is required to bear the burden of the criminal proceeding, including the collection of evidence needed to prove the circumstances of the crime. It should be the policy of the prosecution that sexual violence, because of its gravity, impact on victims and systemic impunity, meets the criteria of public interest for the purposes of pressing charges.

11. It is noteworthy that, in relation to domestic violence, Ukraine has already taken certain steps for ensuring compliance with the CEDAW and Istanbul Convention. For example, Article 284 of the CPCU was amended to provide that criminal proceedings are closed if the victim (and in the cases provided for by the CPCU, their representative) withdraws the accusation in criminal proceedings in the form of a private indictment, *except* for proceedings related to a crime related to domestic violence. However, this is still not

¹² UN HRC, Rape as a Grave, Systematic and Widespread Human Rights Violation, a Crime and a Manifestation of Gender-Based Violence against Women and Girls, and Its Prevention: Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Dubravka Šimonović, paras. 91-94; UN HRC, A Framework for Legislation on Rape (Model Rape Law) Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Article 14(a).

¹³ *Opuz v. Turkey*, Application No. 33401/02, Judgement, 9 June 2009, paras 139, 145; UN HRC, A Framework for Legislation on Rape (Model Rape Law) Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Article 14.

¹⁴ CoE Convention on preventing and combating violence against women and domestic violence (adopted 11 May 2011, entered into force 01 August 2014) CETS No.210 ('Istanbul Convention'), Article 55(1).

the case for criminal proceedings related to sexual violence outside the context of domestic violence, including CRSV.

12. Based on these standards, the criminal justice framework currently fails to protect victims of sexual violence in Ukraine from pressures to not report or to withdraw complaints. Indeed, like many other countries, victims and survivors of sexual violence in Ukraine continue to face stigma and shame surrounding incidents of sexual violence¹⁵ and are often placed under pressure by a range of persons – including the perpetrator, their friends and families, criminal justice actors including investigators and prosecution, representatives of state bodies, as well as doctors and lawyers - to either withdraw or not file their complaint.¹⁶

Elimination of Discriminatory Practices Strictly Requiring Corroboration

13. Corroboration is not explicitly required by the CPCU. Article 94 of the CPCU, which deals with evidence evaluation, does not require that the evidence of victims of rape or other forms of sexual violence be corroborated when entering an offence in the Unified Register of Pre-Trial Investigations (to open an investigation) or rendering a finding of guilt.¹⁷
14. Nevertheless, in Ukraine, testimonial evidence in sexual violence cases is generally considered to lack probative value.¹⁸ Even though it is accepted that sexual violence typically happens in situations where the victim is isolated, criminal justice actors routinely require corroboration of the complainant's testimony by (in particular and among other things) requiring that they submit to practices such as a 'rape kit,' invasive, often traumatizing and many times unnecessary gynaecological or other medical examination, or take part in an 'investigative experiment' (re-enactment).¹⁹
15. In its General Recommendation 33, the CEDAW Committee recommended that State parties ensure that women's equality before the law is given effect by "...taking steps

¹⁵ CEDAW, Concluding Observations on the Eight Periodic Report of Ukraine, para. 14; Amnesty International, 'Ukraine: Not a Private Matter: Domestic and Sexual Violence against Women in Eastern Ukraine' (2020), pp. 20, 50, 61-2; UN HRC, 'Report of the Office of the United Nations High Commissioner for Human Rights Conflict-Related Sexual Violence in Ukraine (14 March 2014 to 31 January 2017)' (16 March 2017) A/HRC/34/CRP.4, paras 92, 140, 143; Council of Europe ('CoE') Commissioner for Human Rights, 'Memorandum on the Human Rights Consequences of the War in Ukraine' (8 July 2022), paras 31, 35; Justice for Peace in Donbas, 'Eastern-Ukrainian Center For Civic Initiatives, Unspoken Pain: Gender-Based Violence in the Conflict Zone of Eastern Ukraine' (2017), pp. 4-5, 8.

