

SEXUAL ABUSE OF WOMEN IN SITUATIONS OF ARMED CONFLICT

Priya Anand*

1.1 Introduction

A nation is known by the treatment it accords to its people, especially the vulnerable lot. This situation becomes even more acute when it is faced with crisis, whether internal or external. In times of war or any armed conflict, human rights are the first to fly out of window. However, it need not always be so. A nation committed to provide and protect the human rights of its population will always endeavour to do so, even if faced with adversities. Nevertheless, one should always remember that we all live in the world of ever changing equations, which are determined to a large extent by economic and military might. Even peaceful societies may face conflicts both from within and outside and as for societies with a conflict history a new conflict is never far away.

A conflict always brings about some changes in the structure of rights and duties of the citizens, but it becomes important to ensure that the basic human rights of the people are not done away with. This is more important in the case of women, children and aged parents. Loss of homes, deaths of near and dear one, loss of limbs, abduction, rape, loss of livelihood, displacement are just some of the consequences of deadly conflicts. It has been often observed that in cases of violent conflict women and children are the most frequently targeted sections of the society. Majority of the crimes against women in times of conflict reflect sexual tendencies, rape being the most common one. In olden times rape was treated as the privilege enjoyed by the victorious side, but now it is often used as a tool of combat against the civilians, thus instilling in them fear of death or oppression. What is even more alarming is that these acts are not only committed against them by the opposing forces but also by the forces designated to protect them. This situation exists in both international and non-international armed conflicts.

2.1 Armed Conflict: Nature and Scope

The world has always been divided between compassion and violence. However, with

***Research Scholar (Pursuing Ph.D), Department of Laws, Panjab University, Chandigarh.**

change in social structure, pronounced difference in the economic status, cases of gender injustice, natural disasters struggle for the limited resources and emergence of new and grave issues of chemical weapons etc. the number of conflicts that the world is witnessing has seen a serious upward trend. Every nation today is affected by the consequences of conflicts, whether violent or non-violent. The countries part of these conflicts especially the armed conflict lose out on their peace and stability, their population, their resources and ultimately on the international investors, thus losing out on valuable assistance which could help it get back on its feet. The two main consequences of any armed conflict are:

- Death of human rights, and
- Death of economy.

The term armed conflict differs from the term war, in its scope and application. War is fought between the sovereign states at a large scale, involving all the stakeholders. It includes widespread deaths. Armed conflicts can be between two or more than two states or between state and non-state actors. There is widespread use of violence without actual declaration of war. However, since the end of Second World War, there have been no major wars of the same level and intensity but there has been a sharp increase in the number of armed conflicts, with most of them ongoing for decades. Hence, it becomes important to recognize armed conflicts as the new face of war, so that the rights of the people involved can be protected and the duties can be imposed upon states and non-states actors. Hence, armed conflict is divided into two types:

- International armed conflict,
- Non-international armed conflict.

According to The International Committee of Red Cross (ICRC), ‘International armed conflicts exist whenever there is resort to armed force between two or more States’.¹ It goes on to define ‘Non-international armed conflicts as protracted armed confrontations occurring between governmental armed forces and the forces of one or more armed groups, or between such groups arising on the territory of a state party to

¹ How is the Term "Armed Conflict" Defined in International Humanitarian Law? International Committee of the Red Cross (ICRC) Opinion Paper, (2008), p.5, *available at* <http://www.icrc.org/eng/assets/files/other/opinion-paper-armed-conflict.pdf> (last accessed on 13 February 2014).

the Geneva Conventions. The armed confrontation must reach a minimum level of intensity and the parties involved in the conflict must show a minimum of organisation'.²

The ICRC is the driving force behind the Geneva Conventions, 1949³. According to the common Article 2 of the Geneva Conventions, the Conventions shall apply to all cases of declared war or any other armed conflict which may arise between two or more of the high contracting parties.⁴ With regard to the internal armed conflict, common Article 3 lays down that the minimum rules laid down in the Article shall apply in case of armed conflict which is not of international character but which occurs in the territory of one of the high contracting parties. The Additional Protocols I and II specifically mention the application of the Geneva Conventions to armed conflicts, both of national or non-international character. Article I, Paragraph I of the Protocol II provides that in case of an armed conflict between the armed forces of a high contracting party and any other organized armed group within its territory, Geneva Conventions shall apply only if such an armed group is under a responsible command, exercises control over a part of its territory which enables it to carry out sustained and concerted military operations.⁵

