

## Submission by Global Rights Compliance to the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in connection to the Call for Input on ‘Identifying, Documenting, Investigating and Prosecuting Crimes of Sexual Torture Committed during War and Armed Conflicts, and Rehabilitation for Victims and Survivors’

### Global Rights Compliance

1. Global Rights Compliance (**GRC**) is a not-for-profit organisation specialising in international humanitarian law (IHL) and human rights issues in conflict-affected areas. Present in Ukraine since 2015, GRC supports the Office of the Prosecutor General (**OPG**) through several projects, including GRC’s Mobile Justice Teams (**MJTs**) providing real-time advice on investigations, evidence analysis and case-building. Through its Integrated Support Mechanism focused on conflict-related sexual violence crimes (**CRSV**), GRC is providing technical and strategic expertise to the OPG and regional prosecution offices and investigative bodies to strengthen the investigation and prosecution of CRSV, including those amounting to ‘sexual torture’<sup>1</sup>, in line with international standards and best practices.

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2. GRC is making the below submissions focusing on the specific context of Ukraine with a focus on the work and legal framework in which the MJTs operate. It sheds light on how the State’s institutions are seeking to identify, investigate and prosecute sexual violence crimes amounting to torture while facing an ongoing armed conflict and repealing the aggressor State out of its borders. While sexual violence crimes and torture crimes have been prevalent in the armed conflict in Ukraine since 2014, the escalation of Russia’s illegal

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<sup>1</sup> In the present submission, reference to ‘sexual violence’ and ‘torture’ should be understood as violations of International humanitarian law. The phrase ‘sexual torture’ should be understood as a violation of IHL which corresponds to both the definition of sexual violence violations (including indecent assault and other prohibited conducts amounting to sexual violence) and torture violations in the meaning of the 1949 Geneva Conventions and their Additional Protocols I.

full-scale invasion of Ukraine in 2022 has led to a significant increase in the incidents and magnitude of these crimes across the country and the use of ‘sexual torture’ in detention. The exact extent and scale of these crimes is still unknown, but the OPG is currently investigating thousands of crimes, including those amounting to both torture and sexual violence.

3. This submission explores both the challenges faced by Ukraine as well as the work of the OPG in strengthening its institutional capacity and strategic approach to addressing all conflict-related crimes, and more precisely, ‘sexual torture’ crimes committed in relation to the Russian Federation aggression on Ukraine.
4. The information shared in this submission is non-exhaustive and is strictly limited to functions carried out by GRC’s MJTs in support of the OPG. It arises from our reports, evidentiary analysis, field missions and other strategic and technical support provided to the OPG and its regional offices. The submission is divided in two parts that include an overview of the situation in Ukraine and the specific contributions to the questionnaire.

### **Overview of sexual torture in the context of Russia’s invasion of Ukraine**

5. As indicated in the GRC’s Submission to the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment of 31 October 2023, GRC has been actively assisting the OPG in investigating and prosecuting CRSV, including conducts that amount to both sexual violence and torture, committed during and in association with Russia’s invasion of Ukraine since 2014 by Russian Federation service personnel and agents.
6. In this sense, among other activities, GRC’s MJTs have accompanied the OPG Specialised Conflict-Related Sexual Violence Division (CRSV Division) on several missions, including in Regional Prosecution Offices (RPO), where case files were reviewed by the CRSV Division and GRC for identifying incidents with acts of sexual violence that needs be charged as such. GRC is further providing support to the CRSV Division for the review of case materials collected since 2015 for the purpose of identifying and prosecuting CRSV, including those amounting to torture, that was not detected during earlier phases of evidence-gathering. GRC has also been assisting the OPG in examining various alleged IHL violations against Ukrainian prisoners of war (POWs) held under Russian control with

a view to potentially informing a more comprehensive criminal investigation regarding violations, including those that constitute ‘sexual torture’.

