Illegality of Sexual Violence against Women during Armed Conflicts

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Abstract. Sexual violence against women during conflict situations has been a common phenomenon throughout history. It has been regarded as a strategy to terrorise and gain control over civilian society. The atrocities of the Bosnian War, the Sierra Leone Civil War, and the Rwandan Genocide are some events that attest to women's vulnerability in warfare. The Nuremberg Charters conceived and established the concept of international crimes and individual liability for violations of international law. Thus, the general acceptance of rape and sexual violence as "normal" or "trophies of war" is no longer tolerated with the growing consciousness of gender equality and human rights. Recently, International Humanitarian Law (IHL) has recognised the illegality of rape and sexual violence during armed conflict. Given the foregoing, the main goal of this study is to comprehend how IHL safeguards women during times of armed conflict. This work discussed the topics of sexual violence as a war crime and human rights. The Special Court for Sierra Leone (SCSL) and the International Criminal Tribunal for Rwanda (ICTR) were also covered in this piece. Finally, this investigation examined the institutional reactions to several case studies of sexual assault offenders. This work argues that the International Criminal Tribunal for Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and the Special Court for Sierra Leone (SCSL) played a vital role in the prosecution of perpetrators of sexual violence. This work suggests that crimes of sexual violence should not be included in amnesty provisions.

Keywords: Sexual violence, Women, Armed Conflicts, International Humanitarian Law

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INTRODUCTION

Recently, International Humanitarian Law has recognised the illegality of rape and sexual violence during armed conflict, and it has been strongly agreed that forces should not be held accountable for atrocities against women. The Geneva Conventions and the Additional Protocols categorically prohibit violence against women during war, and several mechanisms have also been evolved to suppress such acts of violence by punishing the perpetrators (Manjoo & McRaith, 2011). Sexual violence and rape are regarded as indecent as well as illegal under customary international humanitarian law. To start with, many of the international documents have merely prohibited sexual violence against women rather than declaring it to be a criminal act." The 2008 United Nations Security Council Resolution, which officially acknowledged sexual violence as a tactic of war in order to deliberately target civilians, will make an important contribution to international peace and security.

In December 2010, the Security Council adopted a resolution in which it was observed that sexual violence during armed conflict remains systematic, rampant, and widespread (Kreft, 2017). The Security Council emphasised the condemnation of sexual violence in armed conflict, as well as the obligations of states and non-state parties to conflict to prevent sexual violence and hold the parties accountable for the violence; additionally, it was observed that only a small number of perpetrators of sexual violence have been brought to justice, despite the fact that national justice systems are inadequate to punish the perpetrators. The judicial systems of the states and the status of women during the conflicts are well documented by the Security Council, and it makes the maximum efforts to wipe out the worst situations in the conflict regions (Malone, 2004). Situations clearly identify that gender-based violence is nothing but illegal or immoral as well as a crime in the eyes of international society, and the same is condemned in the Geneva Conventions and their Additional Protocols. However, it is only in the last two decades that a concerted effort has begun to recognise rape and other forms of sexual violence against women during conflicts as a war crime.

Criminalization of Sexual Violence Against Women

The concept of violence against women was first introduced by the Lieber Code in the year 1863, which specified that "wanton violence, including rape, etc., committed against persons in the invaded country are strictly prohibited and subject to the death penalty or such other severe punishment (Mitchell, 2004). It is the first document to recognise that rape is a crime that must be punished, as well as to advocate for the recognition of any gender-based offence as a crime and a violation of customary rules. Furthermore, it was carefully codified in the Brussels Declaration of 1874 that any gender-based violence that is "a violation of family honour and rights" is prohibited and that all customary rules of society must be respected. It includes the family honour and rights of the individuals (Nikolic-Ristanovic, 2010). In the name of family honor, it was clearly stated that any form of violence against civilian society, including women,

would not be tolerated. The subsequent conventions also reiterated the same view as expressed in the Brussels declaration.

In the First Hague Peace Conference of 1899 and the 1907 Hague Convention, the "Rules of Warfare" were codified. The First Hague Conference clearly instructed the military people to observe all customary rules during war on land (Tileubergenov et al. 2016). Further, the 1907 Hague Convention, which was the blueprint for earlier conferences, was neutral as to gender and applies equally to both female and male victims of violence committed during armed conflict. All these conventions stated that customary rules should be respected rather than categorically prohibiting acts of violence. These two conferences failed to express a clear prohibition of violence against women, as was done by the Lieber code, but required the parties to protect women's honour in the name of customary rules. These conferences framed violence against women as a violation of honour rather than an act of violence, concealing the violent nature of the crime and inappropriately shifting the focus away from the perpetrator's intent to violate, degrade, and injure. Further, the Treaty of Versailles (1919) made the first attempt to establish individual criminal responsibility but failed to list out war crimes (Greppi, 1999).

