
Monitoring and Investigating Sexual Violence

Amnesty International and CODESRIA



Amnesty International



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I. When is sexual violence a crime under international human rights law?

1. What is sexual violence?

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

- rape
- indecent assault (e.g. touching a woman's breast)
- sexual slavery
- forced marriage
- forced impregnation and forced maternity
- sexual mutilation

All acts of sexual violence constitute crimes of violence, aggression and domination. Sex is used as the means of exercising power over the victim. The goal for the offender is gaining control, degrading, and humiliating the victims. This booklet will focus principally on acts of sexual violence against women and girls because the majority of the victims tend to be women and children. However, it is important to underline that men are also the victims of sexual violence, although such acts remain yet under-reported and under-investigated.

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

Sexual violence can be an element of almost all major crimes prohibited by international human rights law, international humanitarian law, and domestic law.

- Sexual violence may have many different names, depending on the circumstances and on the form of the violence. It may be referred to as torture, cruel, inhuman or degrading punishment, rape, etc.
- Sexual violence can constitute torture or cruel treatment. Sexual violence may also constitute an element of a crime against humanity or of genocide. During an armed conflict, it may be considered as a war crime, a violation of the laws and customs of war or a grave breach of the Geneva Conventions.

- Many acts of sexual violence – in the first place rape, sexual slavery or forced marriage – may constitute torture if they fulfil the international definition of torture. Lesser violent acts may be cruel, inhuman or degrading treatment.

2. Definitions

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

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

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

- **Rape** consists in the forced or non-consensual penetration of the human body with the penis, or with an object, such as a truncheon, stick or bottle.
- **Sexual slavery** consists in women and girl children being held against their will and owned by one or several persons in order to provide sexual services to their owner or owners, as well as, quite often, other forms of domestic services. Sexual slavery of women and girl children may be preceded by their forced marriage to their owners. The ownership of sexual slaves includes the power to kill them. Sexual slavery may be especially prevalent in armed conflict situations.
- **Forced (or servile) marriage** refers to:
 - a woman or girl child being given in marriage, without the right to refuse, by her parents, guardians, the community, etc.

- or the husband of a woman, his family, or his clan, transferring her to another person;
 - or a widow who, on the death of her husband, is inherited by another person
- **Forced pregnancy** refers to all acts of sexual violence whose objective is to impregnate women.

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

- Women may be the victims of sexual violence perpetrated by officials of the state or armed groups because of their activities and political beliefs, such as their being community leaders, human rights or women's rights activists, etc.
- State or armed groups may be targeting women as a means of pressurising family members and stigmatising them. Often enough, women are targeted because they are women (i.e. male relatives may not be targeted or not in the same manner) but also because it is suspected that they are somehow involved in the activities of their relatives. There is a deliberate attempt on the part of armed opposition groups or the government to use the women in order to intimidate, get confessions, and humiliate *both* the activists and the women themselves.
- Women may also be targeted because they are women. They may be attacked by members of the state or armed groups, but also by members of their family or the community. Within the family and the community, sexual violence may take the form of domestic violence, female genital mutilation, female infanticide, rape, etc.
- Women may be the victims of sexual violence in the context of their imprisonment. Sexual violence may be perpetrated by prison officials, or by fellow male inmates.

3. What is torture or cruel, inhuman or degrading treatment or punishment?¹

The Convention Against Torture (CAT) defines torture as follows:

- an act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person
- for such purposes as:
 - (i) obtaining from that person or a third person information or a confession,
 - (ii) punishing that person for an act he/she or a third person has committed or is suspected of having committed,
 - (iii) intimidating or coercing that person or a third person,
 - (iv) for any reason based on discrimination of any kind,
- inflicted by or at the instigation of or with the consent or acquiescence of the authorities.

Cruel, inhuman or degrading (hereafter CID) treatment or punishment is a “lesser” form or act of torture. Please refer to the booklet *Monitoring and Investigating Torture, Cruel, Inhuman or Degrading Treatment and Prison Conditions*.

Torture and other CID treatment or punishment includes beatings, imposition of electric shocks, hanging by the arms or legs, strip-searches, punishments that are not provided for in law, the denial of food, the denial of medical treatment, etc. Torture and other cruel treatment also includes rape, sexual assault, or the threat of rape or sexual assault, sexual slavery, forced marriage, etc.

The international definition of an act of torture comprises three main elements:

- It constitutes **acute suffering**, and
- it is **inflicted for a purpose** (i.e. not by accident),

¹

Please see the booklet *Monitoring and Documenting Torture and Cruel, Inhuman or Degrading Treatment or Punishment.*”

such as obtaining information or a confession, punishing, intimidating, coercing, or for any reason based on discrimination of any kind, and

- it is **inflicted by a public official** or other person acting in an official capacity, or on his/her instigation or with his/her consent or acquiescence.

Notice that Article 7 of the the International Covenant of Civil and Political Rights differs from the CAT definition in that, according to the ICCPR, torture can be inflicted by people acting in their official capacity, outside their official capacity or in a private capacity.

Acts of sexual violence by government agents are a common method of torture inflicted on women. It is both a physical violation and injury, and an assault on a woman's mental and emotional well-being.

Sexual violence is considered as torture to the extent that it fulfils these three criteria defining torture.

Many acts of sexual violence meet the first two criteria in virtually every respect:

- They cause severe physical and mental suffering
- They are always committed for a purpose, such as humiliating, intimidating, degrading, obtaining information, or, in many cases, for reasons based on discrimination, etc.

However, not all cases of sexual violence necessarily constitute torture. The key limiting factor in determining when sexual violence may be defined as torture is the identity of the perpetrator, or, more precisely, the relationship between the perpetrator and the state.

