

## Chapter Sixteen

# PROTECTION OF WOMEN AGAINST SEXUAL VIOLENCE DURING ARMED CONFLICTS: INTERNATIONAL HUMANITARIAN LAW PERSPECTIVE

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**Abstract**

*Sexual violence has, over the years, been made an effective war strategy aimed at humiliating and degrading women. It has been a medium for expression of men's domination over them. This manifest subjugation and oppression of women during armed conflicts flow from the patriarchal nature of most societies which heightens during armed conflicts as a result of general breakdown in law and order characterizing the situation. Unfortunately, this crime is rather accepted as the order of the day and often goes unpunished. To this effect, it is hardly made a subject of public discourse by the victims for fear of reprisal, stigmatization or because it is forbidden to discuss such topic. This paper x-rays the legal protection accorded women against sexual violence under International Humanitarian Law. It reveals that despite the plethora of legal provisions outlawing sexual violence against women under International Humanitarian Law, women are still not adequately protected in contemporary armed conflicts. The paper recommends among other things that States should tighten up measures to prevent the situation of armed conflicts in the first place; improve peace-time status of women and conduct effective investigations and prosecutions of alleged perpetrators where the crime does occur.*

**Keywords:** *Sexual violence, Women, Armed Conflict, International Humanitarian Law, Geneva Conventions.*

### Introduction

Sexual violence is one of the most extreme and unfortunate forms of violence against women in contemporary armed conflicts and often an extension of the gender-based discrimination directed against women during peace time but which is made more obvious during the subsistence of armed conflicts. Migiro<sup>1</sup>-Deputy Secretary-General of the United Nations affirms this position during her remarks at the Women's International Forum in the following words: *'If a culture of violence and discrimination against women and girls exists prior to conflicts, it will be exacerbated during conflicts.'*

Sexual violence against women usually takes the forms of rape, sexual slavery, forced impregnation, forced prostitution, abduction, strip searches and a host of others often perpetrated by members of militia, regular armed forces, security forces, paramilitary groups, humanitarian and peacekeeping personnel, and even fellow civilians.

It is often used as a war tactics aimed at humiliating and terrorising the opposing forces.

Rehn and Sirleaf<sup>2</sup> opined and rightly so that during armed conflicts, "women's bodies become a battlefield over which opposing forces struggle' and a part of trade by barter system by which they exchange their bodies to buy necessities for life". They further described sexual violence as "one of history's great silences which have reached epidemic proportion."<sup>3</sup>

Sexual violence whether committed within the context of international armed conflict or non-international armed conflict constitutes a violation of the fundamental principles of International Humanitarian Law. In fact, Kristof & WuDunn<sup>4</sup> consider it as one of the greatest human rights challenges of our

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United Nations Deputy Secretary-General Asha-Rose Migiro, Remarks at the Women's International Forum ,

New York, U.N. Doc. DSG/SM/440.1711(2009) available at [www.un.org/news/press/docs/2009/dsgsm440.doc.htm](http://www.un.org/news/press/docs/2009/dsgsm440.doc.htm). 7th January 2019.

<sup>1</sup> Rehn Elisabeth and Ellen Johnson Sirleaf. Women, War and Peace: The Independent Experts' Assessment on the Impact of Armed Conflict on Women and Women's Role in Peace-Building. New York: United Nations

Development Fund for Women, vol.1(2002). Available at <https://www.unifem.undp.org> . Web. 23 January 2019.

<sup>2</sup> *ibid.*

<sup>3</sup> Kristof, Nicholas and Sheryl, WuDunn. Half the Sky: Turning Oppression into Opportunity for Women Worldwide. New York: Alfred A. Knopf, 2009. Available at <https://www.google.com> . Web.22 January 2019.

time which affects women disproportionately and constitutes psychological, health, social, economic and security threats to any nation.

The major aim of International Humanitarian Law is to ameliorate the effects of armed conflict by according protection to persons who are not or no longer taking active part in armed conflicts. Women constitute a major part of this vulnerable group. It is against this backdrop that International Humanitarian Law makes provisions protecting women against sexual violence during armed conflicts.