The international military tribunals at Nuremberg and Tokyo in 1945 also failed to specify the violence against women in the list of crimes against a civilian population before or during war as either crimes against peace, war crimes, or crimes against humanity in the list of the major crimes in their respective charters (Askin¸1997). The notion of women's protection in the name of honour rather than the prohibition of violence can even be observed to a certain extent in the Geneva Conventions and the Additional Protocols of 1977 (Barrow, 2010). The Geneva Convention IV also adopted the same perception of honour but modified it to a certain extent as women shall be especially protected against any attack on their honor, in particular rape, enforced prostitution, or any form of indecent assault. Additional Protocol 1 of 1977 applies to international armed conflicts, which states that "women shall be the object of special respect and shall be protected in particular against rape, forced prostitution, and any other form of indecent assault (Barrow, 2010). Additional Protocol II of 1977 applies to non-international armed conflicts. It prohibits certain acts with regard to humane treatment and protection of women, such as outrages upon personal dignity, in particular humiliating and degrading treatment, rape, forced prostitution, and any form of indecent assault (Barrow, 2010). Thus, the perception of the illegality of violence against women during warfare in the form of sexual violence, rape, forced prostitution, and so on has resulted from the concept of respect for family honour as well as individual honour in the name of customary rules. Recently, the notion of rape, sexual slavery, enslavement, and forced prostitution has come to be accepted by international tribunals as war crimes in a number of cases.

Sexual Violence as a Human Rights Issue

Until recently, violence against women in armed conflict has been couched in terms of "protection" and "honor." Article 27 of the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War treats violence against women as a crime of honour rather than a crime of violence (Gardam, 2018). By using the honour paradigm, linked as it is to concepts of chastity, purity, and virginity, stereotypical concepts of femininity have been formally enshrined in humanitarian law. Thus, criminal sexual assault, in both national and international law, is linked to the morality of the victim. When rape is perceived as a crime against honour or morality, shame commonly ensues for the victim, who is often viewed by the community as "dirty" or "spoiled." Consequently, many women will neither report nor discuss the violence that has been perpetrated against them. The nature of rape and the silence that tends to surround it make it a particularly difficult human rights violation to investigate.

An explicit recognition that violence against women constitutes a violation of their human rights can be found in the 1993 Vienna Declaration (Joachim, 2007). Thus, ample deliberation of violence against women has led to the declaration that "women's rights are human rights" and that women therefore have a right to live free from all forms of violence. However, once the nexus between violence and human rights is established, attempts are made to justify this stand retrospectively, dating back to the 1948 Universal Declaration of Human Rights (UDHR). "Women's rights activists are using human rights instruments to combat violence against women, and, in turn, the human rights movement is being enlarged and enriched by their approach." Many international legal instruments dealing with human rights include the protection of women from violence in their provisions. UDHR is a declaration adopted by the United Nations General Assembly on December 10, 1948, at the Palais de Chaillot in Paris (Joachim, 2007). UDHR is the foundation of international human rights law. It is the first universal statement on the basic principles of inalienable human rights and a common standard of achievement for all peoples and nations. This declaration arose directly from the experience of the Second World War and represents the global expression of rights to which all human beings are entitled. This Declaration and its core values, including non-discrimination, equality, fairness, and universality, apply to everyone, everywhere, and always. The UDHR belongs to all of us. The principle of equal rights for men and women has been incorporated into the Universal Declaration of Human Rights.

The UDHR listed a very wide range of human rights, particularly for the welfare of women. The International Covenant on Civil and Political Rights (ICCPR) also contains a non-discrimination clause similar to that contained in Article 2 of the Universal Declaration. In addition, the Covenant provides that "All persons are equal before the law and are entitled, without any discrimination, to the equal protection of the law." In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground, such as "sex." The

International Covenant on Economic, Social, and Cultural Rights (ICESCR) guarantees men and women the equal right to enjoy all of the Covenant's rights, as well as everyone's right to just and favourable working conditions (Bennoune, 2005). Thus, by implication, these two covenants demand that women be free of violence and harassment, even at the workplace. The international community's recognition of violence against women as a barrier to state development was a significant step forward in the emancipation of violence against women. The first world women's conference in Mexico in 1975 declared 1975 the International Women's Year (IWY) and 1976–1985 the UN Decade for Women, Development, and Peace.

Another important convention for women is the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). These international conventions are legally binding on those governments that have ratified them or "acceded" to them. Among the human rights treaties, CEDAW occupies an important place in terms of asserting the human rights of women (Keller, 2014). The very first article of the convention clearly specifies what discrimination is. Articles 2 to 16 and Parts 1–4 of the Convention oblige the state parties to condemn discrimination against women and take all appropriate measures by way of embodying the principles of equality of men and women in their respective constitutions. To eliminate this discrimination, parties are obliged to adopt various legislations, particularly in the political, social, and economic fields and in matters of culture, education, health, employment, and child marriage.

Further, state parties must consider the unique problems of rural women and their critical role in the economic survival of their families. The Convention was strengthened when an Optional Protocol was adopted on December 22, 2000, that provides for an individual complaint procedure and an inquiry procedure (Keller, 2014). Following that, many human rights conventions or treaties were established to improve women's status and to promote and protect human rights. The 1993 World Conference on Human Rights reaffirmed that under human rights law and international humanitarian law, freedom from torture is a right that must be protected under all circumstances, including times of internal or international disturbance or armed conflict (Gasser, 2002). The world conference recognises that gross violations of human rights, including in armed conflicts, are among the multiple and complex factors leading to the displacement of people, and it also recognises that gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural practises and international trafficking, are incompatible with the dignity and worth of the humane person and must be eliminated.

