

## Sexual Violence in Armed Conflicts

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Prior to the 1990s, the limited availability of documentation on sexual violence in war posed a major challenge for academic analysis. It was difficult to determine the motivations of perpetrators in committing acts of sexual violence, the impact of sexual violence on victims, and the nature of any political impact such acts of violence might have during and after a conflict. Since the 1990s, however, this situation has improved as a result of the increased attention that has been given to this particular war phenomenon, together with the growing recognition that sexual violence can be used as a political weapon during war.

### What Is Sexual Violence in Armed Conflicts?

The World Health Organization's (2002: 149) *World Report on Violence and Health* defines sexual violence as 'any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting'. It includes rape and other forms of assault involving a sexual organ.

However, the crime of sexual violence in conflict has only recently been defined in international law, as gender-based sexual violence in conflict had long been regarded as a by-product of conflict rather than as a criminal act. Although Article 4(2)(e) of the 1997 Additional Protocol II of the Geneva Conventions includes rape among the list of 'outrages upon human dignity' that it prohibits, there had been no legal provisions to define the use of rape and other forms of sexual violence during conflicts as specific crimes.

Current legal definitions of sexual violence, particularly rape, in conflict were established in legal decisions by the International Criminal Tribunal for

Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY). These tribunals were set up by the international community to bring prosecutions for crimes against humanity, crimes of genocide and crimes of torture committed during conflicts in Rwanda and Bosnia. Since its inception, the ICTY has indicted a total of 162 persons, and charges brought against 58 of these have included acts of sexual violence. For its part, the ICTR is expected to have prosecuted between 65 and 70 persons, and of these 35 have been charged, inter alia, with sexual violence.

Legal definitions of rape and other forms of sexual violence in conflict continue to evolve. However, the decision in *ICTY Trial Chamber Judgment Prosecutor v. Anto Furundžija* (Case no. IT-95-17/1-T) established the elements listed below as constituting the *actus reus* – that is, the essential material or objective elements – of the crime of rape in war:

- (i) The sexual penetration, however slight:
  - (a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or
  - (b) of the mouth of the victim by the penis of the perpetrator;
- (ii) By coercion or force or threat of force against the victim or a third person.

While accepting that the elements set out in the *Furundžija* case constituted the *actus reus* of rape in international law, a subsequent decision in *ICTY Trial Chamber Judgment Prosecutor v. Kunarac et al.* (Case no. IT-96-23-T&IT-96-23/1-T) noted that the *Furundžija* definition was 'in one respect more narrowly stated than is required in international law', in that it 'does not refer to other factors which would render an act of sexual penetration non-consensual or non-voluntary on the part of the victim'. Accordingly, on the basis of the appropriate

laws in force in different national jurisdictions, the Trial Chamber identified three broad categories that would classify the relevant sexual acts (as defined in the *Furundžija* case) as the crime of rape:

- (i) The sexual activity is accompanied by force or threat of force to the victim or a third party;
- (ii) The sexual activity is accompanied by force or a variety of other specified circumstances which made the victim particularly vulnerable or negated her ability to make an informed refusal; or
- (iii) The sexual activity occurs without the consent of the victim.

Under the Rome Statute of the International Criminal Court (ICC), rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and any other forms of sexual violence of comparable gravity are recognized both as crimes against humanity and as war crimes.

**Why Sexual Violence Is Frequently Practised in a Conflict Environment: Four Hypotheses (adapted from Seifert, 1994)**

1. *Sexual violence is an integral part of warfare.*
2. *Sexual violence is a weapon of terror and revenge, used to inflict humiliation upon male opponents and to reaffirm own masculinity.*
3. *Sexual violence can be understood as a way of destroying an opponent's culture.*
4. *Sexual violence can be seen as an outcome of misogyny.*

### Who Are the Victims and the Perpetrators?

The victims of sexual violence in conflict are members of local populations in countries affected by ongoing interstate and intrastate conflicts. Although women and girls are usually considered the most vulnerable to conflict-related sexual violence, men and boys are arguably equally vulnerable to sexual violence when placed in detention or forcibly recruited by armed groups.

The perpetrators of acts of sexual violence during conflicts include members of official armed and security forces, paramilitary groups, and non-state armed groups, as well as civilians, including refugees and displaced persons.

The exact extent of conflict-related sexual violence is largely unknown, as sexual taboos, feelings of shame and guilt, and fear of being ostracized by the local community and immediate family members contribute to keeping victims of sexual violence in both war and peace silent.

