

Submission to the Special Rapporteur on Torture for her
upcoming report to be presented to the 79th session of the
United Nations General Assembly

**BY THE DINAH PROJECT 10/07 ON
THE SEXUAL VIOLENCE AND
GENDER ATROCITIES OF OCTOBER
7TH HAMAS' ATTACK ON ISRAEL**



PREAMBLE: PROJECT DINAH 7/10

This input is submitted by Project Dinah 7/10. It aims at taking the sexual violence committed on October 7th as a case study in confronting the challenges in pursuing recognition and justice for victims of CRSV, including the complexities of documentation, investigation, and prosecution of such crimes. In light of the particular difficulties posed by the October 7th attack, primarily the lack of surviving victims of the sexual violence, we developed a structural tool for documenting and analyzing the available information in the most constructive way conducive for legal proceedings; as well as a theoretical doctrinal framework of collective responsibility and chain of command. Both these proposals are presented in this submission.

The Dinah 7/10 Project emerged in response to the sexual violence and gender crimes committed on Oct 7th. Comprising a team of experts, including from academia, senior female lawyers from diverse fields and former female civil servants in top public service roles, the project stands out by addressing not only the documentation and international recognition of October 7th sexual crimes, but also the broader challenges faced by the State regarding the gendered crimes by Hamas. Emphasizing the urgent need for the establishment of a robust foundation for prosecuting sexual violence crimes, the project focuses on locating witnesses and evidence to support prosecution in various tribunals and shaping the narrative on national and international levels. Central to its mission is ensuring accountability for terrorists involved in CRSV by researching and establishing legal doctrinal grounds for prosecution under joint responsibility laws .

The members are- Prof. Ruth Halperin Kaddari: Founding Academic Director of the Rackman Center, Bar Ilan University, Col. (reserve) Attorney Sharon Zagagi-Pinhas: Former chief military prosecutor, Retired judge Nava Ben-Or: Former Judge of the District Court of Israel and Deputy State Attorney for Criminal Matters, Attorney Ayelet Razin Beit-Or: Former CEO of the Authority for the Advancement of Women's Status, and Tal Hochman: CEO of Israel Women's Network.

I. FORWARD: THE OCTOBER 7TH ATTACK

On the morning of October 7th, 2023, Hamas, joined by other armed groups, led a simultaneous and coordinated attack against Israeli civilian communities and military posts. The attack began when Hamas launched over 5000 rockets from Gaza into Israel, then used these strategic barrages as cover to breach the Gaza perimeter fence at multiple points. The attack claimed the lives of 1170 men, women, and children, at least 800 of whom were civilians; over 5000 people physically wounded; and 246 people were taken hostage.

A team of UN experts, led by the Under Secretary-General, Special Representative of the Secretary-General on Sexual Violence in Conflict (SRSG-SVC), Pramila Patten, who conducted a comprehensive fact-finding mission to the region, found that “people were shot, often at close range; burnt alive in their homes as they tried to hide in their safe rooms; gunned down or killed by grenades in bomb shelters where they sought

refuge; and hunted down on the Nova music festival site as well as in the fields and roads adjacent to the festival ground. Other violations included sexual violence, abduction of hostages and corpses, the public display of captives, both dead and alive, the mutilation of corpses, including decapitation, and the looting and destruction of civilian property.” With respect to their specific mandate of gathering, analyzing, and verifying information on conflict-related sexual violence (CRSV) in the context of the attacks on 7 October 2023 and their aftermath, the team found clear and convincing evidence that severe sexual violence acts, including rape, torture, and humiliation, were perpetrated against the female captives. It also determined that there is reason to believe that this violence is still being perpetrated against the female captives who remain in captivity. It was also established that within the framework of Hamas' attack and other armed groups on October 7th, acts of sexual violence were committed in various locations, including rape and gang rape in at least three locations: the Nova music festival, Highway 232, and Kibbutz Re'im. The team concluded there was a pattern of victims, mostly women, who were found partially or fully naked, with gunshot wounds at several locations. The team concluded that while this is circumstantial evidence, it points to deliberate forms of sexual violence, including sexually motivated torture and cruel and inhuman treatment.

