

Volume 96 Number 894 Summer 2014

INTERNATIONAL **REVIEW**

of the Red Cross

Humanitarian debate: Law, policy, action

Sexual violence in armed conflict



ICRC

Aim and scope

Established in 1869, the *International Review of the Red Cross* is a periodical published by the ICRC and Cambridge University Press. Its aim is to promote reflection on humanitarian law, policy and action in armed conflict and other situations of collective armed violence. A specialized journal in humanitarian law, it endeavours to promote knowledge, critical analysis and development of the law, and contribute to the prevention of violations of rules protecting fundamental rights and values. The *Review* offers a forum for discussion on contemporary humanitarian action as well as analysis of the causes and characteristics of conflicts so as to give a clearer insight into the humanitarian problems they generate. Finally, the *Review* informs its readership on questions pertaining to the International Red Cross and Red Crescent Movement and in particular on the activities and policies of the ICRC.

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The International Committee of the Red Cross (ICRC) is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of war and other situations of violence and to provide them with assistance. It directs and coordinates the international activities conducted by the Movement in armed conflict and other situations of violence. It also endeavours to prevent suffering by promoting and strengthening international humanitarian law and universal humanitarian principles. Established in 1863, the ICRC is at the origin of the International Red Cross and Red Crescent Movement.

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EDITORIAL

SEXUAL VIOLENCE IN ARMED CONFLICT: FROM BREAKING THE SILENCE TO BREAKING THE CYCLE*

Sexual violence has been, and to a large extent continues to be, shrouded in silence. However, the dynamics behind it, including its prevalence and horrific toll on individuals and societies, have been progressively better understood over the last two decades. The conflicts in the former Yugoslavia and the Rwandan genocide in particular lifted the veil and brought to the fore the suffering of women, men, boys and girls, as well as their families and whole communities, as a result of sexual violence.

The increasing public awareness and denunciation of the horrors of sexual violence in armed conflict have been accompanied by significant progress in a number of areas. A growing understanding of the consequences of sexual violence has led to multiple initiatives from various humanitarian organizations, United Nations (UN) agencies, civil society actors, governments, militaries and academics. The development of the Statute of the International Criminal Court (ICC) was seen by many, including large numbers of civil society organizations, as a long-awaited opportunity to create clarity on this topic. Strong jurisprudence on the prohibition and criminalization of acts of sexual violence during armed conflict has also been developed by domestic, regional and international courts. The *ad hoc* international criminal tribunals, in particular, have documented horrendous episodes of suffering and have held individuals responsible for these acts. From a humanitarian perspective, initiatives have included enhancing and improving assistance and protection activities in this area. Additionally, the focus has shifted from the particular plight of women in conflicts to a broader approach, based on the vulnerabilities experienced by both men and women on the basis of their gender and their sex.

Nonetheless, sexual violence continues to be committed in the twenty-first century's conflicts. While it remains extremely difficult to quantify due to its still rather "invisible" nature, available estimates indicate that acts of sexual violence are perpetrated on a large scale in various regions of the world today.¹ Studies have demonstrated that all types of actors in conflict, be they State armed forces,

* Vincent Bernard is Editor-in-Chief of the *International Review of the Red Cross*. Helen Durham is Director of the International Law and Policy department of the International Committee of the Red Cross (ICRC) and has published extensively on issues related to women in international law. The authors would like to thank Elvina Pothelet, Editorial Assistant for the *Review*, for her contribution to this thematic issue.

non-State armed groups and/or multinational forces, have committed sexual violence.²

Today, although we know more about the causes of conflict-related sexual violence, its magnitude and human cost, this knowledge has yet to be translated into effective prevention and response activities.

With this issue, the *Review* intends to contribute to the discussion on how to further improve access to and quality of services to victims, while also crafting effective prevention strategies. Following the *Review's* editorial line, this issue is multidisciplinary. In that respect, it echoes the idea that the fight against sexual violence in armed conflict requires a cross-disciplinary effort, bringing together expertise from areas such as health, political science, gender studies, history, law and military ethics.

But before giving the floor to experts, the *Review* opens this issue with the voices of persons who have survived sexual violence. They have agreed to share how they worked to overcome the multiple ensuing challenges in their lives.³ The *Review* expresses its deepest gratitude to them and hopes that others may find support and guidance from these voices in their own path to recovery.

A multidimensional trauma requiring a comprehensive response

Sexual violence can be broadly defined as acts of a sexual nature imposed by force, threat of force or coercion, or by taking advantage of a coercive environment or a person's incapacity to give genuine consent.⁴ It encompasses acts such as rape, sexual slavery, enforced prostitution, forced pregnancy and enforced sterilization. Sexual violence occurring in an armed conflict can be committed for strategic purposes, opportunistically, or because it is tacitly tolerated.

1 As reflected in the Médecins Sans Frontières data shared by Françoise Duroch and Catrin Schulte-Hillen in this issue of the *Review*. See also the Sexual Violence in Armed Conflict Dataset elaborated by the Harvard Kennedy School and PRIO, available at: www.sexualviolencedata.org/dataset/. For a description of the dataset and some findings, see Dara Kay Cohen and Ranghild Nordas, "Sexual Violence in Armed Conflict: Introducing the SVAC Dataset, 1989–2009", *Journal of Peace Research*, Vol. 51, No. 3, 2014, pp. 418–428. United Nations (UN) Secretary-General Ban Ki-moon has also noted recently that the year 2014 was marked by harrowing accounts of rape, sexual slavery and forced marriage in contexts like Syria, Nigeria and the Central African Republic. See Report of the Secretary-General, *Conflict-Related Sexual Violence*, 23 March 2015, UN Doc. S/2015/203, available at: www.un.org/en/ga/search/view_doc.asp?symbol=S/2015/203.

2 For an overview, see the piece by Elizabeth Jean Wood in this issue of the *Review*.

3 Thanks to the support of ICRC field delegations, a series of interviews with beneficiaries from humanitarian programmes has been conducted in Colombia and the Democratic Republic of the Congo especially for this issue. See the "Voices and Perspectives" section of this issue, "After Sexual Violence: Paths to Recovery".

4 The ICRC has recently produced a fact sheet summarizing the definition of sexual violence in international law. See ICRC Advisory Service on IHL, "Prevention and Criminal Repression of Rape and Other Forms of Sexual Violence during Armed Conflicts", available at: www.icrc.org/en/document/prevention-and-criminal-repression-rape-and-other-forms-sexual-violence-during-armed.

The human cost

The human cost of sexual violence has different dimensions, as is strikingly apparent from the testimonies of victims gathered by the *Review*. The consequences can include severe and long-term effects not only on an individual's physical health (including the risk of contracting sexually transmitted diseases or developing unwanted pregnancies), but also on their mental health. The social consequences may also be dramatic, forcing victims into isolation due to the shame and stigma which are too often associated with such violence, but also due to the fear of rejection or reprisals. With all familial and social links broken, some victims are left with no means of subsistence: most of the testimonies indicate that one of the most urgent and important challenges that victims faced after the attack was economic survival for themselves and their family.

Sexual violence has long remained insufficiently addressed by humanitarian responders, often in view of their lack of expertise or their limited capacities when also faced with people's immediate "visible" needs for food, water and/or shelter. Humanitarian organizations were possibly reluctant to engage on this issue because of its highly sensitive nature and the risk of being perceived as interfering with local customs or religious beliefs.

Generally, over time an improved understanding of the consequences of sexual violence for victims has resulted in an enhanced ability to respond to their needs. In this issue, Françoise Duroch and Catrin Schulte-Hillen share insightful reflections on how Médecins Sans Frontières has progressively integrated health care for victims of sexual violence into its general assistance to populations affected by armed conflicts.

Raed Abu Rabi's essay describes the particular needs of victims of sexual violence in detention, and the corresponding support that the International Committee of the Red Cross (ICRC) seeks to provide. Male victims of sexual violence may also have specific needs. In this respect, Chris Dolan points out that the growing recognition of men as victims of sexual violence has yet to be adequately reflected in policy and practice in the humanitarian world.

Building a comprehensive response

A major finding from most studies on sexual violence is that it varies drastically in nature and severity across contexts. These variations, as well as the victim's own situation, will determine the nature and amount of support each person will need. If victims of sexual violence are to be effectively assisted and supported, it is essential to take into account their multiple needs and provide a response that respects their autonomy and dignity, as explained by Paul Bouvier in this issue. Such a response may include the delivery of medical, mental and psychosocial assistance, together with awareness-raising sessions with local communities, economic support to the most vulnerable victims, and dialogue with authorities to improve access to adequate support for victims, including legal measures, as

well as to prevent violations from occurring. This is at the heart of the ICRC's multidisciplinary approach, as described by ICRC President Peter Maurer in his interview for this issue of the *Review*.

Despite the unprecedented attention dedicated to the problem, sexual violence still remains to a large extent a silent and hidden crime. "You can't imagine what it's like to stand in front of someone and say you've been raped. I thought everyone knew what had happened so I tried to hide," says I. L., one of the persons who has testified anonymously for this issue of the *Review*. Victims may be reluctant to come forward due to the fear of stigmatization or reprisals, but they may also face material barriers when seeking help: geographical distance from adequate medical infrastructure and the impact of conflict on health care, cost of transportation, absence of qualified personnel due to poor security conditions in the area, and so on. Because victims may find it difficult to report their experience, the ICRC has chosen to adopt a proactive approach, assuming that sexual violence occurs in armed conflict unless it can be proved otherwise by an in-depth assessment. This allows the ICRC to be prepared to take remedial actions and to work preventively wherever potential risks are identified and with all armed actors likely to be involved in violence.

At the global level, numerous initiatives have aimed at improving knowledge sharing among actors involved in the response to sexual violence.⁵ The June 2014 Global Summit to End Sexual Violence in Conflict, for instance, gathered around 1,700 delegates and 123 country delegations.⁶ Trainings and guidelines on how to respond to sexual or gender-based violence, and how to better coordinate assistance,⁷ are now available to humanitarian practitioners. Doris Shopper, however, underlines in her contribution the lack of evidence on which to base humanitarian interventions, and reflects on how to improve this evidence base.

The relatively sudden and massive recent attention given to sexual violence in armed conflicts may also have unintended detrimental consequences. Laura Heaton questions the framing of the dominant narrative relating to sexual violence as a "weapon of war"⁸ in the Democratic Republic of the Congo. In her view, and there is a risk that the instrumentalization of such discourse might

5 For protection strategies employed against sexual violence by international and regional peacekeepers, see, for example, UN Women, Stop Rape Now and UN Department of Peacekeeping Operations, "Addressing Conflict-Related Sexual Violence: An Analytical Inventory of Peacekeeping Practice", October 2012 (1st ed. June 2010), available at: www.resdal.org/wps/assets/04dananalyticalinventoryofpeacekeepingpractice.pdf.

6 Building on the Declaration of Commitment to End Sexual Violence in Conflict launched at the UN General Assembly in 2013, the Global Summit to End Sexual Violence in Conflict led *inter alia* to the launch of the International Protocol on the Investigation and Documentation of Sexual Violence in Conflict. See "Global Summit to End Sexual Violence in Conflict", available at: www.gov.uk/government/topical-events/sexual-violence-in-conflict.

7 For references, see Doris Schopper's article in this issue of the *Review*, notes 2–6.

8 In her article for this issue, Gloria Gaggioli explains that while the terms "weapon" and "method of war" are useful in conveying the idea that sexual violence may be used as a strategy rather than just being a by-product of war, these terms should not be understood in a legal or technical sense; she refers instead to sexual violence as an "unlawful policy, tactic or strategy during armed conflict".

obscure the broader picture and draw attention and resources away from key aspects of the problem.

Humanitarian actors also know that their efforts will be futile if States do not bear their primary responsibility in addressing the needs of victims and providing appropriate remedies for them and their families, in full compliance with their own obligations under international law. In this honor, the ICRC is calling on States to honor their obligations under international law – specifically the absolute prohibition of rape and other acts of sexual violence under international humanitarian law (IHL) and international human rights law (IHRL). It is also encouraging States to pursue action based on the pledges they made at the 31st International Conference of the Red Cross and Red Crescent in 2011 to enhance protection for women during armed conflict.⁹ The 32nd International Conference of the Red Cross and Red Crescent at the end of 2015 will aim to ensure that the issue of sexual violence during armed conflict is a highlighted theme to be addressed by States and the Red Cross and Red Crescent Movement.

The legal framework and the importance of regulations and sanctions

The prohibition of rape is one of the oldest and most basic rules of war. Rape was explicitly prohibited and punished by death in the first modern code on the law of war, the Lieber Code of 1863. The 1949 Geneva Conventions and their Additional Protocols also prohibit rape, both explicitly and implicitly through the prohibition of cruel treatment and torture, outrages upon personal dignity, indecent assault and enforced prostitution, in both international and non-international armed conflicts. As recalled by Gloria Gaggioli in this issue, the prohibition is clear and absolute under both IHL and IHRL, which act in complementarity.

