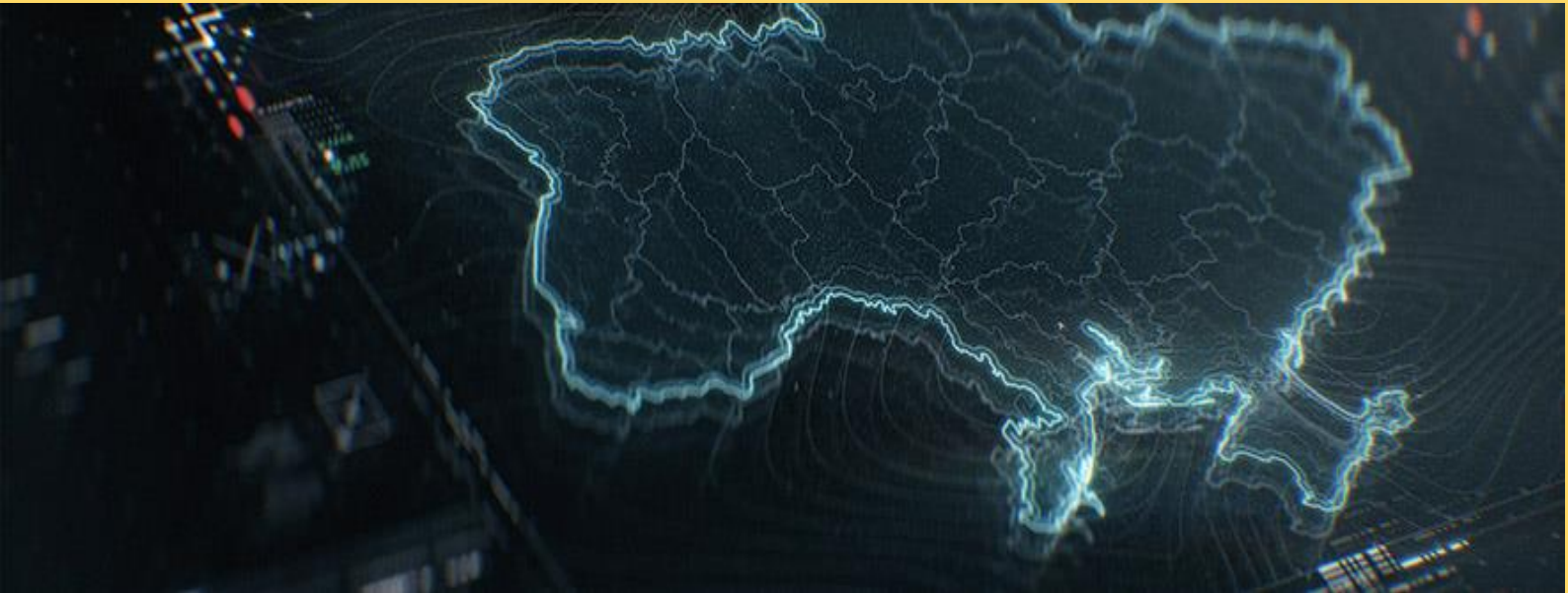




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UKRAINE SETTLEMENT OPTIONS: **Addressing Sexual Violence in the Ukraine Conflict** By Anne Marie Goetz

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UKRAINE SETTLEMENT OPTIONS PAPER:

ADDRESSING SEXUAL VIOLENCE IN THE UKRAINE CONFLICT

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*A [shorter version](#) of this paper has been published on *Opinio Juris*. The views expressed in this paper are the author's alone.*

1. INTRODUCTION

As of 3 June 2022, 124 cases of sexual abuse committed during the Ukraine conflict had been submitted to the Office of the UN High Commissioner for Human Rights. Most incidents took place against women and girls -- though men and boys have also been targeted -- in areas occupied by Russian forces, and the numbers are likely to be an underestimate. As noted by the UN Secretary-General Antonio Guterres during a [UN Security Council Open Debate](#) on Women Peace and Security on 15 June 2022: “we know that for every woman who reports these horrific crimes, there are likely to be many more who remain silent, or unrecorded”. [Ukrainian sources](#) suggest cases so far are in ‘the hundreds’. While the patterns across these and other emerging cases of conflict-related sexual violence have yet to be established, there are cases with multiple victims that indicate command responsibility, such as the detention and repeated rape of 25 girls and women aged 14-24 for several days in a basement in Bucha. Cases of gang rape, public rape, rape in front of family members, and rape of very young children may indicate use of sexual violence in a systematic way, as a tactic to demoralize and ‘emasculate’ Ukrainians and to trigger population flight.