4. When does sexual violence constitute torture?

- The victims of acts of sexual violence are always in some sense “detained or restricted”, even where they may not formally be prisoners. As a result, detention should be understood as including:
 - prisons, military centres, or other official buildings of security agencies,
 - unofficial or secret detention centres,
 - any other locations, such as the victim’s home, a village, a street, etc.
- Acts of sexual violence (such as rape, or the threat of rape) against detainees by prison, security or military officials *always* amounts to torture.

In other words, sexual violence committed by a security, military or police official should, not be seen as a “personal” or private act.

The overall trend, at both a national and international level, is to consider rape by officials as always constituting torture.

- Other forms of sexual violence by law enforcement officials may either constitute torture or cruel, inhuman or degrading treatment.
- Some acts of sexual violence against women detainees, such as rape, may also constitute torture when such acts are perpetrated by male inmates because of the failure of the public officials to separate male and female inmates.

International human rights law requires that prisoners be separated, according to their sex, age, criminal record and other considerations. If prison officials do not abide by this rule, and if women inmates are the victims of rape or other forms of sexual violence, human rights workers may argue that rape has been committed with the consent of public officials, and therefore that it constitutes torture.

- Some acts of sexual violence against child detainees, such as rape, may also constitute torture when such acts are perpetrated by male inmates because of the failure of the public officials to separate child and adult inmates.
- Some acts of sexual violence against male detainees, such as rape, may also constitute torture when such acts are perpetrated by fellow male inmates with the complicity, consent or acquiescence of detention officials.

5. What about sexual violence committed by armed groups?

It will be recalled that, in international human rights law, sexual violence constitute an act of torture or CID treatment only when it is committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting officially.

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

- Some non-governmental organisations, such as Amnesty International, apply the definition of torture to acts committed by members of armed groups.
- Under a conflict situation, all armed groups are required to abide by the Geneva Conventions (as they are applied to internal conflicts) which define the laws and customs of war. The laws of war prohibit all parties to the conflict from perpetrating torture or indecent assault against women.
- Armed groups are therefore always responsible for any acts of sexual violence committed by their forces, be they rape, sexual assaults, forced marriage, sexual slavery, forced pregnancy, etc.

Many such acts of violence committed by the members of armed groups will always constitute torture or CID treatment.

Such acts may take place in detention centres created by the armed groups, but also at other locations, such as the victim's home, the village, the field, a road, etc.

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

6. Is the state responsible for sexual violence committed by private actors?

Newspapers are full of stories of women and children being raped or beaten by strangers or by people they know.

- Is the state also responsible for acts of sexual violence committed by individuals who are not state officials?
- The response is “yes” under certain conditions
 - Every act of sexual violence by a private actor may not be one for which you can hold the state accountable.
 - But, under international law, the state may be held accountable for its failure to provide protection for abuses against all persons. If patterns of inaction or discrimination on the part of the state authorities can be shown, then the state can be held to task.

1. The authorities can be held responsible for the climate which made it possible for rape or other forms of sexual violence to be committed.

- **State incitement to violence:** This particularly applies to situations where state officials incite private citizens to commit acts of violence, including rape and other forms of sexual violence, against other citizens.

Example: State officials may incite citizens of a certain ethnic group to commit violence against citizens from another ethnic group, specifically inciting them to rape.

Example: State officials may incite citizens to attack all women who are not dressed in a certain way, i.e. women who wear trousers, or who are not veiled.

2. States can be held responsible for acts of sexual violence committed by private individuals if they fail to prevent them or to protect the victims.

An illegal act that violates human rights and is perpetrated by a private person can lead to international responsibility of the state, not because of the act itself, but because of the lack of measures to prevent the violation or respond to it.

States are under an obligation to protect all persons against human rights violations (including rape or other forms of sexual violence). This obligation applies whether these acts are inflicted by people acting in their official capacity, outside their official capacity or in a private capacity. Such an obligation is also referred to as the obligation to act with due diligence.

- Please note that in many cases, the reasons for the inaction of the government may be not only the female gender of the victims, but also other factors linked to the identity of the victims, such as race, ethnicity, religion, membership of a specific tribe, occupation (such as prostitution and domestic work), etc. You may therefore need to document not only the failure of the government to protect women but also the failure of the government to protect women who are facing other kinds of discrimination and hardship because they are members of specific groups (be they ethnic, racial, religious, class, work, etc.)

Examples of state failure to protect (concept of due diligence):

- **Failure to enact necessary laws:** the failure of the state to enact laws to name and criminalise certain abuses may underline its passivity, inaction or unwillingness to protect women against such abuses. For instance, the failure of the state to legislate against

rape in marriage may show that it considers married women to be their husband's property and that it is unwilling to take basic action to protect them.

- **Failure to intervene:** If law enforcement officials witness any acts of violence against women, including rape, or were informed about the incident by witnesses but refused to intervene, then they have failed to prevent an illegal act from occurring and they have failed to protect a woman. If such situations keep recurring, i.e. if the law enforcement officials almost always refuse to intervene, the human rights investigator may then conclude that (i) there is a pattern of state passivity or inaction, and (ii) the state is failing to protect women against sexual violence. (This is true for rape or sexual violence and for other acts as well: for instance, if the police witness a racist attack but decide not to prevent or punish it, then its responsibility is at stake.)
- **Failure to investigate:** The same conclusion may be reached if law enforcement officials try to convince women victims or other individuals not to file a complaint and if they fail to investigate acts of sexual violence reported to them. If they almost always fail to investigate, the human rights worker may reach the conclusion that there is an official state passivity or inaction *vis-à-vis* rape or other forms of sexual violence: the state is denying that anything wrong happened and, consequently, is failing to protect women against acts of sexual violence.
- **Failure to prosecute:** If and when acts and practices of sexual violence (such as rape but also female genital mutilation, for instance) are never or rarely prosecuted as criminal offences under domestic law, the human rights worker may reach the conclusion that the state itself is abandoning its function of protecting its citizens from any kind of torture.
- **Failure to punish:** Similarly, the quasi-systematic

failure to punish rape or other forms of sexual violence, or inadequate sentencing, demonstrate not only that there are problems with the way rape is investigated and treated in court, but also that there is an official passivity or inaction to remedy the situation. In effect, it means that the state is failing to protect women against sexual violence committed by private individuals.

