

MA International and Comparative Legal Studies

Human Rights of Women

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Discuss the Impact of Armed Conflict on Women's Rights

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Introduction

Much of human suffering in the modern world occurs as a result of armed conflict, civilians paying an increasingly steep price in that respect. While the majority of casualties during WWI were members of the armed forces more than 90%¹ of today's casualties are civilians. The vulnerability of civilians during armed conflict has particularly exacerbating consequences for women who, at the outset, mostly occupy subordinate positions in societies that are generally patriarchal or male dominated.

Armed conflict is governed by international humanitarian law, within which the IVth Geneva Convention of 1949 specifically deals with the protection of civilians in time of war. However, because both war and the law exist in a predominantly male domain, the law of armed conflict incorporates a gendered hierarchy. Indeed, while the protection of women during armed conflict is the focus of thirty-four provisions of the Geneva Conventions and Protocols women, unlike men, are dealt with primarily in their relationship with others and not as individuals in their own right². This has resulted in the marginalization of women's welfare and needs and rendered insignificant the infringement of their rights. It is only recently that gender-specific crimes committed during armed conflict have been prosecuted at the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR).

It is the purpose of this paper to examine what impact war has on women's lives both during conflict and in its immediate aftermath, what protection is afforded

¹ As quoted in Charlesworth, H. & Chinkin, C., *The Boundaries of International Law* (2000), p. 251 at 7

² Gardham, J. & Charlesworth, H., *Protection of Women in Armed Conflict*, HRQ 22.1 (2000) 148, p. 158

women by international humanitarian law, and how international criminal law has responded to crimes committed against women during the Bosnian and Rwandan armed conflicts in the 1990s.

Civilian Women's Experience of Armed Conflict

War is a male dominated terrain women are generally not actively involved in and over which they have very little influence. The military maintains the masculinity of its combatants and asserts its image as protectors by fighting to protect the nation, their property and "their" women³. By effectively slotting women into the category of property, the differences between the sexes is emphasized, reinforcing men's domination over women and rendering them vulnerable to sexual violence during armed conflict. While women are seldom present or consulted in the decision-making stages that precede a conflict or in the reconstruction phases of post-conflict societies, it is they who, nevertheless, in the absence of male family members and a functioning civil society, most often carry the burden of caring and providing for children, the elderly and the sick, during and after conflict.

Rape and Sexual Violence

Sexual violence during armed conflict is a crime essentially perpetrated against women and committed by men from all "sides" of the conflict, be they the enemy, the "friendly", or the peacekeeping forces⁴. Rape during conflict is not an inevitable by-product of war but "a question of power and control which is 'structured by male soldiers' notions of their masculine privilege, by the strength

³ Charlesworth, H. & Chinkin, C., *The Boundaries of International Law* (2000), p. 259

⁴ Chinkin, C., *Rape and Sexual Abuse in International Law*, 5 EJIL 326-341 (1994), p. 326

of the military's lines of command and by class and ethnic inequalities among women"⁵. Rape and sexual violence against women in armed conflict is not a recent phenomenon. In Greece, as far back as 700 BC, the increase of the slave population was an objective of war and captured female slaves were subjected to their owner's right to sexual access⁶. It is, however, only in recent history that wartime rape and sexual violence against women has been categorized as a crime, documented, investigated and prosecuted.

Rape and sexual violence against women can have several objectives. The purpose of deliberately targeting the "other" side's women, can be to emphasize the inadequacy of the enemy in its failure to protect "its" women and to dishonour and humiliate the social group or community in its entirety.

License to rape may be a term of employment for mercenaries⁷ and women of the defeated side can be seen as a reward or perk for the conquering army. Women may be imprisoned into sexual slavery to service the occupying army. During World War II, for example, the Japanese government sanctioned the forced prostitution of thousands of women of the conquered regions, sending them to military brothels where, as "comfort women", they were held captive and raped by the Japanese troops. In Rwanda, during the 1994 genocide, Tutsi women were singled out by the militias for their personal sexual service. Held

⁵ As quoted in Chinkin, C., *Rape and Sexual Abuse in International Law*, 5 EJIL 326-341 (1994), p. 328 at 14

⁶ Viseur Sellers, P., *The Context of Sexual Violence as Violations of International Humanitarian Law* in "Substantive and Procedural Aspects of International Criminal Law: The Experience of International and National Courts", Kirk McDonald, G. & Swaak-Goldman, O. (eds) (2000)

⁷ As quoted in Charlesworth, H. & Chinkin, C., *The Boundaries of International Law* (2000), p. 252 at 19

under coercive conditions and at the mercy of their captors, these women were forced into "marriages" and became "wives" to their abductors⁸.

