



SEXUAL VIOLENCE AGAINST WOMEN IN ARMED CONFLICT: A SHADOW OVER COLLECTIVE HUMANITY

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Abstract:

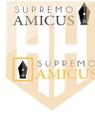
Although men are equally vulnerable to sexual violence, women are more adversely affected by it due to the added risk of pregnancy that very frequently results out of rape. Their condition is further worsened because of their societal position and the treatment they receive post violence period. The cases of sexual violence against women which are officially reported figure only tip of the iceberg. This paper deals with the persisting challenges of impunity with specific focus on the array of tools and bodies that have emerged to tackle and prosecute perpetrators of sexual violence due to the progress made in the international humanitarian law. It also delves into the effectiveness of these tools and bodies, and the way in which they can be used to combat the ongoing war against women's body. Further, it will examine whether these have in fact proved to be a boon for the survivors of sexual violence to wipe away their tears, or merely paid lip service to these victims

and not been as fruitful as they were hoped to be. The victims of this form of violation of human rights not only require justice but also medical attention. The proposal therefore defines the measures for their medical treatment and psychological healing. Sexual violence leaves invisible and indelible scars on the victims. The argument of this paper is that the struggle to eradicate sexual violence against women in armed conflict needs a coherent response by the individuals and the nation at large. Thus, it attempts to recommend various measures for moving the world towards achieving the goal.

Introduction:

“It is more dangerous to be a woman than to be a soldier in modern conflict.”¹ Sexual violence against women in armed conflict is not a new phenomenon. The crime of sexual violence in armed conflict is a by-product of conflict itself. Acts of sexual violence against women during armed conflict include rape, forced sexual intercourse, forced impregnation, sexual mutilation, forced abortion, forced sterilization, forced prostitution and many other human rights abuses. Out of all these, rape is the most prominent form of sexual violence against women in conflicted areas. There is a saying - “rape is as old as war itself” and women have had the battlefield played out on their bodies for centuries around the world. Rape is often used as a weapon of war. It was carried out

¹Maj. Gen. Patrick Cammaert, former UN Peacekeeping Operation commander in DR Congo (2008).



systematically and strategically as a war tactic. In Rwanda, as it has been reported, during the three months of genocide in 1994, the number of women raped was between 100,000 and 250,000.² Countries where sexual violence in conflict has occurred include Middle -East countries like Iraq, Iran, Syria and Israel; Latin American countries like Brazil, Ecuador, Bolivia; and other countries like Kenya, Sierra Leone, South Africa, Nigeria and Rwanda.

The women experience these types of violence at the hands of government actors, non-state militaries (including rebel forces and dissidents) and community members. Other acts of sexual violence, such as strip search, kidnapping or slavery, are often part of an intentional strategy of war used to destabilize the civilian population and violate the honour of the opposing force.

Consequences and Continuing Challenges:

Sexual violence in armed conflict has numerous short and long term socio-economic and cultural consequences, and harmful effects on health of the victims. The most conspicuous consequence of it is the loss of life due to killing by perpetrators or commission of suicide by the victim. Survivors of this violence suffer long-term health hazards which include sexually transmitted infections, HIV/AIDS, gynaecological and pregnancy complications, urinary tract infections, vaginal fistulas, obstructed

labour and psychological trauma like isolation, fear, feelings of unworthiness. Cases of such sexual assaults and rape are the most under-reported crimes because victims of such offences very often apprehend if their complaints are going to be believed. As stated by a Haitian woman,

“A woman would never go to report a rape to the HNP [Haitian National Police] because she is likely to be raped by them again”³.

Many victims don't report the violence and abuses they suffered because of the fear of being ostracized from the community. Moreover, sexual violence is rarely called due to frequent non-availability of witness, difficulty in collection of evidence as well as identification of perpetrators.