### History of Sexual Violence in Armed Conflicts

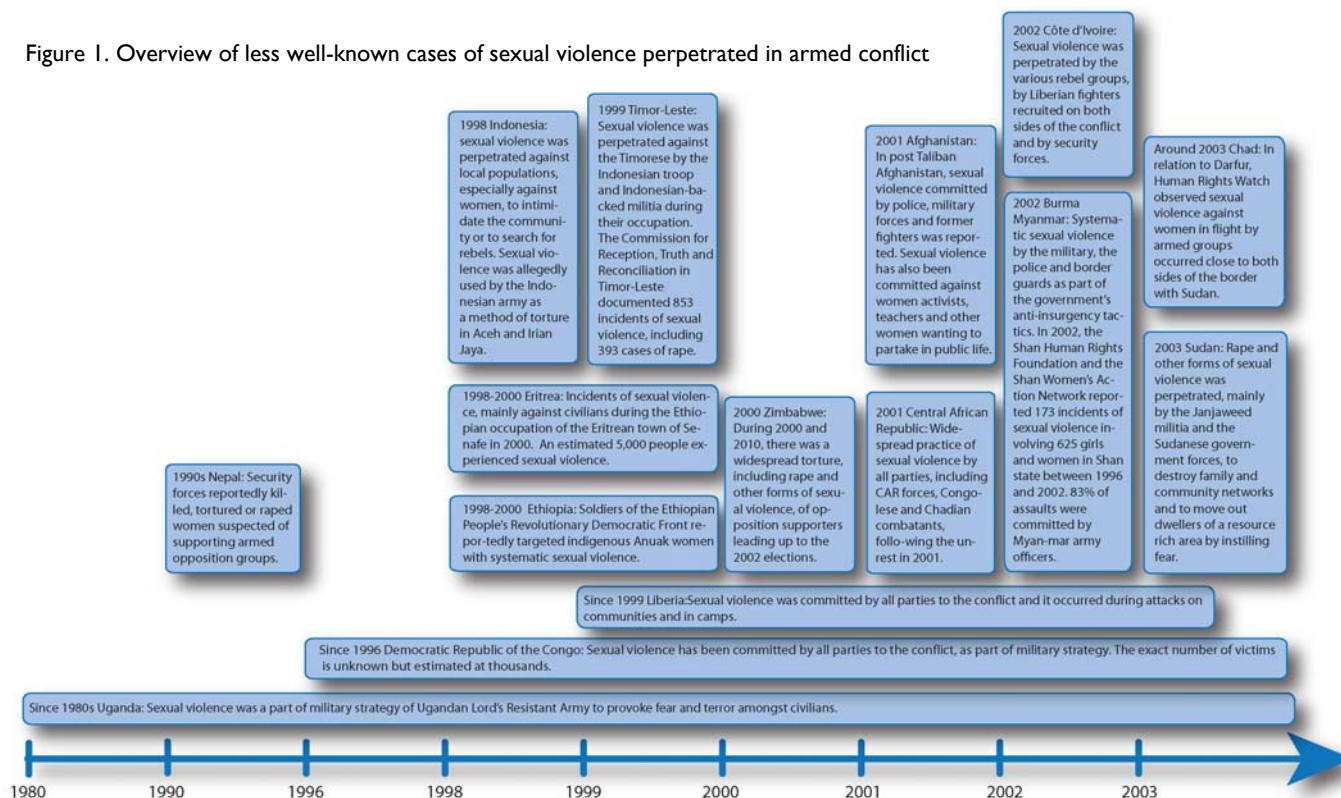
Sexual violence in war is no new phenomenon. A gradual increase in documentation on sexual violence in armed conflict since World War II, however, has fostered academic analysis aimed at identi-

fying the functions that conflict-related sexual violence performs in a conflict environment. A few examples are listed below:

- Documentation on rapes committed by the German and Russian armies, the 'Rape of Nanking' and the use of 'comfort women' during World War II indicate that vanquishing armies often perpetrated systematic sexual violence against local populations in the areas that they conquered.
- The use of targeted sexual violence against Muslim Bengali women during Bangladesh's nine-month war of independence from Pakistan in 1971 was the first case in which conflict-related rape was internationally recognized as having a political-military-strategic function.
- More accounts of conflict-related rape and sexual violence were documented by international nongovernmental organizations active in conflict-ridden regions of Africa, the Americas and Asia in the 1980s.
- The decade of the 1990s was marked by the emergence of ethnic conflicts involving the targeting of civilians in order to eliminate particular ethnic groups or displace groups of people dwelling in resource-rich areas. In order to achieve such goals, the perpetrators of violence in Bosnia and Herzegovina (1992–95), Rwanda (1994), Kosovo (1998–99) and East Timor (1975–2002) engaged in acts of rape and other forms of sexual violence. These developments led to an exponential increase in documentation on sexual violence, which in turn led to international recognition that systematic sexual violence can serve as a military tactic in a conflict environment.