While traditional conflicts were about conquering territory, "new wars" have increasingly used military means against civilian populations to achieve political objectives. As an instrument of war rape, when used with the intention to ".. humiliate, shame, degrade and terrify the entire group"⁹, is a method to achieve ethnic cleansing and when used with the intention to destroy a group partially or in its entirety, by "killings its members"¹⁰; causing serious bodily or mental harm to members of the group¹¹; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction..¹²; and by imposing measures intended to prevent births within the group¹³" is a means to accomplish genocide. During the conflict in the former Yugoslavia, Bosnian Muslim women were the target of organized rape and forced impregnation, in a genocidal attempt by the Serbs, to destroy their "ethnic" cohesion. Bosnian women were singled out by the Serb Army and sent to sex-enslavement camps where systematic mass rape took place. Women who showed any resistance were killed, thereby terrorizing the rest of the women into submission¹⁴. When pregnancies resulted from the rapes, women were told to "Go bear our Serbian children" and released by their captors only when abortions were no longer a

⁸ Human Rights Watch Report, *Shattered Lives: Sexual Violence during the Rwandan Genocide and its Aftermath*, (1996) p. 56-62

⁹ Tadeusz Mazowiecki, Special Rapporteur on the Commission of Human Rights as quoted in Chinkin, C., *Rape and Sexual Abuse in International Law*, 5 EJIL 326-341 (1994), p. 329 at 21

¹⁰ Convention on the Prevention and Punishment of the Crime of Genocide (1948), Article II (a)

¹¹ Ibid, Article II (b)

¹² Ibid, Article II (c)

¹³ Ibid, Article II (d)

¹⁴ Witness testimony in IT-96-23-T *Prosecutor v. Kunarac et al.*

safe option¹⁵. Aside from being sexually abused, women were required to cook and clean for their captors and were used for barter amongst soldiers¹⁶.

Armed conflict can force civilians to flee from their homes, rendering women especially vulnerable to violence. During the 1999 war in Kosovo, displaced people escaping the conflict on foot were repeatedly robbed and threatened by the Yugoslav Army. If families were unable to produce money, Yugoslav security forces would threaten to rape the women. In some cases even when money was given, women were raped in front of their families and other refugees¹⁷.

The Consequences of Rape and Sexual Violence

Rape in its domination and dehumanization, attacks a woman's sense of integrity as a person and her identity as a woman, and seeks to degrade and destroy her, rendering her "homeless in her own body"¹⁸. Survivors of rape face a plethora of physical and psychological problems frequently combined with the social isolation and ostracization, experienced by rape victims worldwide¹⁹. In Rwandan society, for example, where marriageability is important and may represent the only avenue for women to gain economic security and protection, rape victims prefer to keep silent about their ordeal²⁰ so as not to jeopardize their chances of marriage. Women may even be seen as collaborators rather than victims, as in the case of the women "married" to militiamen during the genocide. Their families dead, no skills or resources available to them and the

¹⁵ Shanker, T. *Sexual Violence* in "Crimes of War: What the Public Should Know", Gutman, R. & Rieff, D. (eds) (1999)

¹⁶ Witness AB testimony in IT-96-23-T *Prosecutor v. Kunarac et al.*

¹⁷ Human Rights Watch Report, *Under Orders: War Crimes in Kosovo*, (2001) p. 130-132

¹⁸ Copelon, R., *Gendered War Crimes: Reconceptualizing Rape in Time of War*, in "Women's Rights, Human Rights", Peters, J. & Wolper, A. (eds) (1995)

¹⁹ Human Rights Watch Report, *Shattered Lives: Sexual Violence during the Rwandan Genocide and its Aftermath*, (1996) p. 69

²⁰ *Ibid* p. 72

fear of possible repercussions of the stigma they carry, women have continued to remain with their captors even after the end of the conflict²¹.