Furthermore, in accordance with the United Nations Charter and humanitarian law principles, the World Conference on Human Rights stressed the importance and necessity of humanitarian assistance to victims. In December 1993, the General Assembly adopted "the Declaration on the Elimination of Violence Against Women" (DEVAW) which expressly recognises that violence against women constitutes a violation of the rights and fundamental freedoms of women, impairs or nullifies their

enjoyment of those rights and freedoms, and is concerned about the long-standing failure to protect and promote those rights and freedoms in the case of violence against women (Joachim¸1999). Another important development in the context of women and human rights during armed conflicts has been the appointment of Special Rapporteurs by the United Nations Committee on Human Rights with mandates covering certain aspects of women's experience of armed conflict. In this regard, she or he was asked to investigate complaints, communicate appeals and petitions to states regarding alleged cases of violence against women, visit the particular place to find out the facts, and submit annual reports to the United Nations Security Council.

The Special Rapporteur has observed that, in the context of unequal power relations between men and women, women have been vulnerable to acts of violence in the family, in the community, and by states. The recorded incidents of such violence have reached such unprecedented proportions that they have shocked the conscience of the world. As a result, the international community has decided to take concerted action against incidents of violence against women as part of the general campaign for human rights. Another milestone in the protection of women's human rights was the Fourth World Conference on Women in Beijing in 1995, which covered the human rights of women in 12 critical areas of concern, ranging from poverty and education to violence against women during armed conflict and its impact on the lives of women.

Sexual Violence as a War Crime

War crimes are violations of the rules of law or the customs of war. It doesn't mean all the violations of the rules of international law do not constitute war crimes. It is only certain rules of law that, if violated, constitute war crimes. Murder, ill-treatment, or deportation of civilians to slave labour or for any other purpose in occupied territory; murder, ill-treatment, or torture of prisoners of war or persons on the sea; killing of hostages; plunder of public or private property; wanton destruction of cities, towns, or villages; or devastation not justified by military necessity Certain activities were designated as crimes against humanity by the International Military Tribunal, including "murder, extermination, enslavement, deportation, and other inhuman acts committed against any civilian population before or during the war; or persecution on political, racial, or religious grounds in execution of or in connection with any crime within the jurisdiction of; the murder or ill-treatment of prisoners of war or persons on the seas; and inflicting grievous bodily harm on any civilian population."

The charter of the International Military Tribunal (IMT) identified certain activities as crimes against humanity, namely "murder, extermination, enslavement, deportation, and other inhuman acts committed against any civilian population before or during the war; or persecution on political, racial, or religious grounds" (Quénivet, 2005). The charter prohibits "inhuman acts" committed against any civilian population before or during the war; or persecution on political, racial, or religious grounds in execution of or attempted killing of in connection with any crime within the jurisdiction of the IMT of or in occupied territory, murder or ill treatment of prisoners of war or

persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity (Quénivet, 2005). The charter of the International Military Tribunal identified certain activities as crimes against humanity, namely "murder, extermination, enslavement, deportation, and other inhuman acts committed against any civilian population before or during the war; or persecution on political, racial, or religious grounds in execution of or in connection with any crime within the jurisdiction of the IMT (Bassiouni¸ 2011).

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Outrages upon personal dignity mean and include:

1. The perpetrator humiliated, degraded, or otherwise violated the dignity of one or more persons
2. The severity of the humiliation, degradation, or other violation was of such a degree as to be generally recognised as an outrage upon personal dignity (Boister & Cryer, 2008).

Rape contains the following elements:

1. The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object, or any other part of the body (Boister & Cryer, 2008);
2. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression, or abuse of power against such a person or another, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent. It is understood that a person may be incapable of giving valid consent (Boister & Cryer, 2008).

Sexual slavery has the following elements:

1. The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending, or bartering such a person or persons, or by imposing on them a similar deprivation of liberty;

2. The perpetrator caused such a person or persons to engage in one or more acts of a sexual nature (Boister & Cryer, 2008).

Sexual violence includes:

1. The perpetrator committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression, or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent (Boister & Cryer, 2008);
2. The conduct was of a gravity comparable to that of a grave breach of the Geneva Conventions;
3. The perpetrator was aware of the factual circumstances that established the gravity of the conduct.

In all these circumstances, whenever the conduct took place in the context of and was associated with an international armed conflict, and moreover, the perpetrator was aware of factual circumstances that established the existence of an armed conflict, it is treated as a crime.

