

## **WARTIME SEXUAL VIOLENCE OFFENCES: QUEST TO UNRAVEL THE ASSOCIATED CONSEQUENCES IN INTERNATIONAL LAW**

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### **ABSTRACT**

Despite increasing awareness and the huge condemnation of sexual violence during armed conflicts in the last decades, the bodies of women and girls continue to be regarded as spoils and bonus of war globally. Warring parties often engage the use of rape and other forms of sexual violence, as a tool to punish, terrorize and destroy targeted ethnic populations. In other instances, rebels and terrorist groups engage sexual violence as a weapon and strategy to advance their mundane objectives. The paper aims at examining the consequences and impact of wartime sexual violence on women, and men as well as the impact of such violence on their family and immediate society during armed conflicts. The paper finds that despite efforts made by the international community through the enactment of laws and resolutions in curtailing the scourge of sexual violence during wartime, rape and other forms of sexual violence are still being employed during armed conflict situations as weapon and tactics of war by soldiers and other armed groups. The paper relies on primary and secondary information such as International Conventions and Treaties, Books, Journal Articles, Judicial Precedents and Internet Materials. Flowing from the above, the paper concludes that the desired need to end sexual violence generated impunity is possible through sensitization and propaganda vide non-governmental organizations, accountability and coordinated enforcement through both domestic and international institutions. The paper further recommends that women and other victims of wartime violence who steps out to speak and report the crime of sexual violence committed against them should be protected and rewarded as this would lead to the massive reporting, arresting and prosecuting of perpetrators of conflict-related sexual violence.

**Keywords:** Wartime, Sexual Violence, Consequences, Victims, Prosecution

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## **INTRODUCTION**

Wartime sexual violence has to do with rape and other forms of sexual violence perpetrated by fighting forces, targeting specific groups and used as a weapon of war. Men and women are presently affected by wartime rape and sexual violence. Interestingly, men are now victims of wartime rape, while women on the other hand can be perpetrators.<sup>2</sup>

The link between gender-based violence and armed conflicts has in the last few decades received so much attention from the international community.<sup>3</sup> Sexual violence during warfare was often dismissed as inconsequential in international criminal law, until recently when it was regarded as “an inevitable and unfortunate part of conflict.”<sup>4</sup>

The consequent negative impacts of conflict-related violence against women have led to several efforts in addressing the issues of impunity and accountability and at the same time providing access to justice for victims. Although serious efforts have been made to bring to an end the issues of gender-based violence during warfare and consequent creation of awareness to check further sexual violence against women. Sexual and gender-based violence remains a major challenge confronting the international community.

Almost in every armed conflict around the world, women and girls still suffer from different forms of gender-focused violence, such as rape, forced sterilization, sexual slavery, forced prostitution and other types of human rights violations, as a result of breakdown of law and order in the community which forms an integral part of warfare, women are exposed to sexual violence from state actors, non-state actors as well as peace keeping forces deployed for the protection and restoration of peace and order in conflict areas. Sexual Violence against men during armed conflict have also occurred throughout history, although largely invisible, marginalized and under-reported within the international community.<sup>5</sup> Sexual violence against men during wartime takes different forms, most times, victims are

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<sup>2</sup> Rosemary Grey & Laure Shephard, “Stop Rape Now: Masculinity, Responsibility and Conflict Related Sexual Violence” (2012) 16 *Men & Masculinities* 115-116.

<sup>3</sup> According to Dr. Nwaogu in his doctoral thesis ‘Gender-Based Crimes at the International Criminal Court: Prospects in Investigation and Prosecution’ State the title of your thesis submitted in November 2017 to the School of Postgraduate Studies and Research, Igbinedion University Okada.

<sup>4</sup> See specifically, the Rome Treaty establishing the International Criminal Court (ICC)

<sup>5</sup> Wynne Russell, “Sexual Violence Against Men and Boys” *Forced Migration Review* 27 available at <http://www.hsrgroup.org/human-security-reports/2005/overview.aspx> accessed November 22, 2022

compelled to perform ‘fellatio,’<sup>6</sup> Enforced Sterilization,<sup>7</sup> Genital violence,<sup>8</sup> Enforced Nudity<sup>9</sup> and Enforced masturbation.<sup>10</sup>

The author argues, that in recent years, rape has been employed as a weapon of war during conflict situations in various countries of the world; used to carry out ethnic cleansing and to punish, terrorize and destroy populations, and in most cases, armies, rebel groups and terrorist organizations usually utilize ‘sexual violence’ as a strategy to realize their objectives. In equally other instances, military commanders permit their men to rape women and girls as a form of reward. In international law, conflicts generated sexual violence are classified as war crimes and crimes against humanity when carried out with the intention to destroy in whole or in part a targeted population.<sup>11</sup>

For effective elucidation of the subject matter under review, this paper is divided into seven parts including the introduction. Part two of the paper examines the history of wartime sexual violence within the international community. Part three reviews the statistical data on wartime sexual violence, while Part four and five of the paper on the hand discusses the causes and effects of sexual violence during armed conflicts, together with the extant legal and institutional frameworks for combating sexual violence during armed conflicts. While part six of the paper covers the prospects in curtailing wartime sexual violence. Part seven contains the concluding section of the work.

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<sup>6</sup> Fellatio is the touching of men’s penis with the tongue or lips to give some form of sexual pleasure.

<sup>7</sup> This form of sexual crime against men includes castration and sexual mutilation. Enforced Sterilization is was first practiced among the Ancient Persian Murals, when victorious soldiers marched down the streets carrying plates full of their Enemies penises. In Delzotto and Jones, “Male-on-Men Sexual Violence in Wartime; Human Rights last Taboo? Paper Presented at the Annual Convention of the International Studies Association, 23-27 March 2002, available at <http://adamjones.freeservers.com/malerape.htm> accessed November 22, 2022

<sup>8</sup> This was recorded in the conflicts which took place in Kosovo and Bosnia, men were hit in their testicles with hard hammers and kicked on their testicles with the Soldiers boots

<sup>9</sup> This involves the act of forcefully stripping men naked in public so as to humiliate them before their wives and immediate community. Used as a tactics in the conflicts which took place in Kosovo and Abu Ghraib. Men were made to undress and to stand naked for several days before a large group of women. See the Taguba Report on Treatment of Abu Ghraib Prisoners in Iraq, available at <http://news.findlaw.com/hdocs/iraq/tagubarp.htm/> Accessed November 22, 2022

<sup>10</sup> Here male victims are usually forced during armed conflict to masturbate their captors, available at <http://news.findlaw.com/hdocs/Iraq.tagubarp.htm/> Accessed November 22, 2022.

<sup>11</sup> Statute of the International Criminal court.

## **HISTORY OF WARTIME SEXUAL VIOLENCE**

The prosecution of wartime rape is only a recent development at the international criminal tribunals and courts. Although international and humanitarian laws have not clearly recognized wartime rape as a crime against the victim, that would not serve as a defence for the perpetrators of war time rape. Under the laws and customs of war, there is the prohibition of offences in the nature of “indecent assault” or “inhuman treatment”, thus raising the bar of sexual assault as a crime. As far back as 1863, the United States Lieber Code being the first standard of international customary laws of land war creating the path towards humanitarian law, made provision for the protection of civilians and other non-combatants. The crime of rape was included in the code as one of the known serious war crimes. Article 44 of the Lieber Code of the US Armed Forces provides that rape as a war crime was punishable by death, this however was considered as the very first prohibition of rape in customary humanitarian law. During the International Peace Conference in Copenhagen in 1907, the terms and stance of the Lieber Code on rape was fully adopted as forming parts of international law.<sup>12</sup> During the Second World War, there were documented cases of sexual violence against women and also men, over 2000 Asian women were victims of sexual violence perpetrated by the Japanese soldiers. In East Timor in 1942, the Japanese commanders compelled Village heads to gather the women and girls of their villages to act as “Comfort Women” in stations near Japanese military base, and subsequently subjected the women to forced prostitution.<sup>13</sup> The comfort stations were established to help boost the morale of the Japanese troops and this attracted a lot of celebrations among the soldiers.<sup>14</sup>

Historically, there have been quite a few cases of prosecution of gender-based violence, the earliest recorded case of prosecution of gender-based violence before an international court was in 1474, and this was the trial of Sir Hagenbach who was tried and subsequently convicted for the rapes carried out by soldiers under him. However, at the trial, the rapes for which he was charged were considered illegal as a result of the fact that the war in

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<sup>12</sup>“Treatment of sexual violence in international law” Available at <http://www.iccwomen.org/resources/crimeschart.htm>. Accessed May 18, 2021

<sup>13</sup> “Sexual Violence Against East Timorese Women during the Japanese Occupation,” Available at <http://etan.org/issues/ww2.htm>. Accessed May 18, 2021

<sup>14</sup>Kofler Mindy “ The comfort women and Japan’s War on Truth” The New York Times, November 14, 2014, Available at <http://www.nytimes.com/2014/11/15/opinion/comfort-woman-and-japanese-war-on-truth.htm> r=O Accessed May 18, 2021

question was “undeclared”, thus his prosecution was viewed as unjust and illegal.<sup>15</sup> Generally speaking, wartime sexual violence was not given much attention after the Second World war this is owing to initial traditional view that rape was a reward or “spoils of war” for soldiers, This as it were gave rise to the terminology “rape and pillage” which represented that which is usually given to conqueror, meaning that rape was considered as of the booty of warfare.<sup>16</sup> Rape was further viewed as a good incentive for enlisting soldiers, it was seen as a good meal in celebrating victory in warfare.