7. As a result of these activities, the analysis done by GRC until now indicates that ‘sexual torture’ seems to be systematically occurring in the context of the Russian occupation and in detention facilities in the Russian Federation holding civilians and POWs. This preliminary assessment is continuously verified and revised against evidence to ascertain a broader and more comprehensive analysis of the use of ‘sexual torture’ by the Russian Federation.
8. The analysis thus far includes allegations of rape, sexual slavery, threatened and targeted violence to genitalia, and other sexual body parts, including through the use of electroshocks, both against prisoners of war (men and women) and Ukrainian civilians. Such violence includes targeted and serious beatings to the buttocks resulting in severe bruising, causing defecation, and loss of consciousness. POWs and civilians reported the use of substances or objects to burn genitals (matches, pepper, chemicals inserted into the anus/genitals), electrocution of buttocks and testicles, electrocution while wet and naked, and the tying of rope and cable to male genitalia. Violations also include the pointing of weapons directly at genitals, the burning of nipples of male POWs, and the spanking of female POWs by perpetrators. Victims reported threats of genital mutilation and the threat of the use of electric wires on genitalia. At least one case of emasculation and others of castration against Ukrainian POWs are being investigated. Threats of sexual violence, including rape and castration, were also recorded, including sexual violence against family members, including mothers and children of the victims. In these cases, these conducts are also investigated as torture.
9. The Kherson RPO led an investigation that encompassed interviewing hundreds of victims and witnesses held by Russian occupation forces in different detention centres in the Kherson region. At least dozens of statements mention rape and other forms of sexual violence committed in four detention facilities. The legal analysis of the acts, that occurred during interrogation, shows that these acts constitute both torture and sexual violence. Male and female victims were subjected to various forms of ‘sexual torture’, including electrocution of genitals, forced nudity, witnessing the rape of other persons, and threats of rape as well as sexual mutilation.

## Contributions to questionnaire

### Challenges, impediments and obstacles to effective identification, documentation, investigation and prosecution of crimes of sexual torture and related ill-treatment

10. Challenges, impediments and obstacles to effective identification, documentation, investigation and prosecution of sexual violence also constitutive of torture and related ill-treatment in the context of the Russian Federation's aggression against Ukraine are comparable to those encountered in other armed conflict settings. These are, among others, cultural, societal, religious, and structural. Some of the challenges that are equally affecting sexual violence survivors, relate to the distrust in institutions, which is often reinforced by a lack of understanding and thus fear of the judicial process. This is particularly true when it comes to sexual violence crimes for which the legal process can seem highly intrusive, especially when forensic medical examination is required.
11. In Ukraine, 'sexual torture' is an integral part of the violations committed by Russian Federation's military service personnel and their agents against men and women, in and outside detention settings as seen above.
12. Furthermore, GRC recognizes that stigma associated with sexual violence crimes, including those that amount to torture, may intersect with other prejudices and discriminatory attitudes relating to a survivor's characteristics, vulnerabilities, and lived experience (e.g. attitude to mental health and illness, disability, former detainees, widows, and sexual and gender diverse persons). Investigation and prosecution processes can trigger re-victimisation, deepening stigma and amplifying harm and trauma, creating barriers to the identification and investigation of the full spectrum of crimes. This is especially relevant when it comes to 'sexual torture' where the impacts of the violation and the severity of the physical and mental harm is an important element of the crime. It also explains why some victims might rather disclose partially the violations they were subject to, avoiding the disclosure of the sexual aspect of the violations.
13. In the Ukrainian context, investigation and prosecution processes must be mindful of the different challenges that are faced by victims due to their gender and/or sexual orientation, real or perceived. For example, socially constructed masculinities (and femininities) are an important factor that not only shape the way that investigators and prosecutors approach, view, and respond to cases of sexual violence against men and boys, including 'sexual

torture’. They also affect if, when and how men will, or will not, disclose the sexual element of the acts of torture to which they were subjected. Sometimes choosing to disclose only the element of torture or using indirect language to avoid talking overtly about its sexual violence parts (e.g. ‘they did what they came for’ or ‘they did what they had to do’ when referring to sexual violence) is observed. Even when affected by lasting physical and psychological consequences of sexual torture, male survivors might not be able to disclose the sexual aspect of their harm due to fear of judgement or appearing ‘less of a man’. Such challenges are rooted in gender stereotypes and expectations of men, male behaviour, and masculinities that should be addressed and recognized during investigation and prosecution. The factors may be particularly acute in the context of sexual torture against members of the Ukrainian armed forces, for instance.