A number of courts, for instance, have ruled that the state is under an obligation to protect women against rape committed by their husbands, by making rape in marriage a criminal offence.

- **Failure to provide redress:** The failure of the state to provide victims of sexual violence with adequate compensation also underlines an official indifference to the plight of the victims and lack of concern for their well-being.

7. When do acts of violence committed by private individuals constitute torture?

In some cases, not only do you want to document sexual violence by private actors as falling under the responsibility of the state, but you may also want to demonstrate that such acts of sexual violence perpetrated by private individuals constitute torture for which the state can be held responsible.

Benefits of calling an act torture: such benefits include:

- the responsibility of the state to prosecute the torturer anywhere he or she is found;
- the obligation placed upon the state to take steps to prevent the acts from happening again;
- the obligation of the state to provide compensation to the victim.

Difficulties: On the other hand, referring to an act of sexual violence by private individuals as torture raises many difficulties.

- You may recall that under the CAT definition of torture, an act of violence constitutes torture when it is committed by, or at the instigation of, or with the consent or acquiescence of a public official or other persons acting officially.
- A number of human rights activists and organisations also held the state responsible for acts of torture committed by private individuals when the state has failed to act with due diligence.
- To prove torture and state responsibility therefore, you need to demonstrate some connection between the perpetrator (a private individual) and the state, such as complicity, acquiescence, or lack of due diligence on the part of the state.
- You should also judge whether calling an abuse torture is a good and effective strategy in terms of combatting the abuse.

II. How to monitor sexual violence

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

- It consists of collecting **systematically and consistently** information that may be related to human rights violations, from a variety of sources.
- This information, collected over a certain period of time, should allow you to **put the cases under investigation into a political and legal context**, as well as to **identify patterns** in terms of sexual violence. They should also allow you to develop an in-depth knowledge of the security forces and opposition groups, their methods of operations, their chains of command, etc.
- Please refer to the handbook *Monitoring and Documenting Human Rights Violations in Africa*.

Sexual violence is unfortunately a common state of affairs throughout the world, hence the importance of thorough monitoring to assess the extent of the violations and to identify the likely set of events that triggers and characterises such violence.

Three main steps for monitoring cases of sexual violence

- Step 1: **Collect** information on the law, political climate, organisation of the security forces and armed groups.
- Step 2: **Record and follow-up** individual allegations of sexual violence, etc.
- Step 3: **Analyse** information and allegations and identify **patterns**

1. Collect information on the legal, political and cultural context

This type of information is essential in order to understand the nature and extent of sexual violence. It assists the researcher in four ways: (i) assessing evidence; (ii) establishing a pattern of violations; (iii) determining impunity; (iv) when applicable, reminding the government of its obligations under domestic and international law.

a. Legal information

Some of the legal provisions to be specifically researched include:

Provisions regarding torture and ill-treatment: e.g.

- are all forms of torture and ill treatment prohibited by law and/or the constitution?

Provisions regarding rape and sexual assault: e.g.

- What is the legal definition of rape, of sexual assault?
- What type of evidence is required from the victim?
- Are sentences set out in law?
- Are there separate offences for rape and sexual assault?
- Are there laws addressing marital rape, violence against women, sexual harassment?

Provisions regarding forced marriage, female genital mutilations, domestic violence, etc.

Provisions regarding sexual activities, e.g.:

- Is consenting sex between adults prohibited outside marriage?

Possible sources of information

- Media
- The constitution
- Domestic law

Prosecution and trial of alleged rapists, including non-state actors

- Are women likely to report rape, whether or not it occurred in custody? (Social and cultural considerations.)
- How often are rapists brought to justice?
- What is the most likely sentence?

Prosecution and trials of alleged perpetrators of torture

- Are victims likely to report torture?
- How often have alleged torture perpetrators been brought to justice?
- What has been the average sentence?
- Have other forms of “punishment” been used (i.e. moving the alleged perpetrator from one office, city, prison, etc. to another)?

Which international conventions or treaties relevant to women or torture have been ratified? Have they been incorporated into domestic law?

- Has the government ratified the Torture Convention, and the Women’s Convention?.
- Does the government report to the Committee Against Torture and to the Committee on the Elimination of Discrimination Against women (CEDAW)?

b. Political framework

Specific issues to be researched include:

- How do officials of government and armed groups define opponents and activities against them?
- How do officials of government and armed groups respond to accusations of torture, including sexual violence?
- How do official speeches and documents define the role of women in the country and society?
- What stereotypes or images regarding women and men inform these discourses?

c. Social or cultural mores

Issues to be especially researched include:

- How is women's virginity or women's sexuality considered?
- Is incest taboo?
- How is violent behaviour within the family considered? Is it commonly accepted for husbands to batter their wives, or fathers their daughters? Are sanctions exercised against men if they do so?
- Is polygamous marriage customary? Is dowry or bride price a customary requirement for marriage?
- Are forced marriages and/or child marriages practised?
- What kind of work or activities are women forbidden to do by custom?
- Which stereotypes inform the representation of women in newspapers, television, etc.?

2. Collect information on the consequences of sexual violence

This type of information is very important in several ways.

- It allows the researcher to better understand the nature of sexual violence and its impact on victims.
- It allows the researcher to refer the victims to medical or legal experts who may be in a better position to help the woman victim. Such experts may be medical personnel specialising in the medical consequences of sexual violence, counsellors, women's NGOs assisting women, lawyers, etc.

a. Medical consequences and remedies

These may include: absence of institutions or professionals working with rape victims; insensitivity of medical personnel; laws forbidding abortion; lack of access to medical check-ups for sexually transmitted diseases, including the HIV virus; etc.