These allegations of sexual violence raise serious questions about war crimes. International humanitarian and human rights law categorically prohibit rape and all forms of sexual violence against civilians, enemy soldiers, and detainees. Evidence of mass rape, public rape and systematic engagement in sexual violence by Russian soldiers will be assessed as crimes against humanity.

In the context of Russian aggression in Ukraine, such allegations are not new. Amnesty International’s [November 2020 report](#) indicated that women in eastern Ukraine experienced sexual violence from military personnel in various forms, especially in areas along the post-2014 contact line, and a [2018 UN report](#) raised similar concerns about sexual violence in separatist-held areas and the ‘Autonomous Republic of Crimea’. Even before the February 24 invasion, the [UN external observers](#) noted that Ukraine’s inconsistent legal framework on violence against women, along with poor law enforcement, a proliferation of weapons, and high numbers of mobilized military actors in the east, put Ukrainian women at significant risk of gender-based violence. Limited services for victims worsens their suffering, while the social stigma of reporting in an environment of victim-blaming and masculinist military posturing encourages impunity. The expansion of the war, the extended occupation of Ukrainian settlements by Russian soldiers, and attacks on medical and social service infrastructure, exacerbate these problems.

Conflict-related sexual violence can occur beyond areas of immediate hostilities. Displaced people and refugees are at risk of sexual violence and exploitation in transit and in informal settlements. With few resources and in desperate circumstances, Ukrainian women and girls are also vulnerable to sex traffickers and sexual exploitation (see [this analysis](#)).

This paper identifies options for ensuring sexual violence is addressed in any future negotiations between the Russian Federation and Ukraine. It begins with definitions and a discussion of data and documentation, and then considers:

- Addressing sexual violence in any diplomatic engagements, as well as in international sanctions regimes against individual perpetrators and aggressor governments;
- Survivor-centered provision of medical, psycho-social, security and other services to victims aimed at supporting immediate and long-term recovery and removing the risk of repeated attacks;
- Documentation of cases and collection of data and evidence (for use in criminal cases) in ways that minimize re-traumatization and protect victims both from social stigma and potential reprisals;
- Prohibition of sexual violence in ceasefire commitments;
- Inclusion of provisions on the prohibition and prevention of conflict-related sexual violence in peace negotiations and in a peace accord, at a minimum in sections on security arrangements and DDR, transitional justice measures and reparations, law reform, and implementation arrangements;
- Inclusion of representatives of victims and gender experts in expert mediation support teams and in consultations over peace accord options.

Further guidance in these areas is provided by the UN Office of the Special Representative of the Secretary-general on Conflict-Related Sexual Violence (OSRSG on CRSV). The OSRSG on CRSV and the Ukraine government signed a [‘Framework for Cooperation’](#) on 3 May 2022 that outlines areas of collaboration on data, services for survivors, documentation, and the prevention of sex trafficking. This builds on work by UN Women and the UN Human Rights Monitoring Mission in Ukraine on a [Strategy for Prevention of and Response to Conflict Related Sexual Violence in Ukraine](#).

2. TERMINOLOGY AND DEFINITIONS

Victim/Survivor: The term ‘survivor’ is often used by organizations supporting those who have suffered sexual violence in order to reject implications that ‘victims’ lack agency. In this paper, the term ‘victim’ is used to acknowledge the criminal intent of the act and the harm it causes, and as a reminder that some victims do not survive. The term is used without judgement as to agency.