14. Women survivors, especially when they are the main caretakers of their families, might choose not to disclose the sexual violence they were subjected to, as they might consider it essential to focus on the present needs of their families. In addition, women might prefer not to disclose the sexual component of the act of torture for fear of being seen as “worthless”, “impure”, or “less valuable” in their families and/or communities.
15. Survivors with diverse sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC) might be reluctant to report sexual violence they have endured due to mistrust of law enforcement authorities, fear of being stigmatized, mocked or having intimate details revealed to the public, their families and their communities. When they report, survivors of diverse SOGIESC may limit their account to the non-sexual part of the torture to which they were subject, or be reluctant to disclose information about the basis (or bases) on which they were targeted.
16. Many Ukrainian survivors have taken refuge in foreign countries. Information on how to report the crimes they were subject to, access to services they need, might not be available or easily available to refugees in these countries. This knowledge gap creates an obstacle for survivors who might want to report crimes they were subject to.
17. In remote settlements that have been liberated from the Russian Federation occupation, communication and access remain challenging. Law enforcement authorities are not permanently based in some of these settlements. However, once settlements are liberated, and in settlements very close to the frontlines, investigators and prosecutors are regularly

travelling to these areas, reaching out to victims, directly and through other modes including the distribution of information pamphlets about crimes and how to report them.<sup>2</sup> Moreover, access to victims in territories under the Russian Federation occupation and in the Russian Federation is not possible, making it impossible to assess the extent of the crimes committed in these regions. Such limitation is an important impediment to investigating fully the extent of the crimes committed by the Russian Federation against POWs and civilians, including those constitutive of ‘sexual torture’.

18. It should be noted that one of the peculiarities of this ongoing armed conflict is the fact that Ukraine has a functioning judicial and law enforcement system. Even if it was not prepared to deal with the scale and nature of crimes committed, the Ukrainian law enforcement and justice framework has shown adaptability and a will to incorporate international best practices fostering a victim-centered and trauma-informed approach in its investigation and prosecution work.
19. To overcome the challenges, impediments and obstacles identified above, several institutional advancements have been put in place within the Ukrainian OPG and regional RPOs to address acts amounting to sexual violence and torture or related ill-treatment. The establishment of the CRSV Division in September 2022, within the OPG’s War Crimes Unit, underscores a commitment to leading policy, strategic, and investigative endeavours aimed at fortifying the examination and prosecution of all CRSV.
20. In June 2023, the Prosecutor General adopted a Strategic Plan concerning the criminal prosecution of CRSV, predominantly to be executed by the CRSV Division. The Plan was crafted with the aim of implementing the OPG CRSV Strategy, chiefly to institutionalize systems, procedures, and tools that uphold best practices, establish a framework for coordinated, sequenced capacity building and assistance, and ensure large-scale supported standardized change of practice across the nation and at the field level in the investigation and prosecution of CRSV. These systems, procedures, and tools serve as the foundation for rollout training, mentoring, and supervision which are currently being delivered by GRC.

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<sup>2</sup> These pamphlets are currently being reviewed to ensure that victims are fully aware of their rights and obligations.

## Regulatory frameworks

21. The Ukrainian criminal legal framework does not account for acts of ‘sexual torture’ as a standalone crime. However, through the application of Article 438 of the Criminal Code of Ukraine (CCU), the prosecution has the possibility to charge acts amounting to ‘sexual torture’ as sexual violence and torture to ensure that charging captures both the torture side of the criminal conduct and its sexual violence part.
22. The Ukrainian criminal legislation does not envisage a complex and developed legal framework for addressing IHL violations, including sexual violence and torture. The only provision in the Criminal Code of Ukraine dealing with IHL violations is Article 438 outlawing “Cruel treatment of prisoners of war or civilians, deportation of civilian population to engage them in forced labour, pillage of national treasures on occupied territories, use of methods of the warfare prohibited by international instruments, or any other violations of the laws or customs of war stipulated by international treaties” ratified by the Ukrainian Parliament, as well as ordering to commit such crimes.<sup>3</sup> ‘Cruel treatment’ in the wording of Article 438 of the CCU should be understood as encompassing the wide range of violations that POWs and civilians can be subject to and which constitute prohibited conducts recognised by IHL treaties. The violation of Article 438(1) of the CCU leads to imprisonment for a term of eight to twelve years. The commission of the same acts that were also accompanied by a premeditated murder shall be punishable by imprisonment for a term of ten to fifteen years or life imprisonment. These sentences are applicable to persons found guilty of acts amounting to sexual violence and/or torture as violations of IHL.
23. The analysis of the Notices of Suspicion issued thus far<sup>4</sup> reveals that Ukrainian prosecutors mainly rely on the Geneva Conventions, and their First Additional Protocol, to prosecute violent acts committed against protected persons.<sup>5</sup> However, none of the above treaties

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<sup>3</sup> Criminal Code of Ukraine (‘CCU’), Articles 438.