The human rights investigator should seek to collect information relating to the following questions:

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

b. Social and economic consequences and remedies

- What are the social and economic consequences (e.g. unable to work because of trauma or pregnancy, ostracism, etc.)?
- What are the consequences in terms of the woman's relationship with, or status within, her family or community?
- What are the consequences for the other members of the family or the community?

c. Legal consequences and remedies

These include: lack of legal literacy and capacity to initiate legal action; community pressures to refrain from reporting or seeking redress for certain abuses; less access than men to economic resources necessary to pursue redress; government failure to prosecute in cases involving sexual violence. When adequate remedies do exist in law, *de facto* discrimination may deter or obstruct women's recourse to these remedies.

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

- Are rural and/or poor women likely to find access to such professionals?
- Are police officials specially trained to deal with victims of sexual violence?
- Are police officers likely to discourage women from filing a complaint about rape?
- What kind of training do judicial officials receive?

3. Record and follow up individual cases

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

- **Record and follow up allegations brought to your attention**

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

- **Conduct fact-finding whenever necessary or possible, in order to assess allegations;**
- **Develop a filing or database system to access and analyse the information easily**

To facilitate monitoring, it is recommended to develop a form to record individual cases of alleged sexual violence. An example appears on the next page. You need to adapt it to the specific circumstances of your country or region.

Sample form for recording information on sexual violence

1. Victim identification information

Name (Last and first name, nickname):

Date of Birth or Age: Gender:

Profession/Occupation: Family Status:

Address:

Nationality: Religion: Ethnicity:

Physical description or picture:

2. Location of the incident

Date and time of the alleged incident:

Precise location (e.g. name of the police station):

Province: District City/village (or nearest):

Street address, if applicable:

3. Description of the incident:

.....
.....
.....
.....
.....

4. Circumstances

Briefly describe the events immediately preceding the incident:

.....
.....
.....

5. Alleged perpetrators

.....
.....
.....

6. Evidence

Witnesses:

Forensic evidence:

Court record:

Other:

7. Government responses

Was a complaint launched? No Yes

If yes, where? when?

Public statements:

Official investigation:

Conclusion:

Court cases:

Judgement:

8. Your actions

Identity of first source:

Date:

Information compiled by:

Visit to the scene: No Yes by on

Interviews of witnesses: No Yes by on

4. Identify patterns

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

Patterns in the identity of the victims

- Who are the most likely victims of sexual violence?

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

Patterns in the circumstances resulting in the incidents or allegations

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

Patterns in nature of the harm or injury

- Are there prevalent forms of sexual violence?

A pattern may emerge in terms of the nature of the acts of sexual violence. For instance, the majority of incidents of sexual violence may be rape, gang-rape, defilement, incest, sexual slavery, etc.

Patterns in the location of the incidents of sexual violence

- Where are incidents most prevalent?

Such locations may include specific regions or cities,

specific police stations or prisons, military facilities, civilian homes, secret detention centres, etc.

Patterns in the identity of alleged perpetrators

- Does a pattern emerge in terms of the identity of the perpetrators?
- If perpetrators are security force agents, who are the principal forces and individual perpetrators within these agencies most often denounced?

Pattern on the methods used by the perpetrators

- Are similar methods used by the perpetrators?

For instance, many incidents may be preceded by abduction.

- How many individuals are usually involved?

Patterns of incidents in custody

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

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

Patterns in government responses to alleged cases

A pattern may emerge over time in terms of the responses of the government to the accusations. Such a pattern may be reflected in an official investigation or lack of one, public statements following sexual violence, the nature of the investigations, the nature of the procedures, the nature of prosecutions, the identity of the courts responsible for the prosecution, the absence or nature of the verdict; etc.

- Are complaints and reports of sexual violence systematically, investigated? Or are victims often unable to file a complaint?
- Are those alleged to have committed sexual violence charged and prosecuted?

Patterns in the response of armed groups to allegations of torture

A pattern may also emerge over time in terms of the responses of the leadership of the armed group to accusations of sexual violence. Such a pattern may be characterised in:

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

III. How to conduct fact-finding

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

Step 1: Gather material evidence which will confirm (or not) the allegations

- Ask yourself what kind of evidence you need in order to ascertain that an act of sexual violence took place.
- Ask yourself what kind of evidence you need in order to ascertain that this act of sexual violence constitutes torture or cruel treatment.

Material evidence may include: medical records, photographs, physical signs or marks, official documents or acknowledgement.

Step 2: Conduct interviews

- Ask yourself who is more likely to give you access to this evidence.

Individuals to be interviewed may include victims, family members, eye-witnesses or other witnesses, security officials, local officials, etc.

Step 3: Assess the information and evidence

Having gathered material evidence and interviewed the victims or witnesses, you will need to **assess** the information and evidence provided in order to determine the nature of the crime of sexual violence committed and establish responsibilities.

1. Preparing for the investigation: Get the facts

List everything you know about sexual violence

- Be knowledgeable about the law and standards related to sexual violence. Find out exactly what is prohibited under domestic laws and international human rights standards.
- Be knowledgeable about the law related to torture or CID; find out exactly what is prohibited under domestic laws and international human rights standards; seek information from experts.
- Be knowledgeable about the patterns related to torture or CID treatment in your country.
- Be familiar with the possible stigma attached to sexuality and sexual violence in the area, as well as the various phases of trauma that victims of sexual violence may go through.
- Find out about local or national structures (NGOs, hospitals, lawyers, etc.) that may provide assistance to victims of torture, including rape.