The Nuremberg and the Tokyo Tribunals established in 1945 and 1946 respectively played very important roles in the prosecution of war time sexual violence by recognizing that wartime rape constitutes a serious violation<sup>17</sup> of the laws of war in the Hague Conventions of 1899 and 1907 which provides that the right to family honour as well as the right of persons must be respected. However, the Nuremberg tribunal neither charged nor prosecuted the Nazi war criminal for rapes despite the numerous evidence and witnesses that testified about the occurrence sexual violence. According to Piazza Lorenzo, it would have been possible to prosecute wartime rape under Article 6 (b) and (c) of the Nuremberg Charter in line with the abduction of the civilian population into slavery and abduction unjustified by military necessity together with “other inhumane acts” and enslavement, still wartime rape and other forms of sexual violence was not prosecuted at the Nuremberg tribunal as a result of lack of will power to do so.<sup>18</sup>

The Tokyo tribunal on the other hand effectively prosecuted wartime rape and other forms of sexual violence as war crimes under the heading “inhumane treatment”, ill-treatment” and “failure to respect family honour and rights”. During the trial, the Tokyo tribunal took into cognizance sexual violence offences as testified by victims and witnesses and

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<sup>15</sup> Askin Kelly, “Prosecuting Wartime Rape and other gender-related crimes under international law: Berkeley Journal of International Law (2003), p.21, Available at <http://scholarship.Law.berkeley.edu/bjil/vol21/iss2/4> Accessed May 18, 2021

<sup>16</sup> Beth Stephens, Humanitarian Law and Gender Violence: An End to Centuries of Neglect, Hofstra law and policy Journal, vol. 87, (1999), p 89 Available at [scholarship.law.stjohns.edu/egi/viewcontent.egiarticle=1032&content=jer](http://scholarship.law.stjohns.edu/egi/viewcontent.egiarticle=1032&content=jer), Accessed May 19, 2021

<sup>17</sup> Askin Kelly, Prosecuting Wartime Rape and other gender-related crimes under international law: Berkeley Journal of international law (2003), Available at [https://en.m.wikipedia.org/wiki/Wartime\\_sexual\\_violence](https://en.m.wikipedia.org/wiki/Wartime_sexual_violence). Accessed on May 21, 2021

<sup>18</sup> *ibid*

convicted the Japanese commanders for failing to stop the rape of over 2,000 Nanking women.<sup>19</sup>

Sexual violence against victims during armed conflict takes many forms, including but not limited to rape<sup>20</sup>, sexual slavery<sup>21</sup>, forced pregnancy,<sup>22</sup> Enforced prostitution<sup>23</sup> Enforced Sterilization,<sup>24</sup> and Forced Marriage<sup>25</sup> these forms of sexual violence constitutes crimes against humanity under the Rome Statute of the International Criminal and they are prohibited in international law.<sup>26</sup>

## STATISTICAL DATA ON CONFLICT-RELATED SEXUAL VIOLENCE

Annually, on the 19<sup>th</sup> of June, the international community marks the International Day for the Elimination of Sexual Violence in Conflicts. Sadly, despite the efforts made yearly, each anniversary clearly shows that the international community is very far from realizing the goal of eliminating conflict related sexual violence.<sup>27</sup> The recent report of the United Nations

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<sup>19</sup> Rosenberg Tine, (April 1998) "Editorial Observer; New punishment for an ancient war crime" The New York Times, Available at [https://en.m.wikipedia.org/wiki/Wartime\\_Sexual\\_violence](https://en.m.wikipedia.org/wiki/Wartime_Sexual_violence). Accessed May 21, 2021

<sup>19</sup> This has to do with the forceful invasion of the body of the victim by conduct amounting to penetration, however slight, or any of the body of the victim or of the perpetrator with a sex organ or of the anal or genital opening of the victim with any object or any other part of the body.

<sup>21</sup> Provided for in Article 8 (2) (6) (xxii) of the Statute of the ICC, under the Rome Statute, the elements of the this crime include the fact that perpetrator exercised the power of attaching to the right of ownership over one or more persons, such as purchasing, selling, lending or bartering such a person or persons or by imposing on them a similar deprivation of liberty, or that the perpetrator caused the victim (s) to engage one or more acts of a sexual nature.

<sup>22</sup> Kim Seelinger, Helene Silverberg & Robin Mejia, "The Investigation and Prosecution of Sexual Violence" Sexual violence & Accountability project Working Paper Series Humam Rights Center, University of California, Berkeley, May 2011, at 6 Forced pregnancy. This is provided for in Article 8 (2) (b) (xxii) of the Statute of the ICC, it involves the forcible impregnation as well as the forced confinement of the victim, this is often used during armed conflict as a military strategy.

<sup>23</sup> Provided for in Article 8 (2) (b) (xxii) of the Statute of the ICC. To constitute enforced prostitution, the perpetrator must have caused one or more persons to engage in acts of sexual nature by force, or by threat of force or coercion.

<sup>24</sup> Article 7 (1) (g) of the Rome State of the ICC, Enforced Sterilization has to do with the deprivation of a person's biological reproductive capacity without his or her consent. Under the statute of the ICC it constitutes a crime against humanity where it is committed in a widespread manner.

<sup>25</sup> This involves a female being married, against her will, to a male, thus, creating a union without her free consent, it must also be noted that forced marriage is often employed in armed conflict situations wherein the female folk is subjected to wartime sextual violence and an unwanted marital union. Forced marriage is regarded as a crime against humanity and prohibited by international law.

<sup>26</sup> Amy Palmer, "An Evolutionary Analysis of Gender- Based War Crimes and the Continued Tolerance of Forced Marriage" Vol. 7 (1) *Netherlands Journal of International Human Rights*, 134-135

<sup>27</sup> Erin Farrell Rosenberg & Amal Nassar, "Response to Conflict-related Sexual Violence in Ukraine: Accountability and Reparation" Conflict-related sexual violence, Report of the Secretary-General

Secretary-General on conflict-related sexual violence covering a period of January to December 2020-2021, paints a frightening picture of the consistent use of sexual violence as a tactic of war, torture and terrorism.<sup>28</sup> The report given by the Special Representative of the Secretary General for Children and Armed Conflict in the year 2020 records a 70% increase in sexual violence against children in armed conflict compared to the year before.<sup>29</sup>

In this section, the author reviews conflict related sexual violence report within the periods stated above from some selected conflict affected settings to show that in spite of the efforts by the international community to end or reduce sexual violence during conflict, parties to conflicts have continued to employ sexual violence a tool to accomplishing their mundane agenda.

In Ethiopia, following the military operation in the Tigray region in November 2020, it was reported that in Northern and Central Tigray, the incidence of sexual violence of over 100 rape cases.<sup>30</sup> During the period, individuals were allegedly forced to rape members of their own family under threat and violence, women were also compelled by military elements to have sex in exchange for basic commodities.<sup>31</sup> Subsequently, in February 2021, the Ethiopian Human Rights Commission confirmed that 108 rapes were committed against women within a period of two months.<sup>32</sup> The commission reported that the military elements engaged different forms of sexual violence including rape, gang rape, oral and anal rape, insertion of foreign objects into the vagina and the intentional transmission of HIV.<sup>33</sup>

In Afghanistan, the UN Assistance Mission in Afghanistan (UNAMA) documented 271 cases of sexual violence and gender-based violence in 2020. 18 of such cases were confirmed to be conflict-related sexual violence, involving 9 boys, 5 women and 4 girls.<sup>34</sup> These acts of sexual violence were committed by members of the Taliban, Afghan National Army, the Afghan National Police as well as the Afghan Local Police.<sup>35</sup>

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(S/2022/272), available at <http://opiniojuris.org/2022/06/21/response-to-conflict-related-sexual-violence-in-ukraine-accountability-and-reparation>. Accessed November 28 2022

<sup>28</sup> Ibid at 9

<sup>29</sup> Ibid

<sup>30</sup> United Nations Security Council, Conflict-related sexual violence, (S/2021/312), 30 March 2021

<sup>31</sup> Ibid at 5

<sup>32</sup> Ibid.

