



## Sexual violence against children

*This term appears to have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child.*

### A.1. Definitions in legally binding instruments

- i. 1989: The CRC does not define “sexual violence”, but includes “sexual abuse” in its definition of “violence” in Article 19<sup>40</sup> and specifically addresses protection from sexual exploitation and sexual abuse in Article 34.
- ii. 2011: The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (“the Istanbul Convention”) refers to “sexual violence” in its Article 36. Moreover, Article 3 of the Convention explicitly extends the scope of the instrument to include girls under 18 years of age.<sup>41</sup>

### A.2. Non-binding instruments

The term “sexual violence” is increasingly used in resolutions of the UNGA and of the Human Rights Council (HRC). Some examples are included below.

- i. 2010: HRC Resolution A/HRC/13/L.21 on the Rights of the Child: The Fight Against Sexual Violence.<sup>42</sup>
- ii. 2011: UNGA Resolution 66/140 on the Girl Child mentions sexual violence against children.<sup>43</sup>
- iii. 2011: UNGA Resolution 66/141 on the Rights of the Child, Paragraph 23, mentions rape and other sexual violence against children.<sup>44</sup>
- iv. 2011: CRC Committee General Comment No. 13 on the Right of the Child to Freedom from All Forms of Violence sets forth a broad definition of violence against children which includes sexual abuse and exploitation. It further defines sexual abuse and exploitation as including “(a) *The inducement or coercion of a child to engage in any unlawful or psychologically harmful sexual activity; (b) The use of children in commercial sexual exploitation; and (c) The use of children in audio or visual images of child sexual abuse; (d) Child prostitution, sexual slavery, sexual exploitation in travel and tourism, trafficking (within and between countries) and sale of children for sexual purposes and forced marriage. Many children experience sexual victimization which is not accompanied by physical force or restraint but which is nonetheless psychologically intrusive, exploitive and traumatic.*”<sup>45</sup>
- v. 2013: The Declaration on the Elimination of Violence against Women and Elimination of Violence against Children in the Association of South-East Asian Nations (ASEAN) refers in its Preamble to the need to “prevent and protect [women and children] from and respond to all forms of violence, abuse and exploitation [...] including women and children who are sexually exploited”.<sup>46</sup>

## Terminology considerations

Although the term “violence” is often used in connection with some form of physical act, the original meaning of “violent” signifies “having a marked or powerful effect”.<sup>47</sup> While English dictionaries often refer to “violence” as

the use of physical force, it is also recognised that violence means “*actions or words that are intended to hurt people*”.<sup>48</sup> Indeed, it is increasingly recognised that violence against children can be not only physical but also psychological and sexual.<sup>49</sup>

The notion of “sexual violence” has been used mainly when referring to adults, often in relation to gender-based violence and in the public health discourse, and is often associated with rape.<sup>50</sup> The Declaration on the Elimination of Violence Against Women, adopted by the UNGA in 1993, 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*”.<sup>51</sup> It encompasses, but is not limited to, “*physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation; physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere; trafficking in women and forced prostitution; and physical, sexual and psychological violence perpetrated or condoned by the state, wherever it occurs*”.<sup>52</sup>

The 1993 Declaration has become a text of reference at global level and has guided, for instance, the work of WHO, which, in 2002, defined sexual violence as “*any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person’s sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work*”.<sup>53</sup> It is further specified that “coercion” can include “*a whole spectrum of degrees of force. Apart from physical force, it may involve psychological intimidation, blackmail or other threats*”.<sup>54</sup>

The UN Secretary-General’s Study on Violence against Children, and its accompanying World Report on Violence against Children, reinforces the discourse on sexual violence against children at the UN level,<sup>55</sup> and takes as a starting point the CRC (in particular Article 19) and the WHO definition of violence. The Study systematically refers to sexual violence and contextualises it in the various settings, including, *inter alia*, sexual abuse, sexual exploitation, sexual harassment, and internet-related sexual offences. Since then, an increasing number of UNGA and HRC resolutions have referred to sexual violence against children,<sup>56</sup> often specifically addressing child sexual exploitation and sexual abuse. Over the past years, the discourse in the field of child protection has also moved towards a more “violence-based” language (e.g. violence against children instead of child abuse).