¹⁶ Amnesty International, [Ukraine: Not a Private Matter: Domestic and Sexual Violence against Women in Eastern Ukraine](#), p. 45.

¹⁷ CPCU, Article 94(1) states that: "[T]he Investigator, public prosecutor, investigating judge, court evaluates evidence based on his own moral certainty grounded in comprehensive, complete, and impartial examination of all circumstances in criminal proceedings being guided by law, evaluates any evidence from the point of view of adequacy, admissibility, and in respect of the aggregate of collected evidence, sufficiency and correlation, in order to take a proper procedural decision".

¹⁸ UN HRC, [Report of the Office of the United Nations High Commissioner for Human Rights Conflict-Related Sexual Violence in Ukraine \(14 March 2014 to 31 January 2017\)](#), para. 119.

¹⁹ See, CPCU, Articles 214(3.) (2) and 240, which allow for these measures to "check" and "clarify" circumstances of the offence in question.

to abolish (among others) any practices that directly or indirectly discriminate against women especially in their access to justice, and to abolish discriminatory barriers to access to justice,” including: “[c]orroboration rules that discriminate against women as witnesses, complainants and defendants by requiring them to discharge a higher burden of proof than men in order to establish an offence or to seek a remedy.”²⁰

16. The continued *practice* in Ukraine of requiring corroboration of the evidence of women who have been victims of rape or other forms of sexual violence is discriminatory, and is not in line with international human rights standards.²¹ Moreover, the procedures set out above should not be considered mandatory and only be carried out when absolutely necessary, with the victim’s full, voluntary and informed consent and in a manner that prioritises their safety and well-being.

Effective Implementation of the Consent-Based Definition of Rape

17. As required under numerous international human rights instruments²² and following recommendations made by CEDAW,²³ Ukraine adopted a consent-based definition of rape in January 2019.²⁴ This definition, which notes that “[c]onsent shall be deemed voluntary if it is the result of a person’s free act and deed, with due account of *attending circumstances*”,²⁵ should be interpreted broadly in line with international standards to include coercive circumstances.²⁶ These circumstances include where the sexual conduct was “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

²⁰ CEDAW, ‘General Recommendation on Women’s Access to Justice’ (23 July 2015) CEDAW/C/GC/33, para. 25(a)(iii).

²¹ See, e.g., CEDAW, General Recommendation on Women’s Access to Justice, para. 25(a)(iii); UN HRC, ‘Resolution 23/25: Accelerating Efforts to Eliminate All Forms of Violence against Women: Preventing and Responding to Rape and Other Forms of Sexual Violence’ (25 June 2013) A/HRC/RES/23/25, para. 8 (emphasis added). See also, UN Women, ‘Handbook for Legislation on Violence Against Women’ (2012) (‘UN Women, Handbook for Legislation on Violence Against Women’), pp. 41-2; ICC, Rules of Procedure and Evidence, reproduced from the Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session, New York (3-10 September 2002) ICC-ASP/1/3 and Corr.1 (‘ICC Rules of Procedure and Evidence’), Rule 63(4); *Prosecutor v. Ntaganda*, ICC-01/04-02/06, *Trial Judgment*, 8 July 2019 (‘*Ntaganda Trial Judgment*’), para. 75. See also, ICC Office of the Prosecutor, ‘Policy Paper on Sexual and Gender-Based Crimes’ (June 2014) (‘ICC Policy Paper on Sexual and Gender-Based Crimes 2014’), para. 93.

²² CEDAW, [General Recommendation No. 35 on Gender-Based Violence against Women, Updating General Recommendation No. 19](#), para. 33; *Karen Tayag Vertido v. the Philippines*, Communication No. 18/2008 (22 September 2009) CEDAW/C/46/D/18/2008, para. 8.7; *R.P.B. v. the Philippines*, Communication No. 34/2011 (12 March 2014) CEDAW/C/57/D/34/2011, para. 8.10; *M.C. v. Bulgaria*, Application No. 39272/98, *Judgement*, 4 March 2004, paras 166, 181; *Istanbul Convention*, Article 36; UN Women, [Handbook for Legislation on Violence Against Women](#), p. 24.