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (ICTR)

The International Criminal Tribunal for the Former Yugoslavia (ICTY) was the first war crimes court established by the U.N. Security Council in accordance with Chapter 7 of the United Nations Charter and Security Council Resolution 827, which was passed on May 25, 1993, to prosecute perpetrators of serious violations of international criminal and humanitarian law committed in the Former Yugoslavia since 1991. "It shall have personal jurisdiction, i.e., over natural persons only, but not over political parties, army units, administrative bodies, etc (Futamura & Gow, 2013). It was the first war crimes court created by the United Nations and the first international war crimes tribunal since the Nuremberg and Tokyo tribunals. Mainly, it was established by the United Nations in response to mass atrocities then taking place in Croatia and Bosnia and Herzegovina. It is situated in The Hague, the Netherlands. Under this statute, the Tribunal has authority to prosecute four types of cases, i.e., grave breaches of the 1949 Geneva Conventions, violations of the laws and customs of war, genocide, and crimes against humanity (Futamura & Gow, 2013).

The International Criminal Tribunal for Rwanda is the first international court of law established under Chapter VII of the United Nations Charter (Schweigman, 2001). The Security Council created the ICTR (by Resolution 955 of November 8, 1994) to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring states between January 1, 1994, and December 31, 1994, in accordance with the provisions of the Statute. "It shall have the authority to prosecute persons committing genocide or any other act enumerated

in paragraph 3 of Article 2" (Grover¸ 2010, p. 54), and it shall also have the authority to prosecute persons responsible for crimes against humanity as defined in Article 3 of the resolution.

SCSL (SPECIAL COURT FOR SIERRA LEONE)

The Special Court for Sierra Leone differs from the ICTY and ICTR in its constitution, which were established by Security Council Chapter VII Resolutions (Frulli, 2000). The Special Court was set up jointly by the government of Sierra Leone and the United Nations. It has the power to prosecute those persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since November 30, 1996. "The special court shall have the power to prosecute persons for crimes against humanity and further power to prosecute persons who committed or ordered the commission of serious violations of Art. 3 of the Geneva Conventions of the United Nations. It has the power to prosecute those persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since November 30, 1996 (Donlon, 2013). The special court shall have the power to prosecute persons for crimes against humanity and further power to prosecute persons who committed or ordered the commission of serious violations of Art. 3 of the Geneva Conventions of August 12, 1949, and of Additional Protocol 11 of June 1977 (Donlon, 2013). The Special Court has concurrent jurisdiction with and primacy over Sierra Leonean courts.

As a result, it has the authority to request that any national Sierra Leonean court defer its jurisdiction at any stage of the proceedings. However, the primacy of the Special Court is limited to the national courts of Sierra Leone and does not extend to the courts of other states. The Special Court is the first international criminal tribunal to be funded entirely by voluntary contributions from governments. Canada, the Netherlands, Nigeria, the United Kingdom, and the United States have provided strong support. The United Nations funded the Special Court between 2004 and 2011. The main armed groups that were involved in the relevant armed conflict in Sierra Leone are the Civil Defense Forces (CDF), the Armed Forces Revolutionary Council (AFRC), and the Revolutionary United Front (RUF). Three of the SCSL's cases are built around multiple leaders of these groups. In the CDF case, there are no specific allegations of sexual violence (Oosterveld, 2011). The Special Court has made decisions in three cases: AFRC, RUF, and Charles Taylor (Oosterveld, 2012).

INSTITUTIONAL RESPONSES—CASE STUDIES

The following are some of the important cases decided by the ICTY, ICTR, Special Court for Sierra Leone, and Rome Statute of the ICC in which perpetrators of sexual violence and rape against women during armed conflicts were convicted. VI. The ICTY's response to sexual violence against women during conflicts

1. "Susica camp" case

Prosecutor v. Dragan Nikolic Dragan,

Nikolic was the first person indicted by this tribunal on November 4, 1994 (Murphy, 2000). This case deals with his individual responsibility for particularly brutal crimes such as persecution, mugging, rape, and torture as crimes against humanity committed in the Susica detention camp near the town of Vlasenica in the municipality. The Trial Chamber found that, as a commander in the Suica Camp, Dragan Nikolic had an overall responsibility to protect the detainees from abuse and to ensure that the conditions under which they were forced to live were humane," but that he instead chose to "mistreat the detainees, thereby setting an example for the guards to follow and contributing to an environment of impunity (Murphy, 2000). According to the court, many female detainees in Susica Camp were subjected to sexual assaults, including rapes and degrading physical and verbal abuse, from early June until around September 15, 1992 (Murphy, 2000).

Dragan Nikolic personally removed and otherwise facilitated the removal of female detainees from the hangar, which he knew was for purposes of rape and other sexually abusive conduct. The sexual assaults were committed by camp guards. Special Forces, local soldiers, and other men Female detainees were sexually assaulted at various locations, including houses surrounding the camp, a hotel, a military headquarters, and locations where women were taken to perform forced labor (Murphy, 2000). Dragan Nikolic also allowed female detainees, including girls and elderly women, to be verbally subjected to humiliating sexual threats in the presence of other detainees in the hangar (Sloan, 2005). Moreover, he persecuted Muslim and other non-Serb detainees by subjecting them to murders, rapes, and torture. Furthermore, he helped to create and maintain a terror atmosphere in the camp through murders, beatings, and sexual, physical, and mental abuse. While taking into consideration only the gravity of the crime and all the accepted aggravating and mitigating circumstances, the Trial Chamber sentenced Dragan Nikolic to 23 years of imprisonment on December 18, 2003, for his individual responsibility as a commander of the detention camp (Sloan, 2005). The Appeal Chamber rendered its judgment, altering the Trial Chamber II decision from 23 to 20 years' imprisonment (Sloan, 2005).