The Geneva Conventions, 1949 and their two Additional Protocols of 1977 make both general and specific provisions in this regard. While some of these protective provisions are explicit some are implied. However, despite these protective provisions, women around the world are still the helpless and unfortunate victims of sexual violence in contemporary armed conflicts. This is given the impunity and general breakdown in law and order characterizing the situation of armed conflicts. The expression of aggression which marks the situation of armed conflicts culminates in the subordination of women by men who see them as part of war booties. Worse still, the situation has been helplessly condoned by certain societies like Nigeria. This largely accounts for the reason why it is hardly reported by the victims for fear of stigmatisation, reprisal or perceived inadequate legal protection. This paper reveals that despite the numerous legal provisions outlawing sexual violence against women under International Humanitarian Law, women are still not adequately protected. It made some recommendations aimed at strengthening the protection of women against sexual violence during armed conflicts.

### **Defining Sexual Violence**

Although International Humanitarian Law (IHL) - the branch of law regulating the conduct of armed conflicts, outlaws sexual violence against women during armed conflict, the four Geneva Conventions and their two Additional Protocols did not give any express definition of the subject matter. However, what constitutes sexual violence is rather implied in the texts of the said Conventions and their two Protocols. For example, generally, the four Geneva Conventions and their Additional Protocols provide for humane treatment of all persons during armed conflicts, their gender notwithstanding.<sup>5</sup> They further forbid the acts of violence, torture, outrages upon personal dignity and intimidation against all protected persons and further guarantee their rights to "respect for their person and honour."<sup>6</sup> Sexual violence is therefore a species of these acts as it amounts torture, outrages upon personal dignity, intimidation and humiliation.

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<sup>5</sup> Geneva Convention for the Amelioration of the Wounded in the Armies in the Field, 1949, Article 12.

<sup>6</sup> Geneva Convention for the Amelioration of the Wounded in the Armies in the Field, 1949, Article 3.

The International Criminal Court and Tribunals have also evolved their definition of sexual violence especially rape, on case by case basis. This they do by imputing the elements of *honour*, *coercion* and *lack of consent* in the act of sexual violence. For instance, the International Criminal Tribunal for Rwanda<sup>7</sup> defines sexual violence as “*any act of a sexual nature which is committed on a person under the circumstances which are coercive.*”

Furthermore, the Elements of Crimes of the International Criminal Court Statute<sup>8</sup> defines sexual violence as “*an act of a sexual nature committed by the perpetrator against victims either directly or by the use of force, threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power by taking advantage of a coercive environment or... or persons' incapacity to give genuine consent.*”

Moreover, the International Committee of the Red Cross<sup>9</sup> defines sexual violence as encompassing rape, forced prostitution, sexual slavery, enforced pregnancy, enforced maternity, forced termination of pregnancy, forced sterilisation, indecent assault, trafficking, inappropriate medical examinations and strip searches.

Certain key words underline the various definitions above. These words includes the fact that sexual violence is an act that is of a sexual nature; the fact that the said act constitute an outrage upon personal honour and dignity of the victim and therefore humiliating; and the fact that the said act is committed against the consent of the victim and in circumstance that is coercive.

### **Regulation of Sexual Violence Under International Humanitarian Law**

Rape and other forms of sexual violence have been one of the focuses of International Humanitarian Law in both international and non-international armed conflicts as far back as 1863. The Lieber Code of Instruction<sup>10</sup> forbids rape and other forms of violence against persons in an invaded country. It is also prohibited by virtue of State practice under Rule 93 of Customary International Law. However, generally, the contemporary regulatory framework for sexual violence against women under International

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<sup>7</sup> Prosecutor v Jean Paul Akayesu, Case No. ICTR-96-4-T.

<sup>8</sup> Elements of Crimes, Statute of the International Criminal Court, 2002, ISBN No. 92-9227-2332-2, ICC- PIDS-

LT-03-002/II\_Eng.

<sup>9</sup> Gaggioli, G., “Sexual Violence in Armed Conflict: A Violation of International Humanitarian Law and Human Rights Law”, *International Review of the Red Cross*. 96 (894) (2014): 503-538. International Committee of the Red Cross. Available at <https://doi.org/10.1017/s1816383115000211> .Web. January 2019.

<sup>10</sup> Lieber Code of Instruction, 1863 (General Order No. 100), Article 44.

Humanitarian Law are the four Geneva Conventions, 1949 (GCs I-IV) and their two Additional Protocols, 1977 (AP I & AP II). The applicable legal regime will however depend on whether the crime is committed within the context of international armed conflict or non-international armed conflict. Where the said crime is committed within the context of international armed conflict, then the four Geneva Conventions (GCs I-IV) and Additional Protocol I to the said Conventions (AP I) will apply. On the other hand, where the crime is committed within the context of non-international armed conflict, the applicable legal regime will be the common Article 3 to the Geneva Conventions and Protocol II (AP II) to the same Conventions.