²³ CEDAW, Concluding Observations on the Eight Periodic Report of Ukraine, para 15(a).

²⁴ CCU, Article 152 (Rape): 1. Acts of a sexual nature connected with vaginal, anal or oral penetration into another person's body using genitals or any other subject, without the consent of the victim (rape) - shall be punishable by imprisonment for a term of three to five years.

²⁵ CCU, Article 152.

²⁶ CEDAW, [General Recommendation No. 35 on Gender-Based Violence against Women, Updating General Recommendation No. 19](#), para. 33.

environment, or the invasion was committed against a person incapable of giving genuine consent”.²⁷

18. It is of the utmost importance that efforts are also undertaken to ensure the adequate implementation of the law. It has been reported that there is little understanding by the judiciary, prosecutors, police and investigators as to how to interpret or investigate whether there was a ‘lack of consent’ and guidelines to criminal justice actors have not yet been issued on this matter. Instead, there is still an over-reliance on requiring that the victim demonstrates evidence of injuries resulting from physical force, violence and threats in order to be taken seriously by the police.²⁸ The practice of predominantly focusing on additional physical violence leaves the vast number of sexual violence acts to continue to go unpunished.
19. Examining lack of consent is especially important but not limited to situations where sexual violence is committed within an unequal power relationship or in a coercive environment where violence is ongoing (including domestic violence). In regard to the ongoing war in Ukraine, it should be noted that situations of armed conflict or occupation have been recognised as inherently coercive.²⁹ In this context, a perpetrator may take advantage of the coercive environment to carry out the sexual violence. This can include situations where the perpetrator does not use physical force or threats of force. In these situations, even if the victim “consents”, this consent may not be free and voluntary, as required by CEDAW, the Istanbul Convention and other standards outlined above.
20. As recommended in CEDAW’s 2017 Concluding Observations, Ukraine should “provide relevant training for legal professionals, investigators, prosecutors and police officers in order to enhance their capacity to investigate and prosecute sexual violence cases in accordance with the international protocol on the documentation and investigation of sexual violence in conflict”.³⁰ As part of this, Ukraine should ensure training on international standards around understanding acts of sexual violence and the

²⁷ Rome Statute, Article 7(1)(g), 8(2)(b)(xxii), 8(2)(e)(vi). See also, UN HRC, [Report of the Office of the United Nations High Commissioner for Human Rights Conflict-Related Sexual Violence in Ukraine \(14 March 2014 to 31 January 2017\)](#), para. 151(a). See, CEDAW, [Concluding Observations on the Eight Periodic Report of Ukraine](#), para. 15(a) which recommended Ukraine amend “article 152 of the Criminal Code so as to incorporate provisions on sexual violence, including a broader definition of rape, in line with international standards, *which will include the conditions ‘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 committed against a person incapable of giving genuine consent’* in order to ensure accountability for conflict-related sexual violence”.

²⁸ UN HRC, [Report of the Office of the United Nations High Commissioner for Human Rights Conflict-Related Sexual Violence in Ukraine \(14 March 2014 to 31 January 2017\)](#), paras 117, 119.

²⁹ *Prosecutor v. Ongwen*, ICC-02/04-01/15, [Trial Judgment](#), 4 February 2021, para. 2710; *Ntaganda Trial Judgment*, para. 935; *Prosecutor v. Bemba*, ICC-01/05-01/08, [Judgment pursuant to Article 74 of the Statute](#), 21 March 2016, paras 103-4. See also, ECOSOC, ‘[Contemporary Forms of Slavery: Systematic Rape, Sexual Slavery and Slavery-Like Practices during Armed Conflict Final Report Submitted by Ms. Gay J. McDougall, Special Rapporteur](#)’ (22 June 1998) E/CN.4/Sub.2/1998/13, para. 25.