II. OCTOBER 7TH SEXUAL VIOLENCE AS EPITOMIZING CRSV

The sexual violence and gender atrocities that occurred on October 7, 2023, and their aftermath, particularly the sexual violence that is still taking place towards hostages in Gaza, are the ultimate manifestation of CRSV.

The investigation of the October 7 attack, particularly its CRSV part, poses one of the most significant challenges facing investigative organs: the vast majority of the victims are no longer alive, and for those who survived, it will take years before they are able, if at all, to recount their ordeal. Many of the other survivors do not understand at all that they were witnesses to the acts, and that their testimony could be relevant and crucial. In real time, the gathering of the evidence amidst the heat of battle and the fog of war, while still engaging in combat and in desperate attempts to locate those missing and deceased - greatly complicated evidence collection. In cases of sexual violence in general, especially in CRSV, it takes time for victims to gather enough strength and confidence to report what happened to them. Eyewitnesses to the events themselves are trauma victims, and many witnesses are still involved in combat and cannot be relied upon for testimony.

Further complicating aspects characterizing October 7th were the immense scale of the victims that had to be identified, and the fact that the Jewish tradition places paramount importance on swift burial. These factors affected the ability to clearly map and gather all relevant evidence and testimonies for the fact-finding process. In the report issued on March 4th, 2024, the SRSB's experts team also acknowledged the inherent difficulty

in collecting evidence from a war zone, especially when it was clear that Hamas militants acted to prevent the exposure of cases of sexual abuse.

III. CRSV'S UNIQUE ATTRIBUTES IMPLICATING EVIDENCE AND ACCOUNTABILITY

The unique characteristics of CRSV affect both the evidentiary level of fact-finding regarding what occurred and the legal issue of accountability.

Establishing/imposing accountability can be conceptualized on several levels - starting with accountability in domestic criminal law, moving through the determination of liability in civil proceedings, and culminating in the imposition of responsibility (whether in a legal process or in determining facts necessary for imposing sanctions) in international tribunals. Documentation and historical acknowledgment are also realms where establishing accountability is relevant. In each of these paths, a solid factual foundation is essential, one that would stand the relevant scrutiny for that particular pathway.

1. Establishing the factual basis considering CRSV's particularities

The absence of living survivors who can testify to the horrors they experienced - whether they were murdered or are currently unable, due to severe trauma, to muster the psychological strength needed to come forward - necessitates finding additional ways to build the evidentiary bases beyond those typically relied upon in domestic criminal law, which often depend on victims' testimonies. Investigative authorities must seek out other types of evidence, such as "silent witnesses", i.e. bodies whose condition speaks volumes, revealing only one thing: a naked body bound to a tree, mutilation of genitalia, and eyewitness or hearsay evidence of sexual violence events. In contrast to the more common scenario in the criminal world, where sexual assaults often occur behind closed doors, in the horrific events of October 7th, the assaults took place in public, in outside locations, in front of the eyes or ears of witnesses, and in view of the terrorists' own cameras. All of these, in and of themselves, establish - even without the direct testimony of the victims - a factual basis for sexual violence offenses.

2. Classifying and analyzing the information

We propose a unique platform for organizing information and classifying it (evidence, exhibits, indications) from an evidentiary perspective for legal proceedings. Thus, the proposed classification by us is based on categories related to the nature of the information. Accordingly, it is based on the weight and evidentiary value of the information, enabling pre-cataloging of how it can be used; within this, there is a secondary division for the content of the information - location, timing, gender, whether visual evidence exists, and the source of the information.

The categories we propose include testimonies from survivors who underwent sexual violence; testimonies from eyewitnesses in real-time; testimonies from first responders

and aid providers; testimonies from those involved in body identification; testimonies from healthcare providers (medical and psychological); and additional information. All these are studied and cataloged according to their visual significance, and refined into subcategories, allowing for cross-referencing between the data points. This analysis first enables the collection of information onto a single platform and subsequently facilitates monitoring, mapping, and utilization for various aspects related to developing a comprehensive understanding of the information regarding the sexual and gender-based violence events on October 7th.