### **International Humanitarian Law and the Protection of Women Against Sexual Violence**

Women enjoy both general and specific protections against sexual violence under International Humanitarian Law. These protective provisions are encapsulated in the four Geneva Conventions and their two Additional Protocols depending on whether the crime was committed within the context of international or non-international armed conflicts.

For instance, generally, the Geneva Conventions<sup>11</sup> and their Additional Protocols<sup>12</sup> provide for humane treatment of all persons during armed conflicts by prohibiting violence and torture against all protected persons- men and women alike. Again, the third Geneva Convention (GC III)<sup>13</sup> generally protects prisoners of war against violence and intimidation and guarantees their rights to “respect for their person and honour”. The provisions also stipulate that women are entitled to be “treated with consideration due to their sex” and are to benefit from treatment as favourable as that accorded to their men counter.<sup>14</sup> It is to be noted that although the general provisions under Geneva Conventions I & II did not expressly outlaw sexual violence, it is implied in the texts. This is given the fact that such acts as rape, enforced prostitution, female genital mutilation, enforced impregnation, sex- trafficking, sexual slavery and the like qualify as inhumane, torturous, intimidating, degrading and outrageous acts upon the personal dignity of human persons. Specifically, the fourth Geneva Convention (GC IV)<sup>15</sup> provides thus:

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<sup>11</sup> Geneva Convention for the Amelioration of the Wounded in the Armies in the Field, 1949, Article 12.

<sup>12</sup> Geneva Convention for the Amelioration of the Wounded, Sick and Shipwrecked Members of the Armed Forces in the Sea, 1949, Article 12.

<sup>13</sup> Protocol Additional to the Geneva Conventions and Relating to the Protection of Civilians in International Armed Conflict, 1977.

<sup>14</sup> Protocol Additional to the Geneva Conventions and Relating to the Protection of Civilians in Non-International Armed Conflict, 1977.

<sup>15</sup> Geneva Convention Relative to the Protection of Prisoners of War, 1949, Articles 13 & 14.

<sup>16</sup> *ibid.*

<sup>17</sup> Geneva Convention Relative to the Protection of Civilians in the Time of War, 1949, Article 27.

“Women shall be especially protected against any attack of their honour, in particular against rape, enforced prostitution, or any form of indecent assault.” Moreover, Protocol I<sup>16</sup> prohibits “outrages upon personal dignity” in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault”. It further provides 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 assault.”<sup>17</sup> Rape, sex-trafficking, enforced prostitution, indecent assault female genital mutilation, enforced impregnation, sexual slavery, abduction and so on are forms of sexual violence against women and these acts are specifically outlawed in international armed conflicts as pointed out above.

In the same vein, common Article 3 to the four Geneva Conventions and Protocol II to the same Conventions regulate the protection of women against sexual violence within the context of non-international armed conflicts. Though not express in its prohibition of rape, enforced prostitution and other forms of sexual violence against women, the said common Article 3 implies that by its prohibition of “*violence to life and person*,” in particular mutilation, cruel treatment and torture as well as “*outrages upon personal dignity*,” in particular humiliating and degrading treatments. These are general protection accorded both men and women. Protocol II<sup>18</sup> also implies the protection of women against sexual violence through the prohibition of “*outrages upon personal dignity*”, in particular humiliating and degrading treatment, rape, enforced prostitution, and any other forms of indecent assault against all protected persons.

Moreso, the Statute of the International Criminal Court<sup>19</sup> considers rape and some other forms of sexual violence as War Crime or Crime against Humanity as the case may be, if committed as part of a widespread or systematic attack directed against any civilian population. It is considered an act of Genocide, for instance where it imposes measures like sterilization intended to terminate an entire population. These acts may also constitute other international crimes such as torture when it is intentionally inflicted by a State official in order to obtain confessions from the victim.

Again, sexual violence is a form of torture and Customary International Law prohibits torture and the violation of same constitutes a grave breach under the Geneva Conventions.<sup>20</sup> In the whole, all these provisions are geared towards

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<sup>16</sup> Protocol Additional to the Geneva Conventions and Relating to the Protection of Civilians in International

Armed Conflict, 1977, Articles 75(2)(b) Article 76(1).

<sup>17</sup> *ibid*, Article 76(1).

<sup>18</sup> Protocol Additional to the Geneva Conventions and Relating to the Protection of Civilians in Non-International Armed Conflict, 1977, Article 4(2).