³⁰ CEDAW, [Concluding Observations on the Eight Periodic Report of Ukraine](#), para. 15(b).

investigation of coercive circumstances and these trainings need to be embedded in the mandatory qualification and continuous professional development programs.

Protective Measures

21. Protective measures are an element of the right to be free from discrimination. In General Recommendation 35, the CEDAW Committee directed states to “[a]dopt and implement effective measures to protect and assist women complainants and witnesses of gender-based violence before, during and after legal proceedings.”³¹ Further, CEDAW’s General Recommendation 33 provides that States should “[p]rotect women complainants [...] against threats, harassment and other harm before, during and after legal proceedings and provide the budgets, resources, guidelines and monitoring and legislative frameworks necessary to ensure that protective measures function effectively.”³²
22. The existing protective measures framework in Ukraine is diffuse, inefficient, and ill-equipped to deal with the needs of women who have been victims of rape and other forms of sexual violence in a survivor-centred way. The law which regulates Ukraine’s witness protection scheme,³³ entrusts witness protection to a wide range of authorities. A lack of coordination or cooperation between the authorities responsible for implementation of those measures adversely impacts on their effective implementation.³⁴
23. Additionally, while participants of criminal proceedings are entitled to protective measures if there is information indicating a ‘real threat’ to their life, health, housing, or property,³⁵ what constitutes a ‘real threat’ is not interpreted in the legislation and in practice its application is open to restrictive interpretation.³⁶ In reality, evidence is

³¹ CEDAW, [General Recommendation No. 35 on Gender-Based Violence against Women, Updating General Recommendation No. 19](#), para. 40 : “[A]dopt and implement effective measures to protect and assist women complainants and witnesses of gender-based violence before, during and after legal proceedings including through: a) protecting their privacy and safety, in line with recommendation No. 33, including through gender-sensitive court procedures and measures, bearing in mind the victim/survivor’s, witnesses’ and defendant’s due process rights; b) providing appropriate and accessible protection mechanisms to prevent further or potential violence, without the precondition of victims/survivors to initiate legal actions...” .

³² CEDAW, [General Recommendation on Women’s Access to Justice](#), para. 18(g).

³³ [Law of Ukraine No. 3782-XII](#), Article 2.

³⁴ See, e.g., T. Semkiv, ‘[Improving the Security of Persons Involved in Criminal Proceedings](#)’, p. 125; O. Bezpalova, ‘Foreign Experience in the Field of Witness Protection’, p. 44.

³⁵ [Law of Ukraine No. 3782-XII](#), Article 20.

³⁶ O. Semiorkina & Mykola Mykheiev, ‘[On the Problems of Ensuring Protection Measures for Social Activists and Human Rights Defenders in Criminal Proceedings](#)’ (UHHRU 2020), (‘Problems of Ensuring Protection Measures’), p. 15. Particularly, in 2004, the Supreme Court of Ukraine emphasized on the “need to find out from the victim whether they had been threatened, abused, bribed or subject to other illegal actions by the defendant, their relatives and other persons in order to force [victims] to refuse to testify or not to give knowingly false testimony.” Yet this statement remains vague and not self-explanatory, and, in any event, it does not constitute a clear legislative algorithm. See, [On the practice of application by courts of the legislation which provides the rights of victims of crimes](#), Plenum of the Supreme Court of Ukraine, 2 July 2004, para 20; V. Kasko and A. Orlean, ‘[Ensuring the Security of Participants of Criminal Proceedings Connected with the Human Criminal Trafficking](#)’ (VAITE 2012) (‘Ensuring the Security of Participants’), p. 13.

required that the threat already exists before the participant may be provided protection.³⁷ This excludes many witnesses and victims requiring protection, including women who have been victims of sexual violence, as well as CRSV. Accompanying this are reports that the responsible authorities fail to properly apply the granted protection procedures.³⁸