Such a platform is currently in advanced stages of development by us, as part of the project's work.

IV. PREMEDITATION AND SYSTEMATIZATION

The report published by the UN Deputy Secretary-General, Pramila Patten, determined that as part of Hamas' attack and other armed groups on October 7th, acts of sexual violence were committed in various locations, including rape and gang rape in at least three locations: the Nova music festival, Highway 232, and Kibbutz Re'im. The team concluded there was a pattern of victims, mostly women, who were found partially or fully naked, bound with their hands behind their backs, and shot in the head at several scenes. For example, the team noted receiving information about women tied to a pole or a tree on Route 232. The team noted that while this may be circumstantial, such a pattern of rape and binding is indicative of forms of sexual violence.

We argue that the fact that similar patterns were identified—both in terms of the nature of the harm, the frequency of the incidents, and the different locations—carries significant implications.

Firstly, concerning the definition of sexual violence that occurred on October 7th as part of the phenomenon of CRSV: using intentional forms of sexual violence, including sexual abuse, cruel and inhuman treatment, is part of CRSV. The acts left the victims exposed in a sexually degrading and humiliating manner in front of other community members, deepening their oppression and degradation, and aiming to harm not only the victims but also the community as a whole, trying to assert the perpetrators' control over their enemy, namely Israel.

Secondly, the systematic and similarity in different areas, in which different terrorist groups operated, may teach us, from an evidentiary perspective, about premeditation and instruction from those who initiated and ordered the attack. The accumulation of cases, during which, in at least three different and separate scenes, various populations (whether families, partygoers, or travelers on the road) and different terrorist groups were present, performing similar acts, indicates premeditation, instructions, and intention to use sexual violence against the victims as a weapon of war.

Identifying patterns and tracing their source may also help from an evidentiary perspective in attributing the acts to Hamas and the chain-of-command responsible for giving orders and instructions.

A. ATTRIBUTION OF RESPONSIBILITY: SPECIAL ASPECTS OF CRSV

1. Paradigm Shift

On the issue of responsibility determination, and attributing it to individuals, entities, or organizations, a paradigm shift is required on several fronts. Firstly, regarding the question of which actions fall within the purview of the elements of CRSV, whether domestic law provides sufficient tools to address it, and whether they adequately reflect the punitive interests of the victims. Secondly, concerning the question of who can be held accountable for the actions, and in what manner; and thirdly, in relation to whether similar patterns and circumstances exhibit evidence of systematicity or premeditation.

The Dinah project also centers on formulating a legal basis for determining and attributing responsibility for acts of CRSV. Below we detail our thesis. We are also consolidating a knowledge base related to CRSV and their characteristics as a basis for creating legal platforms.

2. What are sexual violence crimes

Research shows that crimes of sexual violence encompass a wide range of acts. These range from touching of intimate body parts to force nudity in the presence of an abductor, sexual abuse, intrusion of personal boundaries, rape, and other behaviors that the human mind struggles to conceive and believe in their existence. Even in this definitional aspect, a paradigm shift is necessary.

Acts of CRSV serve as brutal weapons against the civilian population under attack. They exhibit multifaceted characteristics and manifest in various forms and phenomena, including some that may not be immediately recognized as sexual violence within conventional criminal doctrines.

From a prosecutorial standpoint, when prosecuting crimes of CRSV, a lack of deep understanding of the true nature of the issues (i.e. what are the phenomena, how do they manifest, what are their characteristics, and what is their place within the overall objectives of the attack) limits the ability to conduct a genuine investigation and bring perpetrators to justice. Conventional and domestic approaches to cases of sexual violence create a limited understanding of the matters and exclude from the framework anything that does not align with the conventional definitions of sexual offenses. Adherence to "familiar" legal frameworks and patterns is highly problematic both substantively, legally, and eventually in accountability. We argue that even if existing legislation law does not precisely define what occurred as sexual offenses, it can be amended, and contrary to those who mistakenly believe so, this is not retroactive legislation. These are serious and universally prohibited crimes. Every reasonable person knows that this is a forbidden, severe, and unacceptable act. Therefore, the amendment only clarifies and frames matters in their proper context without creating a criminal norm out of nowhere.

