

SEXUAL VIOLENCE AS HUMAN RIGHTS' VIOLATIONS: SELECTED EXPERIENCES OF HUMAN RIGHTS WATCH

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SV in conflict resistant to eradication



- Women's subordinate and unequal status in peacetime increases risk for SV in times of war
- Increasing exposure and public outrage about rape in conflict have not translated into vigorous investigation and prosecution of perpetrators
- Inadequate services for survivors reflect official disregard for harm women suffer in conflict and for facilitating rape survivors' reintegration into society

International legal prohibitions against sexual violence

- Mass rape of women and girls documented in WW II and conflicts in the former Yugoslavia, Rwanda, Sierra Leone, and the DRC
- Rape recognized as weapon of war that strategically functions as tool for military and political objectives
- Rape not committed in isolation and victims subjected to multiple human rights abuses

Sexual violence as war crime

- Perpetrators can be held accountable for rape and other forms of sexual violence as war crimes, crimes against humanity, and acts of genocide
- 4 Geneva Conventions and 2 Additional Protocols condemn rape and sexual violence as serious violations of humanitarian law in international and internal conflicts
- Common Article 3 to the Geneva Conventions condemns sexual violence as “outrages upon personal dignity, in particular humiliating and degrading treatment”
- Article 27: “Women shall be especially protected against any attack on their honor, in particular against rape, enforced prostitution, or any form of indecent assault”
- Article 147: specifies that “torture or inhuman treatment” and “willfully causing great suffering or serious injury to body or health” are grave breaches of the conventions
- International Committee of the Red Cross consider rape and other forms of sexual violence to be grave breaches; single act of sex violence can constitute war crime

Crime against humanity (CAH)

- No single international treaty provides authoritative definition of crimes against humanity, but generally considered to be serious and inhumane acts committed as part of a widespread attack against the civilian population, during peacetime or war
- The statutes of both the International Criminal Tribunal for the former Yugoslavia and International Criminal Tribunal for Rwanda make explicit mention of rape, when committed as part of a widespread attack against the civilian population, as CAH
- Statute of the ICC also explicitly identifies the acts of rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity as acts that can be CAH
- Subject to universal jurisdiction: national courts can try a person suspected of CAH even if neither the suspect nor the victim are nationals of the country where court is and the crime took place outside that country

Torture

- International human rights instruments provide protection from rape and sexual assault as forms of torture and other prohibited ill-treatment, slavery, forced prostitution, and discrimination based on sex
- The International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) prohibit torture and other cruel, inhuman, or degrading treatment by officials or persons acting in an official capacity
- The Convention on the Rights of the Child (CRC) provides for the right to freedom from torture, sexual exploitation, and abuse as well as liberty and security of person
- UN Special Rapporteur on Torture has recognized that rape can constitute torture, as have International Criminal Tribunals of Yugoslavia and Rwanda
- Under the ICCPR, the African Charter and CEDAW, sexual slavery and forced prostitution in times of armed conflict constitute a basic violation of the right to liberty and security of person

Discrimination

- Sexual violence generally violates women's rights to be free from discrimination based on sex as provided for under the ICCPR
- Article 1 of CEDAW defines discrimination to include “gender-based violence precisely because GB V has the effect or purpose of impairing or nullifying the enjoyment by women of human rights” on a basis of equality with men
- CEDAW Committee enumerated states' obligations related to ending sexual violence, including ensuring appropriate treatment for victims in the justice system, counseling, support services, medical treatment, and psychological assistance
- UN General Assembly (1993): States “should pursue by all appropriate means and without delay a policy of eliminating violence against women”
- Convention on the Rights of the Child (CRC) also provides for freedom from discrimination on the basis of gender (Article 2)
- African Charter on Human and Peoples' Rights, guarantees the “[e]limination of every discrimination against women...and protection of the rights of the woman and the child” as well as the right to integrity of one's person, and the right to be free of “...[a]ll forms of exploitation and degradation...particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment”

Criminal responsibility for sexual violence

- Individual acts can be prosecuted as criminal acts, or crime against humanity if part of widespread or systematic attack against the civilian population. The attack itself (rather than each type of act, like murder, torture, or rape) must be committed on a widespread or systematic basis.
- Individual criminal responsibility for a crime against humanity, or for a serious violation of HR or IHL can be established when an accused is proved to have either planned, instigated, ordered, committed or otherwise aided or abetted in the commission or the crime.
- Superior officers may also be liable for crimes committed by their subordinates on the basis of command responsibility. Command responsibility now embraces responsibility of civil authorities for the abuses committed by those persons under their effective authority, including state and non-state actors (such as commanders of armed rebel groups).
- The duty to prevent and or punish arises as soon as the superior acquires the knowledge that his or her subordinates are about to commit crimes, or have committed crimes.
- A commander will therefore be found guilty of rape if he or she stood by while the subordinate committed rape.

Examples of HRW's work

- ❑ **Côte d'Ivoire**
- ❑ **Darfur**
- ❑ **Democratic Republic of Congo**
- ❑ **West Bank and Gaza**
- ❑ Chad and Central African Republic
- ❑ Krygyzstan
- ❑ Pakistan
- ❑ Mexico
- ❑ Uganda
- ❑ Rwanda
- ❑ Afghanistan
- ❑ South Africa
- ❑ Saudi Arabia, etc.