Victim Reparations

24. CEDAW General Recommendation 35 urges States to “provide effective reparation to women victims/survivors of gender-based violence. Reparation should include different measures, such as monetary compensation and the provision of legal, social and health services including sexual, reproductive and mental health for a complete recovery, and satisfaction and guarantees of non-repetition in line with general recommendations No. 28, 30, and 33.”³⁹
25. According to Article 56(1)(10) of the CPCU, victims of crime are entitled to obtain compensation for damage resulting from the crime.⁴⁰ However, an overview of Ukrainian practice conducted by the EU Advisory Mission to Ukraine shows that obtaining compensation from a convicted person for the damage caused by their crime is often impossible, and there is no special fund for victims of violent crimes.⁴¹ There has been no comprehensive state policy in Ukraine for remedy and reparation for victims affected by the conflict since 2014, including CRSV survivors.⁴²
26. Recognising the significant financial constraints placed on Ukraine as a result of the war beginning in 2014 and continuing to this day, and that in principal Russia as prosecutor of the war and its human and financial consequences as well as the entity ultimately responsible for the actions of its troops, including failure to prevent sexual

³⁷ Baltic Human Rights Society, ‘Witness Protection’ (Human Rights Guide, 2016); V. Kasko, A. Orlean, *Ensuring the Security of Participants*, p. 13. See also, CoE Parliamentary Assembly, ‘[The Protection of Witnesses as a Cornerstone for Justice and Reconciliation in the Balkans](#)’ (Provisional Version – as adopted on 21 June 2010), para. 130 stating that a threat “[m]ay not necessarily put [the witnesses] in direct danger, losing their job for example, but there are also examples of key witnesses being murdered”, which can preclude other witnesses from providing testimonies in fear of the same violent scenario occurring with them.

³⁸ See, e.g., A. Didenko, ‘[Interrogation of a Witness with the Application of Security Measures in Criminal Proceedings: Legislative Requirements And Case Law](#)’ (*Yurydychna Gazeta*, 2021) (‘Interrogation with the Application of Security Measures’); ‘[Problems of Ensuring Protection Measures](#)’, p. 21 (referring to the data obtained as a result of the interviewing of the persons, to whom the protective measures were applied).

³⁹ CEDAW, [General Recommendation No. 35 on Gender-Based Violence against Women, Updating General Recommendation No. 19](#), para. 46.

⁴⁰ CPCU, Article 56(1)(10).

⁴¹ Veronika Kristkova, Vadym Chovgan, ‘Why Victims of Crime Suffer Twice in Ukraine’ (*EUAM Ukraine*, 28 March 2019) <<https://www.euam-ukraine.eu/news/why-victims-of-crime-suffer-twice-in-ukraine/>>.

⁴² Amal Nassar, Kateryna Busol, Alexa Sydor-Czartorysky, ‘[Ukraine Study on the Status of and Opportunities for Reparations for Survivors of Conflict-Related Sexual Violence](#)’ (May 2022) (‘Nassar, Busol, Czartorysky, *Ukraine Study on the Status of and Opportunities for Reparations for Survivors of Conflict-Related Sexual Violence*’), pp. 15, 60; OHCHR, ‘[Report on the Human Rights Situation in Ukraine: 1 August 2021- 31 January 2022](#)’ (28 March 2022), para. 32.

violence against Ukrainians by its troops and those under its effective control,⁴³ Ukraine should seek – as far as possible – to advance its legal response to the consequences of the armed conflict and provide victims with avenues for reparations.⁴⁴ Reparations programs could be implemented through cooperation with the international community, who should be called upon to support and fund projects and initiatives aimed at responding to the needs of victims of CRSV and their access to remedy and reparations.⁴⁵