While there is no overall internationally agreed legal definition of sexual violence, which is mentioned neither in the CRC nor in the OPSC,<sup>57</sup> it is important to note that Article 7 of the Rome Statute of the International Criminal Court includes among crimes against humanity “*rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity*” (when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack).<sup>58</sup>

In a report to the Security Council, the UN Secretary-General states, “*Under international law, sexual violence is not synonymous with rape. The statutes and the case law of the International Tribunals for the Former Yugoslavia and Rwanda and the Special Court for Sierra Leone, and the Elements of Crimes of the International Criminal Court, define sexual violence to also encompass sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and any other form of sexual violence of comparable gravity, which may, depending on the circumstances, include situations of indecent assault, trafficking, inappropriate medical examinations and strip searches*”.<sup>59</sup> The disaggregation of sexual violence offences into the categories listed above permits a more focused approach to prevention.<sup>60</sup>

The notion of “sexual violence” is more and more often used as an umbrella term that includes sexual exploitation and sexual abuse.<sup>61</sup> This is in line with the abovementioned CRC Committee General Comment No. 13, which clearly states that violence against children can be both physical and mental, and that the latter includes “*psychological maltreatment, mental abuse, verbal abuse and emotional abuse or neglect*”.<sup>62</sup> A similar approach can be found in the Sustainable Development Goals adopted by the UNGA in September 2015,<sup>63</sup> which include sexual exploitation as a form of violence. The implementation of the 2030 Agenda for Sustainable Development entails monitoring progress on both the elimination of all forms of violence against women and girls (Target 5.2)<sup>64</sup> and the elimination of all forms of violence against children (Target 16.2).<sup>65</sup> Moreover, the increasing attention paid to sexual violence against girls is reflected in the data collected at national level. The World’s Women, Trends and Statistics Report 2015 prepared by the UN Statistics Division<sup>66</sup> contains data on sexual violence against women and girls and, building on the 1993 UN Declaration on Violence against Women, defines sexual violence as “*any sort of harmful or unwanted sexual behaviour that is imposed on someone. It includes acts of abusive sexual contact, forced*

*engagement in sexual acts, attempted or completed sexual acts with a woman without her consent, sexual harassment, verbal abuse and threats of a sexual nature, exposure, unwanted touching, and incest”.*

The increased use of the term “violence”, in particular when used to refer to sexual exploitation and sexual abuse, has given rise to concern with regard to the focus that this term may draw to acts of commission, with the risk of making acts of omission (e.g. neglect/lack of supervision/lack of parental care leading to children’s vulnerability to sexual abuse/exploitation) less visible. This is also something that has been underlined in the field of gender-based violence, where the attention is often drawn to those who “commit” violence, leaving unattended the fact that violence can be as much a result of “omission” as of “commission”.<sup>67</sup> With regard to children, the CRC Committee, the European Court of Human Rights, and the Inter-American Court of Human Rights have all been clear on the fact that violence against children includes failure to protect children from danger or harm and that it is the duty of the state to do so (positive obligations).<sup>68</sup>

“Sexual violence” has become an important term in programming and policy-making, and is increasingly found in public discourse. When interpreted broadly, it has the advantage of being an all-encompassing term including all degrees of violence and all forms of suffering inflicted (physical, psychological, or sexual) as well as all kinds of acts (through contact, without contact, by omission). It is important for policy-makers and legislators to, on the one hand, pursue an integrated approach to the protection of children from all violations of their human dignity and sexual integrity and, on the other hand, to monitor and act to prevent and respond to new forms of sexual violence and to adopt all necessary measures to ensure children’s effective protection, including providing appropriate referral mechanisms.<sup>69</sup>

With regard to children, the terms “sexual abuse” and “sexual exploitation” are, as the following sections will show more in detail, firmly established in international law and remain key when addressing violations of children’s rights that are of a sexual nature. In many domestic legal systems,<sup>70</sup> as well as within EU law,<sup>71</sup> the use of violence can represent an aggravating factor in a sexual crime against a child.

