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## **PROTECTION OF WOMEN IN ARMED CONFLICTS IN THE 21<sup>ST</sup> CENTURY**

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### **ABSTRACT**

Women become victim during the armed conflict is not a new phenomena. The 21<sup>st</sup> century conflict has a new dimension in which the classification of conflict becomes harder. Women face greatest suffering like rape, abduction, sexual slavery, etc these are not limited. This article has focused mainly on the violence on women during armed conflicts and their protection through International Humanitarian law.

**Keywords:** Women, conflict, violence, rape and International Humanitarian Law.

Sexual violence against women remains an unsolved human rights problem. Time and again conflicts erupt during which rape and other forms of sexual violence are being recorded. The purpose of this article is to offer a brief historical overview of this gruesome practice and its consequences on the women, and make an analysis of the conflicts in 21<sup>st</sup> century. The aim is to point out that while sexual violence is deeply rooted in patriarchal social norms, it ultimately represents a predatory mode of warfare which is dehumanizing and brutal. Despite protections and actions of International and Non-International organizations, there are enough guarantees to enforce protection of women in armed conflicts. Finally, It is unknown whether the current support mechanisms are capable enough to protect women at the time of armed conflicts.<sup>i</sup>

### **WHAT IS INTERNATIONAL HUMANITARIAN LAW?**

International Humanitarian law, based on the concepts of Jus ad bello, is defined to be the law of war. This means that the laws involved are meant to be active in a situation of an armed conflict or during war. However just like International Law, International Humanitarian Law requires the political will of states for a situation to be considered as armed conflicts, so that the law can be in force. The scenario has therefore arisen that states have been adamant to recognize a situation as an armed conflict for certain political reasons.<sup>ii</sup>

### **What exactly is an Armed Conflict?**

There are three types of conflicts that are recognized by International Humanitarian law: International armed conflict, Internationalized armed conflict and Non-International armed conflict.

- According to the Geneva convention of 1949, International Armed conflict, common article 2 states that " "all cases of declared war or of any armed conflict that may arise between two or more high contracting parties, even if the state of war is not recognized, the convention shall also apply to all cases of partial or total occupation of the territory of a high contracting party even if the said occupation meets with no armed resistance" (Geneva Convention, 1949, common art.2). This means that the occurrence of international armed conflict is clear, that is,

it would be a conflict between the legal armed forces of two different states. A good example would be the North Korean- South Korean war of 1950''.

- The new phenomenon known as 'an internationalized armed conflict'. The situation of an internationalized armed conflict can occur when a war occurs between two different factions fighting internally but supported by two different states (Stewart, 2003, p 315).<sup>iii</sup> The most visible example of an internationalized armed conflict was the conflict in the Democratic Republic of Congo in 1998 when the forces from Rwanda, Angola, Zimbabwe and Uganda intervened to support various groups in the DRC (Stewart, 315).
- Non-international armed conflicts, according to common article 3 of the Geneva Convention, are 'armed conflicts that are non-international in nature occurring in one of the High contracting parties' (Geneva Convention, common article 3, 1949). This means that one of the parties involved is nongovernmental in nature. However, common article 3 also states that it does not apply to other forms of violence such as riots, isolated and sporadic acts of violence. This abstract definition has made it difficult to make a clear distinction between a mere disturbance and an armed conflict, therefore relying heavily on the political will of states to classify the situation as an armed conflict. For a situation to be classified as a non-international armed conflict, it has to achieve two variables: first, the hostilities have to reach a certain minimum level of intensity (Vite, p 75; ICRC, 2008, p 3) and form in a collective character; and second, there has to be a level of organization of the parties (Vite, p 75)<sup>iv</sup>.