With every passing decade, the instances of armed conflicts all over the world have only risen. Almost every country of the world is affected by it in some or the other way. Though the international instruments do not give a concrete and precise definition of what is an armed conflict, the researcher is of the opinion that with so many factors influencing armed conflicts from religion and ethnicity to issues of sovereignty and recognition by the other nations, it is not desirable to give it a water tight definition. Nevertheless, it is important to recognise the emergence of armed

² Supra note 1.

³ The Geneva Conventions and their Additional Protocols are at the core of international humanitarian law and provides the foundation on which international humanitarian law applies. It is the body of international law that regulates the conduct of war and armed conflict and seeks to limit its effects. They specifically protect people who are not taking part in the hostilities (civilians, health workers and aid workers) and those who are no longer participating in the hostilities, such as wounded, sick and shipwrecked soldiers and prisoners of war, *available at* <http://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm> (last accessed on 13 February 2014).

⁴ Frits Kalshoven, (ed.), *Assisting the Victims of Armed Conflict and Other Disasters*, Martinus Nijhoff Publishers, Netherlands, 1989, p.16.

⁵ *Id.*, pp.16-17.

conflicts and their significance in the world affairs for ensuring protection to the people caught in the midst of it.

3.1 Armed Conflicts and Sexual Abuse of Women

Armed conflicts are a breeding ground for the various types of physical and mental abuse of the people caught in the midst of the never ending violence. This is most acutely felt in cases of women and children. Although the majority of victims of sexual violence are women and girls, men and boys are also sexually targeted in armed conflict. In many conflicts, especially those having a history of ethnic or religious violence, indigenous people or people from specific population groups are often targeted for sexual violence based upon their ethnicity or religion.⁶ Since the research focuses on sexual abuse of women, the researcher wishes to focus on that aspect alone. Among all the consequences of armed conflicts that the women suffer, the percentage of sexual abuse is the highest.

Conflict-related sexual violence occurs in homes, fields, places of detention, military sites, shelter homes and camps for refugees and displaced persons. It may occur at the height of armed conflict and/or during population displacement, and at times continues after conflict.⁷ Sexual abuse in conflict situations assumes an even higher proportion for the simple reason that there is lack of medical supplies and no presence of any psychological counsellor. Hence, the fear of contracting sexually transmitted diseases like HIV/AIDS is even higher.

3.1.1 Sexual Abuse by the Warring Forces

Sexual Violence in warfare and in cases of conflict is one of the darkest legacies of history. It has always been present in some form or the other and continues to rear its head even now. Some of the famous instances of sexual abuse of women include: the Japanese occupation of China in Nanking during the Second World War, the partition of India and creation of Pakistan, Bangladesh's 1971 war of liberation and the many

⁶ P. Megan Bastick, Karin Grimm, Rahel Kunz, *Sexual Violence in Armed Conflict: Global Overview and Implications for the Security*, Geneva Centre for the Democratic Control of Armed Forces, Geneva, Switzerland, 2007, p.9, available at [http://www.essex.ac.uk/armedcon/story_id/sexualviolence_conflict_full\[1\].pdf](http://www.essex.ac.uk/armedcon/story_id/sexualviolence_conflict_full[1].pdf) (last accessed on 13 February 2014).

⁷ Ibid.

civil wars raging in African continent.⁸ The magnitude of sexual violence is many times more than what is generally reported since majority of the cases never see the light of the day.