<sup>19</sup> Article 8(2)(b)(xxii) and (e)(vi).

<sup>20</sup> Geneva Convention Relative to the Protection of Civilians in the Time of War, 1949 Article 147.

fortifying the protection of women against sexual violence under International Humanitarian Law and so far they still remain relevant in contemporary armed conflicts. However, the problem has been its implementation by States.

### **Protection of Women Against Sexual Violence in the Light of the Reality of Contemporary Armed Conflicts.**

It has been pointed out earlier in this paper that International Humanitarian Law is not silent about the pertinent issue of sexual violence against women during armed conflicts. A lot of legal structures and institutions are in place to secure the protection of women. However, despite these measures, contemporary armed conflicts are stunned by reports of acts of sexual and other conflict-related violence committed against women in gender-specific ways.

Sexual violence has been weaponized in contemporary armed conflicts and countless number of women are caught in this web. The deliberate and systematic use of sexual violence as a war tactic aimed at humiliating and terrorizing an entire civilian population characterises contemporary armed conflicts. Manjoo and McRaith<sup>21</sup> capture this vividly when they observed that “Despite the progress in setting standards, it is argued that very little has changed in the lives of most women, as states and non- State actors continue to commit acts of Gender-based violations with impunity.”

The Report of the Independent International Commission of Inquiry on the Syrian- Arab Republic<sup>22</sup> found that “For the past six years, parties to the Syrian conflict have subjected thousands of women, girls, men, and boys to sexual and gender-based violence. Such acts have been used as a tool to instil fear, humiliate and punish or, in the case of terrorist groups, to enforce draconian social order”. Thus, members of armed groups, Government troops, and associated militia have on different occasions used their position to rape and commit other forms of sexual violence against women during armed conflicts. For instance, the Boko Haram insurgency in Nigeria which has long been recognized as an internal armed conflict<sup>23</sup>, witnesses high cases of sexual violence against women even by government security forces, Civilian Joint Task Force and Internally Displaced Persons’ camps’ leaders. According to the

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<sup>21</sup> Manjoo, Rashida. and McRaith Calleigh. “Gender- Based Violence and Justice in Conflict and Post-Conflict

Areas”. *Cornell International Law Journal* 44 (1), (2011): 26.

<sup>22</sup> United Nations General Assembly, Report of the Independent International Commission of Inquiry on the

Syrian- Arab Republic, 2018 A/HRC/37/72. Available at < [www.refworld.org/ docid/5aa164614.html](http://www.refworld.org/docid/5aa164614.html). Web.

19 January 2019.

<sup>23</sup> Idayat Hassan. What is Justice? Exploring the Need for Accountability in the Boko Haram Insurgency, *Harvard Human Rights Journal*,vol.31, spring 2018.

United Nations' Secretary –General's Report,<sup>24</sup> about 997 cases of sexual violence including rape, sexual slavery and forced marriages leading to the abduction of 120 Chibok School girls by the Boko Haram insurgents in 2014 was reported in the year 2017 as against 644 cases reported in 2016.

Again, the Syrian war witnesses massive arrests and detentions of armed groups and their supporters inclusive of women who are subjected to inhumane and degrading treatments such as strip searches, sexual slavery, gang rape, enforced prostitution and other conflict-related violence. Women and girls are raped with impunity during interrogations in detention camps, during ground operations and at some other times at checkpoints by government troops and rebel groups. It is in this regard, for example, that the United Nations Special Representative on Sexual Violence in Conflict,<sup>25</sup> pointed out that: "The annual report of the United Nations Secretary-General on conflict-related sexual violence have consistently listed the Syrian Government and associated militias of committing or being responsible for patterns of rape and other forms of sexual violence".

The situation was rather worse in the Democratic Republic of Congo as rape and other forms of sexual violence went on unfettered. The Report of the Secretary-General on Resolution 1820 of the United Nations' General Assembly<sup>26</sup> found that over 200,000 cases of sexual violence in the Democratic Republic of Congo had been recorded since 1996. The year 2010 witnessed a massive attack against some 150 Congolese women by the FDLR and Mai-Mai rebel groups resulting in their rape. In fact, Margot Wallstrom,<sup>27</sup> a United Nations official recognised the Democratic Republic of Congo as 'the world's capital of rape' and the former commander of the United Nations Peace-keeping forces-Major-General Patrick<sup>28</sup> described the Democratic Republic of Congo as the worse place to be a woman given the high rate of rape cases. The Congolese war witnessed a situation where women were brutally and helplessly raped with dangerous objects like guns and batons, mutilated,

<sup>24</sup>United Nations, Office of the Special Representative on Conflict-Related Sexual Violence S/2018/250, 2018. Available at [www.un.org](http://www.un.org). Web. 21 January 2019.