The classification of a situation as an armed conflict means that International Humanitarian law comes into force immediately. However, due to certain legal and political reasons various situations are too complex to be considered as armed conflicts

#### **STAGES OF ARMED CONFLICT**

Armed conflict is not a homogeneous phenomenon. Armed conflicts vary in magnitude (scale, duration and intensity); in geographical scope whether they are international (inter-state) or internal (intra-state, domestic, civil); in the extent and nature of foreign intervention; and in the level of military technology used for warfare. The most common type of armed conflict in terms of geographical scope is internal conflicts. In terms of size, armed conflicts are commonly divided into major and minor. The number of major armed conflicts is relatively small, there are a great number of minor armed conflicts. However, most studies do not seem to make this distinction, but are instead based on a mix of conflicts of different sizes. The majority of armed conflicts take place in low-income developing countries. Only a few internal armed conflicts have been located in industrial countries. There may be some stages of armed conflict which to some extent may vary to times and spheres. As Byrne (1996) has stated, conflict may be said to have the following stages:

1. Run -upto conflict ( Pre-Conflict)
2. The conflict itself
3. Peace and Process (Conflict Resolution)
4. Reconstruction and Reintegration (Post Conflicts)<sup>v</sup>

#### **CAUSES OF ARMED CONFLICT**

The causes of armed conflict are often linked with attempts to control economic resources such as oil, metals, diamonds, drugs or contested territorial boundaries. In countries such as Colombia and the Sudan, for example, oilfield exploration has caused and intensified the impoverishment of women and men. Entire communities have been targeted and killed, displaced and/or marginalized in the name of oil development. The control of resources, like the exercise of power, is gendered. Those who do not have power or resources groups that are disproportionately, though by no means exclusively, made up of women do not usually start wars. Armed conflict as the world moves into the 21<sup>st</sup> century is growing in its complexity. At the international level, inequality in the distribution of power and resources has become more pronounced. Coupled with structural

inequalities between and within nation-states, this disparity has led to more regional conflict, as well as an escalation of international armed conflicts. Furthermore, the nature of warfare itself has dramatically changed due to the development of increasingly sophisticated weapons technology. Nations have placed greater emphasis on increasing and/or reinforcing military strength. This worsens existing constraints on women's rights, which in turn exacerbates inequalities in gender relations. At the same time as increased militarization has further limited the rights of women within countries, gender equality has been co-opted at the international level to justify military intervention into sovereign nations. The liberation of women from the oppressive Taliban regime, for instance constituted one of the justifications for the American invasion of Afghanistan in 2001. But in the five years prior to the invasion, there was a consistent lack of regard for the plight of women, despite attempts by both local and international non-governmental organizations (NGOs) to draw attention to the violation of Afghan women's human rights.

### **CONSEQUENCES OF ARMED CONFLICT**

Armed conflict is a major cause of injury and death worldwide. The impact of armed conflict on civilians through the loss of hundreds of lives and extensive displacement of communities. The price to be paid is high, in terms of human suffering, social and economic disruption. Aggression, foreign occupation, ethnic and other types of conflicts are an ongoing reality affecting women and men in nearly every region. Gross and systematic violations and situations that constitute serious obstacles to the full enjoyment of human rights continue to occur in different parts of the world. The greater consequence is the violence against women. Women become a part of war weapon during armed conflicts. This vulnerability is not a new phenomena but it's been practiced through decades. Women are treated as bush wives, been raped, assaulted, and other kinds of sexual violence's' are been enforced on them.

### **THE CONTEMPORARY CONFLICT SITUATION**

In the current scenario, we are witnessing sexual violence being carried out against women in several regions that are experiencing conflict around the world, spanning from Syria and Iraq to Nigeria and Sudan. The nature of each of these conflicts is different, so are the stages on which they unfold and the war strategies being implemented by the parties involved. The fundamental characteristic shared by each of these conflicts is that women are regarded as some sort of prey to be captured, enslaved , raped , tortured and abused in a way which the perpetrators deem suitable and even rewarding.

In August 2012, the UN's International Commission of Inquiry on Syria indicated that there are "reasonable grounds to believe rape and sexual assault [have been] perpetrated against men, women and children by Government forces and shabbiha members. Rape and sexual assault[have also been] part of torture in official and unofficial detention centers".<sup>12</sup> On 18 January 2013, Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, Valerie Amos reported particular concerns about the "vicious indiscriminate nature of the violence that is taking place and the increasing levels of sexual violence, which is affecting many women" in Syria.

