

VIOLENCE AGAINST WOMEN AND GIRLS DURING ARMED CONFLICTS IN AFRICA:

*Nature, Extent and a Way forward **

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INTRODUCTION

UNAFRI has carried out two studies on trafficking in persons in Nigeria and Uganda (UNAFRI, 2007a, b). Humane trafficking is one of the forms of violation of rights of women and girls. The practice is prevalent and perpetuated during armed conflicts (Amnesty International, 2005:4-5). As one of the institutes comprising the United Nations Crime Prevention and Criminal Justice Programmes Network, Article 13, Section VIII: Research and Evaluation, of the Model Strategies and Practical Measures on the Elimination of Violence against Women in the field of Crime Prevention and Criminal Justice, tasks UNAFRI to develop a crime survey on the nature and extent of violence against women in the field of Crime Prevention and Criminal Justice. That is why the Institute has launched another study to cover some of the other forms of abuse women and girls are suffering in Africa, especially during armed conflicts.

The Institute has not been able to organise the requested survey, mainly due to field (primary data collection) and financial constraints. However, in the process of a fact finding search from secondary sources, the Institute has come across rich alternative sources of materials (Amnesty International; Human Rights Watch; International Committee of the Red Cross; and others: Maya Steinitz, 2001; E. Rehn & E Johnson Sirleaf, 2002; R. Lefort, 2003; Dyan Mazurana, 2005; J. Ward & M. Marsh, 2006) on violence against women and girls during and after armed conflicts. The materials are examined in light of Article 1 of the Declaration on the Elimination of Violence against Women and of some stipulations of Article 13: (1) in looking at the nature and extent of the violence against women and girls during and after armed conflicts; and (2) evaluating the efficiency and effectiveness of the Criminal Justice System in fulfilling the needs of women subjected to violence. And a way forward is proposed.

The materials gathered indicate that violence against women and girls is not only from one region of the world, but from everywhere where there are armed conflicts. However, the presentation focuses on Africa taking into consideration the nature, extent and response to it. Names of countries, towns or places, and involved armed groups are deliberately withheld in some quotations, our interest being purposely on what happened.

We would like to take this opportunity to commend and acknowledge the organisations which have produced the materials in use and others to which we did not have access, as they give more visibility, at national and international levels, to this unacceptable

* This is an abbreviated version. The original version can be accessed through UNAFRI's Web Site.

degrading physical and mental suffering women and girls are subjected to, during armed conflict in Africa in particular and in the world in general. We are of the opinion that, with regard to national and international legal instruments in place, more visibility of these crimes would definitely discourage all the offenders: those who physically commit them and those who, by wilful negligence or other unlawful reasons, allow them to do so.

1: DEFINITION, NATURE AND EXTENT OF VIOLENCE AGAINST WOMEN

We refer to the definition of violence against women as enshrined in Article 1 of the Declaration on the Elimination of Violence against Women, from which we have identified some key concepts making up our conceptual framework. As already indicated above, the exercise will also strive to look at a number of sub-paragraphs of paragraph (b) of Article 13 of the Model Strategies and Practical Measures on the Elimination of Violence against Women in the field of Crime Prevention and Criminal Justice.

This type of violence is made up of a variety of crimes (Amnesty International, 2005:4-5) to be defined in the perspective developed by The Schwendingers, (Herman and Julia Schwendingers, 1975) that considers crime as violation of human rights. And any abuse of human rights of women in situations of armed conflicts is contrary to the fundamental principles of International human rights and humanitarian law. The following is the definition. Article 1 of the Declaration on the Elimination of Violence against Women posits that:

“For the purpose of this Declaration, the term “violence against women” means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such act, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”.