<sup>25</sup>United Nations, Office of the Special Representative of the Secretary- General on Sexual Violence in Conflict,

Pramila Patten. "I Lost my Dignity': Sexual and Gender-Based Violence in the Syrian- Arab Republic." New

York: 2018. Web. Available at <[www.un.org](http://www.un.org)> Press Release. 15 January, 2019.

<sup>26</sup> Amber P. *et al.* "Estimate and Determinants of Sexual Violence against Women in the Democratic Republic

of Congo." *American Journal of Public Health.* (2011): "n.d.". Available at

<https://ajph.aphapublications.org> .

Web. 22 December 2018.

<sup>27</sup> *ibid.*

<sup>28</sup> Autesserre, S. "Dangerous Tales: Dominant Narratives on the Congo and their Unintended Consequences".

*African Affairs* vol. III. (443) (2012): 202-222. [doi:10.1093/afraf/adr080](https://doi.org/10.1093/afraf/adr080). Web. 20 December 2018.

stripped naked before the public, held in sexual slavery by both government troops and rebel groups.

The story is not different with the South Sudanese armed conflict which has raged for nearly five years from late 2013. The United Nations,<sup>29</sup> in a Study released in November, 2017 found that the said conflict “has been characterized by mass rape which is occurring on a massive scale and double the global average.”

In December, 2018, it was reported<sup>30</sup> that “Sexual violence has been weaponized in South Sudan’s civil war, and even under a recent peace deal, humanitarian groups have warned of higher rates of sexual assault as growing numbers of desperate people try to get aid.” The report further has it that “At least 125 women and girls seeking food aid were raped, whipped and clubbed over 10 days this month in attacks described as “abhorrent” even amid the widespread sexual violence of South Sudan’s civil war.”<sup>31</sup>

According to the report of the United Nations Mission in South Sudan,<sup>32</sup> “217 victims of rape, including gang-rape committed by SPLA, SPLM/MIO and other armed groups during and after the fighting between 8 and 25 July.” The plight of women during armed conflicts is a pathetic one and the list inexhaustive. Unfortunately, these acts go unabated even by those who ought to have checked them.

Hence, the need for a more proactive mechanism for ensuring more and effective for women during armed conflict. However, this may not be feasible unless the parties to an armed recognise the underlying aim of International Humanitarian Law and have the political will to ensure compliance with its fundamental principles.

### **Conclusion**

‘The impermanent and flexible expression of gender, coupled with the vying for dominance in armed conflict settings, often encourage various forms of interpersonal violence, including Gender-based violence (sexual violence).’<sup>33</sup> This represents the subjugation of women often rooted in the patriarchal culture of some societies which have continued to rob women of their dignity. It is a serious challenge facing international Humanitarian Law which must be

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<sup>29</sup> United Nations Mission in South Sudan “Killings, Rapes, in South Sudan Continued ‘Unabated after July

2016 Violence” South Sudan. 16 January 2017 available at [www.ohchr.org](http://www.ohchr.org). 12 January 2019.

<sup>30</sup> *New York Times* “125 Women and Girls Seeking Food were Raped and Whipped in South Sudan.” 2 December 2018: Web. 16 January 2019.

<sup>31</sup> *ibid.*

<sup>32</sup> *ibid.*

<sup>33</sup> Mootz, J.J. *et al*, “Gender- Based Violence and Armed Conflicts: A Community – Informed Sociological Conceptual Model from North-eastern Uganda.” *Psychology of Women Quarterly* vol. 4(3), ( 2017): 368-388.

fought doggedly in order to restore women to their proper place. Hence, this paper recommends the inculcation of social norms that will prevent and/or protect women against sexual violence and improve the peace-time status of women in order to reduce cases of women subjugation. It also recommends the promotion of the educational, political and economic opportunities of women and the creation of a protective environment by preventing armed conflict in the first instance. States should further muster the political will to discharge their responsibilities under the Geneva Conventions by integrating the prohibition of sexual violence against women during armed conflict into their national laws and military codes. Effective counselling, reporting, and documentation, investigation and prosecution of cases of sexual violence are also indispensable in achieving justice for both the victims and the perpetrator of this heinous crime. The relevant agencies should also be adequately funded to strengthen their humanitarian response to this sensitive issue of sexual violence against women.