<sup>33</sup> Conflict-Related Sexual Violence, Report of the United Nations Secretary-General, available at <https://reliefweb.int/report/world/conflict-related-sexual-violence-report-secretary-general-s2022272-enarruzh>, accessed November 28, 2022

<sup>34</sup> United Nations Security Council, Conflict-Related Sexual Violence, (S/2021/312) 30<sup>th</sup> March 2021, at 8

<sup>35</sup> Ibid

In Colombia, despite efforts to end the conflict and ensure stable and lasting peace between the Government and the Fuerzas Armadas Revolucionarias de Colombia Ejercito del Pueblo (FARC-EP) sexual and gender-based violence have continued unabated in the country. In 2020, the National Victims' Unit recorded 239 cases of conflict-related sexual violence, thus, of these number, 197 were perpetrated against women, 15 against girls, 13 against men, 6 against boys.<sup>36</sup> Subsequently, in April 2021, there was massive killings and sexual violence by the national police.<sup>37</sup> In 2021, the National Victims' Unit recorded a higher incidence of conflict related sexual violence in the country compared to number documented in 2020. The Unit recorded 293 cases of conflict related sexual violence, out of which 238 were committed against women, 21 against girls, 18 against men and 4 against boys.<sup>38</sup> Twelve of the victims were identified as lesbian, gay, bisexual, transgender, queer and intersex persons.<sup>39</sup>

Similarly, in Democratic Republic of the Congo, conflict related sexual violence have remained a recurring decimal, particularly in the province of North Kivu, South Kivu, Ituri and Tanganyika.<sup>40</sup> The United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) in 2020, reported 1,053 cases of conflict related sexual violence out of which 675 were committed against women, 370 against girls, 3 against men, 5 against boys.<sup>41</sup> These acts of sexual violence were mainly attributed to non-State armed groups, State actors were also responsible for some of the acts of sexual violence within the country.<sup>42</sup> In May 2021, MONUSCO documented 1,016 cases of conflict-related sexual violence, 544 cases committed against women, 459 against girls, 7 against boys and 6 against men.<sup>43</sup> Perpetrated by armed groups within the country together with other identified State actors.

In October 2020, the United Nations Support Mission in Libya (UNSMIL) carefully documented 27 cases of conflict related sexual violence, such includes cases of rape,

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<sup>36</sup> *Ibid* at 10

<sup>37</sup> Conflict-Related Sexual violence, Report of the United Nations Secretary-General, available at <https://reliefweb.int/report/world/conflict-related-sexual-violence-report-secretary-general-s2022272-enarruzh> accessed November 28, 2022

<sup>38</sup> *Ibid* at 19

<sup>39</sup> *ibid*

<sup>40</sup> United Nations Security Council, Conflict-Related Sexual Violence, (S/2021/312), 30<sup>th</sup> March 2021

<sup>41</sup> *Ibid* at 12

<sup>42</sup> *ibid*

<sup>43</sup> Conflict-Related Sexual Violence, Report of the United Nations Secretary-General, 29<sup>th</sup> March 2022, available at <https://reliefweb.int/report/world/conflict-related-sexual-violence-report-secretary-general-s2022272-enarruzh>, accessed November 28, 2022



sexual exploitation and forced prostitution.<sup>44</sup> Out of these, 23 were committed against women, 3 against men and 1 against a girl. the victims were mainly migrants or persons seeking asylum.<sup>45</sup> Subsequently, in 2021 the INSMIL verified 23 cases of conflict related sexual violence including acts of rape and forced prostitution committed against 9 Libyan women and 14 migrant women who came into the country from Cameroon, Somalia and the Sudan.<sup>46</sup>

Mali, in 2020 encountered a major political problem which resulted in escalated security challenge in the country. The breakdown of security in the country in Mali within this period of time lead to massive conflict related sexual violence especially in the Northern and Central regions.<sup>47</sup> The United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) in 2020, documented cases of conflict related sexual violence committed against 21 women and 8 girls of which the perpetrators includes the Coordinated des mouvements de l'Azawad, Groupe d'autodefense des Touaregs Imghad et Leurs allies. These are violent extremist groups and unidentified armed men.<sup>48</sup> Similarly in the same year, humanitarian workers registered 1,020 cases of sexual violence, of which 510 cases were committed against women, 489 against girls, 15 against boys, 6 against men. At the same time, 68 cases of children conceived as a result of rape.<sup>49</sup> In 2021, MINUSAM reported cases of conflict-related sexual violence committed against 19 women, 24 girls and 4 men.<sup>50</sup> Perpetrators of the sexual acts includes members of unidentified armed groups, the dozo traditional hunters, Islamic State in the greater Sahara and armed smugglers. Cases of rape, gang rape, attempted rape, forced marriage, abduction and other forms of sexual violence.<sup>51</sup>

Arguably, the cases of conflict-related sexual violence have remained increasingly high despite the concerted efforts made by the international community in arresting the menace. It is likely that the subsequent United Nation Secretary-General report on conflict related

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<sup>44</sup> United Nations Security Council, Conflict Related Sexual Violence, (S/2021/312) 30<sup>th</sup> March 2021 at 14

<sup>45</sup> *ibid*

<sup>46</sup> Conflict- Related Sexual Violence, Report of the United Nations Secretary-General, 29<sup>th</sup> March 2022, available at <https://reliefweb.int/report/world/conflict-related-sexual-violence-report-secretary-general-s2022272-enarruzh> accessed November 28, 2022

<sup>47</sup> United Nations Security Council, Conflict Related Sexual Violence, (S/2021/312) 30<sup>th</sup> March 2021 at 15

<sup>48</sup> *ibid*

<sup>49</sup> *ibid*

<sup>50</sup> Conflict- Related Sexual Violence, Report of the United Nations Secretary-General, 29<sup>th</sup> March 2022, available at <https://reliefweb.int/report/world/conflict-related-sexual-violence-report-secretary-general-s2022272-enarruzh> accessed November 28, 2022

<sup>51</sup> *ibid*

sexual violence for 2022 and 2023 would not be different from the years that have just been examined.

The author notes that underreporting of conflict related sexual violence remains a major problem, owing to the fear of reprisal attacks, intimidation and stigma. In this respect, the author further advocates that adequate and timely protection together with good reparation needs to be provided for victims to motivate them to report cases of sexual violence to the law enforcement agencies, which would translate into arresting and prosecution of perpetrators of conflict related sexual violence.

### **CAUSES AND EFFECTS OF WARTIME SEXUAL VIOLENCE**

Wartime rape and other forms of sexual violence serves a strategic function in armed conflict and constitutes an important tool in achieving negative specific military objectives. In the conflict which took place in the former Yugoslavia in 1993, rape and other types of sexual violence was used by the Serbian forces to drive away and disorganize the non-Serbian population group. According to Dorothy and Regan, the Serbian forces bombarded the villages and locations of the non-Serbian group, the men were separated from the women and the men were taken to different detention centres.<sup>52</sup> The women were left to take care of themselves and without protection in villages controlled by the Serbian enemy forces. The women were thereafter taken to centres where they were raped, gang raped and beaten.<sup>53</sup> In the conflict which took place in Peru for instance, rape was used as a tactical weapon by the soldiers to demonstrate their domination over civilians. It was also used by the captors to get information.