The creation of the two *ad hoc* International Criminal Tribunals for the former Yugoslavia and for Rwanda (ICTY and ICTR) allowed the international community to acknowledge that such crimes should be punished, and that individuals can bear criminal responsibility for their commission. It is clear today that sexual violence, when linked to armed conflict, constitutes a war crime. In the *Kunarac* case, the ICTY found that rape can also constitute a crime against humanity in certain circumstances. In the *Akayesu* case, the ICTR found that rape and sexual violence can “constitute genocide in the same way as any other act as long as they [are] committed with the specific intent to destroy, in whole or in part, a particular group, targeted as such”. In the *Čelebići* case, the ICTY ruled for the first time that rape can constitute torture. Building on these important cases, the Rome Statute of the ICC includes “[r]ape, sexual slavery, enforced prostitution, forced pregnancy ... enforced sterilization, or any other

9 The pledges database of the 31st International Conference is available at: www.icrc.org/appweb/p31e.nsf/home.xsp.

form of sexual violence” as war crimes in both international and non-international armed conflicts. While some of the currently pending cases before the ICC include charges related to sexual violence, the Court has yet to secure a conviction for crimes of sexual violence.

The impact of the case law of international courts and tribunals on this issue has been significant, not only for its role in clarifying and developing the law, but also through its deterrent effect. Even if only a few perpetrators have been brought to justice, one must not forget the role justice plays in the symbolic statement of what is right and wrong, in gaining recognition for victims and in demonstrating that there are grave consequences for grave offences.

Ultimately, however, accountability for rape and other forms of sexual violence should be ensured domestically, by investigating these acts and by prosecuting and punishing the perpetrators. Kim Seelinger presents and analyzes national systems for the investigation and prosecution of sexual violence crimes in this issue of the *Review*, based on four case studies in Kenya, Sierra Leone, Liberia and Uganda.

Impunity for sexual violence remains at the heart of the problem in many contexts. While emotional and material barriers may prevent victims from reporting the crime, in some cases the real issue lies in the inability of national justice systems to ensure accountability. What is needed is not development of new law, but better implementation of the existing law. Authorities must ensure that adequate mechanisms are in place allowing victims to report the violence in a safe and confidential manner. Certain measures can ease to the extent possible the difficult process of judicial procedures for victims, such as appropriate sensitization of legal personnel, specific technical arrangements regarding time and place of the hearings (such as the system of “Saturday Courts” in Sierra Leone highlighted by Kim Seelinger), and adequate legal assistance to all alleged perpetrators. The increased attention of the media and public opinion on sexual violence cases should not jeopardize fair trial guarantees by putting pressure on the justice system to secure quick convictions.

To invest in the prevention of sexual violence is to trust in the power of humanity

Much effort has been invested in recent years in improving our understanding of the causes of sexual violence.¹⁰ Research studies in this field identify some of the

¹⁰ To name but a few examples: Elisabeth Jean Wood, “Sexual Violence during War: Toward an Understanding of Variation,” in Ian Shapiro, Stathis Kalyvas and Tarek Masoud (eds), *Order, Conflict, and Violence*, Cambridge University Press, Cambridge, 2008; Maria Eriksson Baaz and Maria Stern, “The Complexity of Violence: A Critical Analysis of Sexual Violence in the Democratic Republic of Congo”, Working Paper on Gender-Based Violence, Nordiska Afrikainstitutet and SIDA, May 2010; Jocelyn Kelly, “Rape in War: Motives of Militia in DRC”, United States Institute of Peace, Special Report 243, June 2010; Dara Kay Cohen, Amelia Hoover Green and Elisabeth Jean Wood, “Wartime Sexual Violence: Misconceptions, Implications, and Ways Forward”, United States Institute of Peace,

main reasons why weapon bearers may *use* sexual violence for strategic purposes: to exert power over territory or resources, for ethnic cleansing, to terrorize or humiliate enemy communities, to obtain information, or as retaliation. But sexual violence by armed organizations need not be ordered to be frequent. In her piece in this issue, Elisabeth Jean Wood refers to sexual violence “as a practice” to describe violence tolerated by commanders – encouraged, for example, by peer pressure. This is to be distinguished from sexual violence occurring opportunistically: not as a strategy or policy, but by taking advantage of the surrounding chaos, or of increased vulnerabilities of victims such as displacement or loss of means of subsistence. This variation in the forms of and reasons for sexual violence precludes any prospect of a “one size fits all” model of prevention.

But how can we translate what we know about the variation of the causes into contextualized prevention policies? Let us offer a few perspectives.

First, any prevention effort requires a solid understanding of the context, conflict dynamics, and the actors engaging in sexual violence. Second, one can expect that much is to be learnt from groups who do not commit sexual violence (in some cases, potentially because they are in search of political legitimacy). Third, the frameworks through which we look at causes of sexual violence could serve to inform prevention activities. So, for instance, if we can identify causes for the perpetration of sexual violence at different levels of an armed organization – at the level of the leadership of the armed organization, at unit level and at individual level – we could craft different prevention strategies adapted to each of these three levels. Prevention dialogue will significantly differ depending on what the attitude of the leadership is vis-à-vis sexual violence (in other words, if acts of sexual violence are encouraged, condoned or prohibited). At the unit level, prevention efforts could focus on better disciplinary mechanisms, and on addressing peer pressure to commit sexual violence, for example. At the individual level, depending on the specific reasons that led an individual to rape in violation of clear orders, prevention dialogue could follow different approaches, ranging from insisting on the prohibitive nature of sexual violence, and on sanctions, to explaining the devastating consequences for the victims and the perpetrators themselves.¹¹

Furthermore, a comprehensive prevention effort cannot fail to take into account the phenomenon of domestic sexual violence being exacerbated during

Special Report 323, February 2013; Ragnhild Nordas, “Preventing Conflict-Related Sexual Violence”, PRIO, Policy Brief, February 2013; “Sexual and Gender-Based Violence in the Kivu Provinces of the Democratic Republic of Congo: Insights from Former Combatants”, Logica and Vivo International, September 2013; Lauren Wolfe, “Why Soldiers Rape – and When They Don’t – in Diagrams”, Women Under Siege Project, 25 July 2014, available at: www.womenundersiegeproject.org/blog/entry/why-soldiers-rapeand-when-they-dontin-diagrams.

- 11 Insisting on the dramatic consequences for the victims can actually be counter-productive when talking to armed organizations that encourage sexual violence as a strategy of war aimed precisely at harming specific communities. However, in cases where sexual violence is a “practice” or is committed opportunistically, raising awareness on the health consequences not only for the victims but also for the perpetrators themselves (e.g. risk of contracting sexually transmitted diseases) may have a deterrent impact.

armed conflict (due to the chaotic environment, proliferation of small arms, climate of impunity and so on). Thus, the battle against sexual violence cannot be fought only by looking at the problem through the prism of armed conflicts. In this respect, it can only be hoped that complementarity between different fields of expertise and action will result in a qualitative improvement in prevention efforts.

It is time to take stock of what research and practice have taught us in the past few decades and engage in a multidisciplinary reflection on how best to transfer this accumulated knowledge into concrete contextualized prevention activities. It is no longer tenable to claim that sexual violence is simply an ugly facet of our worst human inclinations and an unfortunate companion of war; today it is widely acknowledged that sexual violence is *not* an inevitable consequence of armed conflict. This makes prevention efforts critical, legitimate and urgently needed. Sexual violence must and can be stopped. Investing in the prevention of sexual violence is a demonstration of trust in the future of humanity.

Vincent Bernard
Editor-in-Chief

Helen Durham
Director of International Law and Policy, ICRC

VOICES AND PERSPECTIVES

After sexual violence: Paths to recovery

The Review has chosen to open this issue with the voices of those who have suffered sexual violence and have been overcoming the multiple ensuing challenges. All have benefited from health care, psychological, psychosocial or material support and/or legal advice provided by the ICRC, the relevant National Red Cross Society or local partners – the non-governmental organization Profamilia in Colombia and the “maisons d’écoute” in the Kivus, the Democratic Republic of the Congo. The testimonies below reflect real, personal – sometimes very intimate – stories of persons who have agreed to share their experience, their trauma, the difficulties they and their loved ones have been facing, the way they have worked to overcome them, as well as their hopes for the future. In order to protect them and their relatives, their testimonies have been anonymized and references to specific locations deleted.



The voice of E.M.

[The attack had] serious consequences for me: my husband left the family home without a word and I haven’t heard from him since. I trembled all the time, lost weight and couldn’t stop thinking about it all. I needed to be comforted because I had trouble sleeping and pain everywhere. I felt I’d been reduced to an object.

I didn’t look for help immediately because I was afraid of being stigmatized in the village and of the shame. Anyway, I didn’t know where to go or what to do in the event of rape. I very much wanted to talk to someone but I didn’t dare One day a neighbour pressed me to go to the fields with her. She could see what a state I was in and began to talk about what had happened to her and how the counselling centre had helped her. That gave me the courage to talk to her and she told me to go to the counselling centre.

Through the counselling centre I had access to medical care, support and above all counselling that helped me to get over the experience. ... The help I



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received did the trick because now I can sleep again; I have the strength to fight and get on with my life, despite the problems, and that's important to me.

The attack also resulted in the break-up of my home: my husband ran off, leaving me alone with four children. And my in-laws drove me out of the fields because I was no longer married to their son. I had less and less contact with other people and

“Now I can sleep again; I have the strength to fight and get on with my life, despite the problems, and that's important to me.”

I no longer want to spend time with the women of my husband's village. I prefer to stay in [my new village] and find new friends. Life's difficult, and you can't have everything; the main thing is to pick yourself up and keep fighting.

* * *

The voice of M.M.

I went to [the] village to work. In August, I had to go and help with a dinner and I was then asked to help in the farmhouse. I went to bed at dawn, in the place where I was staying with the children, and that's where it happened. The mule driver raped me. I didn't tell anyone about it; I didn't say anything at all. In October I spoke with the lady of the house and she told me that I would have had to go here and there and cross over the river to speak to someone in charge. They would have made me travel back and

forth to talk about what happened. So I decided to just drop the issue, get on a bus and leave with my children. I didn't go to report it because they would have ignored me or even killed me because the man who raped me was one of the people in charge. That's why I left and went to [another city].

In December I was really tired and a friend who realized that I wasn't doing very well told me about the Red Cross and suggested I pay them a visit. I went and talked to a man who helped me.

I was distraught about everything. I started dwelling on it. I was heartbroken and crying all the time; I felt exhausted. Talking with the people at the Red Cross helped me. They worked with me and the children because I wasn't doing very well at all and they were all with me. I was in a really bad state... if I hadn't gotten help, I don't know what would have happened because I was very depressed at that time. I went to the Unit for the Care and Treatment of Victims. I didn't get help there right away because there was a very long waiting list.

“When I go to bed and I remember what happened, I get up, walk around, realize what is happening and say no, just keep moving forward.”

How did this change my life? I felt good. [I had become pregnant by my attacker, and] I decided to have my daughter. But I still get very upset at times because I relive it and I'm afraid that it could happen to me again or to one of my children. I would like to be able to go somewhere else, to relocate to a place where I can live in peace.

To women who have been through something similar, I would say keep moving forward, life goes on, don't be depressed about anything. If what happened to me happened to you, know that the babies are innocent and should not bear the blame.

What do I see in my future? I'm a mother and head of a household now; I don't even have a job but if I could set up a business and sell something, I'd like to do that.

At times you forget, but you can't forget forever. When I go to bed and I remember what happened, I get up, walk around, realize what is happening and say no, just keep moving forward.

* * *

The voice of A.L.

I couldn't get what had happened out of my mind and I was terrified, especially that I'd contracted HIV/AIDS. But the worst thing was that I was determined to kill myself. My most urgent need was to tell my husband what had happened so that he'd take me straight to the hospital to get medication. But instead he first threw me out and then left me, with four children. I did not know who to turn to or how to reconcile with my husband. He hasn't come back. At first, even my relatives saw me as a fallen woman, but then they understood that I wasn't to blame.



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Victims of the same kind of violence as me should be treated with love, rather than condemned, and taken quickly to the counselling centre for support and to the hospital for treatment and protection from disease.

* * *

The voice of P.N.

The main consequence of the attack for me was that I was completely demoralized; I felt useless, so I wanted to die. I felt terrible and wanted medical assistance and counselling, to know who I could talk to, because on my own, I felt I was up against a brick wall.

I'd tell other victims to go to hospital and the counselling centre. That way life will seem worth living again.

* * *

The voice of C.F.

I was gathering firewood when an armed man grabbed me and made me have sex with him. I wasn't strong enough to defend myself. I didn't say anything to anyone when I got home.

During and just after the attack I was very frightened, and a few weeks later I started to feel unwell – I was very weak. I thought that, if I were pregnant, that

would be the end because my parents wouldn't let me stay in their home. I was upset and desperate. ... I didn't have the help I needed immediately after the attack A long time later, I saw a woman who was raising awareness about sexual violence, its consequences and the services available for victims. I spoke to her and she told me what I could do.

Three to five weeks after the attack, I went to the counselling centre. After listening to my story, they sent me to the medical centre, where I was found to be pregnant. I'm very happy with the attention I've received, from the time of my arrival at the counselling centre up to the birth (reception, counselling, accommodation, advice, baby kit and informing my family). It was really important for me to talk about what had happened with a professional, not with my family or a friend. Everything went well with the counselling and health centres.

My relationship with the family deteriorated when they discovered I was pregnant; they threw me out, and I found myself alone with no refuge, nowhere to go. But all that was eighteen months ago and now I'm all right because after I'd given birth my family took me back.

* * *

The voice of C.B.

My husband has left me; the responsibility (for the children, schooling and food) is a heavy burden. The counselling centre helped me and that enabled me to meet those needs.