In Africa, because of years of civil wars and infighting between the various local groups, the social and political fabric has given way to a society which celebrates victimisation, rapes, torture etc. in order to prove their dominance and superiority. In the Democratic republic of Congo, rape and other forms of sexual abuse is often used as a weapon of war to break resistance and instill fear in the minds of the civilian population.⁹ Mathilde Muhindo, head of one of Congo's oldest women's organisation, Centre Olame, as quoted by Neumann, has categorised the systematic and collectives rapes by the security and rebel forces as a war within a war.¹⁰

It is not surprising to note that such a situation is not confined only to a particular country. Security forces in El Salvador and Guatemala have often been accused of sexually abusing young women suspected of sympathising with the rebels. In Bosnia and Herzegovina and in Rwanda, rape has often been used as an instrument of war.¹¹ Women are raped, sometimes also in the presence of their family members, further adding to their humiliation and terror. No women in conflict ridden society can claim immunity from the sexual abuse by the rebel forces and by the soldiers, thus blurring the distinction between the perpetrator and protector.¹²

3.1.1.1 *Sexual Abuse by the UN Peacekeepers and NGOs*

The United Nations peacekeeping force is one of the most respected components of the UN system. However, time and again the United Nations peacekeepers have routinely been accused of taking unwarranted sexual favours from the local women of the places they are stationed at, in clear violation of their duty to protect and rehabilitate them. The sexual abuses by the peacekeepers in Congo reached such proportions that the then secretary general Mr. Kofi Annan banned all sexual contact between the peacekeepers and the local population in 2005.¹³ This was after UN

⁸ Janie L. Leatherman, *Sexual Violence and Armed Conflict*, Polity Press, U.K., 2011, p.1.

⁹ Caryn Neumann, *Sexual Crime: A Reference Handbook*, ABC-CLIO, California, 2009, p.76.

¹⁰ Ibid.

¹¹ Krishna Kumar (ed.), *Women and Civil War: Impact, Organizations, and Action*, Lynne Rienner Publishers, 2001, p. 11.

¹² Ibid.

¹³ Supra Note 9, p.77.

Office of Oversight Services (OIOS) conducted a probe of 72 allegations of sexual abuse in 2004. The probe gave full evidence of the sexual abuse of underage girls in six instances, where the peacekeepers had procured them for sex in return for \$2-3 or its equivalent in food.¹⁴ However, the irony is that the UN has no power to try the offending soldiers. They are only sent back and are subject to disciplinary action by their own military.¹⁵

The latest allegations of sexual abuse by the peacekeepers come from Mali in September 2013, where the Security Council has established the UN Multidimensional Integrated Stabilization Mission (MINUSMA) in April 2013 with a targeted strength of 12,600 to support the West African country's recovery from a coup and the occupation of its north by Islamist fundamentalists, with focus on its transition back to stability and democratic governance and the promotion of human rights and provision of humanitarian aid.¹⁶

The United Nations High Commissioner for Refugees (UNHCR) report on sexual exploitation of children and young girls, says that agency workers from national and international NGOs as well as United Nations agencies stationed at Guinea, Liberia and Sierra Leone were reportedly the most frequent sex exploiters of children, often using the very humanitarian aid and services intended to benefit the refugee population as a tool of exploitation.¹⁷ Most of the allegations were levelled at male national staff, who traded humanitarian commodities and services, including oil, bulgur wheat, tarpaulin or plastic sheeting, medicines, transport, ration cards, loans, education courses, skills training and other basic services, in exchange for sex with girls under 18. The practice appeared particularly dominant in locations with large established aid programmes.¹⁸

¹⁴ Ramesh Thakur, *The United Nations, Peace and Security: From Collective Security to the Responsibility to Protect*, Cambridge University Press, 2006, p.108.

¹⁵ Ibid.

¹⁶ Serious misconduct, sexual abuse alleged against UN peacekeepers in Mali, UN News Centre, available at: <http://www.un.org/apps/news/story.asp?NewsID=45942#.Uv5ZY2KSxH1> (last accessed on 14 February 2014)

¹⁷ Report of UNHCR and Save the Children-UK on '*Sexual Violence & Exploitation: The Experience of Refugee Children in Guinea, Liberia and Sierra Leone*' based on Initial Findings and Recommendations from Assessment Mission 22 October - 30 November 2001, (2002), p.4, available at http://www.savethechildren.org.uk/sites/default/files/docs/sexual_violence_and_exploitation_1.pdf (last accessed on 13 February 2014).

¹⁸ Ibid.