Rape victims risk contracting sexually transmitted diseases, including AIDS, which in the event of a resulting pregnancy can be transmitted to the child. Furthermore, many women who have been raped continue to have serious health problems, and as a result of physical and psychological trauma, may be incapable of bearing children. The consequences of rape, therefore, continue long past the attack and can last an entire lifetime.

Economic & Social Hardships

While men may traditionally be the source of income, women are often the one's who take care of their families. In times of war, the disruption of regular economic activity and the absence of male members in the household puts additional pressure on women to provide for those in their care, such as children, the elderly and the injured. Women may be forced into prostitution to generate income and may face physical danger when leaving their homes for routine activities such as finding food and water. Where food is scarce, women may face a higher incidence of malnutrition than men, who traditionally may have access to food before women²². Furthermore, the incidence of domestic violence during armed conflict raises, regardless of whether women live within or outside a combat zone²³.

As a result of conflict, civilians are often forced to flee and may have to live in refugee camps. Refugee camps are male dominated environments that often

²¹ Ibid p. 61

²² Gardham, J. & Charlesworth, H., *Protection of Women in Armed Conflict*, HRQ 22.1 (2000) 148, p. 154

²³ As quoted in Charlesworth, H. & Chinkin, C., *The Boundaries of International Law* (2000), p. 255-256 at 48

replicate the power dynamics in society which exclude women from decision-making and participatory roles in areas of interest to them and their families. As a result of their subordinate position, women may become victim to sexual extortion by male members of local power groups, in exchange for food, shelter, approval of personal documentation and even the granting of refugee status.

The refugee camps' poor living conditions, further exacerbated by inadequate concern for and provision of female health care, exposes women to a higher risk of disease and sickness. For example, while the UNHCR²⁴ now includes sanitary towels in its supplies for refugees, male relief workers and officials initially treated their distribution as a minor concern²⁵.

Economic & Social Consequences in Post-Conflict Societies

War and the violence and destruction that comes with it often leaves women faced with overwhelming problems. Women who have lost everything are often the ones faced with the responsibility of rebuilding their lives, providing food and shelter, generating an income, for themselves and their families. While war may have presented women with opportunities to gain freedoms and enjoy a more active status in public life, it is difficult for women to retain this status after the end of a conflict. Governments, composed mainly of men, aim to reinstate the pre-conflict status quo, by restoring traditional sex and gender roles²⁶. In most societies women are relegated to a second class status and do not hold decision-making positions. This results in women's needs being ignored and making their task of re-building post-conflict societies all the more daunting. About women in post-genocide Rwanda, Annunciata Nyiratamba says "Women

²⁴ Office of the UN High Commissioner for Refugees

are alone. They have lost everything. But there are no programs for them. No one speaks about the survivors. No one talks about their problems. We are watching what the world will do for the survivors and what it does for the returnees and the refugees. This is a problem for reconciliation. There needs to be assistance for victims, not just for refugees, prisoners and returnees. It's unbalanced. Concretely, there is nothing for the women and yet they constitute the bulk of the survivors.²⁷

International Law and Women in Armed Conflict

International humanitarian law is the body of law that regulates armed conflict. The Geneva Convention regulates the protection of civilians during war but has been criticized by feminist scholars²⁸ for its conception of civilian needs from a male perspective and its neglect of women's experiences. The gendered hierarchy that exists in international humanitarian law is also reflected in international criminal law's neglect, until recently, to prosecute gender-based war crimes and in the human rights discourse that categorizes rights in "generations"²⁹, implying a hierarchy that is detrimental to women. The disparity that subsists within international law has adverse consequences on the formulation and implementation of laws that will protect women during armed conflict and the prosecution of breaches of these laws.