In the community I was already stigmatized because my husband had told everyone I had been raped. It was so upsetting but, thanks to the counselling centre, I picked up my normal life again and understood that life goes on and that I had a role to play in the community and for my children.

I advise other victims to speak out, not to hide and to come to the counselling centre for help.

“Thanks to the counselling centre, I picked up my normal life again and understood that life goes on and that I had a role to play in the community and for my children.”

* * *

The voice of E.G.

As I was raped when I was eight months pregnant, I was very fearful for my own and my baby's health. I was also afraid of my husband's reaction because he'd warned me that if I was raped, I'd have to leave his house.

I was very sick but didn't dare tell anyone what had happened. I didn't know how to explain what was wrong. A neighbour took me straight to hospital. But a week



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later, when I was still passing out, a woman who knew the woman in charge of the counselling centre well suggested I should go and see her, and she went with me.

I arrived at the counselling centre two weeks after the attack and stayed there for a month. That enabled me to get back on my feet. Before I went to the counselling centre, I was in a bad state: I couldn't sleep and kept having flashbacks to the attack. Now I can sleep and I don't have negative thoughts, except about everyday problems.

Also, my husband's family talked him into leaving me by saying that, as I'd been raped, I'd no longer be faithful to him. But he went to the centre and received counselling. That helped us to get over a very difficult period. It was this that made him stand up to his family and stopped him from leaving me.

Before the robbery and the rape, I'd already prepared the layette and the money I needed for the new baby – it was all stolen. But to my great surprise, the counselling centre gave me everything I needed. Otherwise, I just don't know what I'd have done. When you're displaced, life isn't easy, especially if you're a parent. I tried to work to earn what I needed, but it didn't work out; I fell ill (it was too soon after the birth). My main need is food, in fact.

I've already referred two cases to the counselling centre, and I'll continue to send anyone I meet.

“[My husband] went to the centre and received counselling. That helped us to get over a very difficult period.”

* * *

The voice of M.E.

My husband had left and I was all alone when that man came to my house and did this to me. I knew him and because I knew him, I opened the door. As soon as I opened the door, he pulled a gun on me. He raped me that day. And then it happened a second time; he came back at night. He sexually assaulted me; he raped me anally and vaginally. After that I couldn't sit down. I had terrible stomach ache. I couldn't stand being ill-treated that way. I couldn't go back home. So I went and stayed with friends: one friend one day, and another the next day. Then I went to my cousins' house. I saw that man every day.

Two weeks after he raped me, I contacted an organization and they put me in touch with the ICRC. I felt really bad. They provided psychological support and I was tested for HIV. After I got treatment, he came back to do the same thing. We fought but he's a man and he had a weapon so I couldn't do much.

I started going to the ICRC workshops and training sessions. The workshops really helped me. They helped me a lot because I felt hopeless. I didn't get that kind of support from family members or friends because we didn't see each other any more. I wasn't sleeping because I kept thinking about what happened.

If I hadn't gotten help... I don't know what would have happened. I was very depressed. I couldn't see any light at the end of the tunnel and I couldn't talk to my children. As a mother, I didn't tell them anything. One of them had helped out this man, and he despises him. If I told them about what happened, my children would be in even greater danger. My son would take it badly and since that man is a criminal, he might kill him.

After it happened, we left the neighbourhood to rent another place to live. But I couldn't afford it so we had to return to the neighbourhood, where he also lives. So now I meet him on the street. He says hello and I say hello. I am afraid that it could happen again and I keep thinking that he will come back for my children. I don't have anywhere else to go. As for the police, you go to them to report a case and then they tell other people about it.

“Now I meet [my attacker] on the street. He says hello and I say hello. I am afraid that it could happen again and I keep thinking that he will come back for my children.”

It has been about three years now and I felt really good after the workshops. If I think about what happened now, I get sharp pains in my head and my hands go numb. The rape is in the past, but then I think that he may have done the same thing to other women.

What advice would I give other women? Find other ways to handle what happened, like talking to other women who've been through something similar for support. Speak up about it. One day, I would like to have a home, a decent place to live where I could move around, sleep and relax like other women and other people do.

Forgetting, forget... if I said that I'd forgotten what happened, I'd be lying. I have died each and every day of my life.

* * *



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The voice of G.A.

In September 2013, I was on my way to the market to buy palm oil when three [presumed members of an armed group] attacked me and dragged me into the bush. For several hours they beat me, tore my clothes, stole my money and then raped me.

After the attack I was frightened: I thought I'd caught HIV/AIDS. I had pains in my lower abdomen and was terribly weak. When I got home, my husband left me with six children. I don't know where he is.

What I needed most after the attack was treatment, but I didn't know it was free. Then I needed clothing because my husband took everything [when he left]. After that, it was a matter of survival because both my parents are dead.

“The counselling centre gave me a can of oil so I could start a small business. That helped me get my strength back, and the business helps me to pay for educational expenses and food.”

I did look for treatment because I'd attended an awareness-raising session run by the counselling centre on the importance of the PEP [post-exposure prophylaxis] kit. I received treatment within seventy-two hours and I went to the counselling centre the day after the attack, which helped calm me down. The counsellor took

me to the hospital and gave me two skirts, a sweater, some food and soap. Five months later, the counselling centre gave me a can of oil so I could start a small

business. That helped me get my strength back, and the business helps me to pay for educational expenses and food.

[I'd like] a house where I could live with my six children because the oil business doesn't cover all our needs. At the moment I'm renting a house that leaks everywhere. But I'm able to work and in good health.

* * *

The voice of H.C.

I was working in my field when two armed men threatened me, raped me and kidnapped me for four days. When I got home, my husband threw me out and wouldn't let me see my three children. The youngest was only three months old.

After the attack I felt terrible. I had pains in my lower abdomen, a vaginal discharge and insomnia. I was bereft because I didn't know what had happened to my children, and just let myself go. I felt isolated because my husband repudiated me and people in the community started to avoid me because they thought I was carrying HIV/AIDS. I didn't know where to go for help. If I had known, I would have gone, even if it had meant walking all day.

It was only a month later that I received help. The hospital ... gave me medication four times. Since receiving that assistance, I've got my health and strength back; the pains in my lower abdomen [and the other physical effects] have disappeared. The conversations I had with the women at the counselling centre helped me to calm down.

“Since receiving that assistance, I've got my health and strength back; the pains in my lower abdomen have disappeared.”

Now I'm in good health and have no more worries because my children are with me. The best way of helping those who have had the same experience as me is to help them with a proper income-generating activity so that they have the means to deal with the problems of everyday life.

* * *

The voice of I.L.

I didn't seek help immediately because I was afraid of going to the health centre on my own and ashamed to say I'd been raped. You can't imagine what it's like to stand in front of someone and say you've been raped. I thought everyone knew what had happened so I tried to hide.

I needed medical care to avoid sexually transmitted diseases, and also a loan so I could restart my fresh fish business because I'd been robbed and had absolutely nothing. I have to look after two children and my three younger brothers.



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I didn't know where to turn. I couldn't ask the people in my community because I was a laughing stock once the neighbours I told about the attack told everyone else.

In my experience, counselling is the first thing, then medical treatment and after that financial support to help cope with family responsibilities. The community also has to be told not to ridicule rape victims. It's an appalling experience. To persons who experience the same thing as me, I'd tell them what happened to me and about the help I had from the counselling and health centres and then I'd refer them to the counselling centre, which would take care of everything else.

“You can't imagine what it's like to stand in front of someone and say you've been raped. I thought everyone knew what had happened so I tried to hide.”

* * *

The voice of P.B.

On 19 April 2013, I left my partner's house after a party. I was walking and a taxi driver signalled to me to ask if I wanted a taxi. But ten minutes later, two men got into the taxi, one on either side, and then it happened... they assaulted... they assaulted me sexually... physically, emotionally and psychologically. The men had talked about my son, places I know well, as if I were someone they already knew. Then they threw



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me out of the car. My father's work had to do with the armed conflict so it's quite possible that that's why it happened. First I played the blame game because, for a very long time, I was used to focusing on the people around me.

The day after it happened, I went to the medical centre and from then on I was on medication. I was taking medication to keep calm. I don't know how to describe how I felt. The ICRC referred me to a psychologist. The first step was detox. I'd been self-medicating. I finally understood that what happened wasn't my fault; I got treatment, and was tested for HIV at Profamilia. That was the support I received and it really helped me to process what had happened.

I feel like I'm one of the lucky ones compared to many victims of the armed conflict because I had the chance to have different experiences with acupuncture, meditation, seeking spiritual relief and relief for my soul. Also, things improved quickly for me because exactly one year later, I had my baby who is my life and the opportunity for a fresh start. I know that usually life is very difficult for victims. I know that there are victims who have to continue living in the same area as their attackers because the authorities do not provide support or that support is very superficial and takes days or months to arrive. It is important to look for opportunities by evaluating what happened. That's easy to say in a big city because it's a free environment and you can speak out, but in a small village you cannot do that because people might hear about it. I feel privileged.

Sexual abuse is terrible: it makes you very angry, and I regret that anger because it drove me to become the oppressor, wishing misfortune upon the

people who did this to me. After that, things happened in my life that showed me that I could move on. I'm reliving it here with you today and it's hard, but at the end of the day it's about seeking out spiritual experiences and focusing on things that make you want to move on, not letting it poison your outlook.

To other women in the same situation: I tip my hat to you. You are courageous and stoic, especially those of you who have decided to have a baby conceived from rape. These are the most beautiful women because they could either continue spewing hatred or do the opposite and explore all the love there is inside of them. Always look inside of you for the best that you have to give because that is precisely why you are beautiful. You cannot let others control you.

* * *

The voice of J.A.

I was very afraid of sexually transmitted diseases and of an unwanted pregnancy, and cried a lot. My main need was for immediate medical treatment in order to avoid all the consequences that could make my life difficult. I also needed help to calm down because I was so terrified.

I sought help straight away, on the same day, because I'd learned from awareness-raising that it was important to be treated within seventy-two hours, sooner if possible. I received medical treatment at the health centre, after referral by the counselling centre, and psychological support from the counsellor.

“I sought help straight away, on the same day, because I'd learned from awareness-raising that it was important to be treated within seventy-two hours, sooner if possible.”

I badly wanted to talk to someone because it was like carrying a heavy weight inside me. I had to

unburden myself. Talking helped a lot. I cried so much talking to my parents and the counsellor and they comforted me. That did me good and I began to calm down.

* * *

The voice of L.B.

I couldn't stop thinking about what had happened. I had headaches and stomach aches, and I lost my appetite completely. [Immediately after the attack,] I felt the need for speedy treatment at the health centre and to stop thinking about the attack all the time, because my headaches were becoming unbearable.

At first I didn't want to talk about it because I was afraid of the stigma as my husband left me immediately. I felt that talking about it could only make my social situation worse. Later, I thought of the counsellor, so I went to see her at the counselling centre.

Family or marital mediation is needed. I'm sure my husband is also suffering a great deal from our separation as he left me because his family told him to. He's started to drink and take drugs.

* * *

The voice of K.A.

My self-esteem plummeted. I lost my virginity through rape, which is shameful. I wish it had happened otherwise. ... For me, the important thing was to calm myself down and be looked after.

The help was effective because the medication was free, and the nurse explained exactly how to take it and what the possible side effects were. I felt a need to talk so the counselling was also good and helped me a lot specifically because I was sure the counsellor wouldn't repeat anything, the nurse too. I'm so glad it was available.

[If I met people who'd had the same problems as me I would tell them,] never hide, and seek help within three days of the attack. I'd help them by referring them to the counselling centre.

“I felt a need to talk... I was sure the counsellor wouldn't repeat anything.”

* * *

The voice of L.M.

The help was very good. Thanks to the medical treatment, there were no physical consequences, and as far as the psychological side is concerned, the anger and thoughts about the attack have diminished a great deal.

In addition to the problems with my husband and his family, some members of the community shunned me, even the neighbours I used to be able to rely on. I just wanted someone to tell them to stop laughing at me, but I had no one to turn to.

To me, the best way of helping people who have been victims of the same kind of violence as me is through family and marital mediation in order to avoid repudiation, and community awareness-raising to fight against the social stigmatization of rape victims. I can tell you, it's so easy to start thinking of suicide or running away.

Overcoming the psychological trauma and psychosocial consequences of sexual violence

The ICRC supports over forty programmes that build up local capacity to stabilize and improve the mental health and ensure the emotional well-being of individuals and communities affected by armed conflict and other situations of violence. These programmes provide mental health and psychosocial support (MHPSS) to victims of sexual violence, as well as families of missing persons, detainees, and other victims of violence, including unaccompanied minors and first-aiders. The ICRC currently provides MHPSS care to victims of sexual violence in Central African Republic, Colombia, the Democratic Republic of the Congo, Mali and Somalia. Future programs will be developed in South Sudan, Lebanon and Mexico.

The ICRC frequently utilizes MHPSS experts to identify victims and encourage community outreach when assessing the needs of sexual violence victims. While the response and support provided to victims may not be psychological in nature, MHPSS experts help to ensure, during this assessment phase based on culturally sensitive methodologies, that the ICRC's actions remain driven by the “do no harm” principle and build community trust.

