

Ending impunity: Prosecuting conflict-related sexual violence after the 2024 US presidential election

October 2024

Ines Meyer holds an M.Sc. in Peace and Conflict from University College Dublin and a B.A. in International Relations and International Organization from the University of Groningen.

Teaser

The outcome of the 2024 US presidential election will profoundly impact global strategies to prevent and prosecute conflict-related sexual violence (CRSV). A Harris administration can be expected to focus on legal prosecution of perpetrators and continuing US support for multilateral efforts addressing CRSV. In this case, European policymakers should use the momentum to promote the UN and the ICC as core institutions to prevent and prosecute CRSV, adopting a survivor-centred and intersectional approach. Conversely, a Trump administration may impede CRSV policies, particularly concerning sexual and reproductive health. In this scenario, European policymakers should identify areas for joint action and form core groups on issues likely to face US vetoes.



Bundeskanzler
Helmut Schmidt
Stiftung



Europa
Kolleg
Hamburg
European and
European Legal Studies

Introduction

Gender has become a key fault line in the 2024 US presidential campaign, with significant consequences not only for the outcome of the election, but also for global efforts to address gender-based crimes in conflict-affected areas. Recent conflicts, such as the Russian invasion of Ukraine and the Hamas attacks on 7 October 2023, have once more made visible the pervasive use of conflict-related sexual violence (CRSV) as a strategy of war. If left unaddressed, CRSV can lead to an escalation of violence, exacerbate conflicts, undermine peace efforts and inflict long-lasting trauma on harmed individuals and communities.

The US presidential election will impact strategies to prevent and respond to CRSV, as the government's position on sexual and reproductive health (SRH) tends to shift with the party in power – generally supported by Democrats and opposed by Republicans. Given the US's political and financial influence in key international institutions, European policymakers should prepare distinct policies to fill the gap potentially left by the US. This policy brief explores future scenarios on how the US election will shape global efforts to address CRSV and provide policy recommendations for its prevention and prosecution.

Global efforts to prosecute CRSV

The 1998 Rome Statute, which established the International Criminal Court (ICC), first recognised CRSV and granted the ICC jurisdiction over serious gender-based crimes. The Statute defines crimes like rape, sexual slavery, forced prostitution, forced pregnancy, enforced sterilisation and other forms of sexual violence as crimes against humanity and war crimes in both international and non-international conflicts. While women and girls are disproportionately affected, men, boys and LGBTQIA+ individuals are also targeted, with many cases going unreported due to fears of reprisal, stigma and limited access to justice.

CRSV may be used as a war strategy to humiliate and dehumanise populations or as a practice tolerated by armed groups without sanction. During the Russian-Ukrainian war, Pramila Patten, the UN Special Representative of the Secretary-General on Sexual Violence in Conflict, stated that CRSV was being used as a military strategy and cited reports of Russian soldiers being supplied with Viagra (Wang et al. 2022). However, CRSV is not an inevitable outcome of conflict; it can be prevented (Wood 2012).

CRSV is increasingly prosecuted in international and domestic courts. The International Criminal Tribunal for the Former Yugoslavia was the first to recognise CRSV as a war strategy and its use against men. The ICC has prosecuted cases involving forced pregnancy and marriage (for instance, in the Ongwen Case). Additionally, some European countries have used command responsibility to hold perpetrators accountable, such as in Germany's conviction of the Syrian colonel Anwar Raslan for crimes against humanity, including rape. Yet, children born from CRSV are often overlooked in legal processes and seen as "evidence of atrocities" rather than victims in their own right (Mionki 2024).

Scenarios for CRSV policies after the US election

The 2024 US presidential election will significantly impact global efforts to combat CRSV. Harris, a former prosecutor, can be expected to continue Biden-era policies, emphasising

prosecution and multilateral action. Trump, who has questioned the ICC's legitimacy, is expected to block survivor-centred CRSV policies.

What if Harris wins? Momentum for CRSV prosecution

If Harris wins, her administration is expected to prioritise prosecuting perpetrators through unilateral sanctions and support multilateral efforts to address CRSV. The Biden-Harris administration has made significant progress in addressing these crimes. The *US Strategy to Prevent and Respond to Gender-Based Violence Globally* explicitly rejects CRSV as an “inevitable by-product of war” and affirms that prevention is fundamental to peacebuilding (US Department of State 2022, p. 28).

Key policy actions include President Biden's 2022 *Presidential Memorandum on Promoting Accountability for Conflict-Related Sexual Violence*, which authorises US agencies to use sanctions, visa restrictions and diplomatic measures to hold perpetrators accountable. This is the first time the US has imposed sanctions based on CRSV. Harris also launched the *Dignity in Documentation Initiative*, which supports UN efforts to end CRSV and promotes women's leadership (White House 2024a). Additionally, the US, EU and UK established the Atrocities Crimes Advisory Group (ACA) to assist Ukraine in prosecuting atrocity crimes. To be effective, these initiatives should become systematic and institutionalised, ensuring consistent support, coordination and progress beyond immediate crises.