<sup>4</sup> In Ukraine’s criminal process, a notice of suspicion is a separate procedural step within the pre-trial investigation. A written notice of suspicion, issued by the prosecutor or investigator upon the agreement with the prosecutor, entails granting a procedural status of a suspect to a person to whom the notice of suspicion is issued. The notice of suspicion contains, among other things, the suspect’s personal information, the brief overview of the incriminated acts as well as their preliminary legal qualification and the outline of the suspect’s rights. When it is not possible to serve the notice of suspicion to a suspect, such notice of suspicion can be published, including on the web-site of the Office of the Prosecutor – General of Ukraine. For more information on notices of suspicion, see Criminal Procedure Code of Ukraine (‘CPC’), Chapter 22, Articles 276 – 279.

<sup>5</sup> See for example the list of Notices of Suspicion issued in CRSV cases:  
<https://www.gp.gov.ua/ua/posts/povidomlennya-pro-pidozru-33083>

directly and specifically prohibit “sexual torture” as an IHL violation nor does the CCU,<sup>6</sup> nor the ICC Statute, for that matter.<sup>7</sup> In order not to overlook or fail to recognize the sexualized element of the act of torture, GRC has been strongly encouraging prosecutors to systematically qualify and charge an act of ‘sexual torture’ as both sexual violence and torture.

24. On the legislative side, Ukraine has been taking on efforts to better translate international standards into domestic law. One notable piece of proposed legislation goes some way to reflect such efforts [is the Draft Law 9351](#) ‘On the Amendments to the Criminal Procedure Code of Ukraine on Improving the Procedure for Pre-Trial Investigation and Trial in Criminal Proceedings on Crimes Related to Sexual Violence Committed in the Context of Armed Conflict’ (hereafter “Draft Bill 9351). Draft Bill 9351 has been prepared with the purpose of improving the procedure for investigating and prosecuting cases of sexual violence committed in the context of Russia's armed aggression against Ukraine.
25. Draft Bill 9351 proposes that a reasonable period of time be established to begin pre-trial investigations in criminal proceedings concerning crimes under Section XX of the Criminal Code of Ukraine (part two of Article 219 of the CPC). A successful prosecution requires “contextualization” of sexual violence, which means analysing the sexual violence committed in the context within which it occurred, examining its “connections” to other crimes that were committed, and the function of such sexual violence in the wider sphere of the crimes committed. To be fully understood, the information regarding the crimes will need to be properly contextualized in the socio-cultural environment within which it was obtained, which may be better understood within a certain time frame. This is particularly true for violations such as ‘sexual torture’, which occur in the context of an armed conflict and, therefore, have to satisfy the elements that relate to context.

### **Victim participation and protection during investigation and prosecution**

26. It should be noted that many of the laws currently in place regarding victim participation in proceedings needed to be updated to take into account best international practices, especially for cases involving sexual violence crimes. The ongoing Russian war of aggression and the thousands of crimes linked to it created an opportunity to reform the

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<sup>6</sup> CCU, article 127.

<sup>7</sup> As of 24 April 2024, Ukraine is not a Party to the ICC Statute.



Ukrainian legal system towards one more victim-centered during investigation and prosecution. If adopted, Draft Law 9351 will significantly strengthen the capacity to investigate CRSV with a focus on the needs of victims and witness safety. However, when specific legislation is put in place to allow for better participation and protection of victims in the judicial process, the provisions are not aimed specifically at sexual torture victims but will benefit them.