Lawlessness in times of armed conflict births a culture of impunity that leads to abuse of human rights of the civilian population. Soldiers therefore take undue advantage to loot and rape the civilian non-fighting forces as a way to make up for their often small income or delay in getting paid.<sup>54</sup> In most cases, where some militia forces cannot sufficiently pay their fighting troops, "pillaging" is encouraged <sup>55</sup> as a reward for victory, raping civilian women can

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<sup>52</sup> Dorothy Thomas and Regan Ralph, *Rape in War: Challenging the Tradition of Impunity*, SAIS Review Vol. 8, (1994), p.1, Available at <https://www.hrw.org/legacy/women/docs/rapeinwar.htm>, Accessed May 22, 2021

<sup>53</sup> *ibid*

<sup>54</sup> [https://en.m.wikipedia.org/wiki/wartime\\_sexual\\_violence](https://en.m.wikipedia.org/wiki/wartime_sexual_violence). Accessed May 22, 2021

<sup>55</sup> Pillaging is the act of stealing something from a place or a person by using force or violence, particularly during warfare.

also be viewed as a good compensation for winning battles.<sup>56</sup> Systematic rape according to UNICEF is regularly engaged as a tactics of war to carry out ethnic cleansing. In the twentieth century it was used in fighting in countries such as Bosnia, Cambodia Uganda and Vietnam.<sup>57</sup> The United Nations stated in 2008 that women and girls are used as a strategy of warfare to humiliate, dominate, instil fear in, and to relocate civilian members of an ethnic population.<sup>58</sup> In the view of Dara Cohen, war time rape is used by military forces to bond and unite soldiers within a particular unit, especially were fighting troops are recruited without their free and full consent..<sup>59</sup> He also stated that where child soldiers are enlisted in the military often rape is used as a maturity exercise to raise the tolerance level of the troops for violence.<sup>60</sup>

According to Amnesty International, wartime rape is a “means of combat” used in defeating territories by expelling the population, separating members of the community as well as destroying their links of affiliations, it is used in spreading HIV, erasing cultural and religious traditional. In the opinion of Gayatri Spivak, gang rape is carried out by soldiers as a way of celebrating the acquisition of new territories.<sup>61</sup> Internally displaced persons and refugees also are exposed to sexual abuses as a result of economic breakdown and lawlessness in the affected areas.<sup>62</sup> In conflict situations, rape and other forms of sexual violence are usually employed in intelligence gathering as subtle tactics to coerce individuals by penetrating, procuring and securing information from them during interrogations. On the other hand, females are compelled to reveal the places and location where arms are kept as well as known commanders.

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<sup>56</sup> Noble Women’s Initiative, War on Women , “Time for action to end sexual violence in conflict” May 2011, Available at <http://noblewomen’s Initiative.org/wpcontent/uploads2013/09waronwomen-web.pdf>. Accessed May 22, 2021

<sup>57</sup> “Sexual violence as a weapon of war” Available at (<https://www.unicef.org/sowc96pk/sexviol.htm>).www.unicef.org Accessed May 22, 2021

<sup>58</sup> *ibid*

<sup>59</sup> Cohen, D, Causes of Sexual Violence During civil War: Cross National Evidence (1980-2009) prepared for the Minnesota International Relations Colloquium, March 2011 Available at <file:///F:/wartimesexualviolence,Wikipedia.htm>. Accessed May 22, 2021

<sup>60</sup> *ibid*

<sup>61</sup> Spivak Gayatri Chakravorty. *A Critique of Postcolonial Reason: Towards a History of the Vanishing present*. Cambridge, Massachusetts: Harvard University Press. P. 300

<sup>62</sup> Sexual violence as a Weapon of War, available at [www.unicef.org](http://www.unicef.org), Accessed May 25, 2021

Contributing to motives for rape during warfare Toos, Tobias and Anna have said that the motive can either be for gratification (opportunity) or for instrumentation (strategic).<sup>63</sup> According to them, rape and other forms of sexual violence can occur as a result of frustration together with lack of regular sexual intercourse by soldiers.<sup>64</sup> They stated that gratification takes place by way of opportunity ceased by troops owing to frustration because they do not have access to free or transactional sex, therefore they tend to carry out sexual violence on any available civilian woman, hence the saying that men rape because of lack of sex. However, this view has been countered by Nicholas and Jean in their work, according to them, men do not rape as a result of lack of sex only, rather men rape as a result of “Lust and lack of sex.” They stated that research assessing male sexual offenders reveal that more than one-third of these male violators were married men and sexually active, living with their wives at the time they committed the sexual offence.<sup>65</sup>

Lending her voice as to the cause of sexual violence during warfare, Elisabeth Wood on the other hand, have said that rape and other forms of sexual violence increases because of lack of sanctions and effective control of armed troop.<sup>66</sup> She attributed the high rates of wartime sexual violence to indiscipline within an armed unit. According to her when armed troops are subjected to strict discipline and tighter control the chances of sexual violence would be reduced.<sup>67</sup>

Commenting on the crimes committed by the national army of the Democratic Republic of Congo, the Human Rights Watch stressed that the military offices in the 14<sup>th</sup> brigade had opportunity to perpetrate sexual violence as a result of lack of sanction and discipline from their commanders who were aware of the crimes and refused to take reasonable action against the soldiers.<sup>68</sup>

The instrumental side of wartime rape in the view of Roos, Tobias and Anna revolves round the idea that rape and other forms of sexual violence during armed conflict is a tactic or strategy employed by fighting forces to realizing a specific goal. More often than not,

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<sup>63</sup> RoosHaer, Tobias Hecker,AnnaMaedl, Former Combatants on Sexual Violence During Warfare: A Comparative Study of the Perspective of Perpetrators, Victims and Witnesses, Human Rights Quarterly, Vol 37, No.3 (2015) P.614

<sup>64</sup> *ibid*

<sup>65</sup> Nicholas Groth& Jean Birnbaum, Men Who Rape: The Psychology of the Offender 5. (1979)

<sup>66</sup> Elisabeth Jean Wood, Variation in Sexual Violence during War. Policy and Society Vol.34 (2006), P. 321

<sup>67</sup> *Ibid*.

<sup>68</sup> Human Rights Watch, Soldiers Who Rape, Commanders Who Condone: Sexual Violence and Military Reform in the Democratic Republic of Congo16 (2009), available at <http://www.hrw.org/sites/default/files/reports/drc0709web.pdf>

commanders of military troop order their men to commit rape as a weapon. According to them wartime sexual violence is used to promote the ethnic cleansing of a particular group of people or alter an ethnic composition by contaminating women and creating an opportunity for the women to give birth to children owed by perpetrators. The women on being pregnant, are moved from their community to other locations. Sexual violence can be committed as genocide strategy by a military troop, it can also be committed as a revenge mechanism as was seen during the second world war where rape was used to motivate the Russian soldiers to act more brutally against the German soldiers.<sup>69</sup> Thus, sexual violence is committed to instil terror within a population group, and to motivate flight from a particular authority, at other times it has been a part of genocide, leading to the destruction of a specified ethnic population. According to Helena Carreiras, sexual violence against women is used as a weapon of social disruption, seeing that women in less developed countries are regularly in charge of economic support activities, critical to the daily lives of their family. Susan Brownmiller also maintained that men conquered in a battle traditionally see the rape of their wives as a serious humiliation. The act and activities carried out on her by the enemy is a message transmitted to men as a clear victory for one and defeat for the other. The raped women and girls constitute a strategic weapon which in turn humiliates not only the immediate family of the woman, but her community as well for failing to protect them.<sup>70</sup> Bastick and Grimm has said that sexual violence against women by armed troops is for them a way to express aggression and brutality and further accepted as a “moral booster” and a “reward for boldness.”<sup>71</sup>

The author argues that Sexual violence during armed conflicts is mainly attributed to failed institutions usually encouraged as a result of breakdown of rule of law. The author further noted that during conflicts, agents of government institutions that ought to protect civilians turn out to be perpetrators of rape and other forms of sexual violence against women. Thus, because normal life no longer exist, leading to the breakdown of government institutions, law and order becomes difficult to be enforced. At this time, it becomes extremely hard to address the impunity of sexual violence in conflict. This is because perpetrators now assume the position of power in government therefore hindering the process of justice and using their governmental powers to oppress surviving victims.

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<sup>69</sup> Tara Gigerich & Jennifer Learning, *The Use of Rape as a Weapon of War in the Conflict in Darfur, Sudan* 6 (2004), available at <http://reliefweb.int/report/sudan/use-rape-weapon-war-conflict-darfur-sudan>, accessed May 26, 2021

<sup>70</sup> Susan Brownmiller, *“Against Our Will;” Men Women and Rape*, UK: London, Chabris Books, 2012

<sup>71</sup> XXX citation

Similarly, inequality in power between men and women also accounts for sexual violence during armed conflict. Women find it difficult to get some assistance the moment they are sexually abused because they are perceived as subordinates socially and economically. Thus, according to Jewkes, sexual and gender-based violence is rooted in gender inequality: 'sexual and gender crimes are the violence involving men and women, in which the female is usually the survivor and which arises from the unequal power relationships between men and women.'<sup>72</sup>

Arguably, women's subordinate status in the society substantially makes them victims of sexual violence. Insecurity is also identified a major cause of sexual violence during armed conflict. In times of conflict, there is lack of adequate protection for civilians especially for women and children by law enforcement agents, this to a large extent creates opportunity for sexual violence to be committed. Sadly, law enforcement agents like the military officers at that point becomes the lead perpetrators of sexual violence. Troops also hid under insecurity to perpetrate sexual atrocities knowing that they cannot easily be identified or be arrested for prosecution.<sup>73</sup> Generally, Soldiers rape to subject their victims, families and communities to shame, also they are motivated to rape during conflict because there are chances that their victims will not report the crime. When a woman is raped, she immediately becomes an agent of her community's shame, this changes the woman's status from the victim to the guilty party that brought shame and dishonour on her family and community. As a result, the woman finds it difficult to report the rape. And because the rape is concealed her attackers cannot be punished.