This knowledge and information may help you in breaking barriers, understanding covert messages (women survivors' reluctance to talk about it; sense of guilt; verbalisation of what happened, mental health and recovery) and addressing some of the pain.

Get the facts

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

Seek expert advice

- Get all the necessary information or expert advice before going to the scene, e.g. consult with medical doctors, lawyers, counsellors etc.

Prepare your interview format

- Write down a check-list of the data and facts necessary to assess the allegations.
- If this is your first investigation of sexual violence, show the check-list to local contacts who have worked on such cases to get their input: they will often be able to add questions.
- Please refer to Part Four, “Interview Guidelines”, of the booklet, *Monitoring and Documenting Human Rights Violations in Africa*.
- See Annexe Two for an interview format

2. Before going to the scene and other locations

Carry out a thorough risk assessment

- List all possible security concerns (e.g. your own physical security and the security of your contacts) and develop contingency plans to deal with each one of them (e.g. evacuation: how?). If access to, and your presence at, the scene carries many dangers, identify alternative means of carrying out the research; e.g. rely on a confidential local contact to bring possible witnesses from outside the area.

Composition of the delegation

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

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

3. Identify main sources of information

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

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

Possible sources of information: Individuals and groups

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

4. On the scene: Breaking barriers

In addition to the usual problems faced during a fact-finding mission (e.g. security problems), you are likely to face two other problems: (i) women victims of sexual violence may be unwilling to talk to you; (ii) community spokespeople may be suspicious because you want to talk to the women.

Women may be unwilling to report human rights violations. There may be a number of pressures (pressures from the family or community; shame; fear) that prevent the women from talking to you. In areas where you have never conducted research on human rights violations, contacts may be limited and untrustworthy; investigation of sexual violence, for instance, requires much effort in terms of breaking a number of barriers. In places where women's access to education is very limited, research may require even more time and effort to address lack of communication due to cultural and language differences, and contrasting modes of reporting information.

Community spokespeople are often men who may be reluctant to introduce the delegations to women, or may not understand why the delegation wishes to meet women. If the delegation is comprised of men only, the problem may be insurmountable.

In order to address these problems:

- Be proactive: while preparing the mission and while on the mission, ask yourself the question: Where are the women? You must actively seek access to them, and ask to meet with women.
- Follow the lines of authority and convince the men and leaders that you must speak with the women.
- Organise focus groups composed of women interested in human rights violations to develop a better understanding of the situation and explain your research. Rely on women leaders to reach out other women in the community.

- There are few people at the grass-roots level who know about fact-finding. A method of information-sharing should be established with people at the grass-roots to encourage them to tell you about their experiences
- Follow the focus group approach: Work with a group of 4 to 6 women:
- Bring together women of the same age-group.
- Begin your investigation with general questions and discussion, such as how do you define violence; what is it that makes women different from men; etc.
- Avoid direct questions on rape or sexual abuse
- Be aware of the women who do not dare to speak and find a way to talk to them in private

5. Identify and collect material evidence

Almost all acts of sexual violence leave traces. It is the work of the investigator to find and document these traces. The evidence comes in a variety of forms that carry different weight and pose different problems in evaluation.

Acknowledgement by authorities

Any statement by a government, government agency or armed group that an individual under its authority has committed sexual violence represents evidence that such act did take place.

Official documents

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

examine prisoners at some point in their period of detention or release.

Medical certificate

There may be medical certificates available, or the victim may have sought independent medical certificates. If the victim has not yet seen a medical doctor, you should immediately organise a medical visit and ask for a medical report confirming the allegations.

Physical marks of sexual violence

Common physical signs following sexual violence include:

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

Photographs

Sexual violence is often accompanied by beatings or other acts of physical violence, the traces of which may have been photographed. Expert evaluation by trauma or forensic specialists may result in strong evidence of rape.

Autopsy record

If the victim has died, the autopsy report should indicate the probable causes of death. In a number of cases, the family may have to request a second autopsy to be performed.

Testimonies

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

As with all forms of violations, but probably even more so with victims of sexual violence, the researcher will need the assistance of a “gate-opener,” someone who has relationships with victims because of his/her work and activities, who is trusted by the victims and can act as an intermediary between the researcher and the victims.

Such individuals may be other human rights or women’s rights activists, midwives, nurses, priests, etc.

They may also be individuals who, in the course of their life or professional activities, have come to know a great deal about the women of a given area. These may be religious officials, medical doctors, midwives, community leaders, etc.

For an interview format, please see Annexe Two.

Possible material evidence

- Medical record
- Photographs
- Official acknowledgement
- Official documents, e.g. police records, court records, etc.
- Post-mortem report
- Physical signs or marks
- Mental state of the victim

IV. How to assess evidence

Some of the key questions guiding the assessment are the following:

1. Reliability of initial source

- Are your initial sources or contacts reliable?

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

2. Consistency with patterns

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

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

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

3. Consistency of medical evidence

- Whenever possible, you should get the assistance of medical experts and forward them all medical evidence.
- If medical experts are not available, you should be very observant while interviewing the victims. Please see Part Four, Interview Guidelines, in the booklet, *Monitoring and Documenting Human Rights Violations in Africa*.
- Are physical signs on the survivor consistent with the allegations?

Physical signs which can occur as a result of sexual violence may have a variety of possible causes. Rarely can

the medical findings prove beyond doubt that sexual violence occurred, especially since the passage of time makes this type of evidence difficult to acquire. This means describing medical evidence as “consistent with” the sexual violence alleged by the survivor.

- What if there are no physical signs of sexual violence?

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

- Are psychiatric signs and symptoms consistent with the allegation?

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

4. Reliability of the testimony

- Does the victim’s testimony appear reliable?:

In assessing the testimony, keep in mind the points developed in the guidelines, *Monitoring and Documenting Human Rights Violations in Africa*.