However, the practice of taking sexual favours in return for money, food and other assistance is not practised by all the UN peacekeepers. Nevertheless, with the organisation dedicated to human rights, even one such incident from its personnel is enough to raise questions on its credibility. The various Secretary General's of the UN have been very vocal in voicing their concern regarding such an issue. The current secretary general of the UN, Mr. Ban Ki Moon, has stated that, "The United Nations and I personally, are profoundly committed to a zero- tolerance policy against sexual exploitation or abuse by our own personnel. This means zero complacency. When we receive credible allegations, we ensure that they are looked into fully. It means zero impunity."¹⁹

4.1 Protection of Victims of Sexual Abuse under International Instruments

The international law provides guarantee of various rights and protection to the victims of armed conflict. However, since the issue of state sovereignty is a very sensitive matter and may lead to sparks at time, most the international documents cannot bind the state unless it has ratified the same. At times even when it is ratified the states often take the plea that the matter is internal to them and hence does not warrant any international speculation. Apart from the Geneva Conventions, 1949 which deals exclusively with wars and armed conflicts (which have already been referred to before), the United Nations is a champion of human rights, though it would not be wrong to say that it has not achieved the same level of success in ensuring resolution of disputes, which ultimately becomes the reason for the violation of the human rights.

4.1.1 Protection under United Nations

The UN Charter is the fountain from which all rights flow. However, the United Nations through various action plans, resolutions and reports has time and again addressed the need to protect the rights of the vulnerable lot both in times of peace and conflict. In 2000, the United Nations Security Council formally acknowledged in the adoption of Resolution 1325 the changing nature of warfare, in which civilians are increasingly targeted, and women continue to be excluded from participation in peace processes. Resolution 1325 addresses not only the inordinate impact of war on

¹⁹ United Nations Peacekeeping: Conduct and Discipline, *available at*: <http://www.un.org/en/peacekeeping/issues/cdu.shtml> (last accessed on 14 February 2014).

women, but also the important role women should and do play in conflict management, conflict resolution, and sustainable peace.²⁰ It calls specifically for the protection of women and girls from sexual and gender-based violence, including in emergency and humanitarian situations, such as in refugee camps.²¹

Apart from this, on 19 June 2008, the UN Security Council adopted another significant Resolution 1820 ‘demanding immediate and complete halt to acts of sexual violence against civilians in conflict zones.’ The resolution noted that women and girls are particularly targeted by the use of sexual violence by parties to the armed conflict, including in some cases as a tactic of war to humiliate, dominate, instil fear in, and disperse civilian members of ethnic groups.²² The resolution stressed that such violence could significantly exacerbate conflicts and impede peace processes. It also demanded that all parties to armed conflict take immediate and appropriate measures to enforce appropriate military disciplinary measures and uphold the principle of command responsibility by training troops on the categorical prohibition of all forms of sexual violence against civilians.²³

Further on, on 30 September 2009, the UN Security Council unanimously adopted Resolution 1888 that aimed to further strengthen the efforts of the international community to combat sexual violence in armed conflict.²⁴ The resolution called upon the UN Secretary General to appoint a Special Representative to intensify efforts to end sexual violence against women and children in conflict situations and who should engage on a high level with military and civilian leaders. Through this resolution the Special Representative would coordinate a range of mechanisms and oversee implementation of both resolution 1325 and resolution 1888.²⁵

The latest addition to this came on 24 June 2013, when the UN Security Council held a debate on the ‘Prevention of Sexual Violence in Conflict’, chaired by UK Foreign Secretary, William Hague. The Debate looked at accountability for crimes of sexual

²⁰ ‘What is U.N. Security Council Resolution 1325 and Why is it so Critical Today?’ United States Institute of Peace, *available at*: http://www.usip.org/gender_peacebuilding/about_UNSCR_1325 (last accessed on 14 February 2014).

²¹ *Ibid.*

²² Security Council Resolution 1820 (2008), *available at*: <http://www.un.org/News/Press/docs/2008/sc9364.doc.htm> (last accessed on 14 March 2014).

²³ *Ibid.*

²⁴ At: http://www.un-ngls.org/spip.php?page=article_s&id_article=1627 (last accessed on 14 March 2014).