The effects of wartime rape and sexual violence on victims, their families and community are numerous. It cuts across physical, psychological, psychosocial and societal effects. A closer examination for instance reveals the following:

#### *Physical Effects*

The physical effects of wartime rape and other forms of sexual violence on victims includes the following; sexually transmitted diseases, injury to reproductive organs, unwanted pregnancies, unhealthy abortions, miscarriages and other kinds of medical complications. Sexually transmitted diseases are a major consequence of wartime rape and at the same time a serious health challenge for women and girls in conflict. During warfare, the

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<sup>72</sup> Jewkes R, "Intimate partner Violence Causes and Prevention" (2002), available at <http://www.the-lancet.com/journals/lancet/article/p11s0140673602083575/abstracthtm>, accessed May 27, 2021

<sup>73</sup> Fleishman J, fatal Vulnerabilities Reducing the Acute Risk of HIV/AIDs among women and girls, *Journals of Gender, Social Policy and the Law*, (2009)

transmission of disease is engaged intentionally as a war strategy to perpetrate violence. Often men known to be carriers of killer diseases such as HIV are compelled to rape women in a targeted area in order to exterminate an ethnic group.<sup>74</sup> This was used as weapon of war during the Rwandan genocide in which HIV positive Hutu men were asked to rape the Tutsi women so that they can be infected. Similarly, wartime sexual violence create room for women and girls to be infected with gonorrhoea and other sexually transmitted diseases which negatively impacts women and girls with symptoms such as difficulty in urination, open sores and other injuries which serious medical attention.<sup>75</sup>

The author notes that wartime sexual violence could also include the physical penetration of the male organ, at other times it could involve rape or gang rape with the use of physical objects, such as sticks, rods and gun barrels which results to vaginal fistula, which is the medical problem wherein a hole is created in the vagina close to the colon or bladder, this as it were can make it difficult for the woman to give birth to children.<sup>76</sup> In addition, other physical effects of wartime sexual violence could include permanent disability of the victim as well as visual and hearing difficulty.

#### *Psychological Effects*

Wartime victims of sexual violence suffer a lot of psychological challenges. This psychological effect may have either a short term or long-term impact on victims and survivors. However, the following can be pinpointed as the psychological effects of wartime rape and sexual violence; post-traumatic stress disorder, depression, shock, feelings of fear, sadness, isolation, memory loss, sexual dysfunction, hopelessness, anger, anxiety disorder, nightmares, difficulty in realigning with her immediate community.<sup>77</sup> Other effects may include emotional problems, substance abuse, the felling of suicide, in addition, the inability of wartime rape victims to promptly access medical and legal assistance as well as adequate protection from the perpetrators of the violent act, can also trigger off psychological effect for them.<sup>78</sup> The fear of further rape and attacks can as well prevent the

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<sup>74</sup> Elisabeth Rehn & Ellen Johnson. *Women, War and Peace: The Independent Expert's Assessment on the Impact of Armed Conflict on Women's Role in Peace-Building*, 9 (2002)

<sup>75</sup> Rashida Monjoo & Calleigh McRaith, *gender-Based Violence and justice in Conflict and Post-Conflict Areas*, Cornell International Law journal Vol. 44 (2011), P .16

<sup>76</sup> Martens Jackie, "Congo Rape Victims Seek Solace" BBC News (24 January 2004)

<sup>77</sup> United Nations High Commissioner for Refugees, "Sexual and Gender-based Violence against Refugees, Returnees and Internally Displaced Persons. Guidelines for prevention and Response UNHCR (SGVB Guidelines)" available [https://en.m.wikipedia.org/wiki/wartime\\_sexual\\_violence](https://en.m.wikipedia.org/wiki/wartime_sexual_violence), Accessed June 1, 2021

<sup>78</sup> Hagen, Kristen. Yohani,, Sophie, "The Nature and Psychosocial Consequences of War Rape for Individuals and Communities" *International Journal of Psychological Studies* Vol. 2 , (2010)

victims and survivors from carrying out their usual activities such as going to school, market, or participating in important social functions.<sup>79</sup>

The author argues, that in order to help the victims of wartime sexual violence recover properly from rape, there is the need for all stake holders including legal and healthcare givers, family members and the survivor's immediate community to provide adequate emotional and psychological support to the victim.

### *Psychosocial Effects*

Another major effect of rape and wartime sexual violence is the fact that it results to a disconnection between victims and their immediate communities. It leads to a complete breakdown of organized community structure, which as it were was the reason behind the use of rape as a weapon of warfare. When a woman is raped, the real shame and humiliation of her rape is actually that of the men of the community where the victim hails from. Thus, the men are humiliated for not being able to offer protection to their women.<sup>80</sup> Arguably, Raped victims experience reintegration problem as well as social stigma from their sexual violation. The author notes, that in most communities, it is usually very difficult for a known wartime rape victim to find a potential husband for marriage. In other instances, some married women are divorced by their legitimate husbands as a result of rape and sexual violence. According to Rashida and Calleigh, in Liberia, well over 25% of married rape victims were divorced by their husbands because of rape and sexual violence.<sup>81</sup> And 15% of wartime rape led to unwanted pregnancy.<sup>82</sup> In addition, women and girls that experience unwanted pregnancy from wartime rape are largely stigmatized by their immediate community, such women seriously encounter both economic and emotional challenges. Economically, women with unwanted pregnancy resulting from sexual violence are usually unable to generate financial support for themselves and their children.<sup>83</sup>

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<sup>79</sup> U.N. Economic & Social Council Commission on Human Rights, Special Rapporteur on Violence Against Women, Integration of the Human Rights of Women and the Gender Perspective, U.N. Doc E/CN.4/2001/73 (January 23, 2001) (prepared by Radhika Coomaraswamy) {hereinafter Report of the Special Rapporteur 2001}

<sup>80</sup> Skyelsbaek Inger, Victim and Survivor: Narrated Social Identities of Women Who Experienced Rape During the War in Bosnia-Herzegovina, Available at [https://en.m.wikipedia.org/wiki/wartime\\_sexual\\_violence](https://en.m.wikipedia.org/wiki/wartime_sexual_violence), Accessed June 2, 2021

<sup>81</sup> Rashida Manjoo & Calleigh McRaith, Gender-Based Violence and Justice in Conflict and Post-Conflict Areas, Cornell International Law Journal, Vol. 44, (2011) P. 17

<sup>82</sup> *ibid*

<sup>83</sup> The Advocates for Human Rights, Health Consequences of Sexual Assault, Available at [http://www.stopvaw.org/Health\\_Consequences\\_of\\_Sexual\\_Assault.html](http://www.stopvaw.org/Health_Consequences_of_Sexual_Assault.html), Accessed June 2, 2021



Victims of wartime sexual violence often suffer from social isolation, abandonment and rejection by their communities. Most times, the effects of these on the victim could constitute a long-term effect which can otherwise lead to re-traumatization of the victim.<sup>84</sup> When women are targeted and infected with HIV that creates a further problem for them, because such victims suffer and experience social exclusion as well as discrimination for being infected with HIV.