Widespread and systematic sexual violence in conflict: Armed conflict creates environments in which gender-based and sexual violence can thrive, and be committed by combatants on all sides, against civilians and other combatants. The chaos of conflict and population displacement can also exacerbate pre-existing patterns of sexual violence and leave some populations highly vulnerable to sexual exploitation by humanitarian actors. Not all cases of sexual violence in conflict are of international concern; some may constitute domestic criminal matters.

The UN Secretary-General's annual reports to the UN Security Council, produced by the [OSRSG on CRSV](#), offer definitions of sexual violence in conflict (SVC) as well as lists of parties credibly suspected of deploying SVC as a tactic of warfare. Definitions of rape, sexual slavery, sexual violence in inhumane acts and torture, are found in the statutes and jurisprudence of international criminal tribunals and the International Criminal Court. In particular, the ICC [Elements of Crimes](#) defines the *actus reus* element of 'sexual violence' as when:

... the perpetrator committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature 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 persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.

Beyond the specifics relating to sexual violence as forced acts of a sexual nature, particular attention is given to establishing whether attacks are 'widespread' and/or 'systematic'. 'Widespread' implies a large number of victims and a large-scale attack. 'Systematic' suggests that the attacks are in some way organized or condoned and that the incidents were unlikely to occur randomly. Sexual violence can be a crime against humanity, even if there are very few victims, if it is part of a widespread or systematic attack on a civilian population.

3. DATA AND DOCUMENTATION

Many victims of SVC do not report the crime for fear of deeper victimization (male victims and ethnic minority victims may experience extremely acute shaming and ostracism). Because of low rates of reporting, and because of difficulties gathering data in the fog of war, there is a tendency to assume that SVC has not taken place, until reports emerge, sometimes many years later (see e.g. the [report](#) on sexual violence in the Lebanese Civil Wars by Legal Action Worldwide and UN Women). This reticence to condemn and take action on SVC can have devastating consequences in terms of responding to victims' needs and addressing these crimes in the peace and recovery process – resulting in impunity and further entrenchment of the patriarchal cultures that dismiss or trivialize these crimes. Instead, an opposite practice is required; it should be *assumed* that SVC has occurred, particularly where armed groups have a history of perpetrating such acts in other conflicts (see [O'Brien and Quenivet 2022](#)), and preventive and response measures should be assembled from the outbreak of hostilities. As the SRSG on SVC, Pramila Patten noted in a [UN Security Council discussion](#) of Ukraine on 6 June: "An active battle-ground is never conducive to accurate 'book-keeping' [...] if we wait for hard data and statistics, it will always be too late. (...) "We do not need hard data for a scaled-up humanitarian response, nor for all parties to put in place preventive measures."

Prevention, pre-ceasefire, and early confidence-building work, should include mitigation measures but also data gathering, specifically focused on identifying patterns of SVC. This should be grounded in gender-related conflict analysis to guide civilian protection measures and mediation, and to build awareness of the gender-differentiated impact of armed conflict. International standards have been established for the safe, respectful, and effective documentation and recording of victims' experiences (see e.g. [UNGA Resolution 63/155](#); this [2008 Report to the UN Human Rights Council](#); and the [Istanbul Protocol](#)). Nadia Murad, a SVC survivor, launched the '[Murad Code](#)' in 2022, designed to support the investigation, documentation, and recording of SVC cases in ways that assist future prosecution, but primarily

protect victims from exposure and reprisals, as well as traumatization. This Code has been translated into Ukrainian.

4. INTERNATIONAL AND DIPLOMATIC ACTION

To ensure that SVC is addressed at the earliest stages of conflict resolution and humanitarian response, coordinated upstream political and diplomatic engagement is required so that SVC is not treated as an afterthought. In addition to providing funding and assistance for the documentation of SVC and the provision of humanitarian aid and security to victims, and in the absence of action by the UN Security Council to build a sanctions regime to target perpetrators of sexual violence, international actors that support Ukraine can ensure that their own bilateral trade, diplomatic, banking, travel and other sanctions and asset bans on individuals and the Russian state, target perpetrators of sexual violence. The UK, for instance, on 16 June 2022, [included sexual violence in sanctions](#) on four Military Colonels from the 64th Separate Motorised Rifle Brigade, a unit known to have killed, raped, and tortured civilians in Bucha.