1.1 ANY ACT OF GENDER-BASED VIOLENCE

The definition refers to any act of gender-based violence. J. Ward and M. Marsh (2006:15) define “gender-based violence” as:

“an umbrella term for any harmful act that is perpetrated against a person’s will, and that is based on socially ascribed (gender) differences between males and females”

Women and girls are victim of the violence described below by virtue of their femininity. In order to have an idea on the extent of the situation, let us refer to R. Lefort (2003). He has indicated that according to a U.N. department, on average, some 40 women were raped every day between October 2002 and February 2003 in and around a town called Uvira (East of DRC), a town with a population between 200,000 and 300,000. Even though cases of males being exposed to sexual violence by armed men have been reported (See R. Lefort, 2003:7; and Human Rights Watch, 2005:20-21), women and girls seem to be the main victims of this type of violence during armed conflicts.

1.2 THAT RESULTS OR LIKELY TO RESULT IN:

1.2.1 Physical Harm or suffering:

Human Rights Watch (2002:21) reported that “Assailants who raped women and girls frequently beat, whipped, or otherwise physically abused them before, during, and after the crime”. This statement gives an idea on the nature of violence inflicted on women and girls during armed conflicts in Africa.

Some few case referred to here below are only illustrations for those who have not had the opportunity to read the above publications, as to the extent of the atrocities, cruelty or the nature of violence inflicted on women and girls during armed conflicts; because, there are other cases with greater atrocities than the following:

“Seven soldiers took the ... woman off and raped her. Then one of the rapists put a gun into her vagina and shot her. The assailants then left. The witness and other women came out of their hiding place and tried to take the badly injured woman for medical assistance, but she died on the way.” (Human Rights Watch, 2002:21)

The very report revealed further that:

“Beyond such usual kinds of abuse, there were other cases where the rapists inflicted severe injury on their victims with sticks or other objects or by mutilating their sexual organs with such weapons as knives or razor blades. A gynaecologist has been reported saying that in his many years of work he had never seen atrocities like those committed against women who had been raped whom he has treated recently ...” (Human Rights Watch, 2002:21).

Insults and humiliations led us to consider another type of violence women and girls and also families are subjected to: the psychological harm or suffering.

1.2.2 Psychological Harm or suffering:

An aspect of psychological harm or suffering is the stigmatisation the individual victim has to suffer. A physician of a girl raped by several men has this to say:

“We can do little else to prevent her being rejected. It’s not her fault, (...). Physically she’ll probably get better, although we don’t know yet if she contracted any other illness. And on psychological level, it remains a problem. She lost her virginity, which is something very important in the village. She can’t even talk about it” (Human Right Watch, 2002).

The report reveals, from a number of cases, the psychological suffering families, friends and communities, have to undergo:

“... many women and girls were raped in the presence of others. Family members, friends, or other captured women were forced to watch. In several cases, children were reportedly forced to hold their mothers down while they were raped. ...” (Human Rights Watch, 2002:12)

1.3 COERCION OR ARBITRARY DEPRIVATION OF LIBERTY

The material at our disposal does not use these terms. Instead, it is often referred to “abduction” with a purpose of sexual exploitation and other related exploitations such as forced labour. We consider that coercion and arbitrary deprivation of liberty are characteristic elements of abduction.

Human Rights Watch reports about forced labour that:

“Combatants abducted women and girls and held them for periods up to a year and a half, forcing them during that time to provide both sexual services and gender-specific work. In addition to being raped, women and girls were obliged to do domestic labour, such as finding and transport firewood and water, gathering food, and doing laundry for the men who held them captive” (Human Rights Watch, 2002:26).

About sexual slaves to armed combatants, J. Ward and M. Marsh report that:

“Many other instances have been identified where women and girls are abducted for the purposes of supplying combatants with sexual services. According to one soldier ...” “Our combatants don’t get paid. Therefore, they can’t use prostitutes. If we politely ask women to come with us, they are not going to accept. So, we have to make them obey us so we can get what we want” (J. Ward and al., 2006:5).

2. RESPONSE TO GENDER-BASED VIOLENCE

The material under analysis reveals that in the majority of cases, there is total impunity of violence against women and girls during and after armed conflicts. The different reasons include: the weakness of National Criminal Justice System (NCJS); lack of complaint due to ignorance and/or fear of the retaliatory reaction of the offender, or of the community, of stigma; and lack of sufficient evidence. We join J. Ward and M. Marsh in their conclusion to say that: “In a world where thousands of women suffer sexual violence committed with impunity in the context of conflict, the message needs to be made clear: A single rape constitutes a war crime”. It is worthy to note that “War crimes” together with the crime of genocide, crimes against humanity, and the crime of aggression are crimes within the jurisdiction of the International Criminal Court (Article 5 of the Rome Statute of the International Criminal Court). We assume that the majority of reported cases fall under Crimes against humanity and War crimes.