The author contends that other major effects of wartime sexual violence on victims and survivors includes the issues of justice and reparation. In many patriarchal societies, rape and sexual violence is seen basically as a violation of the male's (father or husband) property rights and not a violation of the woman or victim's fundamental rights, this to a large extent has an implication on whom reparation goes to. Going by this perspective, it is possible for the husband to receive monetary compensation for the wife's rape without even acknowledging the woman as to justice and reparation.<sup>85</sup> Again, according to Rashida and Calleigh in their work, there is a form of discrimination in when it comes to monetary compensations for the wrong death of an individual, in most nations, what regulates the amount of compensation to be paid is the level of salary or income earned by the dead person. Thus, where a family loses a female member who is not gainfully employed that would result to the family getting grossly inadequate compensation for the loss of their loved one. In Northern Ireland for example, the amount of compensation paid by the government for the death of a woman with six children caused by its military during conflict was altogether 84 pounds.<sup>86</sup> But where such compensation involved the death of a working father, the government would have paid the sum of 100,000 pounds.<sup>87</sup>

## **LEGAL AND INSTITUTIONAL FRAMEWORKS ON CONFLICT-RELATED SEXUAL VIOLENCE**

Over the past decades, there has been the tradition of impunity for wartime rape and sexual violence. The failure to punish perpetrators sexual violence during armed conflicts appears

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<sup>84</sup> *ibid*

<sup>85</sup> Gender Research and Advocacy Project, Legal Assistance Centre, *Why Complainants Withdraw Rape Cases in Namibia*, Available at: [https://en.m.wikipedia.org/wiki/Wartime\\_sexual\\_violence](https://en.m.wikipedia.org/wiki/Wartime_sexual_violence), Accessed June 2, 2021

<sup>86</sup> Kathleen Thompson, *The Pat Finucane Centre for human Rights and Social Change, Family Win Judicial Review? Judge Slams murder Investigation*, Available at <http://www.patfinucanecentre.org>, accessed June 2, 2020

<sup>87</sup> Eamon Phoenix, *RUC Files Outline Events After Abduction of Niedermayer* Irish Times December 30<sup>th</sup> 2009, Available at <http://www.irishtimes.com/newspaper/ireland/2009/1230/122426147154.html>, Accessed June 2, 2021

frequent and consistent like the crime of sexual violence itself. Although wartime rape has been condemned universally, yet whenever it occurs in conflicts it is either trivialized or disregarded.<sup>88</sup>This however partly attributed to the attitudes and perception of persons who are in a position to prohibit and punish the crime of rape. The culture of impunity has been fuelled by the mischaracterization of wartime rape as a crime against family honour and not seen as a crime committed against the individual victim. This has for a long time hindered the punishment of the crime and its perpetrators. It should be noted that the mischaracterization of wartime is not only seen in the attitude of the international community, it is also reflected in the existing laws. This can be seen in international law and in the laws of many countries wherein rape is clearly described as a crime against honour and not a crime against the victim, therefore attitudes and codification has made it difficult to prosecute and punish wartime rape, for instance, in a country such as Brazil, rape is codified as a “crime against custom” of the victim and not a crime committed against the integrity of the victim. Similarly, in Peru, rape was previously codified as a crime against honour, this was only recently amended to reflect a violation of the physical integrity of the woman. A look at the fourth Geneva Convention reveals that Article 27 prohibits any form of ‘attack of the woman’s honour,’ specifically rape, enforced prostitution and any other form of indecent assault. Traditionally and legally, rape is seen as a crime committed against the community as demonstrated by the woman’s honour and not a crime against the victim. Thus, this mischaracterization largely accounts for the reason that women are targeted for rape. This again makes it very difficult for women to report the crime. Raped victims are in this light viewed as entities responsible for the loss of community honour thereby removing attention from the perpetrator for the violation of the victim’s fundamental right to integrity.

Although international humanitarian law as well as international law have prohibited wartime rape by providing clear means of punishing human rights violations during armed conflicts, the challenge is not really in the laws, but rather it is in the failure and inability to enforce the laws.<sup>89</sup>

During armed conflicts, it is important that the human rights of women should be protected from all forms of violation. International humanitarian law clearly prohibits rape both in

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<sup>88</sup> Teresa Wacinabe, “Japan Admits that WW11 Sex Slaves Were Coerced” Los Angeles Times, August 5, 1993, Available at <https://www.hrw.org/legacy/women/docs/rapeinwar.htm>, Accessed June 3, 2021

<sup>89</sup> “Rape and Solder’ Moral” New York Times, December 7, 1992, Available at <https://www.hrw.org/legacy/women/docs/rapeinwar.htm>, Accessed June 5, 2021

international and internal conflicts. The Geneva Convention<sup>90</sup> takes the lead in prohibiting wartime rape. Articles 27 and 147 are quite instructive in this regard. While article 27 of the Convention provides that Women shall be specially protected against any attack on her honour, in particular against rape, enforced prostitution, or any form of indecent assault, Article 147 on the other hand talks about wilfully causing great suffering or serious injury to body or health, “torture” and “inhuman treatment” as war crimes and great breaches of the Geneva Conventions.<sup>91</sup>

According to the International Committee of the Red Cross<sup>92</sup> rape and other types of sexual violence against women constitutes wilfully causing great suffering or serious injury to body or health, and rape therefore should be seen as a great breach of the Geneva Convention. There are a lot of other international instruments containing provisions prohibiting rape and sexual violence in conflict situations. The Article 2 of the Convention on the Elimination of All forms of Discrimination Against Women,<sup>93</sup> also provides that states are to vigorously ensure a policy of totally eliminating all forms of discrimination against women and are to adopt all relevant measures including using their constitution and adopting new legislations and eliminate extant laws, customs and traditions which discriminates against women and girls in the society.<sup>94</sup> Article 5 further calls on State Parties to take all steps to modify the social and cultural patterns of behaviour of men and women in order to realize the elimination of prejudices and customs and practices which makes for the inferiority or superiority of either of the sexes or stereotyped roles for men and women. Article 6 on the other hand provides that State Parties should take all measures to suppress all forms of traffic in women and the exploitation of prostitution of women.<sup>95</sup> Furthermore, the United Nations Declaration on the Elimination of Violence against Women similarly acknowledged that women in conflict situations are a special vulnerable group of people.

The Declaration in Article 2 defined wartime sexual violence as any act of gender-based violence that is capable of inflicting physical, sexual or psychological harm on the woman.

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<sup>90</sup> [Hereafter, The Geneva Convention, 1949]. Security Council Resolution 446 of August 12, 1949, available at <https://en.wikipedia.org/wiki/unitednations-Security-Council-resolution-446>

<sup>91</sup> Ibid.

<sup>92</sup> [Hereafter, The Red Cross]

<sup>93</sup> [Hereafter, CEDAW]. CEDAW is an international treaty adopted in 1979 by the United Nations General Assembly, it is known as International bill of rights of Women. Available at [https://en.wikipedia.org/convention\\_on\\_the\\_elimination\\_of\\_all\\_forms\\_of\\_discrimination](https://en.wikipedia.org/convention_on_the_elimination_of_all_forms_of_discrimination). Accessed June 8, 2021

<sup>94</sup> Article 2, U.N.Doc. A/RES/34/180, Dec.18, 1979

<sup>95</sup> Articles 5&6 U.N. Doc. A/RES/34/180, Dec.18, 1979

It also includes acts threats, coercion, or the deprivation of her liberty, whether or not such act of deprivation occurred in public or private life.<sup>96</sup> Article 4 of CEDAW enjoins state members to totally condemn rape and sexual violence against women both during wartime and peace, as well as reframe from customs and traditional practices which seek to undermine the human rights of women in the society. The declaration further mandates state parties to take measures to eliminate sexual violence against women by exercising due diligence to prevent, investigate and prosecute offenders in line with their national legislation and severely punish perpetrators of sexual violence whether such perpetrators are state agents or private persons.<sup>97</sup>

The author notes that another important instrument which prohibits rape and sexual violence during wartime is the Beijing Platform for Action. The fourth world conference on women which held in Beijing in September 1995<sup>98</sup> focused mainly on rape and other forms of sexual violence during armed conflict. The Beijing Platform recognized the fact that all parties to armed conflict often rape women with impunity usually engaging systematic rape as a tactic of war, the platform pointed out that the impact of sexual violence and human rights violations against women in situations of armed conflicts includes sexually transmitted diseases, internal displacement, loss of home and property, loss of family members especially victims of rape, sexual slavery, forced marriages, forced pregnancy and ethnic cleansing.<sup>99</sup>

The Vienna Declaration on Human Rights<sup>100</sup> prohibits wartime rape. For instance, paragraph 18 of the declaration provides that the human rights of women and girls are an integral and indivisible part of the universal human rights. Also the declaration recognized that wartime rape, sexual violence and exploitation are all violations of the fundamental human rights of womanhood.<sup>101</sup> The declaration further advocated that all forms of cultural prejudice and human trafficking which are incompatible with the dignity of the human person

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<sup>96</sup> UN Commission on the Elimination of Discrimination Against Women, General Recommendation 19: violence Against Women, UN Doc. A/47/38 (Jan. 29 1992)

<sup>97</sup> <http://www.ohchr.org/englihs/law/eliminationvaw.htm>, accessed June 9, 2021

<sup>98</sup> The United Nations, Report of world Conference on Women held in Beijing from the 4-15 of September 1995, CA/CONF: 177/20/15 September 1995.