²⁵ Gardham, J. & Charlesworth, H., *Protection of Women in Armed Conflict*, HRQ 22.1 (2000) 148, p. 154

²⁶ Charlesworth, H. & Chinkin, C., *The Boundaries of International Law* (2000), p. 257

²⁷ Annunciata Nyiratamba, Association for Widows of the April Genocide (AVEGA) HRW/FIDH interview, in Human Rights Watch Report, *Shattered Lives: Sexual Violence during the Rwandan Genocide and its Aftermath*, (1996) p. 70

²⁸ Gardham, J., *Women and the Law of Armed Conflict: Why the Silence?*, 46 *International and Comparative Law Quarterly* 55 (1997), p. 56

International Humanitarian Law and Women

International humanitarian law is coded in a gendered way, with the concept of the State connected with "male" characteristics, holding a primary position and civilian population with "female" characteristics³⁰, holding a secondary position. The preservation of the State and its territorial integrity are of primary importance to the law of armed conflict which confers rights on States to regulate warfare. The purpose is to increase military efficiency in order to ensure the protection of the autonomy and independence of the State, under whose protection civilians come. Consequently, the law of war gives precedence to the protection of the state and the military body that defends it over that of the civilian population and defines the civilian population according to male realities, obfuscating women's experiences from the equation.

There are a number of provisions in international humanitarian law that afford women "special" protection during armed conflict. According to Article 27 of the Geneva Convention, "Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault"³¹. While in international humanitarian law men's honour encompasses both intellectual and physical attributes³², women's honour is defined in terms chastity and modesty, features entrenched in the traditional

²⁹ First generation of rights consists of civil and political rights and can be claimed by individuals against governments, while the second generation of rights consists of economic, social and cultural rights which require positive action by the state to ensure their protection.

³⁰ Charlesworth, H. & Chinkin, C., *The Boundaries of International Law* (2000), p. 260

³¹ In Protocol I Additional to the Geneva Conventions of 12 Aug. 1949, and Relating to the Protection of Victims of International Armed Conflicts [hereinafter Protocol I], no reference to notion of women's honour but women continued to be portrayed as objects of special respect and protection; In Protocol II Additional to the Geneva Conventions of 12 Aug. 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts [hereinafter Protocol II], language of protection prohibits "outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any other form of indecent assault"

³² Gardham, J. & Charlesworth, H. , *Protection of Women in Armed Conflict*, HRQ 22.1 (2000) 148, p. 158

patriarchal notion of a woman's "character" reflecting upon the reputation of the community, of which men are the public representative. While no reference is made to violence against women as being a violation of their physical and mental integrity, the type of violence women are subjected to during armed conflict is mildly termed as "indecent assault", obscuring the torturous nature of these acts and the long term impact on women's well-being. Furthermore, in contrast to the provisions dealing with the protection of combatants and civilians, the Geneva Convention's provisions dealing with violence against women, such as rape, are expressed in terms of "protection" rather than "prohibition". Furthermore, the violation of these provisions fail to be categorized under grave breaches to the Geneva Conventions & Protocols and therefore, subject to national jurisdiction and punishable by severe penalties. Overall, international humanitarian law defines women according to their relationship with others, such as pregnant and as mothers. It fails to recognize women in their own right and avails them of special protection only with respect to the sexual and reproductive aspects of their lives.

The battle to survive in post-conflict areas is one that entails living under circumstances where infrastructures that fulfilled basic needs of food, water, health and security have been destroyed as a result of war. Article 51 (5)(b) of Protocol I states that indiscriminate attacks include those "which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated", and upholds the principle of proportionality, central to international humanitarian law. However,

while the principle of proportionality attempts to minimize the collateral damage from military strikes, ensuing factors, such as injuries and loss of civilian life, starvation and disease, internal and external population displacement, are not taken into account by military commanders when determining the proportionality of an attack.

Economic sanctions are a non-military tactic used to respond to threats to international peace and security³³ and can be employed as an enforcement mechanism after the cessation of hostilities. The effects of these type of sanctions are hardest on the most vulnerable segments of the population, the children, the elderly, the sick and particularly women. A 1991 study on the effect of sanctions in post-Gulf War Iraq indicated that 80% of women interviewed found that their domestic tasks had been exacerbated by the sanctions. Sanctions lead to the rationing of basic commodities such as food, water and medicine, creating black markets with inflated prices, draining women's financial resources in their attempt to acquire necessities for their families³⁴. Economic, social and cultural rights, those that most impact the private sphere and therefore women, has failed to have been given the same priority in international law as civil and political rights. While international humanitarian law prohibits starvation as a method of warfare in Article 54 of Protocol I and Article 14 of Protocol II, and while Articles 23 and 55 of the IVth Geneva Convention impose certain obligations on occupying powers in relation to the provision of humanitarian supplies to civilian populations, these laws are applicable only during armed conflict or occupation. Consequently, economic

³³ Article 41 of the UN Charter

³⁴ Charlesworth, H. & Chinkin, C., *The Boundaries of International Law* (2000), p. 303

sanctions fall outside the regulation of international humanitarian law when imposed in post-conflict situations, despite the fact that may be a direct result of armed conflict and may prolong its hardships on civilian populations.

