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POSITION PAPER

SEXUAL & GENDER- BASED VIOLENCE AS A WEAPON OF WAR

DURING THE OCTOBER 7, 2023 HAMAS ATTACKS

NOVEMBER 2023

Introduction

As time goes on, a fuller picture of what transpired during Hamas' October 7, 2023, assault on the communities of the Gaza Envelope is beginning to emerge. It is becoming more apparent that the violence perpetrated against women, men, and children also included widespread sexual and gender-based crimes.

While the full scale of the assault is yet to be uncovered, we consider it essential to present the information currently known to us. We have chosen to do so for several reasons. **First and foremost**, to encourage the reporting and documentation of these severe violations of international humanitarian law and fundamental moral principles, to advocate for international condemnation and sanctions against the perpetrators, and to prevent their recurrence. **Secondly**, to support the survivors and those who will hopefully still survive. Social and institutional recognition of the experiences of survivors is crucial to their capacity to describe what they endured. We hope that providing such recognition also promotes the allocation of social, professional, and financial resources to facilitate the conditions for their healing. **Lastly**, the publication of this position paper aims to bring attention to the urgent need to release the hostages still being held in Gaza. Those among them who endured or witnessed sexual and gender-based crimes face a higher risk of experiencing further violence and neglect while being denied vital physical and mental medical care.¹ The increased danger to their well-being compels us to utilize all available means to promote their release from captivity and safe return.

It is important to note that this position paper² does not attempt or aim to meet legal thresholds. Past experience has shown that survivors of sexual assault are only able to speak, if ever, after sufficient time has passed. As a human rights organization, our role is to validate and voice the experiences of those who endured sexual and gender-based violence

¹ Prof. Hagi Levin and Mor Hershkowitz. "Medical report on the needs of women kidnapped by Hamas," November 11, 2023. [Hebrew]

² This document has been published following consultations with medical and international law experts to whom we are in debt.

- even if they are no longer here to do so themselves. Therefore, this document cautiously outlines the currently available information while citing all sources used and working with the understanding that we still do not possess a complete account of the events. The information published to date is only partial, both due to a lack of systematic analysis of the findings for forensic evidence of sexual abuse and due to the conditions of some of the victims' bodies, their quantity, and the urgency of identifying and evacuating them - sometimes under fire. It is also likely that much of the documentation has not been officially published for additional reasons, including privacy concerns.

Based on the currently available information and the accounts indicating that sexual and gender-based violence occurred across several locations, an inquiry must be conducted to examine whether their scope and manifestations amount to crimes against humanity under international humanitarian law. However, the primary goal of this document is to highlight the importance of ensuring health care system preparedness for adequate, holistic, and adapted treatment for the survivors of sexual and gender-based violence.

Accumulating accounts of sexual violence

Accounts have been collected from several publicly available sources, including media reports and social media networks, and through interviews we conducted with several professional sources. The evidence collection process continues to be carried out by state and civil society actors, including through the establishment of the Civil Archive for the Documentation of Crimes Committed Against Women by Hamas.³

Victims

Physicians for Human Right-Israel (PHRI) was informed that the Association of Rape Crisis Centers in Israel (ARCCI) received information regarding cases in which women and girls were assaulted.

³ The information available in the archive was presented during a webinar hosted by Harvard Medical School and others: https://www.youtube.com/watch?v=5D7tb4zFKdk&ab_channel=MaimonidesSocietyHarvardMedicalSchoolandHSDM

The information relates to incidents of violence that occurred across all arenas of the October 7 attacks, including the Nova music festival, private homes in the Gaza Envelope, and an Israeli military base. Due to privacy concerns, details of the violent acts were not made public. Given the nature and consequences of sexual violence, the well-being of survivors is prioritized over the collection and documentation of evidence. As ARCCI Executive Director Orit Sulitzeanu noted, "We must consider those who were harmed and ask, "What about their dignity and privacy?" I want the public to know about the war crimes that were committed, but we must first ensure that these women are being treated as humans."⁴