27. One pivotal step in the Strategic Plan concerning the criminal prosecution of CRSV was the formulation of Standard Operating Procedures (SOP) on CRSV. In this sense, in June 2023, the OPG initiated a Task Force comprising Ukrainian investigators and prosecutors from central and regional level, the Security Service of Ukraine (SBU) and the National Police of Ukraine (NPU), entrusted with crafting SOP's for the investigation and prosecution of CRSV in Ukraine. GRC in collaboration with a UK PSVI Expert are collaborating with the OPG CRSV Division to bolster the formulation SOP's aimed at ensuring the effectiveness, victim-centricity, trauma-informed nature, and alignment with international best practices in the investigation and prosecution of CRSV in Ukraine. This process is accompanied by the development of an array of tools that aim at overcoming some of the challenges identified above, including strengthening victims' trust toward law enforcement agencies through a clear Victim Communication Plan and Informed Consent form for investigative activities.
28. The OGP also ensures that its office is staffed with personnel with appropriate skills and experience to ensure contacts with the victims and witnesses engaged in the judicial process are done according to best practices. Further, as mentioned above, the OPG has been working to retain comprehensive legal qualifications of criminal conducts, including ensuring that CRSV amounting to torture are cumulatively charged as sexual violence and torture as violations of IHL according to article 438 of the CCU (see Section II).
29. Finally, as previously mentioned in Part A, since 2022, the OPG has taken a more proactive role in detecting and identifying incidents of CRSV, including crimes that can amount to 'sexual torture'. It has increasingly recognized the importance of properly qualifying such crimes in accordance with international law and related standards, within the 1949 Geneva Conventions legal framework.
30. Currently, Ukraine has integrated recognition of the rights of victims during investigations

and judicial proceedings. Article 56 of the CPC sets forth that victims, throughout the criminal proceedings, shall have the right to: know the substance of the charges, be informed on measures taken in respect of the suspect; produce evidence to the investigators, prosecutors, investigating judges and courts; propose submissions, challenge decisions, acts and omissions by the investigative authorities and courts; have a legal representative; examine parties' materials related to the criminal offence they were subjected to; obtain copies of the procedural documents and receive written notifications; take part in investigatory and procedural actions; and, participate in trial and in the direct examination of evidence.

31. Article 27 of the CPC of Ukraine provides for, among other things, issues regarding the publicity and openness of court proceedings. It states that in courts of all instances, criminal proceedings shall be conducted openly. However, Article 27 (2) also provides that the investigating judge or court may decide to conduct criminal proceedings in a closed court session throughout the proceedings or a separate part thereof in specific cases, including when the court hearing relates to a criminal offence against sexual freedom or security of a person, to prevent the disclosure of private information regarding the victim, and to ensure the safety of persons involved in the proceedings.
32. Article 16 of the law on ensuring the safety of persons involved in criminal proceedings<sup>8</sup> provides for closed court hearings in the manner prescribed by the Criminal Procedural Code of Ukraine in order to ensure the safety of the party to the criminal proceedings as well as the use of videoconference testimony when broadcasting from another premises, including in a manner that makes it impossible to identify the person giving testimony. This law is applicable to cases involving sexual violence and torture.
33. The prosecutorial and investigative authorities of Ukraine are aware of the importance of upholding and safeguarding the rights of victims, witnesses, and their families throughout the legal processes. With this in mind, they and their partners, continue to carefully examine relevant legislation with a view to engaging with entities involved in the drafting process and propose comprehensive amendments or new legislation where necessary and where possible diligently advocate for the prompt enactment of any such necessary

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<sup>8</sup> Report of the Verkhovna Rada of Ukraine (VVR), 1994, № 11, art.51. Entered by the Resolution of the Verkhovna Rada № 3926-XII dated 04.02.94, VVR, 1994, № 18, art.105.

legislative measures.