According to Amnesty International, "Hundreds of Yezidi women and girls have had their lives shattered but the horrors of sexual violence and sexual slavery in IS captivity. These women are exposed to a series of horrendous traumatic experiences in captivity, leaving them emotionally and physically scarred for life – should they survive the toll of the atrocities inflicted upon them by the cruel insurgents.

The following testimonies reveal the intensity of their suffering, despair and helplessness:

"The man who was holding us said that either we marry him and his brother or he would sell us"... "At night we tried to strangle ourselves with our scarves. We tied the scarves around our necks and pulled away from each other as hard as we could".<sup>vi</sup>

The existence of various international legal instruments which prohibit and punish acts of sexual violence have done little to stop or prevent these heinous crimes or deter the abusers. Depending on

the nature of the conflict, the perpetrators can be state or non-state actors, such as insurgent militias or terrorist groups. Very often, the perpetrators from the lower and higher levels of the responsible government remain unpunished, and an investigation and trial even should take place. In order to ensure that such horrific acts of violence against women cease to occur when a conflict erupts, it is necessary to make further advances in the realm of international and national law, when it comes to defining and punishing such acts. Furthermore, it is also important to address prevailing social norms, which lie at the roots of extreme patriarchal values. These envisage women as completely subservient to men, while projecting them as mere commodities to be used in order to advance the purposes of men. It is not mere coincidence that when a conflict erupts, women are usually far more vulnerable than men. This is not because men are called to arms and women are left alone to care for their homes and families, but because male soldiers or insurgents often have such degrading perceptions of women that they end up inflicting torture, rape and other cruel acts upon them.

The justifications given for such acts vary, and there is no systematic official data available on sexual violence in conflict. According to the testimony of a perpetrator of sexual violence during the war in the Democratic Republic of Congo, "when we rape we feel free".<sup>vii</sup> In the case of ethnic conflicts, such as in Rwanda and Bosnia, males from one ethnic group raped the women of the other rival clan in order to wipe out their ethnicity.

Over the last five decades we have witnessed how Islamist movements have asserted themselves as relevant political players in the Middle East. Brigadier-General Mark Kimmit, former spokesperson for the American troops in Iraq, considered that Islamist movements are reactionary movements in revolt against modernity, trying desperately to turn back the time.<sup>viii</sup> Meijer also argues that Islamist movements represent social movements, which primarily seek to create meaning and identity, operating usually in authoritarian or semi-authoritarian states, initially at the periphery of society.<sup>ix</sup>

Women's rights in Islam represent's a sensitive issue, and the topic becomes ever more controversial in the face of atrocious crimes such as mass rapes and enslavement carried out by Islamist groups, and the discourses of cultural relativism surrounding the lives of Muslim women in Islamic communities and Western societies. At present we are witnessing an upsurge of Islamist groups, amassing a large number of recruits from both conservative and Western societies, adopting a twisted and rigidly conservative interpretation of Islam, and legitimating violent crimes such as rape and sexual enslavement of women. Even though sexual violence is universal, the atrocities inflicted by these Islamist groups and their radical followers bear a particularly misogynistic and scarring element towards the targeted women. It is important to note that throughout the history of Islam, only men have interpreted the sources of Islamic tradition.<sup>x</sup> Likewise, Muslim men have arrogated to themselves the task of defining the ontological, teleological and sociological status of women.<sup>xi</sup>

Boko Haram is another Islamist movement which originated in Africa and has been applying a similar treatment to women: captivity and enslavement. The movement originated in Nigeria in 2002 and its initial goal was to oppose Western education. 'Boko Haram' means 'opposing Western education' in the local Hausa language. In 2009 the group started conducting military operations in order to create an Islamic state, which was subsequently declared in 2014.<sup>xii</sup> As of late, Boko Haram has made a pledge of allegiance to the IS, vowing to push forward its expansion.<sup>xiii</sup>