Given that mere exposure to sexual violence is a traumatic event, those who have witnessed sexual and gender-based violence may respond in similar ways to those who were directly harmed. Some survivors of the October 7 massacre described accounts of sexual and gender-based violence during interviews with various media outlets. A male survivor who had been hiding in a bush described the following account: "The terrorists, people from Gaza, raped girls. And after they raped them, they killed them, murdered them with knives...They laughed. They always laughed. It's - I can't forget how they laughed on the - in this situation."⁵ Rami Shmuel, an organizer of the Nova music festival, detailed what he had encountered at the site, leaving no doubt as to what some women had endured: "We found naked women, they were stripped, and their legs were spread wide open."⁶

A month after the attacks, an Israeli broadcaster reported that the Lahav 433 police unit had collected hundreds of testimonies from survivors - primarily residents of the Gaza Envelope - and that these included **dozens of accounts of sexual violence.**⁷ Among them was the testimony of a woman who detailed the group rape and murder of a young woman by assailants dressed in military uniforms: "They bent

⁴ Bat El Kolman, *Makor Rishon (print edition)*, 17.11.2023 [Hebrew].

⁵ <https://www.pbs.org/newshour/show/survivors-of-hamas-assault-on-music-fest-describe-horrors-and-how-they-made-it-out-alive>

⁶ <https://edition.cnn.com/videos/world/2023/11/16/sexual-violence-israeli-women-hamas-attack-tapper-pkg-lead-vpx.cnn>

⁷ <https://kan.org.il/content/kan-news/defense/600882/?app=true>

some woman over, I realized he was raping her and passing her on to another man in uniform." She later noted that one of the rapists shot the woman in the head and then mutilated her body⁸. This testimony was later cited as the only account of a rape to have been collected by police.⁹ As detailed later in this document, the term "sexual violence" refers to various other acts in addition to rape (defined as forcible sexual penetration by a genital organ or object.)

Testimonies by emergency, medical, and security personnel

Rescue teams, military forces, and emergency response personnel¹⁰ who participated in the evacuation of survivors and were present at sites where victims' bodies were found observed signs of severe violence. In their assessment, these signs of violence indicated rape had occurred. Itzik Batach, a ZAKA Search and Rescue volunteer, described witnessing a couple undressed and bound together in a home in Kibbutz Be'eri.¹¹ Simcha Greinman, another ZAKA volunteer, stated that the body of a woman he encountered three days after she was murdered had been left with her lower half exposed.¹² A video testimony presented by the International Spokesperson for the Prime Minister's Office included a paramedic in an elite Israeli military unit who was facing away from the camera as he described entering a home in a Gaza Envelope community while the combat was still ongoing. The paramedic stated that he had seen a girl lying on the floor of the house: "She was lying on her stomach, half-naked, her legs spread open, and there were remains of semen on her back. Someone executed her after brutally raping her..."¹³

⁸ https://www.haaretz.co.il/news/politics/2023-11-08/ty-article/0000018b-afaf-d3c1-a39b-bfe10ae50000?utm_source=App_Share&utm_medium=Android_Native&utm_campaign=Share

⁹ <https://www.haaretz.co.il/news/politics/2023-11-19/ty-article-magazine/.premium/0000018b-e425-df9a-ab8b-feed647d0000?gift=52beb3a054d0482793b1dd081ec9cda1>

¹⁰ <https://www.israelhayom.co.il/news/defense/article/14801490>.

¹¹ <https://www.reuters.com/world/middle-east/rescue-workers-recount-horrors-found-kibbutz-attacked-by-hamas-2023-10-17/>

¹² <https://www.timesofisrael.com/amid-war-and-urgent-need-to-id-bodies-evidence-of-hamass-october-7-rapes-slips-away>