Despite internationally coordinated efforts to combat sexual violence against women during armed conflict since 2000, the use of rape and other forms of sexual violence persists. Sexual violence was used as part of the military strategy of Uganda's Lord's Resistance Army to provoke fear and terror among civilians, while in the Democratic Republic of the Congo sexual violence was (and still is) perpetrated as a military strategy by all armed groups engaged in conflict, both for ethnic-cleansing purposes and as revenge for previous acts of sexual violence. In Sudan, rape and other forms of sexual violence have been perpetrated, mainly by *janjaweed* militias and Sudanese government forces, to destroy family and community networks and to force dwellers out of resource-rich areas by instilling fear.

Figure 1. Overview of less well-known cases of sexual violence perpetrated in armed conflict



Source: Data on sexual violence during armed conflict collected from Sexual Violence in Armed Conflict DECAF 2007, ICG Gender and Conflict 2009, Amnesty International publications, Human Rights Watch publications (compiled by Suk Chun)

### Overview of the Relevant UN Security Council Resolutions

Since 2000, sexual violence and other gender concerns have figured on the agenda of the UN Security Council, and a key set of resolutions now define member-states' duties and obligations in this context.

*UN Security Council Resolution 1325 (2000)*, on 'Women, Peace and Security', was the first UN Security Council Resolution to address the impact of conflict on women during and in the aftermath of armed conflicts. The resolution called on all parties to an armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse. The resolution also urged all states to bring an end to impunity for and to prosecute those responsible for genocide, crimes against humanity and war crimes, including those relating to sexual and other forms of violence against women and girls.

*UN Security Council Resolution 1820 (2008)* was the first UN Security Council resolution to exclusively address sexual violence in armed conflicts. The resolution recognized sexual violence as a security issue, noting that the perpetration of sexual violence as a tactic of war against civilians was a threat to the maintenance of international peace and security. The resolution requested that the international community mobilize resources to protect civilians from all forms of sexual violence.

*UN Security Council Resolution 1888 (2009)* was a follow-up resolution to Resolution 1820, emphasizing the importance both of addressing issues of sexual violence from the very outset of a peace process and of bringing perpetrators to justice. The resolution called for the inclusion of specific provisions for the protection of women and children from rape and other forms of sexual violence in the mandates of UN peacekeeping operations and UN-sponsored peace negotiations. Furthermore, it requested that the UN Secretary-General develop a proposal to ensure monitoring and reporting of sexual violence in conflict and post-conflict situations, and appoint a special representative for sexual violence.

In 2008, UN Secretary-General Ban Ki-Moon launched 'UNiTE to End Violence', a global campaign coordinated by all UN agencies, aimed at bringing an end to violence against women. The campaign also initiated the 'Secretary-General's Network of Men Leaders' to promote greater awareness among men of the impact of sexual violence, particularly on women and girls.

In addition, a number of UN agencies with a specific focus on women and/or gender – including the Office of the Special Adviser on Gender Issues (OSAGI), the United Nations Development Fund for Women (UNIFEM) and the United Nations International Research and Training Institute for the Advancement of Women (UN INSTRAW) – are working to raise awareness of sexual violence and



to provide policy research on conflict-related sexual violence.

### Challenges Ahead

Although the international community has become more proactive in addressing sexual violence during armed conflict over the last decade, little attention has been given to addressing the consequences of systematically perpetrated sexual violence.

*The plight and status of war children, born as a result of forced pregnancies, remain significantly under-documented. In this context, it will be essential to conduct a systematic fact-finding mission to identify the need and interests of war children, and to ensure that the findings of such research are embedded within policy aimed at preserving and protecting the rights of war children.*

*Little research has been carried out on the impact of sexual violence on the reproductive health of victims. The negative impact of sexually transmitted diseases, especially HIV/AIDS, on rape victims has already been seen in post-conflict countries in Africa. Unless addressed urgently, this will have a long-term detrimental impact on the population demography. To enable an overview of the spread of the disease, it will be necessary to increase the level of humanitarian aid initiatives involved in the provision of HIV/AIDS testing.*

*A set of social mechanisms to counteract stigma attached to victims of sexual violence must be devised. Fear of stigmatization discourages victims from reporting their ordeals, which in turn hinders efforts to identify the extent of sexual violence and the purposes for which it is used in a conflict environment. As exemplified in the cases of Bosnia and Bangladesh, the support of social institutions – including legitimate local authorities – can contribute to discouraging stigmatization of victims.*

*A greatly increased focus on sexual violence against men will be essential, because this group is possibly even more silent than female victims.*

*More in-depth knowledge about the perpetrators of sexual violence during conflict is required. Why do they opt for this particular form of violence? Who or-*

*ders them to carry out acts of sexual violence, if indeed they are ordered to do so? What is the effect of international criminal prosecution for these crimes for potential future perpetrators and for the victims of these crimes.*

### Useful Documents and Publications

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