International Framework-A shield for victims of sexual violence:

A historical analysis of the International Humanitarian Law (IHL) provides a crucial understanding of how the redress of wartime sexual violence evolved. It includes both customary and conventional rules. Rule 93 of customary International Humanitarian Law prohibits rape and other forms of sexual violence whereas Rule 94 of the aforesaid law prohibits slavery and slave trade in all its form. Acknowledging the specific needs and vulnerabilities of women, IHL offers a number of specific protections applicable only to women. According to Rule 134 of the law, specific protection,

² Benda Fitzpatrick, *Tactical Rape in War and Conflict: International Recognition and Response* 29 (Policy Press, 2016).

³ Bill Quigley, *Haiti Human Rights Report*, 15 (2005), <http://www.ijdh.org/pdf/QuigleyReport.pdf>.



health and assistance needs of women affected by armed conflict must be respected. This rule is applicable to both international and non-international armed conflict. The famous Liber Code of 1863 which drew upon customary International Law forbade in Article 44, “all rape” and provided in Article 47 that “crimes ... such as ...rape ... are punishable.”⁴

The principal conventional instruments of relevance to the victims of sexual violence in armed conflict are the four Geneva Conventions and the two Additional Protocols of 1949 which deal with international and non-international armed conflict respectively. Article 27 of the Fourth Geneva Convention identifies the specific protection of women against any attack on their honour especially against rape, enforced prostitution, or any form of indecent assault.⁵ Article 3, common to the four conventions, prohibits outrages against personal dignity, particularly humiliating and degrading treatment, that is meted out at any time or any place.⁶ The foregoing provision is also mentioned in Article 75(2) (b) of Additional Protocol I⁷ and Article 4(2) (e) of the Protocol II⁸. Article 76 of the Additional Protocol I states that

women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault⁹.

The constituent documents of the ICTY (International Criminal Tribunal for Yugoslavia), the ICTR (International Criminal Tribunal for Rwanda), the ICC (International Criminal Court) and the Special Court for Sierra Leone contain provisions to ensure the delivery of justice to the victims of sexual violence.

The jurisprudence of the ICTY and ICTR has been instrumental in recognizing and understanding different forms of sexual violence in conflict as crimes. These tribunals classified the acts of sexual violence as crimes of genocide and crimes against humanity. Article 5 of the Statute of ICTY states that the tribunal shall have power to prosecute perpetrators of rape and other inhumane acts when committed in armed conflict, whether of international or internal character, directed against any civilian population.¹⁰ Article 3 of the statute of ICTR considers rape as a crime against

⁴ General Order 100: The Liber Code, Instructions For The Government Of The Armies Of The United States by The Field By Order Of Secretary Of The War, art. 44 and 47, Apr. 24, 1863, http://avalon.law.ale.edu/19th_century/lieber.asp#sec2.

⁵ ICRC, The Geneva Conventions of 12 August 1949, 161 (2012), <https://www.icrc.org/eng/assets/files/publications/icrc-002-0173.pdf>.

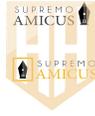
⁶ *Id.* at 35-36.

⁷ Charlotte Lindsey- Curtet, Florence Tercier Holst-Roness & Letitia Anderson, Addressing The Needs Of Women Affected By Armed Conflict, 174 (2004).

⁸ *Id.*

⁹ *Id.*

¹⁰ United Nations, Updated Statute of The International Criminal Tribunal for Former Yugoslavia, 6 (2009), http://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf.



humanity¹¹. Under article 4, any person violating Article 3 common to the Geneva Convention or the Additional Protocol II can be prosecuted by the International Tribunal.

In comparison to ICTY and ICTR Statutes, the Rome statute is considered to be more comprehensive on sexual violence. Article 7(2)(f) of the Statute of ICC holds rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity as crimes against humanity.¹² Article 8(2)(b) of the Statute of ICC declares the commission of outrages upon personal dignity, in particular humiliating and degrading treatment, rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence as war crimes.¹³ The ICC should undertake measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses, with particular regard to gender and crimes involving sexual violence. The ICC's Rules of Procedure

and Evidence set a new international standard for good practice as regards prosecuting sexual violence. The Rules of Procedure and Evidence require the ICC to be watchful in controlling the questioning of witnesses to avoid harassment or intimidations, especially in sexual violence cases [Rule 88(5)].¹⁴ Article 2 of the Statute of the Special Court of Sierra Leone, the Special Court shall have the power to prosecute persons who have committed rape, sexual slavery, enforced prostitution, forced pregnancy and any other forms of sexual violence¹⁵ or other inhumane acts¹⁶ as part of a widespread or systematic attack against any civilian population.

