

Statement

Prevention, accountability and gender

International Responses and Fighting Impunity by investigating and prosecuting sexual and gender-based violence

Excellencies, Ladies and Gentlemen, dear colleagues,

First of all, let me thank the Permanent Missions of Liechtenstein and Finland for having organized this important event. I welcome this space to deepen our understanding of the achievements and the challenges we face today in investigating and prosecuting sexual and gender-based violence.

In preparing for this event, I had very present in my mind, my experience of participating in an outreach and legacy event, in 2004 in Bosnia Herzegovina, called “bridging the gap”. At the time, I was part of a team of ICTY investigators and lawyers involved in the event. We shared with the local community of Foca how we had dealt with the investigation, prosecution and adjudication of sexual and gender-based violence committed in their town as part of the ethnic cleansing during the war. One of the two ICTY cases concerning Foca we discussed was the Kunarac case, sometimes referred to as the “rape camp case”. It led to the first conviction by the ICTY of rape as a crime against humanity. The case established how members of the Bosnian Serb armed forces used rape against non-Serbs, predominantly Muslim women and girls as young as 12 years old, as an instrument of terror. They set up and maintained a detention centre for scores of these women and girls who were transferred to other locations on a regular basis to be raped, and gang-raped. I have a vivid recollection of some of the survivors being present in the room. They had found the strength to travel to Foca for the first time since the war to attend the event. While it took place years after the crimes, in spite of the ICTY judgements, there was still a lot of denial in Foca about the reality of these crimes - as the questions from the local community showed. I was and I am still impressed by their courage and dignity. I remember my hope that accountability for these crimes and the broader transitional justice process, including that event, would play a role in recognizing their suffering, often stigmatized in their own communities, and would help to pave the way for reconciliation between communities in a country still divided years after the peace agreement.

In adopting resolution 71/248 last December and in establishing the IIM, the General Assembly devised a new transitional justice tool to assist in the investigation and prosecution of persons responsible for the most serious crimes

committed in Syria since March 2011. The context within which this ground-breaking initiative was taken is well known. Since the eruption of violence in 2011 and as the country descended into an armed conflict, there has been extensive documentation and reporting of atrocities committed by various parties. Depending on the circumstances, the atrocities in question may amount to crimes against humanity, war crimes or even genocide. Despite this background, the Security Council has failed to refer the situation to the ICC or to establish an international tribunal with jurisdiction to hold accountable those responsible for the most serious of these crimes. To date, the limited instances of accountability for crimes committed in Syria have been offered by national jurisdictions.

The various entities involved in documenting and reporting these atrocities, including the Commission of Inquiry on Syria and the civil society organisations from which the IIIM is to collect information and evidence, show that sexual violence and gender crimes against women, girls, men, and boys have been a persistent and devastating feature of the Syrian unrest and conflict. Women and girls have been disproportionately affected, irrespective of geographic location and perpetrator. The Commission has documented trends and patterns of sexual violence perpetrated by various parties. These include diverse patterns of rape including in detention, forced marriage, and sexual slavery. Sexual violence has been resorted to including as a tool to intimidate, humiliate, and punish, including to extract information or confessions. Some perpetrators also use sexual and gender-based crimes to terrorise the broader civilian population.

There are many challenges to the effective investigation and prosecution of sexual and gender-based crimes. Not only it is underreported, but there is also a fear of reprisals, plus cultural stigmatisation associated to these kinds of violations, that make it difficult for victims to engage. As you know, the IIIM is mandated to on the one hand, to collect, collate, preserve and analyse information and evidence and, on the other hand, to prepare and share files with international, regional and national prosecutors and courts which have or may in the future have jurisdiction over the crimes at stake. In order to contribute to ensuring accountability for sexual and gender-based crimes committed in Syria, the IIIM must seize the opportunity to integrate fully gender perspectives and expertise from the outset of its work.

The Mechanism's governing documents express a firm commitment to effectively address sexual and gender-based crimes, including the appointment of experts in the investigation and analysis of these crimes. The IIIM leadership is to operationalise that commitment into all aspects of the IIIM's work in an effective and meaningful way. Michelle Jarvis, Deputy to the ICTY Prosecutor,

was recently appointed by the Secretary-General as my Deputy and will join us on 1 December 2017. We both have extensive experience in pursuing accountability for SGBV crimes and are committed to doing exactly that. What does this mean in practice? It means:

- Ensuring that expertise working on gender-based crimes is genuinely valued and situated as a core part of the work of staff within the IIIM – in this respect, I am grateful to the Government of Canada that has committed to funding three SGBC posts through UN Women and Justice Rapid Response. This will permit the fast recruitment of a specialized investigator, analyst, and lawyer. Additionally, expertise dealing with gender-based crimes will be included as part of the evaluation of candidates in the recruitment process for a number of other staff.
- Formulating effective policies and operating guidelines to promote better outcomes in addressing gender-based crimes – and ensuring they are enforced and updated on an ongoing basis within the Mechanism;
- Training all staff members on addressing gender-based crimes;
- Periodically reviewing the IIIM’s work on gender-based crimes and feeding back the results into operating guidelines etc;

The IIIM is also required to take into account the nature of the crimes, in particular when it involves sexual violence, gender-based violence, and violence against children. This obligation offers an important opportunity: **to learn from, and build on, the many lessons learned over the past two and-a-half decades** by the ad hoc, international and hybrid courts and tribunals and, increasingly, the national jurisdictions that have been working on accountability for gender-based crimes. Our key objective will be to integrate their best practices into the work of the IIIM – and to build on them. I think, now, of the legacy projects of the prosecutors’ offices in the ad hoc tribunals, which set out the lessons learned in investigating and prosecuting conflict-related sexual violence, emphasising key points such as:

- Understanding the stereotypes and misconceptions about sexual violence that can impede accountability efforts. This would include a myriad of false assumptions, such as that sexual violence conducts are an inevitable by-product of war or that sexual violence affects only women;
- Developing an effective victim-centred approach, supporting and encouraging victims and witnesses’ to come forward and, through the process of taking their accounts, to empower them as much as possible;

- The importance of “contextualising” conflict-related sexual violence, situating it within other patterns of violent conduct;
- Navigating issues such as stigma when investigating and prosecuting sexual violence;
- Establishing analysis frameworks and evidentiary strategies for linking sexual violence to senior officials who are not direct physical perpetrators.

It is also **crucial that the IIIM’s approach reflects the broader scope of gender-based crimes, not only limited to sexual violence**. Much of the attention to date has been focused on sexual violence – and this has been an important achievement, given that this violence has historically been shrouded in silence. But we now need to use our understanding of the documentation of conflict-related sexual violence to expand our focus and address more fully other gender-based crimes in international criminal law. We must accurately understand the distinctive impact of the Syrian conflict on males and females and ensure that our approach to building cases reflects the experiences of both.

For example, crimes such as enforced disappearance have a gendered impact – while adult men are the most direct victims, those left behind – who are predominantly women, and children may in turn be direct victims of crimes. Additionally, in patriarchal societies, enforced disappearance of men also puts women in a socio-economic limbo. In the Syrian context, it creates specific issues for women with children, for instance where the law doesn’t recognise mothers as having decision-making power over key decisions in respect of children’s health. Similarly, gender-based persecution as a crime against humanity (e.g. specifically recognised in the ICC Statute) is a crime category for which there are few precedents, but which provides an important avenue for addressing violations of fundamental rights based on gender. It is also essential to ensure that women’s voices are heard as part of the investigation process and that the documentation of the Syrian conflict reflects the experiences of women and girls. At ICTY, for example, only 13 percent of witnesses were women. The Mechanism is dedicated to ensuring that women’s voices are heard and their experiences understood as part of the process of pursuing accountability.

The IIIM is also required to provide clear referral pathways so that vulnerable victims, including victims of conflict-related sexual violence, who come forward are provided with medical and psychological support.

We expect that gender-based crimes will form part of dossiers that may be transferred to national – and hopefully, international and regional jurisdictions for prosecution. The IIIM will be very open to work closely with those jurisdictions,

including by ensuring access to available expertise on conflict-related gender-based crimes. Indeed, prosecuting these crimes can raise very distinct issues and challenges compared to those usually encountered by prosecutors, particularly in national systems. Expertise could be made available from within the IIM, but also by developing creative collaborations with others with extensive experience working on these issues at the international level. This could include, for example, the Prosecuting Conflict-Related Sexual Violence Network set up through the International Association of Prosecutors, which uses a model of peer-to-peer engagement to make available strategies and lessons learned from the ad hoc courts and tribunals to practitioners working on these issues at the domestic level.

Allow me to conclude by saying that, as the Head of the IIM, I am very conscious of the important role the Mechanism is to play in independently and impartially supporting the investigation of sexual violence and gender-based crimes committed in Syria and in supporting the prosecution of the perpetrators of such crimes. The Mechanism looks forward to your support as we work to fulfil our important mandate and make the prospect of justice for victims a reality.

Thank you.