However, the Democratic Party faces internal divisions regarding CRSV. Some House Democrats withdrew their support for a resolution condemning sexual violence in conflict, fearing that it equated sexual violence by Hamas with that committed by Israeli forces against Palestinians (Giorno 2024). This case raises concerns that a Harris administration may selectively prosecute CRSV based on political alliances. While Harris has condemned sexual violence by Hamas, she has remained silent on sexual violence against Palestinians (White House 2024b).

A Harris administration would thus be expected to prioritise the prosecution of perpetrators through the *Presidential Memorandum* and the *Dignity in Documentation Initiative* and by providing funding for multilateral initiatives such as the UN Action against Sexual Violence in Conflict, the ACA and international tribunals. However, policies may be conflict-specific.

What if Trump returns? A backlash against CRSV policies

If Trump wins, his administration is expected to block or weaken comprehensive policies and initiatives addressing CRSV, particularly with regard to SRH. However, specific policies will depend on personnel decisions and the influence of particular advisors at any given time. During his first term, Trump led an alliance that blocked UN Security Council Resolution 2467 (2019) from including references to SRH, reflecting a hard-line stance against abortion and limiting the rights of CRSV survivors. CRSV policies that address safe and timely abortion, emergency contraception, obstetric violence and the rights of children born of CRSV are integral to survivor-centred approaches.

Under Trump, US relations with the ICC deteriorated when he imposed sanctions on ICC officials in 2020 after they opened an investigation into US war crimes in Afghanistan. President Biden lifted these sanctions in 2021 and ordered the US government to share evidence

of Russian atrocities in Ukraine with the ICC for the first time, marking a major shift in US policy (Savage 2023). A Trump administration is expected to reverse this policy.

While Trump has not explicitly opposed abortion in this year's election campaign, he appointed anti-abortion justices in his first term. This stance is in line with Project 2025, which calls on the next conservative administration to remove terms such as "gender equality", "abortion" and "reproductive rights" and claims that USAID is using SRH and intersectionality to promote "woke extremism" (Dans and Groves, 2023, p. 8; 259).

It follows that a Trump administration can be expected to block and reverse US policies to prosecute CRSV, such as revoking the *Presidential Memorandum* and disbanding the *Dignity in Documentation* initiative. Multilateral action will also be curtailed through US vetoes or reduced financial support.

Recommendations

If Harris wins, policymakers should adopt a multilateral approach, promoting the UN and ICC as key institutions for CRSV policies and prosecution.

1. Broaden mandates of existing initiatives and secure funding

Policymakers should institutionalise and expand the mandates of existing CRSV initiatives to cover multiple conflict zones. For example, the ACA initiative should be broadened to assist prosecutions in conflict-affected areas beyond Ukraine. Legal assistance should not only be provided to prosecutors but also to individuals seeking legal aid. To ensure long-term planning and large-scale prosecutions, secure and increased funding is needed, particularly for EU institutions coordinating these efforts, such as the European External Action Service. A good example of targeted funding is the UN Action's multi-partner trust fund, allowing for thematically delineated contributions for member states.

2. Adopt resolutions and promote the ICC as a key institution

Policymakers should advance the Women, Peace and Security (WPS) Agenda by fully integrating CRSV into all stages of peacebuilding. Another UN Security Council Resolution should be adopted that contains a survivor-centred approach to CRSV, including SRH, and recognises children born of CRSV as a special category of victimhood. This would expand the scope of CRSV beyond immediate violence and secure funding for SRH care. Additionally, the ICC should be promoted as the key institution for prosecuting gender-based crimes. While it would be desirable for the US to join the ICC, policymakers could push for increased funding by European member states and set up national tribunals with US technical expertise and funding (for instance, for Ukraine). Though costly, permanent tribunals increase accountability and raise the perceived cost of committing these crimes.

3. Conduct transparent and inclusive evaluations

Policymakers should conduct transparent and inclusive evaluations of initiatives addressing CRSV to identify effective strategies and lessons learned. These evaluations should involve key stakeholders, including prosecutors, trauma experts, peacebuilders, civil society organisations and government officials. Jointly synthesising the findings can help deter CRSV and improve

efforts to anticipate and prevent it. The results should be made publicly accessible, covering national and multilateral initiatives.

If Trump wins, policymakers should adopt a cohesive European approach to address CRSV and form core coalitions on issues opposed by a Republican administration.