The International Covenant on Civil and Political Rights, Convention on the elimination of all forms of discriminations against women¹⁷, the Declaration on the Elimination of Violence Against Women, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women,¹⁸ the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003), and the Vienna

¹¹ Statute Of The International Tribunal For Rwanda 45(2007),

http://legal.un.org/avl/pdf/ha/ictr_EF.pdf

¹² Rome Statute of the International Criminal Court, 3-4(2011), https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf.

¹³ *Id.* at 8.

¹⁴ ICC, Rules of Procedure and Evidence 33(International Criminal Court, 2nd edition, 2013).

¹⁵ Statute of the Special Court Of Sierra Leone, art. 2(g), Aug. 14, 2000,

<http://www.rscsl.org/Documents/scsl-statute.pdf>.

¹⁶ *Id.* art. 2(i).

¹⁷ The Convention on Elimination of All Forms of Discrimination Against Women, Art 6 (1979) <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article6>.

¹⁸ The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (2003), <http://www1.umn.edu/humanrts/instreet/brazil1994.html>.



Declaration and Programme of Action address the issues of women without any discrimination . UNSC Resolution 1345, 1820, 1888 and 1960 of UN’s Security Council specifically address the issue of sexual violence and provide political framework that compels action by governments and international organisations.

Effectiveness:

Even with the progress made in international law to tackle and prosecute perpetrators of sexual violence, our collective humanity has been unable to prevent sexual violence from becoming a daily feature of most conflicts. It is argued that very little has changed in the lives of most women, as both state and non-state actors continue to commit such heinous crimes with impunity. The international tribunals have been criticised for failing to shield the survivors of sexual violence .There are instances when the witnesses of ICTR were threatened or killed before or after testifying at the Tribunal. During trials, the victims of sexual violence are reported to have faced aggressive cross examination, which left them re-victimised. Adequate treatment is not provided to women who have contracted STDs from the act of rape. Excepting some rare cases, most human

rights treaties do not contain clear- cut provisions to deal with such crimes. Convention on the Rights of the Child (1989) provides that States Parties must protect children (including girls) from all forms of sexual exploitation and sexual abuse by adopting appropriate legislative, administrative, social and educational measures.¹⁹ The fact that most human rights treaties do not contain an explicit provision against sexual violence does not mean that they do not prohibit rape and other forms of sexual violence. While the four Geneva Conventions and their Additional Protocols may not be adequate in their approach to sexual violence, they do provide the required protections from and prohibitions against rape and other forms of sexual violence.

International law has made immense progress in the prosecution front. However, compared to the redressal of the sexual violence by the ad-hoc tribunals and ICC, the international prosecution of sexual violence remains rare in practice. They are unable to fulfil their obligations to the optimal level. For instance, the ICC is criticised for failing to charge, investigate and prosecute these crimes in Lubanga²⁰, Katanga²¹ and Ngudjolo and Bemba. With limited judgements on sexual violence, it is uncertain whether these prosecutions will be influential in deterring the perpetration

¹⁹Office of The High Commissioner for Human Rights, Convention on the Rights of Child, art.34, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>.

²⁰ Passy Mubalama & Espérance Nzigire, ICC Still Facing Rape Case Challenges, Institute of

War And Peace Reporting, (8 Aug. 2011), <https://iwpr.net/global-voices/icc-still-facing-rape-case-challenges>.

²¹*Id.*



of rape and other forms of sexual violence in armed conflict areas.