Lastly, sexual violence may constitute a form of torture or other cruel, inhuman, or degrading treatment or punishment under certain circumstances. The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment sets forth that *“[t]orture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”*<sup>72</sup> The UN Committee against Torture has stated that it views “sexual violence and trafficking as gender-based acts of torture and within the purview of the Committee”,<sup>73</sup> and has repeatedly linked sexual violence to torture.<sup>74</sup> A similar approach can be found within the Inter-American Commission on Human Rights, which has admitted and opened a hearing on the reports of sexual torture of women in Mexico, promising also to continue with the theme.<sup>75</sup> Furthermore, the UN Human Rights Committee established under the International Covenant on Civil and Political Rights<sup>76</sup> recognises that sexual violence and abuse may constitute a form of torture or cruel, inhuman, or degrading treatment.<sup>77</sup> The Covenant deliberately refrains from elaborating an explicit definition of torture, on the basis that the nature, purpose, and severity of an act—not a pre-existing list of offences or crimes—should determine whether it is torture.<sup>78</sup> In all circumstances, the State is obligated to take measures to protect children from any form of sexual violence or abuse, whether perpetrated by persons acting in an official capacity, outside their official capacity, or in a private capacity.<sup>79</sup>

**Conclusion:** Sexual violence against children encompasses both sexual exploitation and sexual abuse of children and can be used as an umbrella term to refer jointly to these phenomena, both with regard to acts of commission and omission and associated to physical and psychological violence. At the same time, within this broader framework it is important also to maintain a more narrow focus on different specific manifestations of sexual violence against children in order to develop precise protection and prevention strategies as well as case-specific responses to child victims. From a child rights perspective, what matters is that the protection granted or sought through both legislation and policies be as broad and effective as possible, leaving no room for loopholes and securing all children’s protection and freedom from harm.

40 “States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”

41 Council of Europe, “Convention on Preventing and Combating Violence against Women and Domestic Violence”, CETS No. 210, adopted in Istanbul, 11 May 2014 <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210>

42 March 2010 <http://daccess-dds-ny.un.org/doc/UNDOC/LTD/G10/123/83/PDF/G1012383.pdf?OpenElement>

43 Adopted 19 December 2011 [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=%20A/RES/66/140](http://www.un.org/en/ga/search/view_doc.asp?symbol=%20A/RES/66/140)

44 Adopted 19 December 2011 [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=%20A/RES/66/141](http://www.un.org/en/ga/search/view_doc.asp?symbol=%20A/RES/66/141)

45 CRC Committee, General Comment No. 13, paragraph 25.

46 ASEAN, “Declaration on the Elimination of Violence against Women and Elimination of Violence against Children in ASEAN”, adopted at the 23rd Summit, 9 October.

47 See Oxford Advanced Learner’s Dictionary, origin of the word “violent”.

48 Cambridge Advanced Learner’s Dictionary and Thesaurus.

49 See the abovementioned references to UNGA resolutions as well as CRC Committee, General Comment No. 13.

50 See, for instance, E. Krug et al., (eds), World Report on Violence and Health, Geneva, World Health Organization, 2002, Chapter 6, p. 149, where it is explained that “[s]exual violence includes rape, defined as physically forced or otherwise coerced penetration – even if slight – of the vulva or anus, using a penis, other body parts or an object. The attempt to do so is known as attempted rape. Rape of a person by two or more perpetrators is known as gang rape. Sexual violence can include other forms of assault involving a sexual organ, including coerced contact between the mouth and penis, vulva or anus.”