The marginal consideration given to women's experience during armed conflict and the inadequate incorporation of these considerations into international humanitarian law, reflect its gendered nature as well as its ineffectiveness in protecting women during and immediately after war time.

The Prosecution of Sexual Violence During Armed Conflict Under International Criminal Law

During the conflict in the former Yugoslavia in the early 1990s, press reports were released exposing the ongoing atrocities and, in particular, the widespread rapes and assaults perpetrated against women in Bosnia. Subsequent to investigations, the Security Council passed Resolution 827 in May 1993, establishing the ICTY, for the prosecution of war crimes committed during the Balkan conflict of the 1990s. In 1994, following the Rwandan genocide, the Security Council went on to establish the ICTR.

While the only crime of sexual violence specified in the ICTY Statute is Article 5(g) (crimes against humanity), sexual violence can also be prosecuted as a crime under the provisions of Article 4 (genocide). However, the Statute does not list rape under grave breaches since neither the IVth Geneva Convention nor Protocol I lists it as such. Nevertheless, the ICTY jurisprudence has interpreted the Statute in a manner in which Article 2 (grave breaches) and Article 3 (violations of the laws and customs of war) have recognized the prosecution and conviction of sexual assaults. In the *Furundzija* case, the Trial Chamber stated

that "...Rape may also amount to a grave breach of the Geneva Conventions, a violation of the laws and customs of war or an act of genocide, if the pre-requisite elements are met, and may be prosecuted accordingly."³⁵ In the *Kunarac* case, the Trial Chamber contended that rape could be a violation of Article 3 as interpreted by common Article 3³⁶ to the Geneva Conventions. It stated "...The Chamber further considers that it is unnecessary to discuss any additional requirements for the application of rape charges based on treaty law, since common Article 3 alone is sufficient in principle to form the basis of these charges under Article 3..."³⁷

The ICTR Statute, on the other hand, makes explicit reference to sex-based crimes. Rape is listed as crimes against humanity under Article 3(g) and Article 4(e), lists "outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault" as violations of common Article 3 and Additional Protocol II. Article 2 (genocide) of the Statute has also been the basis for ICTR convictions of acts of sexual violence. In 1998, the Trial Chamber in the *Akayesu* case stated that rape and sexual violence constituted genocide "...as long as they were committed with the specific intent to destroy, in whole or in part, a particular

³⁵ *Prosecutor v. Furundzija, Case IT-95-17/1-T*, Judgement at para 172. Emphasis added.

³⁶ In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions: 1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: (a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (b) Taking of hostages; (c) Outrages upon personal dignity, in particular humiliating and degrading treatment; (d) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

³⁷ *Prosecutor v. Kunarac et al., Case IT-96-23-T*, Judgement at para 406.

group, targeted as such. Indeed rape and sexual violence certainly constitute infliction of serious bodily and mental harm on the victims."³⁸

Conclusion

Women constitute approximately 50% of the world population and are fundamentally important to social and economic growth, yet they remain absent from decision-making positions that would allow them to voice their needs. Women's subordinate position has undermined the definition and protection of their rights under the law. International law has assigned a peripheral position to women's rights, neglecting to recognize their particular experiences during armed conflict, thereby failing to adequately protect their rights. In post-conflict societies women have also been marginalized and their rights further obscured. While the ICTY's and ICTR's prosecution and conviction of crimes perpetrated against women has signalled an end to impunity, it has also highlighted the inadequacy of international law's protection of women during armed conflict.

³⁸ *Prosecutor v. Akayesu, Case ICTR-96-4-T*, Judgement at para 731.

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