While interviewing, pay special attention to:

- The survivor's description of the **symptoms following the allegation of sexual violence**: what type of physical pains and mental reactions has the woman experienced following the alleged acts?
- The survivor's description of **current symptoms and illnesses**: what are her current health complaints, both physical and mental?
- The survivor's account of the **circumstances, location, procedures, individuals involved**, etc.
- The survivor's account of the **sequence and timing of the events**.
- **Consistency of the testimony**: Does the testimony concur with others as well as with any previous pattern of similar acts in the country/region? Does the survivor contradict himself/herself when asked the same or similar questions?
- **Inconsistencies in the testimonies**: Are they a result of the survivor's dishonesty or of faults in memory, exaggerations, unsubstantiated rumours, cultural differences and misunderstandings between the interviewer (or interpreter) and the interviewee?

5. Assessing the responsibility of the government

- Do the incident and the government's response indicate that it is responsible (e.g. complicity or by negligence) for the incident?

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

- In assessing this evidence, be aware that political factors may come into play: if abuses have allegedly been carried out by the opposition or other governments, the government of the country concerned may be issuing statements and bring up evidence that should not necessarily be taken as proof that sexual violence has occurred.
- Court testimony where those accused of sexual violence have given testimony, may help indicate the degree of knowledge and responsibility of officials.
- Whenever law enforcement or any other state officials are the perpetrators, the government is responsible. Sexual violence perpetrated by them constitutes torture or cruel, inhuman or degrading treatment.
- Furthermore, the absence of (independent) investigations into acts of sexual violence committed by state officials and lack of preventive or remedial measures imply a lack of concern to stop incidents of sexual violence. A continuing pattern of such incidents must then be attributable to the state condoning such acts.
- Whenever private individuals are responsible for acts of sexual violence, the responsibility of the state may be at stake if you can show that it failed to protect women against sexual violence.
- Failure to protect women against sexual violence committed by private individuals may be shown if the state (or state officials, such as the police force) almost systematically fails to prevent such acts from occurring, or fails to investigate them, or fails to prosecute perpetrators, or fails to punish perpetrators. (Please refer to the first part of this booklet, sections 6 and 7.)

6. Assessing the responsibility of the armed group

- Does the incident and the response of the armed group indicate that it is responsible?

Assessing the responsibility of an armed group may be particularly difficult:

- There may be several armed groups in the same area, the government and the armed group may be using similar methods, the government may accuse the armed groups of acts of torture committed by its own forces, etc.
- Material evidence may be scarce. Information gathered through interviews and your knowledge of the usual methods followed by the armed group will therefore be central to your assessment of the responsibility.

Some of the key questions guiding the assessment of responsibility include:

- **identity of the victims:** Has the armed group been known to target these specific individuals or groups?
- **Motive:** Is there any apparent motive for the act of sexual violence? Had these individuals been previously targeted? By whom?
- **Methods:** Are these methods ordinarily used by armed group?
- **Location:** Have previous allegations been made in this particular area? Is the area where sexual violence is alleged to have taken place under the military control of the armed group? Has the armed group been known to carry out attacks in this area?
- **Responses of the armed group:** Did the leadership of the opposition group try to “justify” the abuses in any way? Did it claim responsibility for these acts? Did it deny any responsibility for them? Did it admit or agree to carrying an internal investigation?

Annexe One: Medical and social consequences of sexual violence

1. The medical consequences of sexual violence are often very serious.

These include sexually transmitted diseases, including AIDS, stomach pains, nausea, vaginal pains, generalised pains, infertility, miscarriage, stillbirth, pregnancy, etc. They may also suffer from Rape Trauma Syndrome (see below).

Access to medical treatment may be very difficult: women or girl child victims of sexual violence may not be able to get access to the required medical treatment because of absence of institutions or professionals working with victims of sexual violence, insensitivity of medical personnel, laws forbidding abortion, lack of access to medical check-ups for sexually transmitted diseases, including the HIV virus, etc.

2. Social rejection and alienation

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

In the case of women who have lost their husbands because of imprisonment or killing, the consequences of the violations persist, such as social and economic hardship, medical problems, etc.

The human rights investigator must be aware of the consequences of sexual violence upon victims.

Rape Trauma Syndrome (RTS)

RTS² is a form of Post-Traumatic Stress Disorder (PTSD) and shares most of its symptoms in varying degrees. PTSD does not affect *all* victims of torture, including rape, but the probability of it occurring is very high. It generally follows three phases, with some degree of overlap from one phase to the other:

1. Impact phase

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

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

- 1 **Expressed style**, in which feelings of fear, anger and anxiety are shown through such behaviour as crying, laughing, restlessness and tension;
- 2 **Controlled style**, in which feelings are contained and a calm, composed or a subdued effect is demonstrated.

Intervention: When dealing with a survivor during the impact phase, it is extremely important to emphasise three things: 1) she has been through an extremely frightening experience; 2) she is not to blame for what has happened; and 3) she is now in a safe place (if that is true).

2. Acute phase

Duration: Variable: from a few days to 6 weeks or more. Period of disorganisation; predominant feeling is fear; physical symptoms are especially troubling.

²
"Rape Trauma Syndrome",
in New York City/
Balkan Rape Crisis
Response Team,
Training Manual,
September 1993,
pp. 1–3.

Physical reactions: skeletal muscle tensions, fatigue, sleep disturbances, stomach pains, nausea, vaginal discharge, itching, burning and generalised pains.

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

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

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

3. Reorganisation phase

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

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

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

- 1 Isolation/withdrawal;
- 2 Lowered self-esteem: feels shameful, dirty, powerless, naïve, stupid;
- 3 Restricted mobility: phobias, fear of being alone, fear of darkness,
- 4 Depression/restricted effect: wary, clamping down on emotions, holding things inside;

5 Sexual dysfunction: fear of sex, numbing, sometimes promiscuity.

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

Annexe Two: Check-list for interviews of victims of rape or other forms of sexual violence

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

1. Interview

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

2. Personal Information

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

3. Circumstances of arrest or attacks

- When (day and time)
- Where was the victim at the time?
- Were other people present?