The United Nations requires its mediators to address SVC. Other international actors should ensure that they too impose this requirement. The UN's 2012 '[Guidance for Mediators: Addressing Conflict-Related Sexual Violence in Ceasefire and Peace Agreements](#)' (2012 Guidance for Mediators) can be used to ensure that sexual violence is addressed. Its key principles include a commitment to raise sexual violence with parties to conflict and ensure that they make firm commitments to stop all acts of SVC.

Indirect military or intelligence support provided by external actors should include risk mitigation measures informed by an understanding of patterns of SVC. For instance, intelligence on sex trafficking should be shared to help prevent increased involuntary migration for sex work. Humanitarian assistance in-country, and amongst Ukrainian refugees, must also include physical and mental health resources for victims, alerts regarding conflict-driven trafficking, and zero tolerance of sexual exploitation and abuse perpetrated by humanitarian aid providers.

Support for media coverage of sexual violence will also help ensure the international community's sustained focus on SVC and will contribute to effective mitigation and redress, as well as, hopefully, de-stigmatizing victims.

5. VICTIM/SURVIVOR-CENTERED MEDICAL, PSYCHOSOCIAL, SECURITY AND OTHER SERVICES

While this paper is focused on ensuring SVC is addressed in conflict-resolution, immediate humanitarian efforts to address the health, safety and survival of sexual violence victims must be a primary concern at all phases of conflict, peace-making, and peacebuilding. In 2019, UN Security Council resolution 2467 asserted that measures to prevent and respond to SVC, including access to medical and psychosocial care, must be centered on protecting the human rights of victims. Humanitarian responses inside Ukraine, and countries receiving large numbers of refugees, must provide services to all victims of SVC without discrimination, and such services must be tailored to their needs and wishes. This can include respecting decisions to terminate pregnancies caused by rape.

Domestic abortion restrictions can undermine adequate responses for women and girls made pregnant by rape. Ukraine permits abortion up to 14 weeks; however, in some neighboring countries such as Poland (the location of the majority of Ukrainian refugees), the national prohibition on and criminalization of abortion will limit effective responses to Ukrainian refugee victims of SVC. This could mean that Ukrainian women made pregnant from Russian rape will risk imprisonment if they seek abortion. Abortions are permitted there in cases of rape, but only if the rape has been officially confirmed by prosecutors, a practical impossibility considering the overloaded health and judicial systems and limited documentation. Health care professionals may also be at risk if they provide assistance to terminate pregnancy. Pregnant victims will likely be best served via immediate asylum in countries with more liberal abortion laws and services.

Services oriented to addressing the stigma and discrimination faced by victims – which can be exacerbated because of their gender, sexuality, and ethnic origin – are also required, and may include support for relocation and for combatting social ostracism. Physical and psychosocial treatment and recovery are matters that can also be included in any eventual peace agreement. The Colombia 2016 [Final Agreement to End Armed Conflict and Build Sustainable and Lasting Peace](#) contains provisions for rehabilitation of victims of SVC in its justice and reparations section (see page 192 inter alia).

In resolution 2467, the Security Council also asserted that beyond rehabilitation and reintegration, accountability for sexual violence requires legal recourse for survivors. This is a matter that should be addressed in a peace process in areas of transitional justice and legal reform, and also requires early and continuous attention to evidence-gathering for future prosecutions.

6. PROHIBITION OF SEXUAL VIOLENCE IN CEASEFIRE / CESSATION OF HOSTILITIES AGREEMENTS

All conflict resolution efforts have been required to integrate a gender perspective since the passage of UNSC resolution 1325 in 2000 (para. 8). The UN Department for Political and Peacebuilding Affairs (DPPA) has issued guidance to explain what this means for mediators and negotiators (see the 2012 Guidance for Mediators and 2017 '[Guidance on Gender and Inclusive Mediation Strategies](#)'). These documents provide suggestions for means of ensuring that sexual violence is addressed in the main phases of conflict resolution. Operational paragraph 3 of [UNSC 1820 \(2008\)](#) demands the categorical prohibition of all forms of sexual violence against civilians through:

... inter alia, enforcing appropriate military disciplinary measures and upholding the principle of command responsibility, training troops on the categorical prohibition of all forms of sexual violence against civilians, debunking myths that fuel sexual violence, vetting armed and security forces to take into account past actions of rape and other forms of sexual violence, and evacuation of women and children under imminent threat of sexual violence to safety.