51 Doc. A/RES/48/104, 20 December 1993, Article 1.

52 Ibid., article 2.

53 E. Krug et al., World Report on Violence and Health, supra 50, Chapter 6, p. 149.

54 Ibid.

55 P.S. Pinheiro, World Report on Violence against Children, New York, UN, 2006.

56 See, for instance, UNGA Resolutions 66/140 (2011), 66/141 (2011), 68/146 (2013).

57 It should be noted, however, that the French version of the CRC uses the terminology violence sexuelle where the English text refers to sexual abuse. See Articles 19 and 34 of the CRC.

58 UNGA, “Rome Statute of the International Criminal Court” (last amended 2010), adopted 17 July 1998, Article 7(g).

59 UN Secretary-General, “Report on the Implementation of Security Council Resolutions 1820 (2008) and 1888 (2009)”, Doc. A/65/592 – S/2010/604, Paragraph 4. See also Security Council Resolutions on sexual violence in conflict 1820 (2008), 1888(2009), and 1325 (2000).

60 Sexual slavery or enforced prostitution, for example, may differ in terms of its logic from the execution of a specific policy of forced pregnancy during a campaign of “ethnic cleansing” designed to achieve a military or political end, or rape concurrent with looting to terrorise the population or as a result of overly lax command and control structures. Depending on the circumstances of the offence, sexual violence can constitute a war crime, a crime against humanity, an act of torture, or a constituent act of genocide.

61 See WHO, World Report on Violence and Health. See also Inter-Agency Standing Committee (IASC), Guidelines for Integrating Gender-Based Violence Interventions in Humanitarian Contexts, 2015, p. 323, which uses WHO’s definition and adds that “[s]exual violence includes, at least, rape/attempted rape, sexual abuse and sexual exploitation” and “[s]exual violence takes many forms, including rape, sexual slavery and/or trafficking, forced pregnancy, sexual harassment, sexual exploitation and/or abuse, and forced abortion.”

62 CRC Committee, General Comment No. 13, Paragraphs 4 and 25. The Committee also emphasised in the General Comment that the choice of the term violence “must not be interpreted in any way to minimize the impact of, and need to address, non-physical and/or non-intentional forms of harm (such as, inter alia, neglect and psychological maltreatment)”.

63 UNGA, “Transforming our World: 2030 Agenda for Sustainable Development”, Doc. A/RES/70/1, 25 September 2015

[http://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/70/1&Lang=E](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E)

64 UN Sustainable Development Goal 5, Target 2: “Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation”.

65 UN Sustainable Development Goal 16, Target 2: “End abuse, exploitation, trafficking and all forms of violence against and torture of children”.

66 <http://unstats.un.org/unsd/gender/aboutWW2015.html>. The guidelines for the production of statistics on sexual violence against women, published by the UN Statistics Division, also include a “minimum list of acts” to be considered: [http://unstats.un.org/unsd/gender/docs/Guidelines\\_Statistics\\_VAW.pdf](http://unstats.un.org/unsd/gender/docs/Guidelines_Statistics_VAW.pdf)

67 See, for instance, A. Basu, “Gender-Based Violence: Acts of Commission and Acts of Omission” [web blog], 23 November 2015

<http://unfoundationblog.org/gender-based-violence-acts-of-commission-and-acts-of-omission/>

68 CRC Committee, General Comment No. 13, Paragraph 20; European Court of Human Rights, “Case of X and Y v. the Netherlands”, Judgement of 26 March 1985; Inter-American Court of Human Rights, “Case of González et al. (“Cotton Field”) v. Mexico”, Judgment of 16 November 2009.

69 A referral mechanism is a cooperative framework through which state actors fulfil their obligations to protect and promote the rights of victims. The CRC Committee, in its General Comment No. 13, sets forth in its Paragraph 50 that “The person receiving the report should have clear guidance and training on when and how to refer the issue to which-ever agency is responsible for coordinating the response. [...] Professionals working within the child protection system need to be trained in inter-agency cooperation and protocols for collaboration. The process will involve: (a) a participatory, multi-disciplinary assessment of the short- and long-term needs of the child, caregivers and family, which invites and gives due weight to the child’s views as well as those of the caregivers and family; (b) sharing of the assessment results with the child, caregivers and family; (c) referral of the child and family to a range of services to meet those needs; and (d) follow-up and evaluation of the adequateness of the intervention.”