Depending on the context, the ICRC's mental health and psychosocial activities for sexual violence victims may include the set up and supervision of psychosocial support through local actors, that aims to reduce the psychological suffering of victims and increase their capabilities in the immediate term. In other situations, the ICRC may focus on training and supervising health staff and other key community leaders on sexual violence-related issues, signs of distress, and how to give basic psychological support to ensure adequate and appropriate care is available to victims.

The ICRC also conducts community sensitization and psychoeducation activities on sexual violence-related issues (such as the stigma surrounding sexual violence and the importance of medical follow-up in case of rape or other forms of sexual violence) and of available services in the area to reduce victim stigmatization and encourage victims to seek help if they need it.

Q&A: THE ICRC'S APPROACH TO SEXUAL VIOLENCE IN ARMED CONFLICT



In conversation with Peter Maurer

President of the ICRC

In 2014, the International Committee of the Red Cross (ICRC) undertook a four-year commitment to consolidating and expanding its efforts to address sexual violence in armed conflicts and other situations of violence. In this Q&A, ICRC President Peter Maurer reflects on the complex nature of sexual violence and on some of the specific challenges involved, including identifying victims and assessing and adequately responding to their needs. He emphasizes the need for a proactive, multidisciplinary approach comprised of assistance, protection and prevention efforts, and explains how the ICRC intends to step up its efforts to better respond to and prevent sexual violence in the coming years.

Keywords: sexual violence, armed conflict, other situations of violence, ICRC, multidimensional approach, assistance, protection, prevention.

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What do we currently know about sexual violence in armed conflict and other situations of violence?

While sexual violence remains a highly complex issue, consensus has broadened that it is not merely an inevitable side effect of armed conflict and violence. The ICRC uses the term “sexual violence” to describe acts of a sexual nature imposed on men, women, boys or girls, by force, threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power. Taking advantage of a coercive environment or of the victim’s incapacity to give genuine consent is also a form of coercion. Sexual violence encompasses rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization or any other form of sexual violence of a comparable gravity.

Sexual violence in armed conflict is frequently linked to other forms of violence, such as killing, child soldier recruitment, destruction of property and looting. It may be committed by belligerents (state or non-state actors) or non-belligerents. There are multiple causes for sexual violence, including its use as a strategy to create fear, terrorize populations, commit reprisals, undermine or punish an opposition and, in some cases, change the ethnic makeup of a society. It might also be the result of opportunistic behaviour, such as perpetrators taking advantage of a generally violent and chaotic environment in which policing and judicial mechanisms may not be functioning properly.

Contrary to some public representations, sexual violence is not a regionally or culturally isolated practice in some armed conflicts. It has occurred throughout history, on all continents. It can be perpetrated against a variety of persons: women and men, boys and girls, people deprived of their liberty, people displaced from their homes, etc.

The consequences of sexual violence can affect all dimensions of an individual's life as well as their family and community. Physical harm can include injury and pain, sexually transmitted diseases and infections, and the risk of infertility or unwanted pregnancy. Psychological trauma resulting from sexual violence can include distress, shame, isolation and guilt, sleeping and eating disorders, depression, and a number of other behavioural disorders which can lead to self-harm or even suicide. Victims' spouses, partners or children also experience the trauma of guilt, indignity or shame, particularly if they witnessed the attack. When families or communities ostracize victims, physical and emotional consequences are compounded by the loss of socio-economic stability and opportunity.

Why did the ICRC choose to prioritize the issue of sexual violence?

The ICRC's mission is to protect the lives and dignity of victims of armed conflict and other situations of violence and to provide them with assistance. While the idea that sexual violence is an integral part of violence occurring in conflict has been accepted and highlighted by humanitarian practitioners and researchers, the trivialization of the phenomenon and the stigmatization of victims in many contexts and communities continues. This creates obstacles for victims to receive adequate care, heal, and build resilience, as well as preventing them from reporting their attackers to the authorities.

The main challenge for humanitarian responders is that sexual violence remains an invisible phenomenon due to its taboo nature and to the fact that victims of sexual violence in need of medical and psychosocial care do not usually come forward. This invisibility has consequences not only for victims, who ideally require care within seventy-two hours of the violence, but also for medical staff and humanitarians, who often have difficulty in locating areas where sexual violence occurs and therefore face obstacles in designing and developing programmes.

The ICRC has decided to make sexual violence an institutional priority in order to consolidate and expand its focus on preventing and responding to sexual violence. In line with our mission to protect the lives and dignity of victims of armed conflict, the ICRC aims to gain a better understanding of the phenomenon, develop comprehensive, multidisciplinary responses, and share good practices and lessons learnt.

You shared the concern that sexual violence leaves largely invisible scars. How does the ICRC ensure that it can respond to the needs of victims of sexual violence?

We consider sexual violence to be a “silent crime” that too frequently goes unnoticed. Even when victims are willing to speak out and seek support, there are often considerable material obstacles preventing them from accessing medical care. Unavailability of health services or health staff (which are frequently the object of violent attacks), geographical distance, and transportation problems (costs, shortage, etc.), to list only a few obstacles, can create considerable hurdles to accessing treatment and care. The increasing number of protracted crises and armed conflicts in the world has led to the disintegration of public services, including health services. Where such services are already limited or hardly functioning, emergency care for conflict-related violence is even more difficult to provide.

The many obstacles that victims of sexual violence face in obtaining care or reporting attacks partially explain the lack of reliable quantitative and qualitative data on sexual violence. Yet, in order to respond adequately, one first needs to identify, measure and analyze the nature and scale of the issue. More substantive documentation is crucial in responding to victims' needs and avoiding the risks of underestimation.

The ICRC operates in close proximity to populations in areas of conflict and violence. This, combined with our experience in providing emergency medical care, allows us to help victims of sexual violence, when we are able to identify them. This is why the ICRC now works on the assumption that sexual violence occurs in armed conflict, unless it can be proved otherwise by an in-depth assessment. Through this assumption, we analyze contexts differently and can then develop contextualized, holistic and multidisciplinary responses to address sexual violence in an effective way.

This approach is different from the way the ICRC responds to other forms of suffering and violence. Because victims of sexual violence may find it difficult to articulate their experience and needs, we proactively offer support. In return, we are able to identify or approach more victims and respond to their needs more rapidly. We believe that the overall response to sexual violence can be substantially improved this way.

How does the ICRC ensure that the assessment will lead to adequately and effectively responding to victims' needs?

We analyze and document patterns of abuse that occur during armed conflicts and other situations of violence, paying attention not only to the number of victims and the profile of the perpetrators, but also to the types of acts committed, the circumstances in which abuse takes place, the specific risks, the vulnerabilities and needs of victims, their families and communities, and the attitude of the authorities, as well as the presence and effectiveness of existing structures that are already addressing the issue. We take into account testimonies from those affected, but also from their relatives and other local actors. Interviews with victims take place in a safe environment and are fully confidential, respecting legal and ethical standards and cultural sensitivities.

In the coming years, we will continue to strive to systematically identify incidents of sexual violence and continue to pursue efforts to gain a clearer understanding of the barriers that prevent violations from being reported. This implies closely working with local actors to enhance their awareness of the risks of sexual violence and their receptiveness to possible allegations.

What is the ICRC's approach to protecting and assisting victims of sexual violence in armed conflicts and other situations of violence?

The consequences for victims of sexual violence are often similar to those suffered by victims of other forms of physical violence such as torture and other forms of ill treatment. However, sexual violence requires specific and contextualized responses which take into account victim's individual experiences.

The ICRC is committed to offering a vast range of responses. In the first instance, we provide medical and psychosocial support. The ICRC can either directly provide vital care or refer victims to appropriate services. In cases of rape, it is crucial to provide medical assistance within seventy-two hours to prevent sexually transmitted diseases, including through post-exposure prophylaxis for HIV. We also strive to ensure continuing long-term medical care. In contexts where pregnancies may be terminated legally, the ICRC helps ensure that victims choosing not to carry a pregnancy to term can access safe abortions.

Adequate and immediate mental health and psychosocial support is also essential in helping victims and their relatives to overcome the trauma they have experienced. In the Democratic Republic of the Congo (DRC) and the Central African Republic (CAR), the ICRC supports a number of "*maisons d'écoute*" ("listening houses") run by local associations. These counselling centres offer psychological help to victims of all types of violence, including sexual violence, and can also refer them to medical facilities for further treatment.

The ICRC also strives to provide economic assistance, when needed, particularly for victims considered the most economically vulnerable. If victims

wish to report an attack, we may direct them to relevant authorities, provided that the victim gives informed consent and their protection can be ensured.

In parallel, we carry out awareness-raising sessions with local communities, authorities and other relevant stakeholders to explain what sexual violence is and where victims can find available services, as well as to reduce stigmatization and enhance communities' ability to adequately support victims.

By providing basic mental health and psychosocial training to midwives, psychologists and other medical staff, we ensure greater availability of skilled caregivers to victims. Material support such as medical supplies and equipment is also provided to reinforce the capacity of local structures. We also work on improving infrastructure, including transport and water treatment systems, and sanitation and energy supply in hospitals. In areas which have no local health structures, the ICRC can deploy mobile clinics to facilitate access to care.

Finally, we carry out several activities in the field of protection of civilian populations. We work with individuals and groups to develop locally appropriate mechanisms aimed at reducing their exposure to risk. We also hold regular confidential dialogues with authorities, armed forces and armed groups, during which we may raise observed or alleged abuses and patterns of violence with the aim of decreasing the risk of future violations.

Groups who are particularly vulnerable to sexual violence, such as children, people deprived of their liberty, women heads of households, the disabled or displaced persons, also require protection approaches which fully take into account their specific vulnerabilities.

How will these efforts be pursued and strengthened in the coming years?

Since 2002, the ICRC has put in place multidisciplinary projects in Burundi, the DRC, Colombia and the CAR. In 2015, we will work to develop projects in Mali, South Sudan, Lebanon and Mexico. As just mentioned, there will also be particular effort dedicated to better addressing sexual violence affecting particularly vulnerable groups.

In places of detention, we will continue our efforts to address ill-treatment and structural concerns, such as prison management, overcrowding, detainees' lack of privacy or safety – notably by reminding authorities of the necessity of separating women and minors from adult male detainees, and of ensuring the presence of female staff to supervise female detainees.

Protection and coping mechanisms can be improved through efforts to better involve communities and encourage them to take ownership. By enhancing awareness of communities about the consequences of sexual violence and about the ICRC's and Red Cross and Red Crescent National Societies' responses to victims' needs, we aim to limit and prevent stigmatization of victims.

Through our multidisciplinary approach, the ICRC expects both to adequately respond to the immediate and long-term effects of sexual violence and to help build an environment in which people are better protected from sexual

violence. The ICRC remains committed to this two-tier approach, of assisting and protecting present victims and preventing future ones, while continuously improving identification, response and prevention.

In recent times, attention has increasingly focused on the need to better understand the root causes of sexual violence. How does the ICRC contribute to prevention efforts?

Sexual violence is absolutely prohibited under international humanitarian law (IHL), as well as under international human rights law. In many cases, it is also prohibited in domestic, religious or traditional law. IHL specifically prohibits rape, enforced prostitution or any forms of indecent assault, and more generally prohibits torture and cruel, inhuman or degrading treatment. This prohibition binds State and non-State actors alike. Rape and other forms of sexual violence, when committed during and in connection with an armed conflict, constitute a war crime and must be prosecuted. The issue is therefore not so much the law itself, but its proper application and implementation.

In terms of implementation of the law, States must address major gaps that allow the persistence of sexual violence – including by dedicating more effort to building the capacity of security and judicial services to adequately handle sexual violence allegations. Effective mechanisms to investigate crimes, prosecute suspects and sanction those found guilty must therefore be fully developed to ensure that perpetrators are held accountable for their crimes. Victims seeking justice must be informed about any support available to them and must be able to report their allegations safely, without fear of reprisal, stigma or unnecessarily lengthy procedures.

By working with State and non-State armed actors, national and detention authorities, communities, and religious and traditional leaders, the ICRC promotes awareness of and adherence to the prohibition of sexual violence in IHL and other applicable norms. We also provide support to national authorities to help integrate IHL into domestic legislation and adopt the necessary measures to protect people against sexual violence and assist victims adequately.

In Colombia, for instance, the ICRC's consultations with Congress members led to the inclusion of measures relating to access to health-care services and protection, in addition to judicial investigation. The ICRC also trains legal staff and other authorities at national or local level to better and further disseminate and implement the law. We regularly remind all parties to a conflict of their responsibility to comply with the laws that already exist. We further conduct context-based sensitization sessions, support the integration of IHL standards into military doctrine, regulations and sanctions systems, and maintain confidential dialogue with all parties.

In detention facilities, we work with authorities on the structural causes and risk factors that lead to sexual violence. In the coming years, our aim is to pursue and further strengthen our response in the prevention of sexual violence.

How is the ICRC preparing its staff to better respond to cases of sexual violence in the future? How do you plan to work with others on the ground to ensure a coherent response?

The ICRC has been striving to provide its staff with the necessary knowledge, skills, tools and support mechanisms to be able to adequately respond to the needs of victims of sexual violence and their relatives and communities. We have thus reinforced our internal training with specialized courses to ensure that our staff are sensitized on the issue and have the competence to provide support to the victims. We have also developed new tools and internal documents to guide our staff in the field and at headquarters. Our work is based on an internal frame of reference developed in 2007 and internal guidelines detailing the principles and operational standards to be observed when gathering and analyzing data, and planning and carrying out activities to address the needs of victims.¹ We will pursue these efforts in the years to come, including in partnership with National Red Cross and Red Crescent Societies, to ensure long-term capacity-building and skills transfer, together with efforts to bolster emergency preparedness and response capacities.