2. "KRAJINA"

The Prosecutor v. Radoslav Bradanin

Radislav Bradanin served as a member of the ARK Crisis Team. Staff was also charged with genocide against Bosnian Muslims and Bosnian Croats, and rape and sexual assault of non-combatants formed part of the related operation (Hameed, 2011). Genocide was not proven beyond a reasonable doubt. The prosecution failed to prove all the allegations of sexual violence made in the indictment. In addition to the above, there are a number of cases decided by the ICTY tribunal with regard to sexual violence and rape against women. Many victims who testified before the Tribunal bravely

declared their experiences of being either beaten, tortured, raped, or sexually assaulted. In the Celibici Camp case, Grozdana Cecez, a Bosnian Serb woman, speaking about her experiences with Hazim Delic, said that "he trampled on my pride and I will never be able to be the woman that I was" (Hameed, 2011). In this case, a teenage rape victim stated her experience with Zoran Vukovic as that "he finished raping me and said that he could perhaps do more, but that I was about the same age as his daughter." All of these incidents demonstrate how, regardless of age, women face such miserable situations in their lives during conflicts. And it has been established that gender is the sole criterion used to commit all of these crimes against civilians. On the basis of their testimony, the ICTY confirmed in a number of cases that rape and sexual violence during the conflicts were violations of IHL, and thereby the perpetrators of the crime were punished.

According to the ICTY's decisions, sexual violence may take various forms. It may be rape, torture, enslavement, or other outrages upon personal dignity, in particular humiliating and degrading treatment, including sexual assault, cruel treatment, and persecution for crimes against humanity. In some situations, there is more than one perpetrator involved, as in the Dragan Nikolic, Razic, Bralo, Celebci, Kunarac, Bralo, and Zelenovic cases. And in some circumstances, sexual violence was practised against civilians, or women were being raped and sexually assaulted repeatedly in the presence of other victims, as in the Bralo and Furundzija cases. All of the incidents described above occurred as part of a series of assaults designed to terrorise and destabilise society during the conflict. As per the recent analysis, almost half of those convicted by the ICTY have been found guilty of elements of crimes involving sexual violence. The Tribunal has played a significant role in the trial of wartime sexual violence in the former Yugoslavia. Since the first days of the Tribunal's mandate, investigations have been conducted into reports of systematic detention and rape of women. The ICTY has ensured that treaties and conventions that have existed on paper throughout the 20th century have finally been put into practice.

RESPONSE OF THE ICTR TO PUNISHING SEXUAL VIOLENCE PERPETRATORS

1. The Prosecutor v. Akayesu

It is the first time an international court has punished sexual violence in a civil war, and rape has been considered an act of genocide as well as an act of torture. It is the first interpretation and application by the International Court of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. The sentencing of Akayesu to life imprisonment is one small step towards redressing the longstanding injustice perpetrated by the international community against women war victims (Askin, 2003). In this case, the prosecutor charged Akayesu with direct and public incitement to commit genocide, a crime punishable under Art. 2(3)(c) of the Statute. The facts of the cases were: Akayesu was born in Taba commune and served as burgesse of that commune from April 1993 until June 1994 (Askin, 2003).

In Rwanda, the bourgmestre is the most powerful figure in the commune (Brehm, 2017). Despite his efforts to keep social order, he took part in the violence on or near the Burmese communal grounds. Between April and the end of June 1994, hundreds of civilians (the majority of these civilians were Tutsis) seeking refuge at the communal bureau were subjected to sexual violence by armed local militia or communal police, and further evidence was presented that Akayesu allowed the military to use his office premises to commit various heinous crimes against women. The prosecutor relied on these facts to demonstrate that there was a nexus between the actions of Akayesu and the conflict, and he further alleged that Jean Paul AKAYESU never attempted to prevent the killing of Tutsis in the commune in any way or called for assistance from regional or national authorities to quell the violence (Brehm, 2017).

Akayesu's defence team argued that he had no part in the killings and that he had been powerless to stop them. Despite this defense, the ICTR found him guilty of nine counts of genocide and crimes against humanity. On September 2, 1998, Trial Chamber I of the ICTR, composed of judges Mr. Justice Laity Kama, President, Mr. Justice Lennart Aspegren, and Navaneethem Pillay, found Jean Paul Akayesu guilty of nine of the 15 counts alleged against him, including genocide and the counts relating to the violations of Art. 3 of the Geneva Conventions and Additional Protocol II. In this case, the court ruled that rape and other forms of sexual violence constitute genocide in the same way as any other act, as long as they were committed with the specific intent to destroy a particular group in whole or in part (Brehm, 2017). The Chamber has already established that genocide was committed systematically and deliberately, with the specific intent to destroy the Tutsi group in Rwanda in 1994, throughout the period.