¹³ <https://www.ynet.co.il/news/article/bjnxpwufp>

Two testimonies from within the Shura military base - to which most bodies and remains from the massacre were brought - similarly described signs of sexual violence. The first is the testimony of Ma'ayan, a female reserves officer and dentist who was assigned to the forensic medical team. Ma'ayan stated that she observed many signs of abuse in groins, broken legs and pelvises, blood-stained underwear, and women who were exposed from the waist down. Sarai, a member of a special unit responsible for handling the bodies of female soldiers, was also present at Shura as a reservist. Speaking to the camera, she noted: "Yes, we saw women who were raped - from young children to elderly women, including penetration so forceful it broke their bones... We saw amputated genitals." While both these witnesses, like other emergency and medical personnel who provided testimonies, are not professionally trained to determine whether rape had occurred, the accounts they provided indicate the perpetration of sexual violence.¹⁴

A senior medical official with knowledge of the efforts being carried out at Shura shared with us that incidents of broken pelvises and other physical signs indicating sexual violence had been documented.¹⁵ The official also noted that he spoke with medical personnel at hospitals to which survivors and bodies from the attacks had arrived, who told him they had observed clear signs of sexual violence, including vaginal tears.

Visual testimonies

Videos spread online by Hamas, some of which were later removed, provide evidence of abuse of women and girls. The videos showed the individuals who were assaulted - some of whom were alive while being filmed, some who had already died, and some who were in an unknown state - being paraded through the streets of Gaza.¹⁶ These acts in and of themselves constitute sexual crimes, but in light of the various testimonies, there is also serious concern that some of these women

¹⁴ <https://www.timesofisrael.com/amid-war-and-urgent-need-to-id-bodies-evidence-of-hamass-october-7-rapes-slips-away/>.

¹⁵ Stated during phone calls and text exchanges, November 2023.

¹⁶ <https://www.memri.org/reports/special-announcement-%E2%80%93-hamas-atrocities-documentation-center-hadc>

faced additional sexual abuse.¹⁷ While we were not provided with access to the full video presented by Israeli authorities to diplomatic missions and journalists around the world, a journalist who was allowed to see it later described its content on X (formerly Twitter): "The bodies of two females laid on the grounds of the music festival - both without pants. The underwear of one of them was partially lowered. The other didn't seem to have underwear on. An eyewitness described seeing a woman being raped by several Hamas militants who pulled her hair while taking turns raping her. One of them cut off her breasts, and the other played with them like they were toys. The last Hamas militant to rape her proceeded to shoot her in the head... The witness also described a militant carrying a naked woman on his shoulders."¹⁸ According to the journalist, police representatives present at the screening of the video stated that they were still collecting evidence, including eyewitness testimonies and DNA samples from rape victims.¹⁹

Additional information

In videos shared with the media by Israel's Shin Bet security service, interrogated persons can be seen describing the orders they had received to kill and kidnap civilians, as well as orders to "sully" women - meaning to defile them through sexual acts.²⁰ It is important to note that we have not relied on the accounts recorded in these videos due to severe concern that the interrogations included the use of torture.

Based on these accounts and reports, in addition to accumulated experience from armed conflicts in other regions and scientific

¹⁷ The videos and photos we viewed while working on this document include a video of a young woman being forced into a vehicle as blood covers the pelvic region of her pants; a partially undressed woman in a vehicle along with several armed men, a photo of a body with the lower half exposed; a burned body bearing signs of sexual abuse; a photo of a woman who was tortured and burned in her home.

¹⁸ <https://x.com/mrconfino/status/1724385046583234841?t=r9L3a5S0cBrcfCiZDHuaaA&s=08>:

The journalist is Jotam Confino, a freelance Middle East affairs correspondent who has reported for BBC, CBS, Sky News, and others.

¹⁹ Ibid.

²⁰ <https://www.timesofisrael.com/kill-behead-rape-interrogated-hamas-members-detail-atrocities-against-civilians/>

literature on the vulnerability of hostages, there is serious concern that the individuals being held captive in Gaza face an ongoing threat of sexual violence. Prominent examples from other regions include women of the Yazidi community,²¹ individuals detained at the US military prison of Abu Ghraib,²² and other incidents cited by the UN Secretary-General in a report on conflict-related sexual crimes against women, girls, and other victims of abduction and human trafficking.²³

Sexual and gender-based violence as crimes against humanity

Sexual and gender-based violence refers to acts of abuse committed against a person's will and rooted in a system of unequal gender norms and dynamics.²⁴ Gender violence includes physical, sexual, and mental harm intended to humiliate, subordinate, threaten, and debilitate victims. In the context of armed conflict, these acts of violence are sometimes utilized to humiliate not only the victims themselves but to symbolically infringe upon the dignity of their entire communities, societies, and nations.