Medical and psychological support to the victims:

In armed conflict affected areas, the war wounded are often given priority regarding medical treatment. In the same footing, the medical and surgical needs of victims of sexual violence are of priority also. Such women should be provided with free and full access to the benefit of medical care. Care should include the treatment of serious or life threatening injuries (if any from such sexual acts of violence), prevention of unwanted pregnancy and sexually transmitted diseases and psychological support. Preventive care for HIV/AIDS infection, syphilis, gonorrhoea and unwanted pregnancy must be provided. Emergency contraception pills must be given on the request of the women at the risk of pregnancy that results from the assault within 5 days (120 hrs) of its happening.²²

Appropriate training should be given to all health workers who provide services to the victims. They should provide an objective service, display sensitivity and compassion towards such people. Confidentiality must be maintained in order to protect the victims from social repercussions.

Victims often report having flashbacks of the sexual violence committed against them. The victims may experience nightmares, difficulty in sleeping,

anxiety, depression, social phobias, post-traumatic stress disorder, and interpersonal difficulties including sexual problems. Hence, along with the medical assistance, psychological counselling must be provided to the survivors to help them develop coping mechanisms.

Addressing the consequences of Sexual Violence:

A more concerted effort involving government, civil society, military and other people working at the grass root level is required to address the issue adequately. At national level, the government must ensure that its agencies working in the conflict and post-conflict areas contribute to end all forms of sexual violence. They must step up their efforts in implementing comprehensive strategies that protect women and punish the offenders. It should take the initiative to include victims in peace negotiation tables so that they can propose recommendations on the issues concerning their security in armed conflict areas.

They must ensure that there is an end to impunity for the use of sexual violence in armed conflict in peace negotiations, ceasefire agreements and post conflict reconciliation plans. The acts of sexual violence in internal armed conflict should be exhaustively investigated and its perpetrators promptly prosecuted by an independent and impartial tribunal. It must train officials dealing with sexual

²² World Health Organisation, Guidelines for Medico Legal Care for Victims of Sexual Violence 64(2003).



violence cases to face the challenges of work in areas of armed conflict and sensitively handle the victims. Criminal sanctions must be imposed on public officials (related to the investigation or examination of sexual violence during armed conflict) who obstruct investigations, or harass abuse or assault the victims and/or witnesses of such offence.

Further, the government must provide sufficient funds to the criminal trials of war crime, ensuring that all the cases of sexual violence are properly prosecuted. In order to help the proper functioning of international justice mechanisms, they should provide financial and political support. Women's security must be given top priority. They must provide funds to carry out research for the better understanding on the problems of sexual violence in conflict, its after effects and development of recovery strategies.

The survivors not only seek justice but also seek emotional support from the people close to her. The act of sexual violence must not be considered as the fault of the woman. Rather, they must be helped to break their silence and report any such acts to the proper authorities. Individuals must show their outrage against such crimes and aid the international efforts to prosecute the perpetrators. They must bring awareness among people that such issues are not inevitable and can be stopped. In order to fill the gap between the law and the reality, there is an urgent need for the proper implementation of the international prohibition of sexual

violence and the prosecution of sexual violence. The support from individuals to such international laws can be a huge help in holding the perpetrators accountable.

Final Words:

Sexual violence casts a long lasting shadow in the minds of the victims and over our collective humanity. Although, the international organisations have succeeded in prioritizing attention towards recognition and termination of sexual violence in armed conflicts, they are still inadequate. Much remains to be accomplished in order to prevent the offender from being scot-free. It is high time focus on the proper implementation of the existing legal instruments to combat such horrifying crimes. The expansive and long-lasting effect of sexual violence is an issue that doesn't come within the scope of our international tribunals. The people and the nation at large must collaboratively work towards mitigation of the after-effects on the victims of such violence. The needs and voices of the survivors should no longer be smothered.

In spite of the fact that the road ahead of eradicating sexual violence in armed conflict is very long and uneven, still there is a ray of hope in the horizon ,and the sexual violence in conflict will be a thing of past.