²⁵ *Ibid.*

violence on the national level and how the UN can better support countries in holding perpetrators to account.²⁶ The UN Security Council then adopted Resolution 2106. It recognised sexual violence during conflict as a crime against humanity on the lines of genocide and declared rape and all other serious sexual offences as war crimes.²⁷ The resolution also stressed upon the deployment of gender advisors to the relevant United Nations peacekeeping and political missions as well as humanitarian operations and to ensure comprehensive gender training of all relevant peacekeeping and civilian personnel.²⁸

4.1.1.1 *Protection under International Criminal Court and Tribunals*

Rapes and other forms of sexual abuses were not treated as a war crime earlier. They were treated more as consequences of war. It was only in 1992, in the face of widespread rapes of women in the former Yugoslavia, that the issue came to the attention of the UN Security Council. On 18 December 1992, the Council declared the "massive, organized and systematic detention and rape of women, in particular Muslim women, in Bosnia and Herzegovina" an international crime that must be addressed.²⁹

Subsequently, the Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY, 1993) included rape as a crime against humanity, alongside other crimes such as torture and extermination, when committed in course of armed conflict though not of the stature of war and directed against a civilian population. The Court also expanded the definition of slavery as a crime against humanity to include all forms of sexual slavery committed by any warring side. Previously, forced labour in economic sense and not sexual sense was the only type of slavery to be viewed as a crime against humanity.³⁰ The International Criminal Tribunal for Rwanda (ICTR, 1994) has also declared rape to be a war crime and a crime against humanity. In 1998, the ICTR became the first international court to find an accused person guilty of rape

²⁶ *At:* <http://www.un.org/womenwatch/feature/wps/> (last accessed on 14 February 2014).

²⁷ United Nations Security Council Resolution 2106 (2013), para 2, p.2, *available at:* [http://peacemaker.un.org/sites/peacemaker.un.org/files/SC_ResolutionWomen_SRES2106\(2013\)\(english\).pdf](http://peacemaker.un.org/sites/peacemaker.un.org/files/SC_ResolutionWomen_SRES2106(2013)(english).pdf) (last accessed on 14 March 2014).

²⁸ *Id.*, para 8, p.3.

²⁹ Background Information on Sexual Violence used as a Tool of War, *available at:* <http://www.un.org/en/preventgenocide/rwanda/about/bgsexualviolence.shtml> (last accessed on 14 February 2014).

³⁰ *Ibid.*

as a crime of genocide (used to perpetrate genocide). The judgment against a former mayor, Jean-Paul Akayesu, held that rape and sexual assault constituted acts of genocide insofar as they were committed with the intent to destroy, in whole or in part, the Tutsi ethnic group.³¹

The Rome Statute of the International Criminal Court, in force since July 2002, includes rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or ‘any other form of sexual violence of comparable gravity’ as a crime against humanity when it is committed in a widespread or systematic way. In *The Prosecutor v. Germain Katanga*,³² ICC held Germain Katanga, also known as ‘Simba’ of Congo was held guilty of war crimes which included murder, sexual slavery, rape, pillaging, and forcible conscription of children before the fifteen years of age. In *The Prosecutor v. Mathieu Ngudjolo Chui*,³³ Chui was charged with a total of three crimes against humanity and seven war crimes which also included sexual slavery and rape. On 18 December 2012, Trial Chamber II acquitted Mathieu Ngudjolo Chui of the charges of war crimes and crimes against humanity and ordered his immediate release. Subsequently on 21 December 2012, Mathieu Ngudjolo Chui was released from custody. The Office of the Prosecutor has appealed the verdict and the final decision is awaited.³⁴

It is important to understand that the various courts and tribunals jurisdiction will come into play only after the commission of the offence. They alone are not sufficient to erase the problem of sexual abuse during conflicts. The issue requires a systematic grass root approach. Help should be taken from village and community leaders, educational institutions, government officials and media.

5.1 Conclusion and Suggestions

Sexual abuse of the victims of violent crimes is the most deadly reminder of the atrocities faced by them for everyday of their life. Wars are inevitable and so is armed conflict, but what is necessary is to sensitise the local population and the forces with regard to what is acceptable behaviour and what is not in times of conflict. We as

³¹ Supra note 29.

³² ICC-01/04-01/07

³³ ICC-01/04-02/12.