<sup>99</sup> *Ibid.*

<sup>100</sup> [Hereafter, The Vienna Declaration on HR] 1993

<sup>101</sup> This was the human rights declaration adopted by consensus at the world conference on human rights on 25 June 1993 in Vienna Austria, Available at [https://en.wikipedia.org/wiki/vienna\\_declaration\\_and\\_programmeof\\_action](https://en.wikipedia.org/wiki/vienna_declaration_and_programmeof_action), Accessed June 9, 2021

must be discarded and completely eradicated.<sup>102</sup> According to the declaration, the eradication of wartime rape and sexual violence can be realized through legal means by cooperation from both national and international levels in the fields of economic and social development as well as the education of women. In the same vein, paragraph 18 of the declaration provides that the violation of the human rights of women during wartime is strictly the violation of the fundamental principles of international human rights and humanitarian law, it stated that such violations include systematic rape, sexual slavery and forced pregnancy all requiring prompt and effective response through the collaboration of national, regional and international community. The Vienna declaration however, calls on government, institutions, intergovernmental and non-governmental organizations to raise efforts in protecting and promoting the fundamental human rights of women and children.<sup>103</sup>

Incidentally, there has been an upsurge in the emergence of other international instruments. These novel instruments actually generated improvements and expanded the traditional definition of rape and sexual violence as well as addressed issues of sexual and gender-based violence in conflict. Thus, sexual and gender-based violence have been expanded to include rape with a foreign object therefore altering the traditional definition of rape which was restricted to the penetration of the vagina by the penis no matter how slight. It was the activities of NGOs and international institutions that led to the establishment of a number of international court and tribunals such as the International Criminal Tribunal for the Former Yugoslavia,<sup>104</sup> the International Criminal Tribunal for Rwanda,<sup>105</sup> the Special Court for Sierra Leone,<sup>106</sup> the International Criminal Court,<sup>107</sup> the courts re-defined the traditional meaning and treatment of rape and sexual violence, the courts were also empowered by

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<sup>102</sup> *ibid*

<sup>103</sup> *Ibid.*

<sup>104</sup> [Hereafter, the ICTY]. Statute of the International Criminal Tribunal for the Former Yugoslavia, S.C. Res.827, art 5 (g), UNDoc.S/ RES/827, may 25, (1993) (listing rape as a crime against humanity), {hereinafter ICTY Statute}

<sup>105</sup> [Hereafter, the ICTR]. Statute of the International Criminal Tribunal for Rwanda, S.C. Res.955, art 3 (g) , U.N Doc. S/ RES/955 (Nov. 8 1994) (which clearly listed rape as a crime against humanity) {hereinafter ICTR Statute}

<sup>106</sup> [Hereafter, the SCSL]. Statute of the Special Court for Sierra Leone, art 2 (g), Jan. 16, 2002 2178 U.N.T.S. 137 (which listed rape, sexual slavery, enforced prostitution, forced pregnancy, and any other form of sexual violence as a crime against humanity)

<sup>107</sup> The Rome Statute of the international Criminal Court art 7 (2) (c), July 171998, 2178 U.N.T.S. 90 (the Statute defined enslavement as the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children)

their statutes to investigate and prosecute sexual and gender-based violence.<sup>108</sup> The International Criminal Tribunal for Rwanda in the case of *Prosecutor v Jean Akayesu*<sup>109</sup> for instance, gave a wider definition of the crime of rape, the tribunal saw rape as “the physical invasion of a sexual nature that is committed on a person under circumstances which are coercive.” Thus, this definition incorporates rape with an object, and has given room for more women to access justice in the courts.

The International Criminal Court also gave a recent definition of rape, in situations in which rape was committed on a large-scale during armed conflict, thus, the court sees rape in conflict as a crime constituting genocide, war crime and a crime against humanity, according to the ICC rape results to genocide when it is committed with such an intent to destroy, in whole or in part, a national, ethnical, racial or religious group. By the statute of the court, rape constitutes a crime against humanity when it is committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of such attack.<sup>110</sup> Rape constitutes a war crime when it is committed as part of a policy or a plan or as part of a large-scale commission of such crimes<sup>111</sup>

The need to end wartime rape and sexual violence has led to the United Nations Security Council passing important resolutions. In the year 2000, the UNSC passed Resolution 1325 which focused on Women, Peace and Security, the resolution stressed the need for the protection of the human rights and dignity of women and girls during and after armed conflict. Resolution 1325 in addition, called on all the parties to armed conflict to take necessary steps to protect women from sexual and gender-based violence.<sup>112</sup> It noted that state parties must take up responsibility to end impunity and timely prosecute all perpetrators of gender-based violence against women and girls.<sup>113</sup>

In 2008, the Security Council also passed Resolution 1820. By this resolution, wartime rape and sexual violence was seen to constitute threat to international peace and security. The resolution recognized warring parties used rape and other forms of sexual violence as a

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<sup>108</sup> See article 4 &5 of the ICTY Statute, and article 2 of the Statute of ICTR

<sup>109</sup> *Prosecutor v, Jean Akayesu*, Case No. ICTR-96-4-T, Judgment, 598, (Sept.2, 1998)

<sup>110</sup> Article 7 (1) (g) (which clearly listed rape and other forms of gender-based violence as a crime against humanity)

<sup>111</sup> Article 8 (2) (b) (xxii) (this article listed rape, sexual slavery, enforced prostitution, forced pregnancy and enforced sterilization as war crimes)

<sup>112</sup> Security Council Resolution 1325, United Nations Doc. S/RES/1325 (Oct. 31, 2000)

<sup>113</sup> *ibid*

war strategy to humiliate, dominate, and input fear in members of an ethnic group.<sup>114</sup> It was further noted that such sexual violence can to a large extent exacerbate conditions of armed conflict and could even prevent the restoration of international peace and security.<sup>115</sup> The Security Council therefore called on all parties to armed conflict to urgently take steps to protect civilians, including women and girls from all forms of sexual violence, and stressed the need for appropriate enforcement of military discipline as well as upholding the important principle of command responsibility.<sup>116</sup>

In September 2009, the Security Council again adopted Resolution 1888<sup>117</sup>. This resolution was established to strengthen resolution 1820 by calling for improved cooperation among all stakeholders in ending impunity for sexual and gender-based crimes. It further urges the United Nations Secretary General to appoint a special representative to provide leadership, and further advocate the ending of sexual violence against women, by bringing together the government, military, representative of the Judiciary as well as all the parties involved in armed conflict. It also calls on all the parties to conflict to seriously ensure that reports of sexual violence committed by both military officers are properly investigated and alleged perpetrators brought to justice, and that military commanders must ensure they use their office, authority and power to prevent sexual violence.<sup>118</sup> Resolution 1888 advocated for the creation of a team of experts who are skilled in areas like the rule of law, judicial systems, criminal investigations, security sector reform which can assist governments, and peace keeping troops in handling issues of sexual and gender-based violence during wartime and improving national capacity to strengthen the rule of law, thus helping national government to prevent impunity.<sup>119</sup>

Also relevant is the Security Council Resolution 1960 which was adopted in December 2010. This resolution offers an accountability system for stopping conflict-related sexual abuse, it calls on countries to raise commitments in addressing issues of sexual and gender-based violence. Resolution 1960, further urges the secretary general of the United Nations to include in its annual reports detailed information and list of parties to armed conflicts suspected of perpetrating sexual and gender-based violence including systematic

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<sup>114</sup> Security Council Resolution 1820. Pmbl., U.N. Doc S/RES/1820 (June 19, 2008)

<sup>115</sup> *ibid*

<sup>116</sup> *ibid*

<sup>117</sup> Security Council Resolution 1888, U.N. Doc.S/RES/1888 (Sept. 30, 2009), Available at [https://www.google.com.ng/search?\\_security+council+resolution+1888+2009](https://www.google.com.ng/search?_security+council+resolution+1888+2009), Accessed June 11, 2021

<sup>118</sup> *ibid*

<sup>119</sup> *Ibid.*

rape, this is to enable the council to bring appropriate sanctions on such erring state parties.<sup>120</sup>In addition, the resolution called on parties to armed conflict to express and implement commitments to stop and fight against sexual violence by issuing orders through chains of command aimed at prohibiting sexual violence and incorporate such prohibition in codes of conduct, military and police field manuals, states are also urged to timely and properly investigate all alleged cases of sexual and gender-based violence in order to bring perpetrators to book and give justice to victims.<sup>121</sup>It must be noted that although not all the Security Council Resolutions have binding effects on member states, they however help to create huge international attention on major issues and at the same time provide political basis on which national governments and international organizations could take necessary steps.

### **PROSPECTS IN CURTAILING WARTIME SEXUAL VIOLENCE**

The challenges associated with sexual violence in conflict situations are however not without remedies. As indicated above, the upsurge in the emergence of plethora of recent international instruments prohibiting sexual violence and fortifying procedural protections for likely victims of sexual violence in conflict situations has operated as legal improvement on the traditional framework.