This paragraph adds that the views of conflict-affected women should be taken into account in implementing these measures. Security Council resolutions 2106 and 2467 establish that ceasefire agreements should require that orders be immediately issued through respective chains of command to prohibit sexual violence, to exclude it from amnesty provisions, and

include concrete, timebound, gender-sensitive measures to monitor and prevent any further attacks.

According to the DPPA's [Guidance on Inclusive Mediation](#), SVC must be "addressed early and directly in any cessation of hostilities or ceasefire agreement so that persons with command responsibility understand their obligations to prevent or ensure punishment of such crimes." At a minimum, ceasefire agreements must prohibit sexual violence by all parties.

Despite this, many ceasefire agreements have failed to list sexual violence as a prohibited act. Those that do typically add sexual violence to the list of outlawed forms of combat, and omit mention of SVC against men and boys. For instance, the 2013 [Ceasefire Agreement and Declaration of Principles for the Central African Republic](#) states (author's translation):

We commit ... to:

...

Respect human rights, particularly those of children and women, and to abstain from any and all acts of sexual violence against women on the one hand, and the recruitment of children as soldiers on the other.

A gender-neutral mention of SVC is found in the Burundi 2006 [Comprehensive Ceasefire Agreement](#), which calls for:

Cessation of all acts of violence against the civilian population: acts of vengeance: summary executions; torture; harassment; detention and persecution of civilians on the basis of ethnic origin; religious beliefs; and or political affiliation; arming of civilians; use of child soldiers: sexual violence; sponsoring or promotion of terrorist or genocide ideologies (Page 3, Article 2, 1.1.5.)

Ideally, ceasefire, cessation of hostilities, and truce agreements should explicitly prohibit sexual violence to ensure that it cannot be used as a tactic of warfare after the guns fall silent. Implementation arrangements should include women in ceasefire monitoring and reporting, gender expertise, translators, and referral services. The 2006 [Darfur Peace Agreement](#), for instance, commits (in Article 25, para. 229) to:

(e) Support the participation of a greater number of women in the mechanisms.

Greater specificity about the number of women to be included, or the percentage of participants in monitoring and implementation mechanisms that they should represent, is desirable.

7. SECURITY ARRANGEMENTS AND DEMOBILIZATION, DISARMAMENT AND REINTEGRATION (DDR)

The UN DPPA's 2012 Guidance for Mediators devotes a full chapter on security arrangements and DDR with priority actions to proscribe sexual violence in demobilization processes, to identify and disarm perpetrators of sexual violence, to protect communities from sexual violence perpetrated by returning fighters, and to reform security services to establish zero tolerance for sexual violence. The protection of women and girls, as well as men and boys, whether as members of armed groups, or as members of the communities receiving demobilized combatants, must be prioritized, and mediators are advised to consult extensively

with women on the design of security arrangements that seek to address or prevent sexual violence.

DDR arrangements must:

- Prohibit SVC as an element or tactic of conflict;
- Exclude SVC from amnesty provisions;
- Assert command responsibility to prevent, respond to and punish acts of SVC, for instance, in dismantling, disengagement and withdrawal of forces;
- Ensure early, voluntary release of those abducted, coerced or forcibly recruited from within the ranks of armed forces or groups;
- Document SVC experienced by demobilizing fighters, particularly women and children;
- Include gender-sensitive provisions within a code of conduct identifying permitted or proscribed actions towards military and civilian populations;
- Plan for appropriate facilities for men, women and children during the separation of forces and in cantonment sites;
- Establish security environments (e.g. through demining and policing) that are sensitive to the different needs of men, women and children (e.g. by safeguarding agricultural paths, wells and firewood collection areas).