2.1 CRIME AGAINST HUMANITY

Article 7, paragraph 1(g) of the Rome Statute of the International Criminal court stipulates:

“For the purpose of this Statute, “crime against humanity” means any of the following acts when committed as part of widespread or systematic attack directed against any civilian population, with knowledge of the attack:

(g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence of comparable gravity;”

2.2 WAR CRIMES

The distinction made between internal or international character of the conflict leads us to consider Article 8 (War crimes) of the Statute. Paragraph 1 of Article 8 of the Statute gives jurisdiction to the International Criminal Court to deal with rape, sexual slavery and other crimes:

“. “The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crime”.

If the described armed conflicts are to be defined as “internal”, provisions of Article 8 (War crimes) of the Statute, especially its paragraph 2(b) (xxii) is to be referred to. Paragraph 2, sub-paragraph (b) (xxii) posit:

“Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilisation, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions:”

In a number of cases, armed men seem to be allowed to behave with cruelty, as if they obey to hidden instructions, plan or policy. R. Lefort (2003:8) reports:

“The sexual violence against women constitutes a “war within the war” (...). These rapes are show of force, “asserted a doctor who treats the victims.” The point is to show the husband, the family, the village, that they’re all powerless. It’s as if the rapists are saying: We can do any thing we want to you. “Humiliate, terrorize, all the while stressing the victims’ total absence of recourse, until the populace resigns itself to obeying these outside masters (...)”

Gillian Triggs (2003:15) observes that often the persons who committed the war crime are not those who ought to ultimately be criminally responsible for the act. The Rome Statute adopts the principle of command responsibility. Article 28 (Responsibility of commanders and other superiors) includes within the jurisdiction of the ICC the acts of military commanders who will be responsible for crimes against humanity, war crimes and genocide. Similar provisions (See Article 28, paragraph (b) apply to superiors who are not commanders and under whose authority and control people commit crimes.

2.3 INITIATION OF INVESTIGATION

The prosecutor shall initiate an investigation unless he or she determines that there is no reasonable basis to proceed under this Statute (Article 53). We would like to reiterate that there are national and international instruments that protect the rights of women and organise or guide prosecution of related crimes. Are local authorities and populations aware of such instruments and the required procedure for their implementation? Are victims aware of such instruments preventing and protecting them against violence related to armed conflicts? There is a need for sensitization campaigns about the above and other related instruments. We are of the opinion that this will be a positive development in the attempt to combat impunity that has been identified as a major explanation for the prevalence of violence against women and girls.

3. A WAY FORWARD

We have observed an unacceptable situation of impunity regarding the violence women and girls are subjected to during armed conflicts. Since the National Criminal Justice System (NCJS) is often weakened during these conflicts, the International Criminal Justice System (ICJS) should come at its recourse by initiating the prosecution, on the basis of the information gathered by the field organisations mentioned above and others.

A way forward to combat impunity and prevent the different crimes women and girls often suffer from during armed conflicts, is to organise sensitisation campaigns through electronic and other mass media means of communication, that should aim at potential victims (by informing them about their rights and related International Instruments protecting them); offenders (by drawing their attention on their responsibilities and the related instruments organising their prosecution); and the field Civil Society Organisations (on their obligations or responsibilities). The sensitisation should focus on the sure and subsequent prospect of accountability for any act of humane rights abuse by all those responsible.

UNAFRI envisages organising an expert meeting that will give the opportunity to representatives of concerned Civil Society Organisations, the ICC Prosecutor, United Nations Missions (UNMISS) and others from any interested organisations, to discuss inter alia, the mechanisms to put in place for the Prosecutor of ICC to have access to any useful information at their disposal.