Such wartime crimes have been known to occur for thousands of years. While national prohibitions of these crimes have existed for nearly as long, it was not until relatively recently that they gained international resonance and recognition. In 1992, amid the widescale rape of women in the former Yugoslavia, the topic of conflict-related sexual violence was discussed for the first time at the United Nations Security Council. On December 18, 1992, while acknowledging previous resolutions on international crimes (resolutions no. 770 and 771), the council also addressed the organized and systemic mass rape and confinement of women (mostly of Muslim women in Bosnia and Herzegovina.)²⁵

²¹ Kizilhan JI. PTSD of rape after IS ("Islamic State") captivity. Arch Womens Ment Health. 2018 Oct;21(5):517-524. doi: 10.1007/s00737-018-0824-3. Epub 2018 Mar 10. PMID: 29525830.

²² Ryan Ashley Caldwell . Fallgirls: Genders and the Framing of Torture at Abu Ghraib.

²³ <https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2021/04/report/conflict-related-sexual-violence-report-of-the-united-nations-secretary-general/SG-Report-2020editedsmall.pdf>

²⁴ WHO | Sexual and other forms of gender-based violence in crises, 2014-07-21

²⁵ UN Security Council, *Security Council resolution 798 (1992) [Bosnia and Herzegovina]*, 18 December 1992, S/RES/798 (1992), available at: <https://www.refworld.org/docid/3b00f16163.html>

Later, the Statute of the (ad hoc) International Criminal Tribunal for the former Yugoslavia enabled the prosecution of rape (as well as torture and genocide) as a crime against humanity when committed against a civilian population within the context of armed conflict.^{26,27} In 2002, the Rome Statute of the International Criminal Court defined rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and any other form of sexual violence of comparable gravity as crimes against humanity (article 7) when committed as part of an attack that is both widespread (beyond isolated incidents) and systematic (based on written or oral plans.) In contrast to war crimes, crimes against humanity are defined as directed against any civilian population, with knowledge of the attack, and not only as the consequence of military warfare.

Sadly, despite the various international prohibitions of conflict-related sexual violence, it continues to be used as a means of warfare. The atrocities committed by Hamas were intended to be utilized as a psychological weapon. The objectification of both living and deceased victims is a horrific and brazen violation of human dignity. At least two testimonies described the mastectomy of women, while an additional account described the dissection of a pregnant woman's abdomen and the stabbing of the fetus.²⁸ Such acts brutally illustrate the objectification inherent to gender-based violence.

Though we are unable to determine the dimensions of the harm inflicted, the accounts and reports of sexual abuse committed during the October 7 Hamas attacks, including those brought to our attention and those made public, provide sufficient evidence to require an investigation of crimes against humanity. As International Criminal Court Chief Prosecutor Karim Khan similarly urged: "We cannot leave a world for our children where burnings and executions and rapes and killings can take place as if they are normal, as if they are to be tolerated

²⁶ Outreach Programme on the Rwanda Genocide and the United Nations, Background Note, Sexual Violence: a Tool of War, April 2013.

²⁷ UNITED NATIONS, International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, Updated Statute of the International Criminal Tribunal for the Former Yugoslavia, September 2009.