According to estimates from a Human Rights Watch Report, approximately 500 girls from Northern Nigeria have been abducted since the establishment of the group.<sup>xiv</sup> Most women seem to have been intentionally abducted because they were students, Christian, or both. Those women, who opposed converting to Islam, have been especially subjected to elevated levels of physical and psychological abuse, rape and forced marriage. Additionally, abducted women have also been forced to engage in attacks against government officials and civilians and carry ammunition. One victim, who was forced to take part in such an operation, recalls how "on the way back from another

operation, I was told to approach a group of five men we saw in a nearby village and lure them to where the insurgents were hiding".<sup>xv</sup> The report states that government forces fighting Boko Haram have committed numerous abuses against the civilian population, using excessive force and persecuting anyone suspected of supporting the Islamist group.<sup>xvi</sup> Violations against women and girls have also been committed, thus the reports calls for fair investigations and prosecutions of all perpetrators, irrespectively if they are part of Boko Haram or the Nigerian armed forces. The need to support survivors of gender-based sexual violence with adequate medical and mental health services is also emphasized.<sup>xvii</sup> Due to the existing culture in some highly conservative and religious parts of Nigeria, which stigmatizes victims of rape and leaves them covered in shame, it is assumed that many cases of sexual violence have gone underreported.<sup>xviii</sup>

Women in Armed Conflicts Culture of violence against women and girls have been prevalent in all societies through all time. However, this problem has become more highlighted with the outbreak of war flames and armed hostilities. Consequently, women and violence against them is of those issues that, in recent decades, has seriously attracted a great deal of international organizations including the four treaties of Geneva, added protocols, the UN bodies such as the General Assembly and its resolutions and reports, the Security Council and its various resolutions (thematic or case), human rights organizations like world conferences of human rights, Human Rights Commission and Council, Human Rights Committee, regional organizations like the African Union, and the charts of criminal courts such as the international court for the former Yugoslavia, the international court for Rwanda and special court for Sierra Leon and International Criminal Court. This issue has been in the spotlight since 1990s, when international and domestic armed conflicts increasingly spread, leading to widespread violence against thousands of innocent women and children. Apart from international human rights support and general protection of civilians stipulated in humanitarian international law, women enjoy other specific supports, too. To be exact, some women, due to their particular situation, benefit from specific supports as well as general supports. Therefore, protection of women against armed conflicts falls under two categories: general protection of women and specific protection of some women (Ziaie Bigdeli, 2013).<sup>xix</sup>

#### **GENERAL PROTECTION OF WOMEN**

Every Woman Without Exception Has The Following Protections –

1. Women must be protected against any violation and be respected by the parties of the conflict in all time and places and in all forms of armed conflicts. Their special protective, health and aid requirements affected by the conflicts must be respected.
2. Women are protected against any damage to their honor particularly against any sexual violence including rape, enforced prostitution and other forms of desecration and disgraceful violation and contemptuous treatment. All the aforementioned acts are under absolute prohibition.

In addition, the chart of International Criminal Court has included, apart from the above acts, sexual slavery, forced pregnancy and enforced sterilization of women within the war crimes (Ziaie Bigdeli, 2013).<sup>xx</sup>

Specific protection of some of the women A group of women enjoy additional or complementary protection, as well as general protection, the most important of which include protection of pregnant women and mothers of under-seven-year-old children, preferential or national treatment with pregnant women and mothers of under-seven-year-old children who are of foreign nationality and live in the land of one of the parties of the conflict, preferential treatment with and specific protection of women who are giving birth and also nursing mothers when distributing aid packages, evacuating women from surrounded areas, immunity of nursery from military attack, protecting transport vehicles of women who have just given birth, traffic freedom for any clothes, provisions, and nutrient foods necessary for pregnant women and those who have just given birth, protecting the detainee women or those prevented from freedom by separating women's detention

center from men's, particularly their sleeping place and health facilities, hospital and medical care for pregnant women and women who have just given birth in detention center, receiving food proportionate with these women's physical needs, being frisked by the same gender, legal investigation with pregnant women and mothers having priority, preventing death sentence and execution of pregnant women and mothers of dependent infants (Ziaie Bigdeli, 2013).<sup>xxi</sup>