Where conflict leaves behind a male population that has been mobilized for violence, and a high concentration of weapons in civilian and former combatants' hands, gender-based violence can increase and become normalized. The militarization of a population and weapons proliferation can have long-standing impacts in terms of increased violence against women and children (see this [2020 Amnesty International Report](#)). Disarmament arrangements need to extend to civilian defense forces and mobilized communities and households.

Longer-term security sector reform arrangements can include:

- Legislation to tackle discriminatory practices and address violence against women;
- Recruitment of women into armed forces, including the national police (approximately 15% of Ukraine's combat forces are women, a high number globally, which means it has a strong foundation for building a more gender-balanced security sector);
- Gender-sensitive selection criteria for recruitment and vetting standards of ex-combatants;
- Strategies for integration into security organs;
- Mandatory SVC training for security forces;
- Prevention of normalization of SVC in a militarized, masculinist environment by dismantling, disengaging and withdrawing armed forces and integrating former combatants into security or state institutions;
- Mandates for security forces to combat and monitor SVC, provide training on effective military response and law enforcement, and develop a code of conduct to vet security actors, prohibit SVC and punish misconduct;
- Exclusion of individuals credibly suspected of committing or being responsible for SVC from participating in government and the national security system, including the armed forces, police, intelligence services and the national guard, as well as civilian oversight and control mechanisms;

- Inclusion of representatives of women's and gender equality interest groups in civilian arrangements for oversight of the military.

The 2006 Darfur Peace Agreement has a subsection on the protection of women and children in security arrangements, calling for special measures to prevent gender-based violence (Article 26, paras. 275-279). The parties are required to:

- Investigate gender-based crimes;
- Establish separate police counters for reporting of crimes committed against women;
- Appoint women police personnel to staff these counters;
- Ensure that a significant number of police are women;
- Establish specialist gender units to work with women and children; and
- Ensure all their investigations and monitoring shall include at least one woman.

In addition, recognizing that the majority of internally displaced persons in conflict or post-conflict areas are women and girls, mediators should promote inclusion of women in all safety and security arrangements relevant to displacement, such as the management of camps.

8. TRANSITIONAL JUSTICE AND LAW REFORM

Failure to investigate SVC and prosecute the cases that constitute war crimes, crimes against humanity and genocidal crimes, not only rewards perpetrators with a dangerous impunity, but makes a mockery of the post-conflict peacebuilding enterprise, because it sends a signal that the rights and physical security of half the population are not of concern (see [Jenkins and Goetz 2010](#)). Peace agreements must ensure that SVC is treated as seriously as other crimes under international law.

The ICC's Rome Statute contains provisions for sexual violence as war crimes (Art. 8(2)(b)(xxii)) and crimes against humanity (Art. 7(1)(g)). The ICC's Office of the Prosecutor has announced it is [investigating sexual violence](#) relating to the Ukraine-Russia conflict, and has committed to closing 'the impunity gap' when it comes to these crimes, which have traditionally been under-prosecuted. However, even if political constraints to international indictments and prosecutions can be overcome, only a few people will be prosecuted. Transitional justice measures, including domestic criminal prosecutions of captured perpetrators, may permit some justice to be done, but it is likely that a truth-telling process and reparations program will be needed address the impact and legacy of sexual violence. In the longer-term, the national legal framework for addressing gender-based violence and for ensuring timely investigations and prosecutions will need reform to meet the highest standards of justice for victims.

Several recent peace agreements include provisions, in their transitional justice or law reform sections, that:

- Acknowledge that SVC is a serious crime under international law;
- Prohibit amnesties;
- Establish arrangements to ensure victims and witnesses can report these crimes and testify in prosecutions or truth-seeking bodies; and
- Ensure reparations for victims.

The UN's OSRSG on CRSV can deploy its Team of Experts on the Rule of Law and Sexual Violence in Conflict to strengthen domestic institutional safeguards against impunity, and to build the technical capacity of police, prosecutors, and the judiciary at the national level.