70 Some examples: in Brazil “Dos crimes contra a liberdade sexual” <http://www.oas.org/juridico/MLA/sp/bra/index.html>; in Argentina “Delitos contra la integridad sexual” <http://www.infoleg.gov.ar/infolegInternet/anexos/15000-19999/16546/texact.htm#17>; in Spain “Delitos contra la libertad e indemnidad sexuales” [https://www.boe.es/legislacion/codigos/codigo.php?id=038\\_Codigo\\_Penal\\_y\\_legislacion\\_complementaria&modo=1](https://www.boe.es/legislacion/codigos/codigo.php?id=038_Codigo_Penal_y_legislacion_complementaria&modo=1); in France “Des atteintes à l’intégrité physique ou psychique de la personne” <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070719>; in Germany “Offences against sexual self-determination” [https://www.gesetze-im-internet.de/englisch\\_stgb/englisch\\_stgb.html](https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html)

71 Directive 2011/93/EU, supra 14, Article 9 on “aggravating circumstances”: “In so far as the following circumstances do not already form part of the constituent elements of the offences [...], Member States shall take the necessary measures to ensure that the following circumstances may, in accordance with the relevant provisions of national law, be regarded as aggravating circumstances [...]”: (g): “the offence involved serious violence or caused serious harm to the child.”

72 Adopted on 10 December 1984, Article 1.

73 See, for instance, <http://www1.umn.edu/humanrts/svaw/law/un/enforcement/comtorture.htm>. It should be noted, however, that the UN Committee against Torture considers only violations committed by a State Party, and does

not address issues relating to individuals or non-State actors exclusively. See, for instance, <http://www.ohchr.org/Documents/Publications/FactSheet17en.pdf>

74 For instance, in its Concluding Observations on the Fifth Periodic Report of the Russian Federation, (29 October–23 November 2012), the Committee against Torture expressed the following concern (Paragraph 14): “Despite consistent reports of numerous allegations of many forms of violence against women throughout the State party, the Committee is concerned that there are only a small number of complaints, investigations and prosecutions of acts of domestic violence and violence against women, including marital rape.” More recently, its Concluding observations on the initial report of Iraq (11-12 August 2015), the Committee expressed particular concern about “reports of ISIL fighters raping female captives, and about the fact that this extremist group has instituted a pattern of sexual violence, slavery, abduction and human trafficking targeted at women and girls belonging to religious and ethnic minorities (see S/2015/203, paras. 28-31). It is equally concerned by reports of sexual violence committed by members of the Iraqi army and militias on all sides of the conflict. The Committee is further concerned at the apparent impunity enjoyed by the perpetrators of such acts (arts. 1, 2, 4 and 16).”

75 See <http://hrbrief.org/2015/03/reports-of-sexual-torture-of-women-in-mexico/>

76 The UN Human Rights Committee is the treaty-monitoring body for the UN International Covenant on Civil and Political Rights established under Article 28 of the International Covenant on Civil and Political Rights, 23 March 1976, 999 U.N.T.S 1057.

77 See for instance, the following Concluding Observations by the Human Rights Committee: Cabo Verde, UN Doc. CCPR/C/CPV/CO/1; Honduras, UN Doc. CCPR/C/HND/CO/1; Kenya, UN Doc. CCPR/C/KEN/CO/3, para 17; Malawi, UN Doc. CCPR/C/MWI/CO/1, para 15; Mozambique, UN Doc. CCPR/C/MOZ/CO/1, para 17. See also UN Human Rights Committee, “V.D.A and Argentina”, Communication No. 1608/2007, 29 March 2011, UN Doc. CCPR/C/101/D/1608/2007.

78 UN Human Rights Committee, “Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)”, CCPR General Comment No. 20, 10 March 1992, Paragraph 4.

79 Ibid., Paragraph 2.