²⁸ ZAKA volunteer, Yossi Landau, interviewed on Kan Darom Radio [Hebrew]: <https://www.youtube.com/watch?v=bXozzkU0SfQ>, and the journalist's account of the video testimony cited above.

as if they can happen without consequence... And when these types of acts take place, they cannot go uninvestigated and they cannot go unpunished. Because these types of crimes that we've all been watching, that we saw on the 7th of October, are serious violations, if proven, of international humanitarian law."²⁹

Conclusion

The reports and testimonies mentioned in this document, some of which remain confidential and some of which appeared in the media and on social media networks, raise concerns that the October 7 Hamas attacks included many incidents of sexual assault following repetitive patterns. A professional inquiry is required to determine whether these incidents were perpetrated as part of the overall attack orders and whether they were systematic and premeditated. Some time will pass before the survivors - both those in Israel and those still held hostage in Gaza - will be able to provide their testimonies, if ever.

Given that determining whether crimes against humanity have been committed is a matter of legal nature, it falls upon those making these assertions to prove that the violence was perpetrated systematically. There are clear objective and subjective challenges to collecting and publishing the evidence to prove these claims. Yet, acknowledging these cautions does not absolve us from providing comprehensive support and recognition to the victims.

Social recognition is no less critical than legal recognition. Victims of sexual violence often feel shame regarding the experiences they endured. Paired with a struggle to process the traumatic event, this shame can lead to silence and isolation. Conversely, the public exposure of the accounts of sexual crimes committed by Hamas is perceived as a realization of universal primal fears - particularly those of girls and women who do not feel protected in any space. In response to this distress, a natural defense mechanism is mobilized - casting doubt: "Denial, repression, and dissociation operate on a social as well

²⁹ <https://www.ynet.co.il/news/article/syihf9rf6>.

as an individual level. Those who attempt to describe the atrocities they witnessed also risk their credibility. To speak publicly about one's knowledge of atrocities is to invite the stigma that attaches to victims."³⁰

As a society, we must be able to identify and acknowledge the sexual and gender-based violence perpetrated on October 7, 2023. We must break the cycle of silence sustaining the shame and foster adequate space and conditions to support the healing of survivors. Adequate funding must be provided to address the significant shortage of forensic pathologists. Until enough professionals are trained, forensic personnel must be supported by teams from abroad - both in times of emergency and routine. In addition, financial resources must be granted to fund support services for survivors of torture and trauma-informed training for medical, nursing, and paramedical care providers. Investigative personnel must be systematically and routinely trained in proper sample collecting, the maintenance of the chain of custody, and best practices for interviewing survivors and witnesses of sexual violence. Finally, all relevant institutions must prepare to prevent and address an expected rise in violence, particularly domestic violence.

To enable these conditions, we urge the following:

1. State and civil society organizations must cooperate and exchange information to provide adequate support services for survivors and their families - while bearing in mind that some survivors have lost their entire families and social support networks. Sufficient financial resources must be allocated to enable this work. Importantly, this must be carried out by establishing trauma-informed care systems equipped to provide survivors with holistic responses that go beyond traditional mental health services (which must also be strengthened.) A painful indication of the urgency for such preparedness became evident with reports that at least ten survivors of the Nova music festival were forcibly hospitalized due to their mental health condition - occurrences that may have been prevented if the appropriate care had been promptly provided.³¹

³⁰ Judith Lewis Harman, *Trauma and Recovery: The Aftermath of Violence - From Domestic Abuse to Political Terror*, Basic Books, 1992.

³¹ National commissioner for involuntary hospitalization speaking at the Knesset Health Committee, November 14, 2023. See: https://www.mako.co.il/news-lifestyle/2023_q4/Article-322da3ddf49cb81026.htm

2. Support services must be administered with an understanding that the survivors are heterogeneous and include infants, children, teens, the elderly, men, migrant workers, foreign nationals, and Palestinian citizens of Israel - all requiring different forms of support.
3. The support services must also provide adequate attention to the emergency personnel who arrived at the sites of the attacks, the medical and health teams, and the rescue units who first encountered the survivors and the bodies of the victims.
4. Women must be comprehensively included while forming the response services and carrying out decisions.
5. Survivors must be provided with access to tools and means for obtaining justice and filing legal claims, with the understanding that victims' rights under international law include truth, justice, compensation, and preventing repetition of the acts.
6. Local and international bodies must investigate the testimonies and reports to determine whether the accounts they describe amount to crimes against humanity.

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