Furthermore, these recent legal instruments operated to widen the horizon with respect to definition of rape and sexual violence as well as addressed in details unclear issues of sexual and gender-based violence in conflict. Flowing from the interpretation ascribed to widened horizon of definition of rape and concomitant sexual-violence offences in conflict situations, there have been a significant stretching of connotative meanings of rape to include 'rape with a foreign object,' therefore altering the traditional definition of rape which was restricted to the penetration of the vagina by the penis no matter how slight.

It was the activities of the different Non-Governmental Organisations (NGO) and international institutions that led to the establishment of some international courts and tribunals.<sup>122</sup>The courts re-defined the traditional meaning and treatment of rape and sexual violence, the courts were also empowered by their statutes to investigate and prosecute

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<sup>120</sup>Security Council Resolution 1960 (2010), Available at [www.securitycouncilreport.org/att/ct\(65BFC9B-6D27-4E9C-8CD3-CFF6E4FF9\)/WPSres1960.pdf](http://www.securitycouncilreport.org/att/ct(65BFC9B-6D27-4E9C-8CD3-CFF6E4FF9)/WPSres1960.pdf). Accessed June 12, 2021

<sup>121</sup><http://www.unwomen.org/en/what-we-do/peace-andsecurity/globalnormsandstandard>. Accessed June 12, 2021

<sup>122</sup> See generally: the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone and the International Criminal Court (ICC).



sexual and gender-based violence. For instance, the International Criminal Tribunal for Rwanda in the case of Prosecutor v Jean Akayesu gave a wider definition of the crime of rape. The tribunal conceived of rape as “the physical invasion of a sexual nature that is committed on a person under circumstances which are coercive.” Thus, this definition incorporates rape with an object, and has given room for more women to access justice in the courts.

Significantly, the United Nations Security Council acting as a global institution has equally made landmark resolutions appertaining to women and consequent ordeal during conflict-situations. The first is the UNSC Resolution 1325 which focused on Women, Peace and Security, the resolution stressed the need for the protection of the human rights and dignity of women and girls during and after armed conflict.<sup>123</sup>Resolution 1325 compelled parties in any armed conflict situation to take necessary steps to protect women from sexual and gender-based violence. It noted that state parties must take up responsibility to end impunity and timely prosecute all perpetrators of gender-based violence against women and girls.

Furthermore, Resolution 1820 enjoins parties to shun wartime rape and sexual-violence offences.<sup>124</sup>By this resolution, wartime rape and sexual violence was seen to constitute threat to international peace and security. The resolution recognized that warring parties used rape and other forms of sexual violence as a war strategy to humiliate, dominate, and input fear in members of an ethnic group. It was further noted that such sexual violence can to a large extent exacerbate conditions of armed conflict and could even prevent the restoration of international peace and security. The Security Council therefore called on all parties to armed conflict to urgently take steps to protect civilians, including women and girls from all forms of sexual violence, and stressed the need for appropriate enforcement of military discipline as well as upholding the important principle of command responsibility.

Resolution 1888 aims at strengthening resolution 1820 by calling for improved cooperation among all stakeholders in ending impunity for sexual and gender-based crimes.<sup>125</sup> It further urges the United Nations Secretary General to appoint a special representative to provide leadership, and further advocate the ending of sexual violence against women, by bringing together the government, military, representative of the Judiciary as well as all the parties involved in armed conflict. It also calls on all the parties to conflict to seriously ensure that

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<sup>123</sup> Resolution 1325 of 2000.

<sup>124</sup> of 2008.

<sup>125</sup> September 2009.

reports of sexual violence committed by both military officers are properly investigated and alleged perpetrators brought to justice, and that military commanders must ensure they use their office, authority and power to prevent sexual violence. Resolution 1888 advocated for the creation of a team of experts who are skilled in areas like the rule of law, judicial systems, criminal investigations, security sector reform which can assist governments, and peace keeping troops in handling issues of sexual and gender-based violence during wartime and improving national capacity to strengthen the rule of law, thus helping national government to prevent impunity.

Also relevant is the Security Council Resolution 1960 which was adopted in December 2010. This resolution offers an accountability system for stopping conflict-related sexual abuse, it calls on countries to raise commitments in addressing issues of sexual and gender-based violence. Resolution 1960, further urges the secretary general of the United Nations to include in its annual reports detailed information and list of parties to armed conflicts suspected of perpetrating sexual and gender-based violence including systematic rape, this is to enable the council bring appropriate sanctions on such erring state parties. In addition, the resolution called on parties to armed conflict to express and implement commitments to stop and fight against sexual violence by issuing orders through chains of command aimed at prohibiting sexual violence and incorporate such prohibition in codes of conduct, military and police field manuals, states are also urged to timely and properly investigate all alleged cases of sexual and gender-based violence in order to bring perpetrators to book and give justice to victims. It must be noted that although not all the Security Council Resolutions have binding effects on member states, they however help to create huge international attention on major issues and at the same time provide political basis on which national governments and international organizations could take necessary steps.

## **CONCLUSION**

This paper has highlighted the causes and effects of conflict-related sexual violence, it noted that despite the progress made by the international community in the fight against wartime rape and sexual violence in establishing standards and norms, the crime has remained unabated and used as a major tactic for almost all sides of the conflict to instil fear, intimidate, motivate and serves as a reward for soldiers and other armed groups. The paper further noted that much has not changed in the lives of women in terms of violence, their integrity and access to justice, as the bodies of women and girls continue to be violated

with so much impunity by both State and non-State actors. In the Syrian conflict for instance, rape have used as a strategy throughout the conflict by all the parties, including the pro-government supporters, members of the Free Syrian Army, and the militants fighting for the Islamic State of Iraq. Also, in the Democratic Republic of the Congo, rape and other forms of sexual violence have continued despite a new set of national laws and several interventions by the United Nations. This however prompted the comment by Major-General Patrick Cammaert, a former commander of the United Nations peacekeeping forces in the Eastern Congo, according to him, "It has probably become more dangerous to be a woman than a soldier in armed conflict"<sup>126</sup> this was as a result of the prevalence of rape and sexual violence in the Democratic Republic of Congo. So much still needs to done in terms of protection, prevention, investigation, prosecution, accountability, compliance and implementation of set standards. To end impunity against rape and sexual violence in armed conflict, there is need for both the national governments and the international community to urgently focus attention on effective implementation of existing legal instruments in the fight against sexual violence against women.

A lot of measures need to be put in place, including both legal and non-legal measures in ensuring the enforcement and implementation of existing international instruments. Effective Measures has to be in place to encourage and increase the reporting of wartime rape and other forms of sexual violence, which can be achieved by reducing the level of stigma imputed on the victims of sexual violence which as it were keeps them withdrawn into silence either because of shame or fear. Measure must also be put in place to ensure accountability especially on the part of military commanders and other superior officers in line with Article 28 of the statute of the international criminal court which provides that a military commander or other persons effectively acting as a military commander shall be criminally responsible for crimes committed by forces under his or her effective control or authority, as a result of his or her failure to exercise control over such forces. If perpetrators are promptly held liable with strict punishments, that to a large extent would reduce the incidence of conflict-related sexual violence. Such measure should also include overhauling and strengthening the judicial systems and the security arms of various national governments so that victims can have easy and prompt access to justice and reparation.

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<sup>126</sup> Press Release, U.N. Human Rights, Office of the High Commissioner for Human Rights (OHCHR), Rape : Weapon of War, available at <http://www.ohchr.org/en/newsevents/pages/rapeweapon.aspx>. Accessed June 12, 2021

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Article 2, U.N.Doc. A/RES/34/180, Dec.18, 1979

Article 7 (1) (g) (which clearly listed rape and other forms of gender-based violence as a crime against humanity)

Article 7 (1) (g) of the Rome Statute of the ICC, Enforced Sterilization has to do with the deprivation of a person's biological reproductive capacity without his or her consent. Under the statute of the ICC it constitutes a crime against humanity where it is committed in a widespread manner

Article 8 (2) (b) (xxii) (this article listed rape, sexual slavery, enforced prostitution, forced pregnancy and enforced sterilization as war crimes)

Articles 5&6 U.N. Doc. A/RES/34/180, Dec. 18, 1979

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Provided for in Article 8 (2) (6) (xxii) of the Statute of the ICC, under the Rome Statute, the elements of this crime include the fact that perpetrator exercised the power of attaching to the right of ownership over one or more persons, such as purchasing, selling, lending or bartering such a person or persons or by imposing on them a similar deprivation of liberty, or that the perpetrator caused the victim (s) to engage one or more acts of a sexual nature

Provided for in Article 8 (2) (b) (xxii) of the Statute of the ICC. To constitute enforced prostitution, the perpetrator must have caused one or more persons to engage in acts of sexual nature by force, or by threat of force or coercion

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