³⁴ At: <http://www.icc->

http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200104/related%20cases/ICC-01-04-02-12/Pages/default.aspx (last accessed on 14 March 2014).

society should not stoop so low that one loses sight of one's judgment. The governments concerned and the United Nations together should adopt a more stringent approach in dealing with the perpetrators of such heinous crimes. Mere dismissal and repatriation from service does not amount to punishment. The duty of protecting the victims of conflict, particularly the women and children should rest on both the warring forces and the forces designated to provide protection. The work of the various NGOs should be closely monitored by enforcement agencies. The complaint system should be made more victims friendly. Just because it is a conflict does not give any person the liberty to think of women as the spoils of war, to be enjoyed as one pleases. Conflicts are never fought for fair reasons, but at least the fighting could be fair.

REFERENCES

Articles:

- Background Information on Sexual Violence used as a Tool of War.
- How is the Term "Armed Conflict" Defined in International Humanitarian Law? International Committee of the Red Cross (ICRC) Opinion Paper, March 2008, p.5, available at,
- Serious misconduct, sexual abuse alleged against UN peacekeepers in Mali, UN News Centre.
- United Nations Peacekeeping: Conduct and Discipline.
- What is U.N. Security Council Resolution 1325 and why is it so Critical Today? United States Institute of Peace.

Books:

- Frits Kalshoven, (Ed.), *Assisting the Victims of Armed Conflict and Other Disasters*, Martinus Nijhoff Publishers, Netherlands (1989).
- Krishna Kumar (Ed.), *Women and Civil War: Impact, Organizations, and Action*, Lynne Rienner Publishers (2001).
- Ramesh Thakur, *The United Nations, Peace and Security: From Collective Security to the Responsibility to Protect*, Cambridge University Press (2006).
- Janie L. Leatherman, *Sexual Violence and Armed Conflict*, Polity Press, U.K. (2011).

- Caryn Neumann, *Sexual Crime: A Reference Handbook*, ABC-CLIO, California, (2009).

Cases:

- ICC-01/04-01/07
- ICC-01/04-02/12

Reports:

- P. Megan Bastick, Karin Grimm and Rahel Kunz, *Report on Sexual Violence in Armed Conflict: Global Overview and Implications for the Security*, Geneva Centre for the Democratic Control of Armed Forces, Geneva, Switzerland (2007).
- Report of UNHCR and Save the Children-UK on ‘Sexual Violence & Exploitation: The Experience of Refugee Children in Guinea, Liberia and Sierra Leone’ based on Initial Findings and Recommendations from Assessment Mission 22 October - 30 November 2001, (2002).

Resolutions:

- United Nations Security Council Resolution 1325 (2000)
- United Nations Security Council Resolution 1820 (2008)
- United Nations Security Council Resolution 1888 (2009)
- United Nations Security Council Resolution 2106 (2013)

Websites:

- <http://www.un.org/apps/news/story.asp?NewsID=45942#.Uv5ZY2KSxH1>
- <http://www.icrc.org/eng/assets/files/other/opinion-paper-armed-conflict.pdf>
- http://www.savethechildren.org.uk/sites/default/files/docs/sexual_violence_and_exploitation_1.pdf
- <http://www.un.org/en/peacekeeping/issues/cdu.shtml>
- http://www.usip.org/gender_peacebuilding/about_UNSCR_1325
- <http://www.un.org/womenwatch/feature/wps/>
- <http://www.un.org/en/preventgenocide/rwanda/about/bgsexualviolence.shtml>
- [http://www.essex.ac.uk/armedcon/story_id/sexualviolence_conflict_full\[1\].pdf](http://www.essex.ac.uk/armedcon/story_id/sexualviolence_conflict_full[1].pdf)

- <http://www.un.org/News/Press/docs/2008/sc9364.doc.htm>
- http://www.un-ngls.org/spip.php?page=article_s&id_article=1627
- [http://peacemaker.un.org/sites/peacemaker.un.org/files/SC_ResolutionWomen_SRES2106\(2013\)\(english\).pdf](http://peacemaker.un.org/sites/peacemaker.un.org/files/SC_ResolutionWomen_SRES2106(2013)(english).pdf)
- http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200104/related%20cases/ICC-01-04-02-12/Pages/default.aspx