Who carried out the arrest/attack? (Description of the individuals involved: number, uniforms, whether they were carrying arms, etc.)

What did they say?

Was violence used?

Was the victim the only one arrested/attacked?

Were there any witnesses?

In case of an arrest: Was an arrest warrant presented?

4. Circumstances of the rape or other forms of sexual violence

Location (e.g. detention centre, private prisons, home of the victim, etc.)

Were any questions asked?

Who participated? (Number of people involved, personnel such as security, military, others, etc.)

Was a medical officer present? Did he/she participate in the torture?

Did the victim see a medical officer before/after the torture?

Other forms of physical abuse

Other forms of psychological abuse

Duration and frequency of the sexual violence (e.g. several times a day, twice a week, etc.)

Physical pains experienced immediately following the abuse

Mental reactions experienced immediately following the abuse

Was the victim made to sign any statements?

Were charges filed against the victim?

Did the victim have access to a lawyer during detention?

5. Circumstances following the abuse

How long did the victim remain in detention?

Access to a lawyer

Access to a medical professional (Name, gender, day of the first examination, other examinations)

Type of examination and diagnosis

Date and circumstances of the release

Did the victim file charges?

Investigation by government of victim's accusations?

Circumstances of the trial

6. Current situation and symptoms

Victim's state of health *before* the incident (e.g. past illnesses, previous injuries)

Feelings and other symptoms which the victim noted at various intervals (e.g. one week afterwards, one month afterwards, etc.)

Current physical symptoms

Current mental symptoms

Medical or other treatment the victim is currently receiving

7. Observation: Wounds

Marks/scars/bruises

Hair missing

If rape was accompanied by other forms of torture:

Fractures

Deformities

Burns

Amputations

Other distinguishing characteristics

Medical certificates

8. Observation: How is the interviewee behaving

Tone of voice (e.g. soft, loud, emotionless, etc.)

Gaze (e.g. little eye contact)

Tears (at which point during the interview?)

Silence or talk non-stop

Body Language (e.g. nervous movements, no movements)

Responses (hesitations after questions, asks for questions to be repeated, etc.)

Other

Annexe Three: Recommendations and possible actions

Legal action

- Review, evaluate and revise laws, codes and procedures, especially criminal law, to ensure their value and effectiveness in eliminating violence against women. Lobby government so that it removes provisions that allow for or condone violence against women.
- Take cases to court; provide legal, material or any other support to victims of sexual violence who have brought their cases to court

Support men and women victims

- Provide victims with medical and psychological support: they should not feel that they are guilty. Build self-confidence and self-esteem.
- Empower the victims of sexual violence: ask them to join your or other organisations, organise training for them, ask them to become advisers, etc.

Action on behalf of women in custody

- Lobby governments and prison authorities so that:
 - female detainees and prisoners are held separately from male detainees and prisoners, and do not share bathing or toilet facilities;
 - female security personnel are always present during the interrogation of women detainees and are solely responsible for conducting body searches of women detainees;
 - there should be no contact between male guards and female detainees and prisoners without the presence of a female guard;
 - the imprisonment of a mother and child together must never be used to inflict torture or ill treatment on either by causing physical or mental suffering;
 - any female detainee or prisoner who alleges that she

has been raped or sexually abused must be given an immediate medical examination, preferably by a female doctor;

- women receive appropriate medical treatment for injuries, infections, or other related trauma, including psychological care, treatment for sexually transmitted disease;
- victims of sexual violence are entitled to fair and adequate compensation and appropriate medical care.

Training

- Organise training sessions for police officers; guards; judges; and others regarding sexual violence against women as well as against men.

Public awareness campaign

- Inform, launch public awareness campaigns on violence against women, including sexual violence.
- Inform, launch public awareness campaigns on sexual violence against men;
- Mobilise high-profile women in the country and the community, such as women MPs, women ministers, journalists, etc.
- Create lobby groups composed of a variety of NGOs, including human rights NGOs, women's NGOs, etc., aimed at eradicating violence against women
- Network and create umbrella organisations to co-ordinate activities
- Ask all NGOs to integrate a gender-sensitive and cultural-sensitive perspective into their work.
- Ask all NGOs to develop expertise in investigating cases of sexual violence and assisting victims

Armed conflicts

- Lobby governments to sign and ratify the creation of the International Criminal Court
- Lobby governments to undertake a full investigation of all acts of violence against women during war; bring to justice those alleged to have committed war crimes against women and provide full redress to women victims
- Ask governments and armed groups to issue clear orders that torture, including rape and other sexual abuse of women and girls, will not be tolerated under any circumstances.

Annexe Four: International and Regional Legal Standards

1) **The Universal Declaration of Human Rights.** (UDHR) 1948. In its art. 3 declares that: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”.

2) **The International Covenant on Civil and Political Rights.** (ICCPR) 1966. In its art. 7 declares that: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment ...”. Besides art. 7, it must be noted that the Covenant, in its art. 10 number 1, declares that: “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”.

The Human Rights Committee responsible for monitoring the implementation of the ICCPR, stated, in its General Comment 20 (10/04/92), that:

- it is the duty of the states to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity.
- There should be provisions in criminal law which penalize torture and cruel, inhuman and degrading treatment, whether committed by public officials or other persons acting on behalf of the State, or by private persons.
- States should disseminate, to the population at large, relevant information concerning the ban on torture and the treatment prohibited by article 7. Enforcement personnel, medical personnel, police officers and any other persons involved in the custody or treatment of any individual subjected to any form of arrest, detention or imprisonment must receive appropriate instruction and training.
- States could keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest... Provisions should be

made for detainees to be held in places officially recognized as places of detention and for their names and places of detention, as well as for the names of persons responsible for their detention, to be kept in registers readily available and accessible to those concerned, including relatives and friends.