Outreach and Messaging Strategy

27. Sexual violence against women is historically under-reported in Ukraine’s patriarchal society.⁴⁶ This remains the case during the country’s war with Russia and results, in part, from a lack of trust in the criminal justice authorities and their responses to sexual violence.⁴⁷
28. In its General Recommendation 33, CEDAW recommended that States “take appropriate action to create supportive environments that encourage women to claim their rights, report crimes committed against them and actively participate in the criminal justice processes”.⁴⁸ In the current climate, this will require special measures. An important first step would be a messaging strategy from the top levels of government which reflects a clear and ongoing commitment to women who have survived rape and other forms of sexual violence to implement the principles of the CEDAW and Istanbul Convention in enabling their access to justice in a safe and supportive environment. This message and may reflect some of the legal and practical changes proposed above. This message should then be echoed throughout the arms of government and criminal justice sectors, to build public trust in the authorities. Such a messaging strategy can be understood to reflect the State’s intention to take the lived experiences of women who survived sexual violence seriously, and to provide them information on how to access justice and claim their rights. This is an essential step to empowering women and survivors of sexual violence.

⁴³ Ceasefire Centre for Civilian Rights, ‘[Reparations for Ukraine: An International Route Map](#)’ (June 2022) (‘Ceasefire Centre for Civilian Rights, [Reparations for Ukraine: An International Route Map](#)’), p. 30.

⁴⁴ Nassar, Busol, Czartorysky, [Ukraine Study on the Status of and Opportunities for Reparations for Survivors of Conflict-Related Sexual Violence](#), pp. 60, 74.

⁴⁵ Nassar, Busol, Czartorysky, [Ukraine Study on the Status of and Opportunities for Reparations for Survivors of Conflict-Related Sexual Violence](#), pp. 74-5; Ceasefire Centre for Civilian Rights, [Reparations for Ukraine: An International Route Map](#), p. 27.

⁴⁶ CEDAW, [Concluding Observations on the Eight Periodic Report of Ukraine](#), para. 14.

⁴⁷ Amnesty International, [Ukraine: Not a Private Matter: Domestic and Sexual Violence against Women in Eastern Ukraine](#), pp. 11, 17, 43, 45; UN HRC, [Report of the Office of the United Nations High Commissioner for Human Rights Conflict-Related Sexual Violence in Ukraine \(14 March 2014 to 31 January 2017\)](#), para. 14; CoE Commissioner for Human Rights, [Memorandum on the Human Rights Consequences of the War in Ukraine](#), para. 33.

⁴⁸ CEDAW, [General Recommendation on Women’s Access to Justice](#), para. 51(d).

Recommendations

- Take all feasible measures to ensure that all cases of sexual violence, including those committed during the war, are thoroughly investigated, that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions and that victims have access to effective remedies. Ensure that all reports of rape or other acts of sexual violence are taken seriously and investigated promptly, thoroughly and impartially, from a gendered perspective and free from stereotypes.
- Amend Article 477 of the Criminal Procedure Code to ensure ex officio (public) prosecution of all sexual violence crimes.
- Amend Article 284(1)(7) of the Criminal Procedure Code to ensure that the withdrawal of the victim's complaint should not be considered as the sole reason for terminating the investigation of sexual violence and other gender-based violence offences.
- Issue guidance/practice directions and conduct training sectors to ensure that discriminatory practices strictly requiring corroboration in cases of sexual violence are eliminated.
- Issue guidelines/practice directions and provide sustained training, mentorship and resources to investigators, law enforcement and the judiciary on how to interpret and implement a consent-based definition of rape and other forms of sexual violence to ensure that all victims can access justice.
- Implement effective, individualised support and protection measures in the case of women who have been victims of sexual violence, whether in conflict or peacetime, to guarantee their right to be free from discrimination.
- In planning measures to ensure survivors of conflict-related violence have an opportunity for healing and rehabilitation, ensure that provision is made for women survivors of sexual violence, irrespective of when they may identify themselves as victims.
- Create a public messaging strategy with a clear and ongoing commitment to women, providing information on how all levels of the criminal justice system will work to assist survivors of sexual violence to access justice, and information on the rights of victims.
- Collect, analyse and publish administrative data on sexual violence crimes, disaggregated by sex, age, ethnic origin, nationality status, immigration status, disability, sexual orientation, gender identity, involvement in prostitution and other indicators of vulnerability, as well as relationships between the victim and perpetrator.