1. Use existing frameworks to call for CRSV action

Policymakers should leverage existing resolutions and guidelines to urge states to fulfil their obligations to prosecute CRSV. For SRH, they can refer to UN Security Council Resolution 2106 (2013), which calls for non-discriminatory, comprehensive healthcare for survivors. Key documents for guiding state action on CRSV include the UN Framework for the Prevention of Conflict-Related Sexual Violence and the Murad Code, both of which promote ethical, survivor-centred investigations. To adopt an intersectional approach, policymakers can use the UN's Intersectionality Resource Guide and Toolkit.

2. Develop a cohesive EU approach to CRSV

Given the uncertainty of Republican policies, policymakers should adopt a unified European approach vis-à-vis an incoming Trump administration. The EU should formulate a clear strategy for CRSV prevention and prosecution that goes beyond providing funding to external initiatives. For instance, the EU could denominate an EU Special Representative for Sexual Violence in Conflict, collaborating closely with the corresponding UN Office. This representative would serve as a rapporteur, expert and political advocate for CRSV policies and explore options to prosecute CRSV on an EU level.

3. Form core groups for policies opposed by the Trump administration

European policymakers should engage with key US policymakers to identify areas for collaboration, clarifying where joint action is feasible and which organisations will continue to receive US support. On issues likely to face a US veto, policymakers should form core groups with willing countries. For example, the UK and France have generally supported SRH initiatives. Additionally, countries with feminist foreign policies, such as Germany and Spain, could advocate for an intersectional, survivor-centred approach within these core groups, producing reports on best practices, funding mechanisms and capacity building.

Summary

The 2024 US presidential election will significantly shape global efforts to prevent and prosecute CRSV. A Harris administration offers an opportunity for European policymakers to upscale prosecutions and multilateral initiatives focused on holding perpetrators accountable through intersectional and survivor-centred approaches. In contrast, a Trump administration may weaken these efforts, and policymakers should prioritise European initiatives and networks in anticipation of declining US support.

Note: The respective author is responsible for the content of the article. The contributions do not necessarily reflect the opinion of the Bundeskanzler-Helmut-Schmidt-Stiftung and the Europa-Kolleg Hamburg.

References

- Dans, Paul and Groves, Steven (2023): *Mandate for Leadership: The Conservative Promise*. The Heritage Foundation.
- Giorno, Taylor (2024). Israeli Politics Trigger Democrats to Withdraw Support from Sexual Violence Bill in: *The Hill*, March 28, <https://thehill.com/homenews/house/4560147-israel-politics-trigger-democrats-to-withdraw-support-from-sexual-violence-bill/>.
- Mionki, Judy (2024): Symposium on Reproductive Violence in International Law: Legal Recognition of Children Born of Conflict-Related Sexual Violence in International Criminal Law, *Opinio Juris*, <https://opiniojuris.org/2024/06/05/symposium-on-reproductive-violence-in-international-law-legal-recognition-of-children-born-of-conflict-related-sexual-violence-in-international-criminal-law/> (accessed on October 9, 2024).
- Savage, Charlie (2023): Biden Orders U.S. to Share Evidence of Russian War Crimes with Hague Court, in: *The New York Times*, 26 June <https://www.nytimes.com/2023/07/26/us/politics/biden-russia-war-crimes-hague.html?smtyp=cur&smid=tw-nytimes>.
- US Department of State (2022): United States Strategy to Prevent and Respond to Gender-Based Violence Globally, <https://www.state.gov/reports/united-states-strategy-to-prevent-and-respond-to-gender-based-violence-globally-2022/> (accessed on September 7, 2024).
- Wang, Philip, Tim Lister, Jost Pennington, and Heather Chen (2022): Russia Using Rape as ‘Military Strategy’ in Ukraine: UN Envoy, *CNN*, <https://edition.cnn.com/2022/10/15/europe/russia-ukraine-rape-sexual-violence-military-intl-hnk/index.html> (accessed on October 9, 2024).
- White House (2024a): Fact Sheet: The Biden-Harris Administration’s Actions to Address Conflict-Related Sexual Violence, <https://www.whitehouse.gov/briefing-room/statements-releases/2024/06/17/fact-sheet-the-biden-harris-administrations-actions-to-address-conflict-related-sexual-violence/> (accessed on September 8, 2024).
- White House (2024b): Remarks by President Harris on Conflict-Related Sexual Violence, <https://www.whitehouse.gov/briefing-room/speeches-remarks/2024/06/17/remarks-by-vice-president-harris-on-conflict-related-sexual-violence/> (accessed on October 9, 2024).
- Wood, Elisabeth J. (2012): Rape During War is Not Inevitable: Variation in Wartime Sexual Violence, 389-420, in: Bergsmo, M., Skre, A. B., & Wood, E. J. (Eds.). *Understanding and Proving International Sex Crimes*, Beijing: Torkel Opsahl Academic EPublisher.