- <sup>34</sup>. As mentioned above, Draft Law 9351 delves into multiple amendments that, if approved, would bring the Ukrainian legislation closer to international standards, including for victims of ‘sexual torture’. The amendments aim to ensure the protection and confidentiality of victims during the pre-trial investigation and trial stages of this category of crimes.
35. Regarding amendments to Article 27 of the CPC, these correspond to Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms which imposes a positive obligation on the State to ensure respect for private and family life. Protecting personal data is fundamental to ensuring the right to respect for private and family life. Ensuring confidentiality is a fundamental principle in sexual violence investigations and judicial proceedings, and information regarding the victims of this category of crimes should be protected at all stages of such proceedings. Failures to uphold confidentiality, or ensure privacy will, among other things, likely cause re-traumatisation of the survivor. Therefore, consideration of such motions in a closed court session helps to better ensure the inviolability of the privacy of victims of CRSV, avoids disclosure of the details of the crime in so much as is possible, and better ensure respect for the dignity of victims and their families.
36. Note should also be taken of Law [3604-IX](#) ‘On the introduction of amendments to the CPC regarding the gradual implementation of the Unified Judicial Information System’. It allows all participants in criminal proceedings to *attend court hearings online with their own devices* and use e-signatures (amendments to Article 336 CPC). It specifies that the interrogation of witnesses, victims and specialists may be conducted outside the court with their own devices only under exceptional circumstances during wartime or a state of emergency. To participate in a court hearing online with their own device, victims or witnesses should submit a request 5 days prior to the hearing. This is a significant development in terms of a victim-centered approach, although the practice is still evolving and the exact criteria for what may qualify as "exceptional circumstances" are yet to be determined.
37. Given the unique nature of CRSV in the context of an armed conflict, in-person participation of a victim or a witness of CRSV in a court session can be dangerous or difficult when they resides far from the seat of the court, damaging and re-traumatising for

them. Moreover, it can impact the quality of their testimony in court. Therefore, the ability to participate in the session online is a necessary and a must-have special measure. This amendment is in line with the EU Directive on victim's rights best practice in terms of victim participation at the various stages of the trial.

38. Lastly, regarding the informed consent of victims, the CCP provides for various rights for the victim, including the right to take part in investigatory other procedural actions. To bolster victims' participation and understanding of the legal proceedings, the SOP Task Force is working to ensure that best practices in line with documents such as the EU Directive on victim's rights, the Istanbul Protocol or the Murad Code are integrated.

#### **IV. Evidence Collection and Documentation in accordance with the Istanbul Protocol**

39. The collection of evidence related to 'sexual torture' in Ukraine presents numerous practical and logistical challenges, including the sensitive nature of the crime, the often remote or hostile environments where these crimes occur, and the need for specialized skills and techniques to gather evidence effectively.
40. It should be noted that in criminal cases, a key source of evidence is the victim's statement. However, the Ukrainian armed conflict context implies that victims might be located in occupied, dangerous or remote areas, or abroad, without access to investigators or prosecutors' offices to file their complaints. Therefore, it is highly likely that there are still many victims of 'sexual torture' who have not yet filed complaints, decreasing the prosecution's access to relevant evidence.
41. The rules governing collection of evidence in Ukraine were not designed to deal with a situation of armed conflict such as that currently facing the country. However, the OPG and other relevant actors are taking multiple steps to adapt their case-building methodology to allow the collection of evidence in complex crimes and violations and support their cases in court.
42. As previously mentioned, during the development of the SOPs, the Taskforce has been preparing specific tools to align its procedural practice to international standards, such as the Forensic Medical Examination, often ordered by investigators and prosecutors in CRSV cases, including those constitutive of 'sexual torture'. In Ukraine, there is an overall

reliance on physical medical forensic examinations, which are highly regarded as reliable and relevant evidence in courts. As such, there is a risk of overuse of examinations performed under the guidelines of the Istanbul Protocol, as well as the lack of understanding of their limits and probative value both by prosecutors and courts.

43. In this sense, the Taskforce has worked on several standardized forms related to the guidance and requests of forensic medical examinations in CRSV cases, ensuring that these documents comply with the standards of the Istanbul Protocol, including by ensuring that victims are fully informed and understand the procedure as well as the risks and benefits associated to such investigative action.
44. The SOP process further takes into account the challenges faced by the ongoing armed conflict and the fact that most survivors of CRSV, including cases that can amount to 'sexual torture', might only be able to seek justice or feel ready to report months, if not years, after the commission of the violation. It may therefore be impossible to gather DNA and other trace evidence through a medical examination. Investigators and prosecutors are therefore trained to manage their expectations about the probative value of physical medical forensic findings, to seek other sources of evidence, such as psychological/psychiatric medical examinations, and to correct any misunderstandings and bias they might still have regarding sexual violence.