Indeed, rape and sexual violence certainly constitute the infliction of serious bodily and mental harm on the victims and are even, according to the Chamber, one of the worst ways to inflict harm on the victim, as he or she suffers both bodily and mental harm. In light of all the evidence before it, the Chamber is satisfied that the acts of rape and sexual violence described above were committed solely against Tutsi women, many of whom were subjected to the worst public humiliation, were mutilated, and were raped several times, often in public, in the Bureau Communal premises, or in other public places, and often by more than one assailant. These rapes resulted in the physical and psychological destruction of Tutsi women, their families, and their communities. Sexual violence was an integral part of the process of destruction, specifically targeting Tutsi women and specifically contributing to their destruction and to the destruction of the Tutsi groups as a whole. The rape of Tutsi women was systematic and was perpetrated against all Tutsi women and solely against them. A Tutsi woman, married to a Hutu, testified before the Chamber that she was not raped because her ethnic background was unknown. As part of the propaganda campaign geared toward mobilising the Hutu against the Tutsi, the Tutsi women were presented as sexual objects. This sexualized representation of ethnic identity graphically illustrates that Tutsi women were subjected to sexual violence because they were Tutsis (Brehm, 2017).

The Prosecutor v. Emmanuel Rukando

Rukando was a military chaplain at Ruhengeri Prefecture in 1994. Following the request of the ICTR to the Swiss Department of Foreign Affairs, he was arrested in Geneva in July 2001, where he had been granted asylum. The ICTR convicted him of attempted rape and genocide for crimes that included killing people who had sought refuge in a seminary (Turns, et al., 2009). He was charged with genocide and two counts of crimes against humanity, i.e., murder and extermination. The ICTR prosecutor accused him of participating in the massacres of Tutsis in Kabgayi, in central Rwanda (Turns, et al., 2009). According to the allegations, Rukando was a known extremist with a history of contempt for the Tutsi population and his fellow Tutsi clergymen. The indictment alleges that he was involved in the mobilisation of Hutus against Tutsis, assisted the search for Tutsis by soldiers and interahamwe militias, and ordered the killings of more than 500,000 members of the Tutsi civilian population between April and July 1994. Judge Joseph Asoka Nihal de Silva said that there was clear evidence that Rukundo directed the killings of Tutsi civilians in the central Rwanda area of Gitarama during the 1994 genocide, and he attempted to rape a Tutsi woman at the same seminary (Turns, et al., 2009).

The victim testified against Rukundo during the trial. Further, they also considered his education and stature as a priest in making their judgment. Accordingly, the Chamber found that Rukudo was guilty of committing genocide through his sexual assault of a young Tutsi woman at the St. Leon Minor Seminary in May 1994. On the basis of the substantial evidence, he was convicted of genocide. The three-judge panel sentenced Emmanuel Rukundo to 25 years in prison. The trial of Rukando began on November 15, 2006, before trial chamber II, and was completed on February 20, 2008 (Turns, et al., 2009). On February 9, 2009, he was convicted of genocide and crimes against humanity and sentenced to 25 years in prison. On October 20, 2010, the Appeals Chamber reduced Rukundo's sentence by two years, citing errors in law by the trial chamber (Turns, et al., 2009).

The Prosecutor v. Ahmad Muhammad Harun ("Ahmad Harun") and AH Muhamad Ali Abd-Al-Rahman ("Ali Kushayb")

In this case, Pre-Trial Chamber I issued warrants against Ahmad Harun and Ali Kushayb on April 27, 2007. On March 15, 2012, it was assigned to Pre-Trial 7: Chamber 11, and at present, this matter is pending before Pre-Trial Chamber II (Vagias̨, 2018). Ahmad Harun, Foreign Minister of State for the Interior of the Government of Sudan and Minister of State for Humanitarian Affairs of Sudan, is allegedly criminally responsible for forty-two counts on the basis of his individual criminal responsibility, including twenty counts of crimes against humanity, such as murder, persecution, forcible transfer of population, rape, inhumane acts, imprisonment or severe deprivation of liberty, and torture, and twenty-two counts of war crimes, such as murder, attacks against the civilian population, destruction of property, rape, pillaging, and outrage upon personal dignity (Vagias̨, 2018). Ali Muhammad Ali Abd-Al-Rahman

("Ali Kushayb"), the alleged leader of the Militia or Janjaweed, is accused of fifty counts of criminal responsibility, including twenty-two counts of crimes against humanity, including murder, deportation or forcible transfer of population, imprisonment or other severe deprivation of physical liberty in violation of the fundamental rules of international law, torture, persecution, and inhumane amputation (Vagias¸ 2018).

The Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta, and Mohammed Hussein Ali

Francis Kirimi Muthaura, former head of the public service and secretary to the Cabinet of the Republic of Kenya, Uhuru Muigai Kenyatta, Deputy Prime Minister and former Minister for Finance of the Republic of Kenya, and Mohammed Hussein, all Chief Executives of the Postal Corporation of Kenya, are allegedly criminally responsible as indirect co-perpetrators for the crimes against humanity of murder, deportation, forcible transfer, rape, persecution, and other inhuman acts (Sadat & Cohen, 2015). The Pre-Trial Chamber II, by a majority, decided to summon Francis Kirimi Muthaura, Uhuru Muigai Kenyatta, and Mohammed Hussein Ali to appear before the Court. Pursuant to this decision, the suspects voluntarily appeared before the Court at the initial hearing held on April 8, 2011 and at the confirmation of charges heard by the Court from September 21 to October 2, 2011(Sadat & Cohen, 2015).