National Red Cross and Red Crescent Societies play an instrumental role in raising awareness and promoting norms related to sexual violence in armed conflict and other situations of violence. The ICRC will therefore continue to operate in close partnership with them to ensure adequate and effective responses to the needs of affected people.

By deploying more staff to regions with a high prevalence of sexual violence, including ICRC mental health delegates, we seek to enhance the effectiveness of our activities and to increase the number of responders by training local staff. Beyond that, we will continue to encourage the mobilization of other actors, and to further develop and fine-tune responses.

1 Editor's note: Guiding principles and operational standards are included *inter alia* in the ICRC "Frame of Reference on Sexual Violence in Armed Conflict and Other Situations of Violence", as well as in a guidance note on "Assessing and Responding to Sexual Violence 'Extra Muros' in Armed Conflict and Other Situations of Violence" (internal documents). Internal guidelines to address sexual violence in the specific context of detention are also currently being produced. More general guidelines are also relevant to guide our work with victims of sexual violence – these include internal guiding principles on humanitarian assessments, and the "Professional Standards for Protection Work Carried Out by Humanitarian and Human Rights Actors in Armed Conflict and Other Situations of Violence", available at: www.icrc.org/eng/resources/documents/publication/p0999.htm.

Conflict-related sexual violence and the policy implications of recent research

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Abstract

Scholars increasingly document different forms of conflict-related sexual violence, their distinct causes, and their sharply varying deployment by armed organizations. In this paper, I first summarize recent research on this variation, emphasizing findings that contradict or complicate popular beliefs. I then discuss distinct interpretations of the claim that such violence is part of a continuum of violence between peace and war. After analyzing recent research on the internal dynamics of armed organizations, I suggest that widespread rape often occurs as a practice rather than as a strategy. Finally, I advance some principles to guide policy in light of recent research.

Keywords: conflict-related sexual violence, rape, sexual torture, civil war violence, causes of sexual violence, armed conflict.

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Scholars have made significant advances in understanding conflict-related sexual violence since the turn of the century. In particular, we now understand a lot more about how sexual violence varies across conflicts and armed organizations (State or non-State), and significantly more about why it does so. Some organizations rape boys and men as well as girls and women; some target only members of a particular ethnic group, while others target more broadly. Some organizations more often engage in rape by multiple perpetrators than by a sole perpetrator. Most importantly, not all armed organizations engage in rape. The forms of sexual violence by armed organizations during conflict also vary, including sexual torture and mutilation; forced pregnancy, abortion, prostitution and marriage; and sexual slavery, as well as rape. In some organizations, women as well as men perpetrate sexual violence. While there is a lot we do not understand about this variation, in light of the ongoing suffering that such violence inflicts and the quality and quantity of recent research, it is timely to assess what we know and the implications for policy.

In this paper, I first summarize recent research (in social science, but also public health) that documents the patterns of sexual violence – its form, targeting and estimated frequency – on the part of both State actors and non-State actors (rebels and pro-government militias) during conflict, including the absence of rape on the part of some actors. In particular, whether rape by armed organizations is significantly more frequent than that by ordinary civilians varies across conflict settings. I then argue that classic explanations for conflict-related rape do not account for the full spectrum of the documented variation. I distinguish different meanings of the oft-repeated claim that conflict-related sexual violence is part of a continuum of violence between peace and war and suggest that recent research supports only some versions of this theory; many patterns of sexual violence by armed organizations during war do not reflect pre-war patterns.

Second, I summarize recent research that analyzes why armed organizations exhibit such variation in their patterns of conflict-related sexual violence, drawing on theoretical approaches that analyze the internal dynamics of armed organizations. After arguing that the distinction between “strategic” and “opportunistic” rape is insufficient, I suggest that when armed organizations engage in frequent rape, they often do so as a *practice* rather than as a strategy. I then briefly discuss the conditions under which rape as a strategy and rape as a practice occur. Finally, I lay out some implications for policy, advancing some principles that should guide its development.

Throughout, by “conflict-related sexual violence” I mean sexual violence by armed organizations during armed conflict. By “armed organizations” or “armed actors” (I use these two phrases interchangeably), I mean State actors (military, police, paramilitary organizations under the direct command of other State actors) and non-State actors (rebel and militia organizations). When I refer to sexual violence by civilians, I do so explicitly. By “sexual violence” I refer to

sexual violence as defined by the Rome Statute of the International Criminal Court, which includes “[r]ape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity”.¹

Variation in conflict-related sexual violence

Perhaps the most important finding of recent research is that sexual violence during conflict varies sharply across armed actors.² Many armed organizations engage in widespread sexual violence, but not all do so: 59% of 177 armed actors in the civil wars between 2000 and 2009 in twenty African countries were *not reported* to have engaged in rape or other forms of sexual violence.³ There is of course severe under-reporting of conflict-related sexual violence in many contexts; however, these data reflect reporting of sexual violence *after* human rights and women’s organizations had begun to actively document rape and other forms of conflict-related sexual violence. While under-reporting no doubt continues, the documented differences across armed organizations are very sharp. Armed organizations that were not reported to have engaged in even moderate levels of rape include some State militaries, some leftist insurgent organizations and some secessionist organizations.⁴ Indeed, some armed organizations engage in ethnic cleansing – often presumed to be a setting for widespread rape – without engaging in sexual violence. The best cross-national dataset available confirms that sexual violence (including rape) varies across State militaries, insurgent organizations and pro-government militias; indeed, for all three types of armed actors, a strong majority is not reported to have perpetrated sexual violence between 1989 and 2009.⁵

- 1 See Rome Statute of the International Criminal Court (ICC), 17 July 1998 (entered into force 1 July 2002), UN Doc. A/CONF.183/9, Art. 7(1) (g). See also Art. 8(2)(b)(xxii) and Art. 8(2)(e)(vi). In the ICC *Elements of Crimes*, rape is defined as the invasion “of 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. ... 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 person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.” See ICC, *Elements of Crimes*, Document No. ICC-PIDS-LT-03-002/11_Eng, The Hague, 2011, Art. 8(2)(b)(xxii)-1, available at: www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf (all internet references were accessed in December 2014).
- 2 Elisabeth Jean Wood, “Variation in Sexual Violence During War”, *Politics and Society*, Vol. 34, No. 3, 2006, pp. 307–342; Dara Kay Cohen, “Explaining Rape during Civil War: Cross-National Evidence (1980–2009)”, *American Political Science Review*, Vol. 107, No. 3, 2013, pp. 461–477; Dara Kay Cohen and Ragnhild Nordås, “Sexual Violence in Armed Conflict: Introducing the SVAC Dataset, 1989–2009”, *Journal of Peace Research*, Vol. 51, No. 3, 2014, pp. 418–428.
- 3 Ragnhild Nordås, *Sexual Violence in African Conflicts*, PRIO Policy Brief No. 1, 2011.
- 4 Elisabeth Jean Wood, “Armed Groups and Sexual Violence: When is Wartime Rape Rare?”, *Politics and Society*, Vol. 37, No. 1, 2009, pp. 131–161.
- 5 D. K. Cohen and R. Nordås, above note 2, Figure 1, pp. 423 and 425.

In some conflict settings, the frequency of sexual violence by armed actors is significantly less than that by intimate partners, acquaintances or strangers.⁶ For example, according to a survey of twelve rural communities in Cote d'Ivoire, during the 2000–2007 conflict 4% of women and 2.2% of men endured forced or coerced sex by perpetrators other than intimate partners; of those men and women, less than a tenth had been forced or coerced by combatants or uniformed officials (0.3% of the women surveyed and 0.2% of the men).⁷ The prevalence of forced or coerced sex by combatants during the eight years of the crisis was significantly less than the prevalence of intimate-partner forced sex in the year following the crisis, which was 14.9% among ever-partnered women.⁸ According to a survey in fifteen conflicted municipalities in Colombia, 3.4% of women reported having been raped between 2000 and 2009. The reported rate of rape by family members was triple the reported rate by combatants and 50% more than the reported rate by strangers.⁹ Where belligerents not only effectively prohibit rape by their members but also enforce norms against rape by civilians (including spousal rape), the overall frequency of rape during war may be significantly less than peacetime levels.¹⁰ Of course, in many settings the rate of rape during conflict, which includes that by armed actors as well as civilians (including intimate partners), is significantly greater than that during peacetime because some civilians and some armed actors engage in more rape than they would have had peace continued. In some but not all settings, conflict-related sexual violence (usually defined as that by armed actors) is greater than that by family members during the conflict, as in the eastern Democratic Republic of the Congo (DRC), where a survey of the North and South Kivu provinces and the Ituri district found that of the 39.7% of women and 23.6% of men who had suffered sexual violence in the past sixteen years, 74.3% of the women and 64.5% of the men reported that it had been conflict-related (carried out by armed actors).¹¹ The reported rates of intimate-partner sexual violence (IPSV) and community-based sexual violence were much lower.

Conflict-related sexual violence varies in form and targeting as well. Armed actors appear to engage in sexual torture, sexual slavery, non-penetrating assault,

6 Lindsay Stark and Alastair Ager, "A Systematic Review of Prevalence Studies of Gender-Based Violence in Complex Emergencies", *Trauma, Violence and Abuse*, Vol. 12, No. 3, 2011, pp. 127–134; Mazeda Hossain *et al.*, "Men's and Women's Experience of Violence and Traumatic Events in Rural Cote d'Ivoire Before, During and After a Period of Armed Conflict", *BMJ Open*, Vol. 4, No. 2, 2014.

7 *Ibid.*, Table 3.

8 *Ibid.*, Table 2. The article does not report the prevalence of intimate-partner forced or coerced sex during the conflict (nor does it report the rate of forced or coerced sex suffered by men in the year after the crisis).

9 Olga Amparo Sanchez *et al.*, *First Survey on the Prevalence of Sexual Violence Against Women in the Context of the Colombian Armed Conflict, 2001–2009: Executive Summary*, Casa de la Mujer and Oxfam, Bogotá, 2011, available at: www.peacewomen.org/assets/file/Resources/NGO/vaw_violence_againstwomenincolombiaarmedconflict_2011.pdf

10 This suggestion appears to be true for a few areas controlled by some rebel organizations, but the evidence is anecdotal. See E. J. Wood, above note 4.

11 Kirsten Johnson *et al.*, "Association of Sexual Violence and Human Rights Violations with Physical and Mental Health in Territories of the Eastern Democratic Republic of Congo", *Journal of the American Medical Association*, Vol. 304, 2010, Table 1.

sterilization, forced prostitution and pregnancy to highly varying degrees. Some target women and girls who belong to “enemy” groups during ethnic or political cleansing; others appear not to use such criteria. Some armed organizations target only females, while others target males as well, an emerging theme in research on conflict-related sexual violence.

Yet too narrow a focus on conflict-related sexual violence runs the risk of ignoring contextual differences that are essential. Knowing whether rape occurs in the context of genocide or torture, for example, is essential to analyzing why it occurs. Variation in repertoire is complex, belying any dichotomous categorization such as those that engage in all forms of terror vs. those that engage in restraint.¹² For example, the number of female Muslim Bosnian civilians raped by Bosnian Serb militias appears to be roughly the same order of magnitude as the number of male Muslim Bosnian civilians killed by them;¹³ in sharp contrast, the Tamil Tigers appear to have rarely engaged in rape of civilians but killed many.¹⁴ In short, the frequency of lethal violence may be very different from that of sexual violence.¹⁵

An explicit concept of “pattern of violence” may help clarify this complexity. A “pattern of violence” by an armed organization is comprised of the repertoire of forms of violence in which it regularly engages and, for each element of the repertoire, the targeting and frequency of that form of violence for the specified time period and region (of course, the pattern of a particular unit of the organization can be similarly defined).¹⁶ The organization’s sexual violence repertoire is thus a part of its overall repertoire. In analyzing targeting, scholars often use a broad, qualitative distinction between selective (targeted because of an individual’s behaviour) and indiscriminate targeting. Increasingly the literature on violence during armed conflict also distinguishes a third category, that of collective targeting based on identity as members of an ethnic or religious group,

- 12 Francisco Gutiérrez Sanín and Elisabeth Jean Wood, “What Should We Mean by ‘Pattern of Political Violence’? Repertoire, Targeting, Frequency and Technique”, paper presented at the annual meeting of the American Political Science Association, Washington, DC, 29 August 2014.
- 13 Estimates of the number of female Muslim Bosnian rape victims range from 12,000 to 60,000 (see E. J. Wood, above note 2), while an estimate of the number of male Muslim Bosnian civilians killed based on the best available data is about 24,000. The number of male Muslim Bosnian civilians killed is roughly estimated as follows: of the nearly 100,000 people killed, approximately 40% were civilian, 90% were male, and two thirds were Muslim; the estimate (my calculations) assumes that those categories can simply be multiplied (problematic but defensible for a rough estimate). The data come from Patrick Ball, Ewa Tabeau and Philip Verwimp, *The Bosnian Book of Dead: Assessment of the Database (Full Report)*, Households in Conflict Network Research Design Note 5, 17 June 2007, available at: <https://hrdag.org/wp-content/uploads/2013/02/rdn5.pdf>.
- 14 See E. J. Wood, above note 4; and the International Crisis Group, *Sri Lanka: Women’s Insecurity in the North and East*, Asia Report No. 217, 20 December 2011, available at: www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/217%20Sri%20Lanka%20-%20Womens%20Insecurity%20in%20the%20North%20and%20East%20KO.pdf.
- 15 D. K. Cohen, above note 2.
- 16 Elisabeth Jean Wood, “Rape during War is Not Inevitable: Variation in Wartime Sexual Violence”, in Morten Bergsmo, Alf B. Skre and Elisabeth Jean Wood (eds), *Understanding and Proving International Sex Crimes*, Torkel Opsahl Academic Epubliser, Oslo, 2012, pp. 389–419; F. Gutiérrez Sanín and E. J. Wood, above note 12.

a political party or a village thought to represent or support the rival.¹⁷ Of course, in analyzing sexual violence repertoires and targeting, comparison must often be qualitative or ordinal given data constraints.