3. A platform for prosecution based on collective responsibility

A central question we address, offering a unique perspective grounded in existing legal doctrines, is the issue of prosecution and the criminal responsibility of participants in the massacre and sexual violence. We propose a legal platform where responsibility is attributed based on principles of collective responsibility arising from the commission of offenses under the power of the masses.

On October 7th, thousands of terrorists broke into Israel, and under the cover of the masses, they threw out all moral and humane values and committed unimaginable atrocities as they were sent to rampage, to destroy all order, to kill, to rape, to harm, without any legal or moral restraint. They came equipped with body cameras, ready to film their horrific acts and to broadcast them in real time.

The execution of the acts under the cover of the masses, devoid of normative and moral compass, "released" the terrorists from any inhibition and human moral constraints, enabling them to behave brutally and barbarically. This is regardless of whether the acts were premeditated, or whether this "blood contract" was spontaneously created on the battlefield. Within this appalling behavior, where the individual lost the moral and ethical compass, each of them adopted the norm of "the absence of any norm."

When the plan is to rampage under the cover of the masses, when it is a ruthless, lawless, and reckless plan, every cruel act is done to fulfill it and does not deviate from it, every atrocious act in fact received approval, and thus everything is within the realm of expectations. From a legal point of view, this is clearly a common criminal enterprise. When a gang of prowlers goes out barbarically, under indoctrination of destruction and devastation, **every offense committed by members of that gang incurs criminal liability for all members.** Anyone who takes part is responsible for the acts that were carried out during the rampage. This applies even for those whose participation in the rampage is passive, regardless of whether the crime is murder, kidnapping, rape.

This is also true regarding acts of sexual violence. From the moment the mob sets out with its plan to rampage, there is no need to prove that a specific person raped a specific woman. It is enough that they joined the group of raiders, knowing that the prospect of rape was part of the original or expected plan formulated under the auspices of the masses. **Not only this is the correct normative and legal perception given the incomprehensible scope of mob behavior, but it also allows for attributing responsibility to the perpetrators of sexual violence without the need to create a direct evidentiary link between a specific victim and a specific perpetrator, and without relying on the testimony of a living survivor.** Everyone who participated in the mob behavior is accountable.

This thesis allows us to articulate the true account of what took place and sets anchors of morality and norms of acceptable and proper behavior. Giving up on the prosecution for the horrendous acts of sexual violence is a forfeiture of all the victims, both past and future. From a victims' centered approach, prosecution and punishment of perpetrators is an essential component in providing a remedy for victims and families of victims.

The longstanding implications of a governmental or international entity's decision not to prosecute CRSV because of evidentiary difficulties, would be encouragement for lawless rioters around the world to use sexual violence as a tool of war.

4. Practical Challenges of Prosecution in Domestic Law

Another area where we propose a unique perspective is the practical aspects of managing proceedings in domestic law. The infinite dimensions of what took place impact the complexity in managing criminal legal proceedings. The large number of terrorists to be prosecuted, the scope of investigative materials, the number of witnesses, victims' rights issues, issues of immunity, the need to examine special accommodations, and the fear of blocking the courts, all these are just part of the questions that the State of Israel will have to address, and likewise, any state confronted with such horrific events. We propose to map the challenges and the necessary amendments for managing the proceedings in a way that leads to accountability, achieves justice, ensures a true legal process, is executed efficiently, and minimizes the secondary trauma aspects accompanying criminal proceedings towards victims. Examples include establishing special legal procedures for victim testimony, re-examining aspects of medical immunity, and determining a framework for prosecution (by locations/types of offenses/hierarchy of responsibility, etc.).