3) The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. (CAT) 1984.

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

5) Standard Minimum Rules for the Treatment of Prisoners (1977). This body of international law provides important basic rules for the treatment and accommodation of prisoners. This instrument is especially relevant for Rape as Torture. Indeed, art. 8 provides the separation of the different categories of prisoners according to their sex, age, criminal record and other less relevant considerations. Additionally, art. 9 (1) prescribes that "... it is not desirable to have two prisoners in a cell or room".

Bearing in mind that rape is torture not only when it is inflicted by public officials and officials of armed groups, but also *when it is done with the consent or acquiescence of a public official*, the non compliance of prison officials with rules such as the separation of women and man or young males from adult males in prisons can be tantamount to acquiescence to rape, thus configuring the elements of rape as torture.

6) Basic Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. (1988). This body of principles was adopted by the General Assembly of the United Nations in an attempt to further improve the situation of people under any form of detention or imprisonment. Important articles of this set of principles are: a) Principle 1, which provides that "All persons under any form of detention or imprisonment shall be treated in a human manner and with respect for the inherent dignity of the

human person”; b) Principle 6, which outlaws torture and other cruel, inhuman or degrading treatments or punishments in detention centres or prisons and declares that these practices are to avoided always, without exception; and c) Principle 35, that provides for compensation for detained or imprisoned person that have suffered “damaged incurred because of acts or omissions by a public official contrary to the rights contained in these principles”.

These standards reinforce the idea that the officials in charge of a detention centre or prison have to ensure that all person deprived of their liberty shall be treated in a human manner, which, regarding the practice of rape, means that officials of those places are not only to avoid committing those acts, but also to actively take reasonable measures in order to ensure that women and minors are not going to be exposed to rape by other detainees and convicted people.

7) United Nations Rules for the Protection of Juveniles Deprived of their Liberty. (1990). Number 29 of the Rules prescribes that :“In all detention facilities juveniles should be separated from adults, unless they are members of the same family.”

8) Code of Conduct for Law Enforcement Officials. (1979). Art. 5 mandates:“No law enforcement official may inflict, instigate *or tolerate* any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment. Art. 6 declares that “Law enforcement officials shall *ensure the full protection of the health of persons in their custody...*”.

These two norms are of particular importance. Given the situation of deprivation of liberty of detainees and prisoners these rules of international law require from the official in charge of these places to take a more active role in the protection of the person under their responsibility. The relatively common case of juveniles that are raped by adult inmates while being in the same premises can thus be seen

as a case of rape as torture, inflicted with the tolerance of the officials that made the decision of putting juveniles together with adult inmates.

9) Convention on the Elimination of All Forms of Discrimination against Women (1979)

Article 1 defines discrimination against women as:

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

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

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

10) Declaration on the Elimination of Violence Against Women

Article 1 defines violence against women as:

“any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.”

The Preamble to the Declaration recognises that “violence against women is one of the crucial social mechanisms by

which women are forced into a subordinate position compared with men.”

The Preamble also identifies groups of women who are especially vulnerable to violence, including women belonging to minority groups, refugee women, migrant women, women living in rural or remote communities, destitute women, **women in detention**, female children, women with disabilities, elderly women and **women in situation of armed conflicts**.

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

10) **African Charter on Human and Peoples’ Rights**

Article 5 states that every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. It prohibits all forms of exploitation and degradation particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

Article 18 (3) requests that the state ensure the elimination of every discrimination against women and the protection of the rights of the woman and the child as stipulated in international declarations and conventions.

The Publishers

Amnesty International (AI) is a worldwide voluntary activist movement working towards the observance of all human rights as enshrined in the Universal Declaration of Human Rights and other international standards. It promotes respect for human rights, which it considers interdependent and indivisible, through campaigning and public awareness activities, as well as through human rights education and pushing for ratification and implementation of human rights treaties. Amnesty International takes action against violations by governments of people's civil and political rights. It is independent of any government, political persuasion or religious creed. It does not support or oppose any government or political system, nor does it support or oppose the views of the victims whose rights it seeks to protect. It is concerned solely with the impartial protection of human rights.

Amnesty International Dutch Section Special Programme on Africa (SPA) was established in 1994. Initially, SPA developed a programme to assist Amnesty Sections worldwide to improve the effectiveness of their campaigning against human rights violations in Africa. Since 1996 SPA has moved towards providing support to the broader Human Rights Movement in Africa. Rather than funding projects, SPA is developing and co-ordinating long term projects for and in cooperation with other human rights organisations and AI sections. In addition to copublishing *Ukweli*, SPA is also coordinating advocacy and training workshops in southern and West Africa, a project on policing and Human Rights, and a pilot project to raise human rights awareness in rural areas in Liberia.

CODESRIA is the Council for the Development of Social Science Research in Africa head-quartered in Dakar, Senegal. It is an independent organisation whose principal objectives are facilitating research, promoting research-based publishing and creating multiple forums geared towards the exchange of views and information among African researchers. It challenges the fragmentation of research through the creation of thematic research networks that cut across linguistic and regional boundaries.

CODESRIA publishes a quarterly journal, *Africa Development*, the longest standing Africa-based social science journal; *Afrika Zamani*, a journal of history; the *African Sociological Review*, and the *African Journal of International Affairs (AJIA)*. Research results and other activities of the institution are disseminated through 'Working Papers', 'Monograph Series', 'New Path Series', 'State-of-the-Literature Series', 'CODESRIA Book Series', the *CODESRIA Bulletin*, *KIBARU* and *CIVIC AGENDA*.