Classic explanations of conflict-related sexual violence

Classic theories advanced to explain conflict-related sexual violence explain only a small part of the observed variation. In particular, theories to explain conflict-related rape do not account for its variation because they *over*-predict rape during war. The militarized masculinity approach, for example, argues that societies in war develop (or draw on) institutions and norms that inculcate a highly militarized masculinity based on sharp distinctions between genders: to become men, boys must become warriors.¹⁸ The result is that combatants represent domination of the enemy in highly gendered terms and use specifically sexual violence against enemy populations. However, the argument does not explain the absence of sexual violence on the part of some very effective insurgent and State armies.¹⁹ Similarly, increased opportunity to rape during war cannot account for armed organizations with ample access to civilians that engage in little rape.²⁰ Nor does the “substitution” argument (that rape “substitutes” for sex with prostitutes, camp followers, female combatants or willing civilians) account for the targeting of particular groups of women, the often extreme violence that frequently accompanies conflict-related rape, the occurrence of sexual torture, or rape by forces with ample access to prostitutes.²¹

Relatedly, patriarchal culture cannot account for the observed variation as it too over-predicts conflict-related rape. Moreover, such broad cultural proclivities cannot account for asymmetric conflicts where one party to the war promotes sexual violence while the other does not, a pattern true of almost 40% of civil wars.²² While devaluation of women may be a necessary condition for the occurrence of widespread sexual abuse of women, this general notion of patriarchy is too broad to account for the observed variation; it is not a sufficient condition.²³

17 For a detailed discussion and an alternative approach, see F. Gutiérrez Sanín and E. J. Wood, above note 12. See also Jule Kruger and Christian Davenport, “Understanding the Logics of Violence: A Victim-Centered, Multi-Dimensional Approach to Concept and Measurement”, unpublished paper, University of Michigan, July 2013.

18 Joshua S. Goldstein, *War and Gender*, Cambridge University Press, Cambridge, 2001; Madeline Morris, “By Force of Arms: Rape, War, and Military Culture”, *Duke Law Journal*, Vol. 45, 1996, pp. 651–781.

19 E. J. Wood, above note 16.

20 Elisabeth Jean Wood, “Sexual Violence during War: Toward an Understanding of Variation”, in Stathis N. Kalyvas, Ian Shapiro and Tarek Masoud (eds), *Order, Conflict and Violence*, Cambridge University Press, New York and Cambridge, 2008, pp. 321–351; E. J. Wood, above note 4.

21 *Ibid.*

22 D. K. Cohen, above note 2.

23 Elisabeth Jean Wood, “Multiple Perpetrator Rape during War”, in Miranda Horvath and Jessica Woodhams (eds), *Handbook on the Study of Multiple Perpetrator Rape: A Multidisciplinary Response to an International Problem*, Routledge, New York, 2013; Dara Kay Cohen, Amelia Hoover Green and Elisabeth Jean Wood, *Wartime Sexual Violence: Misconceptions, Implications, and Ways Forward*, United States Institute of Peace Special Report No. 323, February 2013.

Similarly, the argument that conflict-related rape occurs because the armed organization orders or promotes its use as a strategy of violence against civilians cannot account for the many armed actors that engage in other forms of violence but do not engage in rape. Of course, strategic sexual violence in various forms does occur during some armed conflicts on the part of some armed actors: as sexual torture against detainees to obtain information; as institutionalized forms of sexual slavery and forced marriage; and as a form of terror or punishment, to control resources or territory, or to “cleanse” an area of a targeted population.

Thus, many of the classic theories explain only part of the observed variation. Indeed, they generally focus narrowly on rape, predict more conflict-related rape than the already tragic levels observed, and fail to explain the fact that many armed organizations do not engage in even moderate levels of rape or other forms of sexual violence.

Conflict-related sexual violence is undoubtedly a complex phenomenon; any mono-causal theory is unlikely to account for the observed variation.²⁴ However, promising combinations of causes for conflict-related rape, such as militarized masculinity and opportunity together, also do not explain the variation for the same reason: the combination over-predicts rape. In light of the sharp variation in sexual violence across armed actors, on the one hand, and the limitations of theories focused either on individual incentives or on broad assertions of the strategic value of conflict-related sexual violence, on the other, the literature increasingly takes the armed organization as the unit of analysis, documenting variation in the institutions and cultures of organizations to explain variation in their patterns of sexual violence. Before assessing this recent literature, I will discuss whether conflict-related sexual violence can be seen simply as part of a continuum of violence.

Does conflict-related sexual violence fall along a continuum of sexual violence?

Do we need to account specifically for *conflict-related* sexual violence? The continuum thesis asserts that conflict-related sexual violence is part of a continuum of violence in general or sexual violence in particular.²⁵ In essence, the thesis holds that the same gender relations that drive sexual violence during peace drive it during war, and therefore patterns of sexual violence in peace and war differ in degree but not in kind. At this level of abstraction, the thesis is obviously true in the banal sense that all violence falls along some violence continuum and gender relations are integral to sexual violence (against women and girls and also against men and boys). It is also true in the specific sense that

24 One multifactorial model of conflict-related sexual violence perpetration lists forty-five distinct variables and processes that facilitate conflict-related rape. Nicola Henry, Tony Ward and Matt Hirshberg, “A Multifactorial Model of Wartime Rape”, *Aggression and Violent Behavior*, Vol. 9, 2004, pp. 535–562.

25 Cynthia Cockburn, “The Continuum of Violence: A Gender Perspective on War and Peace”, in Wenona Giles and Jennifer Hyndman (eds), *Sites of Violence: Gender and Conflict Zones*, University of California Press, Berkeley and Los Angeles, CA, 2004, pp. 24–44.

men often rape women for sexual gratification and as an expression of power and rights over women as property in wartime as in peacetime. Particular forms of sexual violence by intimate partners, family members, acquaintances and strangers are prevalent in many societies whether or not they are at war.²⁶ For example, researchers found no significant difference in the rates of sexual coercion by intimate partners in the year just before and that just after the conflict in East Timor, which suggests that the rates continued during the conflict as well.²⁷

Yet other interpretations or implications of the thesis when applied specifically to rape are false. For example, in her analysis of the best available dataset on conflict-related rape, Dara Kay Cohen found no correlation between a standard measure of patriarchal institutions and the level of conflict-related rape.²⁸ As argued above, such societal-level explanations are hard pressed to account for the asymmetric pattern of conflict-related rape in many civil wars. Nor does the combination of patriarchy and opportunity account for the absence of rape by armed actors in patriarchal societies that have ample access to civilians.²⁹ Nor does the continuum thesis explain the innovations in sexual brutality that we observe on the part of some armed organizations (rape with guns, sexual mutilation, etc.), innovations that would appear to have little precedent during peacetime. Moreover, when armed organizations engage in high levels of rape during conflict, the very high fraction of rapes that are carried out by multiple perpetrators contrasts sharply to the fraction observed during peacetime.³⁰ In Sierra Leone, for example, 76% of conflict-related rapes of women were by multiple perpetrators.³¹ In three war-torn provinces in the eastern DRC, 73% of rapes of women and 38% of rapes of men were by multiple perpetrators.³² Nor does the thesis account for high levels of sexual violence against boys and men during conflict on the part of some armed organizations.

A distinct version of the continuum thesis which asserts continuity between patterns of conflict-related violence (in general, not specifically sexual violence) and patterns of sexual violence in the *post-war* period appears to be better supported by recent research. In an analysis that combines household survey data from seventeen countries in sub-Saharan Africa with geo-referenced conflict data, Gudrun Østby

26 For a review of global rates of intimate-partner violence, including sexual violence, see Jovana Carapic, *Beyond Armed Conflict: Sexual Violence in a Global Perspective*, paper presented at the Workshop on Sexual Violence and Armed Conflict: New Research Frontiers, Harvard Kennedy School, Harvard University, 2–3 September 2014.

27 Michelle Hynes *et al.*, “A Determination of the Prevalence of Gender-Based Violence among Conflict-Affected Populations in Timor-Leste”, *Disasters*, Vol. 28, No. 3, 2004, pp. 294–321.

28 D. K. Cohen, above note 2. On the challenges of measuring patriarchy, see Ifnaki Permanyer, “The Measurement of Multidimensional Gender Inequality: Continuing the Debate”, *Social Indicators Research*, Vol. 95, No. 2, 2010, pp. 181–198.

29 E. J. Wood, above note 4.

30 *Ibid.*; E. J. Wood, above note 23.

31 Dara Kay Cohen, “Female Combatants and Violence in Armed Groups: Women and Wartime Rape in Sierra Leone”, *World Politics*, Vol. 65, 2013, pp. 383–415.

32 Calculated from data in K. Johnson *et al.*, above note 11, p. 557, and data sent in a personal communication (23 July 2012) from Dr Lynn Lawry.

shows that conflict intensity in the home region of respondents had a significant effect on the probability that the respondent had suffered IPSV after the conflict.³³ Whether the mechanism linking conflict-related violence, including sexual violence, with post-war IPSV has a causal effect by increasing the risk factors for victimization or for perpetration (or both) is not well established.³⁴ In support of the latter, in South Africa the rate of intimate-partner physical violence by men who have been exposed to political violence is significantly higher compared to the rate by men who had not been, and in the Occupied Palestinian Territories, the rates for physical and sexual intimate-partner violence were both higher on the part of men exposed to political violence than for those not exposed.³⁵

An additional, as yet little explored link between conflict-related sexual violence and post-war violence concerns conflict recurrence: periods of peace after civil conflicts with high levels of conflict-related rape are reported to be 3.5 times more likely to end in renewed conflict.³⁶

These diverse findings suggest that the relationships between pre-war sexual violence and conflict-related sexual violence, and between conflict-related sexual violence (and violence during conflict generally) and post-war sexual violence, vary across forms of sexual violence and probably across settings as well. The continuum thesis alone cannot account for this variation. Sexual violence by intimate partners, for example, is much better understood as part of such a continuum than is the type of multiple-perpetrator rape carried out by some armed organizations. Opportunistic sexual violence, whether by family members or strangers, should be more easily conceptualized as part of a continuum than the strategic adoption of sexual violence by an organization. In an exemplary analysis of the evolution of patterns of sexual violence in Northern Ireland, Liberia and Timor-Leste, Aisling Swaine found that while some forms of sexual violence began before the conflict and continued during and after the conflict, other forms were innovations during the conflict, with some of those carrying over to the post-conflict period.³⁷

33 Gudrun Østby, *Violence Begets Violence: Armed Conflict and Domestic Sexual Violence in Sub-Saharan Africa*, paper presented at the Workshop on Sexual Violence and Armed Conflict: New Research Frontiers, Harvard Kennedy School, Harvard University, 2–3 September 2014.

34 *Ibid.* See also J. Carapic, above note 26; and Rebecca Horn *et al.*, “Women’s Perceptions of Effects of War on Intimate Partner Violence and Gender Roles in Two Post-Conflict West African Countries: Consequences and Unexpected Opportunities”, *Conflict and Health*, Vol. 8, No. 12, 2014.

35 Jhumka Gupta *et al.*, “Men’s Exposure to Human Rights Violations and Relations with Perpetration of Intimate Partner Violence in South Africa”, *Journal of Epidemiology and Community Health*, Vol. 66, No. 6, 2012; Cari Jo Clark *et al.*, “Association Between Exposure to Political Violence and Intimate-Partner Violence in the Occupied Palestinian Territory: A Cross-Sectional Study”, *The Lancet*, Vol. 375, 2010, pp. 310–316.

36 Dara Kay Cohen and Mackenzie Israel-Trummel, *The Reaches of Rape: Conflict-Related and Post-War Consequences*, paper presented at the Workshop on Sexual Violence and Armed Conflict: New Research Frontiers, Harvard Kennedy School, Harvard University, 2–3 September 2014.

37 Aisling Swaine, *Transition or Transformation: An Analysis of Before, During and Post-Conflict Violence Against Women in Northern Ireland, Liberia and Timor-Leste*, PhD dissertation, University of Ulster, 2011.