During the course of the hearing, Pre-Trial Chamber II, on the basis of the evidence presented, found that the Prosecutor has established substantial grounds to believe that post-election violence took place between January 24 and 28, 2008, in Kenya against the civilian residents of Nakuru and Naivasha assumed to be supporters of the Orange Democratic Movement, in particular those belonging to the Luc, Luhya, and Kalenjin ethnic groups (Jalloh, 2011). And they also found that the consequences of an attack included a large number of killings, the displacement of thousands of people, rape, severe physical injuries, and mental suffering. Moreover, the Chamber was satisfied with regard to the criminal responsibility of Francis Kirimi Muthaura and Uhuru Muigai Kenyatta as indirect co-perpetrators who had control over the Mungiki and directed them to commit the crimes. Nonetheless, the Chamber found that the evidence presented in Mohammed Hussein Ali did not establish any evidence to confirm the charges against him. Accordingly, the Pre-Trial Chamber delivered its decision on January 23, 2012, to move cases against Francis Kirimi Muthaura and Uhuru Muigai Kenyatta and declined to confirm the charges against Mohammed Hussein Ali (Jalloh, 2011).

Further, it should be noted that the non-confirmation of charges against Mohammed Hussein Ali does not mean the cases against him are completely closed. The prosecutor may seek fresh confirmation if he acquires additional and sufficient evidence to support the rejected charges. At present, the Kenyan people are awaiting justice from the International Criminal Court.

CONCLUSION

As per the above cases, it is rightly confirmed that the ICTY, ICTR, and SCSL played a vital role in the prosecution of perpetrators of sexual violence in armed conflicts that raged in Yugoslavia, Rwanda, and Sierra Leone. These three courts were specifically credited with prosecuting and trying individuals responsible for the flagrant international crimes of genocide, crimes against humanity, and war crimes. These three are temporary tribunals and have started scaling back their activities in anticipation of the completion of their current mandates in the next few years. Recently, the United Nations urged the ICTY to take all possible measures to complete its work expeditiously as requested in Resolution 1966 (2010) and decided to extend the terms of office of the permanent judges as well as the ad litem judges at the international tribunal, who are members of the Trial Chambers, until December 31, 2012, or until the completion of the cases to which they are assigned (Pittman, 2011). And further, it called upon the ICTY to take all possible measures to expeditiously complete all its remaining work not later than December 31, 2014. Regarding the ICTR, the United Nations called upon the International Tribunal to take all possible measures to expeditiously complete all its remaining work before December 31, 2014 (Pittman, 2011).

In addition to those mentioned above, the United Nations has established other tribunals in accordance with Security Council Resolutions and the United Nations Charter. However, as they do not try cases involving violence against women, a detailed study of these tribunals is not undertaken here. The above discussion of the rules of International Human Rights Law and International Humanitarian Law and the numerous cases tried or being tried by the International Criminal Tribunals, together with the Resolution and Declaration of the Security Council, reflect a strong and unanimous condemnation by the International Society of Sexual Violence Against Women of sexual violence against women during armed conflicts. To sum up, even though rape and sexual violence against women during conflict situations were considered "spoils of war," at present this phenomenon has changed, and international law deals with them as a part of humanitarian law as well as the rules of armed conflict. Rape and other forms of sexual violence in conflict situations amount to a grave breach of the Geneva Conventions. Though rape or sexual violence is not a separate crime in international law, it can be prosecuted as a crime against humanity, an act of genocide, a war crime, and a grave violation of the Geneva Conventions and the Additional Protocols. Sexual violence crimes should therefore not be a part of amnesty provisions, and those responsible for such acts should be prosecuted.

REFERENCES

Askin, K. D. (1997). *War crimes against women: Prosecution in international war crimes tribunals* (Vol. 1). Martinus Nijhoff Publishers.

Askin, K. D. (2003). Prosecuting wartime rape and other gender-related crimes under international law: Extraordinary advances, enduring obstacles. *Berkeley J. Int'l L.*, *21*, 288.

Barrow, A. (2010). UN Security Council Resolutions 1325 and 1820: constructing gender in armed conflict and international humanitarian law. *International Review of the Red Cross*, *92*(877), 221-234.

Bassiouni, M. C. (2011). *Crimes against humanity: historical evolution and contemporary application*. Cambridge University Press.

Bennoune, K. (2005). The International Covenant on Economic, Social and Cultural Rights as a tool for combating discrimination against women: general observations and a case study on Algeria. *International social science journal*, *57*(184), 351-369.

Boister, N., & Cryer, R. (Eds.). (2008). *Documents on the Tokyo International Military Tribunal: Charter, Indictment, and Judgments* (Vol. 1). Oxford University Press.

Brehm, H. (2017). Subnational determinants of killing in Rwanda. *Criminology*, *55*(1), 5-31.