A good example of a victim-centered approach to transitional justice is found in [Colombia's 2016 Final Agreement](#), in Chapter 5. This chapter ensures that sexual violence will be addressed by a Tribunal for Peace, with a special investigation team on sexual violence included in the Investigation and Prosecution unit. It incorporates commitments to protect victims from retaliation, facilitate truth-telling, and provide reparations.

9. SEXUAL VIOLENCE IN OTHER AREAS OF PEACE AGREEMENTS

Sexual violence has been typically addressed in pre-ceasefire/ humanitarian access agreements, ceasefires, DDR arrangements, and justice provisions. This prioritises protection/security and legal frameworks for addressing sexual violence. It neglects the way the denigration and contempt communicated via sexual violence may label its victims, particularly women, as incapable of contributing meaningfully to post-conflict governance and economic recovery. In addition, in post-conflict environments that valorize militarized masculinity and male-typed combat sacrifices, existing gender inequalities can be exacerbated and further sideline women's participation in long-term peacebuilding.

Peace agreements can factor in ways in which SVC undermines women's capacities to seek public office or be treated with respect in positions of public authority, engage in the economy, and restore livelihoods. In male-dominated decision-making arenas, women already face challenges in seeking to influence public policy debates. Although in Ukraine the level of women in the current Parliament (20.5% of seats), and in government (5 among 23 positions), is the highest since independence, this still falls short of what is considered the minimum threshold for women to move from a token presence to an influential '[critical mass](#)'. War-time governance means centralization of decision-making and overwhelming influence by the military administration, both of which can further sideline women legislators. Mitigation measures may be appropriate to reverse this pattern and ensure diversity in post-conflict governance. Ukraine does not have gender quotas at the national level, although introduction of a [30% gender quota in local elections in 2015](#) suggests there is scope to expand this nationally (enforcement mechanisms need however to be strengthened).

The peace accord with the most extensive treatment of sexual violence beyond the areas of ceasefires, DDR and justice is [Colombia's 2016 Final Agreement](#). This includes provisions in the following areas:

- **Power-sharing and political participation (Chapter 2):** Creates specialized, independent bodies such as Human Rights Commissions and Commissions on the Status of Women and Girls, with consultative, administrative and even judicial powers to support, inter alia, investigation and prevention of gender-based violence. Provisions for affirmative action (gender quotas) in elections to representative bodies to strengthen women's representation.
- **Social welfare (Chapter 5):** Calls for psychosocial rehabilitation including emotional recovery measures at the individual level and mental health services.
- **Sexual violence and criminality linked to illicit drug trade (Chapter 4):** Recognizes that women drug users, or the female population of zones of illicit drug production and

trade, suffer higher rates of sexual violence than elsewhere, requiring tailored security measures, as well as introduction of alternative sources of livelihood.

Peace agreements have paid limited attention to women's participation in economic recovery provisions and wealth-sharing deals. If negotiations include post-conflict industrial, trade and employment recovery, they should also factor in measures to reduce the economic impact of heightened insecurity and trauma left by SVC.

10. PARTICIPATION IN PEACE PROCESSES

It is unlikely that sufficient attention will be paid to sexual violence in any peace process, or in justice and reparation mechanisms, without women's direct participation in negotiation and monitoring teams, and without direct representations from women civil society and victim groups. Examples of means of ensuring women's participation in peace talks will be provided by another paper in this series. The method used in the Colombia peace talks is considered a powerful means of bringing the perspectives of conflict-affected women to the attention of peace-makers. A specific Gender Sub-Commission was established, which included women members of both the government and FARC negotiating teams, and heard testimonies and proposals from women's organizations and victims' groups.

The monitoring of implementation of any part of a peace agreement, from the ceasefire onwards, must include a mandate to monitor incidents of sexual violence that violate the ceasefire, as well as early warning indicators of increased gender-based violence. Specialized teams with gender and sexual violence prevention experts should be deployed. The 2016 Colombia Final Agreement makes specific mention (on page 205) of the need to adapt monitoring mechanisms to detect, report on, and prevent sexual violence.