Explaining variation in conflict-related sexual violence: Institutions, ideology and the culture of the armed organization

For simplicity of exposition, we will mainly focus on conflict-related rape (referring to other forms of sexual violence when relevant). Because the classic explanations when taken separately or even in relevant combinations do not explain the observed variation in conflict-related rape, as shown above, many scholars now focus on the culture, ideology and institutions of armed organizations.³⁸

To field an armed organization, leaders must develop institutions for the enlisting and training of recruits, for organizational cohesion, and for the control of members. To be sure, organizations vary sharply in the degree of development of such institutions, but their survival depends on them. In particular, leaders seek to control the pattern of violence (the repertoire, targeting and frequency of violence) wielded by their combatants, at least to the extent of avoiding the turning of weapons against commanders.³⁹ Even when an armed organization appears to embrace the terrorizing of civilians, there are decisions to be made about targeting and timing. In particular, military leaders may make explicit decisions to prohibit, promote or tolerate rape (and against which groups or individuals); if they have not made an explicit decision, they may have to do so if accusations of rape emerge.

However, exerting control over violence is challenging for two reasons. First, combatants in general differ from commanders in their preferences for patterns of violence, where by “preferences” I include reasons for action such as norms, tastes, ethical commitments, emotions, affective ties to others and psychological propensities (e.g. conformity). For example, combatants may prefer to engage in more or less rape than commanders would prefer them to engage in, a contrast that may be particularly sharp when commanders (sincerely) prohibit or order it (of course, combatants differ among themselves in their preferences as well). Second, commanders often do not know what their combatants are doing on the ground – that is, in what pattern of violence they actually engage (as opposed to that ordered). These differences between commanders and combatants – in preferences and information – mean that armed organizations suffer from what social scientists term a “principal–agent” problem. As a result, many scholars currently focus on variation across organizations in the ideologies and institutions through which organizations attempt – to varying degrees – to mitigate or at least manage the tensions between the “principal” (the commander) and the “agents” (the combatants under his or her command).⁴⁰

38 See E. J. Wood, above note 4, and E. J. Wood, above note 16, as well as the work of others cited below.

39 E. J. Wood, above note 4.

40 More precisely, there is a series of principal–agent challenges down the chain of command in which the superior officer and subordinates may have different preferences for the form, targeting and frequency of violence, and the superior does not have perfect information about the actions of the subordinates. Scott Gates, “Recruitment and Allegiance: The Microfoundations of Rebellion”, *Journal of Conflict Resolution*, Vol. 46, No. 1, 2002, pp. 111–130; Neil J. Mitchell, *Agents of Atrocity: Leaders, Followers, and the Violation of Human Rights in Civil War*, Palgrave MacMillan, New York, 2004; Jeremy Weinstein, *Inside Rebellion: The Politics of Insurgent Violence*, Cambridge University Press, Cambridge, 2007; Christopher K. Butler,

There are two fundamental origins of the differences in preferences. First, most recruits must be taught to overcome an initial aversion to killing. To forge combatants who are willing to fight, if not on behalf of the organization in the abstract then in defence of their brothers in arms, organizations must reshape combatant preferences to allow the wielding of violence. Most armed organizations do so initially through the induction of combatants into the organization through formal institutions such as boot camp and informal ones such as initiation rituals.⁴¹ In many State militaries, the powerful experiences of endless drilling, dehumanization and degradation at the hands of the drill sergeant and then “rebirth” as organization members through initiation rituals mould recruits into combatants whose loyalties to the organization may be experienced as stronger than those to family.⁴²

Second, combatant preferences may evolve dramatically during active deployment. Both the suffering and wielding of violence often bring profound changes to the combatant’s own norms, commitments and tastes concerning violence. The desensitization of combatants to violence, the dehumanizing of victims, the anxiety and uncertainty of combat and the threat of violence – as well as the displacement of responsibility not only onto the organization but also onto the enemy, who “deserve what they get” (blame attribution) – are all powerful wartime processes of moral disengagement that tend to widen the repertoire (possibly including sexual violence), targeting and/or level of violence.⁴³ Collective responsibility for atrocities can itself become a source of organization cohesion and a bulwark against betrayal.⁴⁴

In light of the challenges that leaders face in fielding an armed organization, Amelia Hoover Green⁴⁵ argues that there are two ways in which armed

Tali Gluch and Neil J. Mitchell, “Security Forces and Sexual Violence: A Cross-National Analysis of a Principal-Agent Argument”, *Journal of Peace Research*, Vol. 44, No. 6, 2007, pp. 669–687; Amelia Hoover Green, *Repertoires of Violence Against Non-Combatants: The Role of Armed Group Institutions and Ideologies*, unpublished doctoral dissertation, Yale University, New Haven, CT, 2011; Michele Leiby, *State-Perpetrated Wartime Sexual Violence in Latin America*, unpublished Doctoral dissertation, University of New Mexico, 2011; E. J. Wood, above note 4; E. J. Wood, above note 16.

- 41 Dave Grossman, *On Killing: The Psychological Cost of Learning to Kill in War and Society*, Back Bay Books, New York, 1996.
- 42 Hank Nuwer, “Military Hazing”, in Hank Nuwer (ed.), *The Hazing Reader*, Indiana University Press, Bloomington, IN, 2004; Donna Winslow, “Rites of Passage and Group Bonding in the Canadian Airborne”, *Armed Forces and Society*, Vol. 25, No. 3, 1999, pp. 429–457.
- 43 See, for example, Christopher Browning, *Ordinary Men: Reserve Police Battalion 101 and the Final Solution in Poland*, HarperCollins, New York, 1992; Daniel Chirot and Clark McCauley, *Why Not Kill Them All? The Logic and Prevention of Mass Political Murder*, Princeton University Press, Princeton, NJ, 2006; Alexander Laban Hinton, *Why Did They Kill? Cambodia in the Shadow of Genocide*, University of California Press, Berkeley, CA, 2005; A. Hoover Green, above note 40. For a review of the social psychology literature, see Meghan Foster Lynch, “Am I My Brother’s Killer? The Social Psychology of Mass Violence against Civilians”, unpublished article manuscript. For an argument about how an initial pattern of limited sexual violence may escalate to more brutal forms and wider targeting, see Janie L. Leatherman, *Sexual Violence and Armed Conflict*, Polity Press, Cambridge, 2011.
- 44 J. S. Goldstein, above note 18; Mark J. Osiel, *Obeying Orders: Atrocity, Military Discipline, and the Law of War*, Transaction Publishers, Edison, NJ, 1999.
- 45 A. Hoover Green, above note 40; and Amelia Hoover Green, “The Commander’s Dilemma: Creating and Controlling Armed Group Violence”, unpublished paper, Drexel University, 6 January 2015.

organizations resolve this “commander’s dilemma”, as she terms the tension between needing both to produce and to control violence. The first way in which organizations may in principle resolve the commander’s dilemma is through institutions that indoctrinate recruits so strongly that they internalize the commander’s preferred pattern of violence (and perhaps even the commander’s reasons for that choice), a level of indoctrination stronger than the “secondary cohesion” analyzed in the military sociology literature.⁴⁶ Some organizations attract members who are already committed to the organization’s ideology, while others attract opportunistic recruits; indoctrination of the former is significantly easier.⁴⁷ In the case that commanders prefer a pattern of limited targeting and a narrow repertoire, the organization must instil an understanding that some forms of violence undermine the organization’s purpose through ongoing, intensive political education, argues Hoover Green.⁴⁸ In the ideal case for the commander, combatants thus come to internalize the leadership’s choices about violence and to implement them willingly, with no need for discipline. Of course, the leadership of many organizations does not pursue narrow repertoires and limited targeting, and armed organizations inculcate their ideology to highly varying degrees. But some armed organizations – for example, some Marxist organizations that understand conflict as likely to continue over many years or perhaps decades – go to impressive lengths to inculcate their ideology long after the initial training period. Similarly, those State militaries that seek to avoid targeting civilians need strong institutions for the ongoing socialization of soldiers if the psychosocial dynamics of war are not to override the leadership’s preference.

The second way is through strong disciplinary institutions: combatants obey orders because they are punished if they do not. In this case, the ability of the organization to enforce the commander’s chosen pattern of violence depends on the flow of information concerning the actual patterns wielded on the ground up the chain of command and on the willingness and ability of superiors to hold those below them accountable. Maintaining discipline through the vagaries of combat thus requires the development of strong internal intelligence institutions to ensure the flow of such information. For example, the LTTE insurgency in Sri Lanka deployed a parallel chain of command dedicated to internal intelligence.⁴⁹

If indoctrination of combatants is complete, preferences of superiors and combatants will be consistent, and no unordered violence will occur. If there is a conflict between the preferences of the commander and those of the combatants, but disciplinary and internal intelligence institutions are sufficiently strong, then combatants will follow orders despite their own individual preferences. So in both these cases, if the leadership chooses to promote rape of civilians, for example, combatants will rape with high frequency against the chosen target, and if the

46 Secondary (or vertical) cohesion is cohesion between different levels of the organization, in contrast to primary cohesion, which is cohesion between ground-level combatants. Guy L. Siebold, “Core Issues and Theory in Military Sociology”, *Journal of Political and Military Sociology*, Vol. 29, 2001, pp. 140–159.

47 J. Weinstein, above note 40.

48 A. Hoover Green, above note 40.

49 E. J. Wood, above note 4.

leadership chooses to prohibit rape, combatants will not rape (except in isolated instances). In short, if the organization's internal institutions are strong, it is possible to conclude that if sexual violence occurs, it is ordered, except for isolated incidents.

But what happens when the orders of superiors and the behaviour of combatants concerning violence collide? Indeed, often the organization's institutions are not so strong, with the result that the organization is unable to deter or facilitate behaviour that it would rather prevent or promote. In this case, individual and unit norms concerning rape will determine the pattern of rape by combatants. They will also do so both when the organization does not have a policy concerning rape, and also when such a policy exists but individual commanders do not enforce it.⁵⁰ Many organizations appear to formally prohibit sexual violence but do not build the institutions or exert the will to effectively do so – with the result that rape, if it emerges, is neither ordered nor punished but is *tolerated*, an observation to which I return in the next section.

Several recent works on conflict-related sexual violence confirm this focus on the armed organization. The absence (or presence) of sexual violence against civilians on the part of some organizations reflects their ideologies and institutions.⁵¹ During El Salvador's civil war, differences in patterns of sexual violence across State forces and insurgent organizations corresponded to different institutions, and when institutions changed, the pattern of violence changed as well.⁵² Distinct branches of the State military (which have distinct institutions) engaged in different patterns of sexual violence during Peru's civil war.⁵³ Among armed organizations that develop institutions for military training, those that also develop institutions for reiterated political indoctrination are significantly less likely to engage in high levels of rape, according to tentative findings by Hoover Green.⁵⁴ Hoover Green also tentatively finds that rebel groups who follow communist ideology are less likely to engage in wartime rape.⁵⁵

However, this focus on the armed organization runs the risk of ignoring causes of conflict-related sexual violence stemming from interactions with other organizations, including combat dynamics (the pattern of violence may change with imminent defeat, for example) and diffusion of patterns of violence from organization to organization. And of course, the approach begs the question: from where do internal institutions come? One source is ideology: some

50 *Ibid.* One implication is that the prevalence of rape could in principle be low without relying on intense socialization or hierarchical discipline – namely, when sufficiently many combatants have their own norms against rape so that the dynamics of peer pressure enforce those norms. However, given the social psychological processes described above, such organizations are probably quite rare.

51 *Ibid.*

52 A. Hoover Green, above note 40.

53 Michele Leiby, *Wartime Sexual Violence as a Weapon of Irregular Warfare: An Analysis of Sub-National Variation in Peru*, paper presented at the annual meeting of the American Political Science Association, Seattle, 30 August–4 September 2011.

54 Amelia Hoover Green, *Armed Group Institutions and Conflict-Related Sexual Violence in Cross-National Perspective*, paper presented at the Workshop on Sexual Violence and Armed Conflict: New Research Frontiers, Harvard Kennedy School, Harvard University, 2–3 September 2014.

55 A. Hoover Green, above note 45.

ideologies include strong blueprints for institutions and may also proscribe certain forms of violence against certain targets on either strategic or normative grounds.⁵⁶ Armed organizations also copy the institutions of other organizations in an *ad hoc* fashion.

Between strategic and opportunistic: Rape as a practice

The difference between ordered and unordered violence is often approached in the literature on conflict-related sexual violence through the contrast between “opportunistic” and “strategic”. Again focusing on rape for simplicity of exposition, let’s consider “opportunistic rape” to be rape carried out for private reasons rather than organization objectives, and “strategic rape” to be instances of rape purposefully adopted in pursuit of organization objectives. In its extreme form, “strategic rape” is ordered (not necessarily by top commanders).

However, the distinction as used in the literature is often confusing. “Strategic” sometimes appears to be used as a synonym for “massive”, which conflates whether or not violence is carried out for organization purposes with its frequency. The existence of a strategy is sometimes inferred, rather than demonstrated, as when widespread rape is followed by massive flight, and the consequence – flight – is presumed to also be the purpose without supporting evidence.⁵⁷ Similar concerns arise when rape is claimed to be a “weapon”, a “tactic” or a “tool” of war without further evidence that it was in fact purposefully adopted in pursuit of organization objectives. Such simplifying assumptions overlook the distinct mechanisms that contribute to a high incidence of rape.⁵⁸

Moreover, the distinction begs several questions: what should we conclude when commanders consistently fail to punish certain forms of violence despite their being against organization norms and/or rules? Or when combatants are drawn into forms of violence by the exceedingly strong forms of peer pressure present during war, rather than by individual opportunism or their superiors’ orders?

56 Francisco Gutiérrez Sanín and Elisabeth Jean Wood, “Ideology in Civil War: Instrumental Adoption and Beyond”, *Journal of Peace Research*, Vol. 51, No. 2, 2014, pp. 213–226.