## **INTERNATIONAL HUMANITARIAN LAW AND ITS' IN-ADEQUATE PROTECTION FOR WOMEN**

IHL is the law that governs armed conflicts and is therefore the first place that we should turn to see if women are sufficiently protected against violence in international law. The specific provisions dealing with the protection of women are found in the Geneva Conventions which state that 'women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault'.<sup>xxii</sup> This demonstrates how IHL is a gender-biased law that only sees rape as a challenge to 'honour' rather than a violent attack on women because of their gender.<sup>xxiii</sup> By linking rape to honour, it fails to recognise the brutal assault that take place on a woman's body and psyche. It also links with society's perceptions that women are disgraced and deserve to be outcaste once they have suffered this violence. Moreover, Article 147 of the Fourth Geneva Convention does not describe rape as a 'grave breach' which refutes the serious and damaging effects of rape and denies that it deserves universal jurisdiction.<sup>xxiv</sup> Nevertheless, some progress has been made with the 1977 Additional Protocols to the Geneva Conventions which prohibit 'outrages upon personal dignity'. This includes rape, forced prostitution and any other degrading treatment.<sup>xxv</sup> However, the reference to 'personal dignity' still fails to recognise the seriousness of rape by giving it a secondary status in IHL. Another issue is that despite the improvements that have been made for women through the Protocols, their protective scope is limited because they are not widely ratified and do not amount to customary international law.<sup>xxvi</sup> Charlesworth and Gardam also reveal how a mighty 43 provisions of the Geneva Conventions and their protocols actually deal with women and the effects of armed conflict, yet they still remain inadequate because they only 'deal with women in relation to others and not as individuals in their own right'.<sup>xxvii</sup> Gardam is also correct in believing that IHL looks at the protection of women from a male perspective, which therefore ensures that the laws remain inherently discriminatory and unjust.<sup>xxviii</sup> Women's concerns are presented as less important compared to those of men because the language of 'protection' is used rather than 'prohibition'.<sup>xxix</sup> Gardam suggests that a new protocol to protect women in times of armed conflict is necessary and is an achievable goal.<sup>38</sup> However, another more credible option would be to focus on re-conceptualizing the rules that already exist by mainstreaming gender issues within them.<sup>xxx</sup> Whatever method is used, it is clear that IHL needs to be revised so that it recognises rape as a distinct form of warfare that is used to persecute women because of their gender.<sup>xxxi</sup>

## **CONCLUSION**

War – whether International or Non-International – causes enormous suffering for those caught up in it. Women's experience of war is multifaceted – that is separation, the loss of family members and livelihood an increased risk of sexual violence. Wounding, deprivation and death. Conflict forces women into unfamiliar roles and necessitated the strengthening of existing coping skills and the development of new ones. However specific protection to which women are entitled must become a reality.

This paper has demonstrated the stages and concern of the conflict that exists for women in conflict zones. The mass violence that they are subjected is due to their gender. The current deficiency of International Humanitarian Law and the recent improvements that have been made for women in international law have also been looked at to reveal how slow progress is taking place to allow for greater protections for women; yet many deficiencies still exist that need to be resolved. Nonetheless, a slight change of focus is necessary by looking at the gender-based violence that both men and



women face in conflicts. There still remains a major gap between the laws that have been put in place and the political will of Member States to enforce these laws. Violence against women is the most effective indication of the extent to which gender inequality exists throughout every society across the world. It is a form of discriminatory force that is used to degrade women by enforcing male dominance within domestic and social settings. Despite this paper focusing on armed conflict settings, it must be remembered that women are equally vulnerable in times of peace and in times of conflict because all cultural backdrops have enabled men to exert arbitrary power over women. Only when complete gender equality exists in every society across the world, will violence against women no longer be a major global concern.

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