Donlon, F. (2013). The Transition of Responsibilities from the Special Court to the Residual Special Court for Sierra Leone: challenges and lessons learned for other international tribunals. *Journal of International Criminal Justice*, *11*(4), 857-874.

Frulli, M. (2000). The special court for Sierra Leone: some preliminary comments. *European journal of international law*, *11*(4), 857-869.

Futamura, M., & Gow, J. (2013). The strategic purpose of the ICTY and international peace and security. In *Prosecuting War Crimes* (pp. 33-46). Routledge.

Gardam, J. (2018). The silences in the rules that regulate women during times of armed conflict. In *The Oxford Handbook of Gender and Conflict* (pp. 35-47). Oxford: Oxford University Press.

Gasser, H. P. (2002). International humanitarian law and human rights law in non-international armed conflict: joint venture or mutual exclusion. *German YB Int'l L.*, *45*, 149.

Greppi, E. (1999). The evolution of individual criminal responsibility under international law. *International review of the Red Cross*, *81*(835), 531-553.

Grover, S. C. (2010). The International Ad Hoc Criminal Courts of Rwanda and the Territory of the Former Yugoslavia. In *Prosecuting International Crimes and Human Rights Abuses Committed Against Children* (pp. 55-68). Springer, Berlin, Heidelberg.

Hameed, N. T. (2011). *The prosecution of the crime of genocide: a comparative analysis of approaches between International and National legal systems* (Master's thesis, Kuala Lumpur: Ahmad Ibrahim Kulliyyah of Laws, International Islamic University Malaysia, 2011).

Jalloh, C. C. (2011). Situation in the Republic of Kenya. *American Journal of International Law*, *105*(3), 540-547.

Joachim, J. (1999). Shaping the human rights agenda: the case of violence against women. *Gender politics in global governance*, *4*, 142-160.

Joachim, J. M. (2007). *Agenda setting, the UN, and NGOs: Gender violence and reproductive rights*. Georgetown University Press.

Keller, L. M. (2014). The Impact of States Parties' Reservation to the Convention on the Elimination of All Forms of Discrimination against Women. *Mich. St. L. Rev.*, 309.

Kreft, A. K. (2017). The gender mainstreaming gap: Security Council resolution 1325 and UN peacekeeping mandates. *International Peacekeeping*, *24*(1), 132-158.

Malone, R. D. M. (Eds.). (2004). *The UN Security Council: from the Cold War to the 21st century*. Lynne Rienner Publishers.

Manjoo, R., & McRaith, C. (2011). Gender-based violence and justice in conflict and post-conflict areas. *Cornell Int'l LJ*, *44*, 11.

Mitchell, D. S. (2004). The prohibition of rape in international humanitarian law as a norm of jus cogens: Clarifying the doctrine. *Duke J. Comp. & Int'l L.*, *15*, 219.

Murphy, S. D. (2000). Arrest by US forces of Bosnian Serb indictee. *The American Journal of International Law*, *94*(3), 537.

Nikolic-Ristanovic, V. (2010). Supporting victims of trafficking: Towards reconciling the security of victims and states. *Security and Human Rights*, *21*(3), 189-202.

Oosterveld, V. (2011). The Gender Jurisprudence of the Special Court for Sierra Leone: Progress in the Revolutionary United Front Judgments. *Cornell Int'l LJ*, *44*, 49.

Oosterveld, V. (2012). Gender and the Charles Taylor case at the special court for Sierra Leone. *Wm. & Mary J. Women & L.*, *19*, 7.

Pittman, T. W. (2011). The road to the establishment of the international residual mechanism for criminal tribunals: from completion to continuation. *Journal of International Criminal Justice*, *9*(4), 797-817.

Quénivet, N. N. (2005). Sexual Offenses as Crimes against Humanity. In *Sexual Offenses in Armed Conflict and International Law* (pp. 113-139). Brill Nijhoff.

Sadat, L. N., & Cohen, B. (2015). Impunity Through Immunity: The Kenya Situation and the International Criminal Court. *The International Criminal Court and Africa: One Decade On, Forthcoming, Washington University in St. Louis Legal Studies Research Paper*, (15-12), 03.

Schweigman, D. (2001). *The authority of the Security Council under Chapter VII of the UN Charter: legal limits and the role of the International Court of Justice*. BRILL.

Sloan, J. (2005). Prosecutor v. Dragan Nikolić (Decision of the Interlocutory Appeal Concerning Legality of Arrest), Case No. IT-94-2-AR73. *The Law & Practice of International Courts and Tribunals*, *4*(3), 491-500.

Tileubergenov, E. M., Pelevin, S. I., Vasiliev, A. A., & Danilyanc, E. I. (2016). Political and legal defining the regulations of war in the hague convention of 1907. *J. Advanced Res. L. & Econ.*, *7*, 672.

Turns, D., Rojo, C., McCausland, J. S., & Bojovic, A. (2009). International Criminal Courts Round-Up. *Yearbook of International Humanitarian Law*, *12*, 233-262.

Vagias, M. (2018). The prosecutor's request concerning the Rohingya deportation to Bangladesh: Certain procedural questions. *Leiden Journal of International Law*, *31*(4), 981-1002.