Côte d'Ivoire

- **“My Heart Is Cut”: Sexual Violence by Rebels and Pro-Government Forces in Côte d'Ivoire**
- Armed conflict erupted in 2002 resulting in brutal forms of SV against women and girls by armed men on both sides of military & political divide.
- HRW documented over 180 cases of sexual violence in Côte d'Ivoire
- For victims, no justice and few services
- Ivorian authorities must stop impunity for perpetrators and provide adequate services to survivors

Importance of health services

The New Forces, the government, and aid agencies must:

- ❑ Improve medical assistance
- ❑ Provide free medical certificates to rape victims
- ❑ Launch nationwide information campaign on the connection between sexual violence and HIV/AIDS (on prevention, counseling, testing and treatment)
- ❑ Prioritize the nationwide establishment of sexual and reproductive health programs for women and girls
- ❑ Involve Ivorian women and girls as active participants in the formulation and implementation of these programs

Darfur and Chad

- UN Security Council referred the situation in Darfur to the International Criminal Court in 2005.
- In the case of Darfur, serious sexual violence forms part of widespread and systematic attack against civilians; such crimes could be prosecuted under the jurisdiction of the ICC.
- Women and girls in camps in Darfur and IDPs in Chad are subjected to rape and sexual violence, in addition to malnutrition, general health problems, trauma, insecurity and require immediate medical attention and heightened prevention measures.

Peter Takirambudde, HRW Africa director

- “Donors urgently need to set up programs to protect women and girls from sexual violence and address the needs of those who have been raped.”
(2005)
- “The mounting evidence of widespread rape in Darfur underscores why the newly approved AU-UN mission will need to be prepared to protect civilians. Peacekeepers in Darfur need the capacity to respond rapidly to threats against civilians.”
(2007)

Democratic Republic of Congo

- In eastern Congo women and girls continue to be targeted for crimes of sexual violence. Perpetrators of SV are members of all the armed forces and groups
- **Victims of crimes of SV have enormous needs for medical, psychological and social support; unless such needs are met, they have difficulty beginning and persevering in efforts to bring the perpetrators of the crimes to justice**
- Efforts to seek justice often failed due to deficiencies in the law, the unwillingness of military and other officials to treat sexual violence as a serious offense, lack of protection for the victims, and various impediments linked to the dilapidated state of the judicial system

Latest developments



- ICC issued arrest warrant for military leader Katanga for war crimes including sexual enslavement (Oct 2007)
- HRW has gathered hundreds of testimonies over past 6 years documenting widespread human rights abuses by all armed groups in Ituri
- Katanga ordered, tolerated or personally committed ethnic massacres, murder, torture, rape, mutilation and the recruitment of child soldiers

Question of security: Violence against Palestinian women and girls (2006)

- ❑ Discriminatory laws condone and perpetuate such violence
- ❑ Virtual absence of institutionalized policies to prevent violence, assist victims, and hold perpetrators accountable
- ❑ Jordanian and Egyptian criminal laws in force in the West Bank and Gaza, respectively, do not effectively prohibit or appropriately punish violence against women and girls
- ❑ These laws include provisions that provide a reduction in penalty to men who kill or attack female relatives committing adultery; relieve rapists who agree to marry their victims from any criminal prosecution; and allow only male relatives to file incest charges on behalf of minors
- ❑ Efforts aimed at overturning these inherited laws and developing unified Palestinian family and penal codes have been hindered by lawmakers' divisions over critical reforms and the slow pace of passing new legislation during the six years of *intifada*
- ❑ Result is virtual impunity for perpetrators of domestic violence and continued obstacles in the way of victims who might otherwise report abuse

Obligations under law

- OPT unilaterally committed to abide by international law
- Article 10 of the draft Palestinian constitution (“Basic Law”) states that: “Basic human rights and liberties shall be protected and respected” and that “the Palestinian National Authority shall work without delay to become a party to regional and international declarations and covenants that protect human rights.”
- Article 9 stipulates that: “Palestinians shall be equal before the law and the judiciary, without distinction based upon race, sex, color, religion, political views or disability” and thus creates important foundation for non-discrimination in the Palestinian legal system.
- However, if this commitment is not translated into tangible legal protection for all members of Palestinian society, including women and girls, it will ring hollow.
- PA also committed police to exercise powers and responsibilities to protect the public, respect human dignity, and avoid harassment.
- Israel also has responsibilities for the implementation of international human rights treaties that it has ratified in areas under its control such as the OPT.
- Israel should not undermine the ability of Palestinian judges, police officers, forensic doctors, lawyers, and social service providers to move within and between the West Bank, Gaza and Israel in order to carry out their job or undertake training.

End of sexual violence against women in armed conflict*

- **Heightened respect for women's human rights** in all aspects of their lives. Failure to address sex discrimination will ensure ongoing risk for sexual violence among future generations of women
- **Significantly improved compliance with the provisions of IHL** during armed conflicts. Methods include regular training and education of soldiers and other combatants regarding international legal protections for civilians, specifically prohibitions against rape and other forms of GBV
- **Vigorous condemnation, investigation, and prosecution of gender-specific crimes against women** in times of peace as well as war

*Jefferson LR. In War as in Peace: Sexual Violence and Women's Status in Human Rights Watch World Report 2004.

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