57 E. J. Wood, above note 16; Xabier Agirre Aranburu, “Beyond Dogma and Taboo: Criteria for the Effective Investigation of Sexual Violence”, in Morten Bergsmo, Alf Butenschon Skre and Elisabeth Jean Wood (eds), *Understanding and Proving International Sex Crimes*, Torkel Opsahl Academic Epublisher, Oslo, 2012, pp. 267–294.

58 Jelke Boesten, “Analyzing Rape Regimes at the Interface of War and Peace in Peru”, *International Journal of Transitional Justice*, Vol. 4, No. 1, 2010, pp. 110–129; Maria Eriksson Baaz and Maria Stern, “Why Do Soldiers Rape? Masculinity, Violence, and Sexuality in the Armed Forces in the Congo (DRC)”, *International Studies Quarterly*, Vol. 53, No. 2, 2009, pp. 495–518; Maria Eriksson Baaz and Maria Stern, *The Complexity of Violence: A Critical Analysis of Sexual Violence in the Democratic Republic of Congo (DRC)*, Working Paper, The Nordic Africa Institute, Sida, May 2010; Maria Eriksson Baaz and Maria Stern, *Sexual Violence as a Weapon of War? Perceptions, Prescription, Problems in the Congo and Beyond*, Zed Books, London, 2013; Paul Kirby, “How is Rape a Weapon of War? Feminist International Relations, Modes of Critical Explanation and the Study of Wartime Sexual Violence”, *European Journal of International Relations*, Vol. 19, No. 4, 2013, pp. 797–821; E. J. Wood, above note 16.

The distinction, if it is to be useful, must be supplemented by an intermediate category, that of “practice”.⁵⁹ Violence that is not ordered (even implicitly) but is tolerated by commanders, let us term a “practice”.⁶⁰ A practice differs from opportunistic violence in that it may be the product of social interactions, not individual preferences – for example, the combatant’s desire to conform to the behaviour of others in the unit. Such social pressures are very strong during training and combat, as is evident in combatant memoirs as well as the military sociology and history literature.⁶¹

This set of concepts – strategic, opportunistic, and as a practice – are distinct from the dimensions that comprise a pattern of violence (repertoire, and for each element its frequency and targeting). A practice of rape could be more or less frequent, and targeted more or less narrowly. An organization’s pattern of sexual violence could be narrow in terms of its target (a single social group, for example), but with either a high or low frequency, and with either a wide or narrow repertoire. A particular organization may engage in rape both as a practice and as a strategy during the same period, and rape as a practice may be more frequent than rape as a strategy as in the following example: in a village under occupation, the frequency of rape that is tolerated but not ordered by commanders (a practice) may be significantly higher than rape that is ordered against a small fraction of political prisoners as a form of torture (a strategy).⁶²

Whether a given pattern of rape is strategic or opportunistic or occurs as a practice may not be readily observable. If an instance or pattern of rape is punished by the chain of command, it is clearly opportunistic (unless it is a “show trial”). Institutionalized forms of sexual violence are clearly adopted for organization purposes and are therefore strategic (see below). Organizations that explicitly order combatants to rape are probably rare (but do exist).⁶³ Probably more common are organizations where some form of sexual violence by combatants is a strategy authorized not by explicit orders but by “total war” or other permissive rhetoric.

With these considerations in mind, I will now analyze the conditions under which rape in particular is likely to be a strategy or a practice of war of the armed organization. I will bring in other forms of conflict-related sexual violence as needed.

59 *Ibid.*; E. J. Wood, above note 23; F. Gutiérrez Sanín and E. J. Wood, above note 12.

60 Of course, in a broader meaning often used in sociology, all violence is a “practice”. Here the term refers to unordered, not ordered, violence.

61 For a synthesis of this sizeable literature, see E. J. Wood, above note 4. On conformity in war, see Jean-Jacques Frésard, *The Roots of Behaviour in War: A Survey of the Literature*, International Committee of the Red Cross, Geneva, 2004, available at: www.icrc.org/eng/assets/files/other/icrc_002_0854.pdf.

62 Commanders are of course responsible for violence that was unordered but carried out by troops under their effective command even in the absence of orders. The common response of military and political leaders to accusations of strategic rape by their forces is to claim that the troops were not under their control, but this can be countered by other indicators of control. See E. J. Wood, above note 16.

63 See *ibid.*; E. J. Wood, above note 23.

Rape as a strategy of war

Commanders may adopt rape as a strategy of war against particular populations as in the case of rape as a form of sexual torture of political prisoners, the public rape of members of particular groups as they are “cleansed” from an area, as a form of collective punishment (usually in the context of orders to terrorize civilians), or as a signal of the organization’s resolve. In some settings, rape is an institutionalized form of compensation or reward, as when combatants are rewarded for exemplary service with civilians to victimize (or sex slaves, or wives in forced marriage). In such cases, commanders appear to perceive the benefits as outweighing the costs, which include less disciplined troops (who might come to engage in rape in contexts where it is not strategically beneficial), decreased civilian loyalty and cooperation, violation of domestic and international norms, and negative publicity possibly in international as well as domestic media.⁶⁴ Rape – including multiple-perpetrator rape – appears to have been a strategy in, for example, Bosnia, Guatemala and Rwanda: perpetrators were almost never punished, and gang rape occurred in the context of campaigns of ethnic cleansing or genocide (or torture) that were clearly ordered.⁶⁵

Michele Leiby analyzes rape as a counter-insurgency strategy on the part of States engaged in irregular warfare.⁶⁶ She suggests that State forces engage in sexual torture and rape (as well as other forms of violence) where and when rebel forces are visibly active but not strong enough to engage the State in frequent combat, using rape against communities of purported insurgent supporters as well as sexual torture against captured insurgents (and relatives) to extract information but also to punish and terrorize. She shows that sexual violence on the part of State forces during the 1980–2000 civil war in Peru conformed to the pattern predicted by her theory and was thus probably strategic.⁶⁷

Some armed organizations engage in other forms of conflict-related sexual violence as strategies of war. When an organization institutionalizes sexual slavery or forced marriage, the organization has purposefully adopted that form of sexual violence in pursuit of organization objectives, and it is therefore a strategy as defined above. For example, while still in Uganda (before being pushed into neighbouring countries), the Lord’s Resistance Army forced many of the girls and women it abducted to marry combatants on terms defined by the organization, which regulated and monitored compliance with its rules.⁶⁸ In mid-

64 E. J. Wood, above note 16.

65 E. J. Wood, above note 23. This does not imply, however, that rape and multiple-perpetrator rape will occur in all such campaigns: for example, in Sri Lanka, the LTTE appears to have not or rarely engaged in rape while forcibly displacing Muslims from the north (E. J. Wood, above note 4).

66 M. Leiby, above note 40; M. Leiby, above note 53.

67 In another paper, she identifies “hot spots” where more rape occurs than is predicted by factors that she argues facilitate opportunistic violence; thus, rape in those districts is, she argues, strategic. See Michele Leiby and Kimberly Proctor, *The Geography of Wartime Sexual Violence: Identifying “Hot Spots”*, unpublished paper presented at the annual meeting of the International Studies Association, San Diego, 1–4 April 2012.

68 Christopher Carlson and Dyan Mazurana, *Forced Marriage within the Lord’s Resistance Army, Uganda*, Tufts University Feinstein International Center, May 2008.

2014, the Islamic State (Daesh) reportedly “abducted hundreds (perhaps thousands) of Yazidi men, women and children”,⁶⁹ subjecting many of them to rape and sexual slavery (and some to forced marriage). Forced marriage and sexual slavery are clearly strategic: they are strongly institutionalized within the group, which has issued rules for their implementation.⁷⁰

Rape as a practice of war

When rape occurs as a practice, it is not ordered (even implicitly) or institutionalized, but is tolerated for a variety of reasons. Upper-level commanders may think effective prohibition too costly: it may require the disciplining or dismissal of otherwise effective subordinates; it may divert scarce resources to an issue seen as unimportant; it may lessen the respect of subordinates for their superiors (in a unit dominated by those who see nothing wrong in rape of civilians, the commander who would attempt to prohibit it may be seen as weak) and thereby undermine vertical cohesion; or it may simply be too much trouble. Commanders may tolerate rape or sexual slavery as a form of “compensation” to combatants (see below) if the costs of ending the practice are seen as too high. In short, “too costly” is socially constructed. An individual commander may tolerate rape if it is in his interest (for example, when he himself engages in rape).

The literature has identified at least two contexts in which combatants come to engage in rape as a practice. First, Dara Kay Cohen⁷¹ argues that *gang rape* reinforces cohesion in organizations that rely on forced recruitment (and thus have to create cohesion among hostile and bewildered recruits). Drawing on the literature on urban and prison gangs, she argues that gang rape effectively builds cohesion because it is an act understood by participants to be uniquely costly, not only breaking local social norms and recruits’ ties to their communities and cementing new ones to the organization, but also likely to result in sexually transmitted disease, which might go untreated. Rape in at least some of these cases – for example, the Revolutionary United Front in Sierra Leone, she shows – is not ordered or purposefully adopted by commanders; rather, senior members of small units participate and often insist that all members (including women) do so as well.⁷² Cross-national data confirm that conflict-related rape is more likely on the part of organizations that forcibly recruit,⁷³ and interviews with former combatants in Sierra Leone confirm the

69 Amnesty International, “Escape from Hell: Torture and Sexual Slavery in Islamic State Captivity in Iraq”, Amnesty International, December 2014, p. 4, available at: www.amnestyusa.org/sites/default/files/escape_from_hell_-_torture_and_sexual_slavery_in_islamic_state_captivity_in_iraq_mde_140212014_.pdf.

70 See *ibid.*, pp. 11–12, and the source cited therein, “Islamic State (ISIS) Releases Pamphlet on Female Slaves”, Jihad and Terrorism Threat Monitor of the Middle Eastern Media Research Institute, 4 December 2014, available at: www.memrijtm.org/islamic-state-isis-releases-pamphlet-on-female-slaves.html.

71 D. K. Cohen, above note 31; D. K. Cohen, “Explaining Rape during Civil War”, above note 2.

72 Of course, when rape is *ordered* or *encouraged* as a means to build cohesion, it would be a strategy, not a practice.

73 *Ibid.*

underlying mechanism.⁷⁴ As Cohen herself emphasizes, gang rape is a deeply social activity and (apparently) for some perpetrators also a sexual one, which begs the question: how in the context of such terror (on the part of the recruit) can rape nonetheless be sexual? What accounts for high levels of gang rape by those organizations that do not forcibly recruit, and low levels by some that do?

The second context of rape as a practice is when it is an unordered form of *compensation* that is broadly tolerated by commanders (as long as it is not institutionalized). Maria Eriksson Baaz and Maria Stern analyze how soldiers of the DRC State military understand the widespread rape of civilians by the organization.⁷⁵ In the context of deeply inadequate salaries that often go unpaid for extended periods, many of the 200 soldiers interviewed by the authors linked their organization's high rates of rape with the frustration and anxiety occasioned by their failure to live up to masculine ideals of establishing and providing for a family. Soldiers also distinguished (but not sharply, and with some ambivalence) what they saw as "lust" rapes – that is, rape involving forced sexual intercourse born out of frustration – from what they termed "evil" rapes, which included mutilation and gratuitous violence. The former were rapes that were "somehow more 'ok,' morally defensible, ethically palatable and socially acceptable, and [the latter were] those that are 'evil,' and not acceptable – but still 'understandable'".⁷⁶

Implications for policy

In light of recent research on conflict-related sexual violence, particularly its variation in repertoire, targeting and frequency across armed organizations, what are the implications for more effective policy to address it? The question is all the more urgent for the fact that a wide range of political, religious and social actors are implementing policies, many of which are not well informed by recent research. The discussion below lays out principles to guide policy rather than recommendations for specific policies (which must be tailored; see principles 4 and 5).⁷⁷ It focuses on policies to prevent sexual violence by armed organizations (not

74 D. K. Cohen, A. Hoover Green and E. J. Wood, above note 23.

75 M. Eriksson Baaz and M. Stern, "Why Do Soldiers Rape?", above note 58.

76 *Ibid.*, p. 497.

77 For discussion of particular policies and recommendations, see Leticia Anderson, *Addressing Conflict-Related Sexual Violence: An Analytical Inventory of Peacekeeping Practice*, United Nations Entity for Gender Equality and the Empowerment of Women (UNIFEM), 2010; Jessica A. Turchik and Susan M. Wilson, "Sexual Assault in the U.S. Military: A Review of the Literature and Recommendations for the Future", *Aggression and Violent Behavior*, Vol. 15, No. 4, 2010, pp. 267–277; Ragnhild Nordås, *Preventing Conflict-Related Sexual Violence*, PRIO Policy Brief No. 2, 2013. See also Jo Spangaro *et al.*, "What Evidence Exists for Initiatives to Reduce Risk and Incidence of Sexual Violence in Armed Conflict and Other Humanitarian Crises? A Systematic Review", *PLOS ONE*, Vol. 8, No. 5, p. e62600; Ted Alcom, "Responding to Sexual Violence in Armed Conflict", *The Lancet*, Vol. 383, 10 June 2014, available at: [www.thelancet.com/journals/lancet/article/PIIS0140-6736\(14\)60970-3/fulltext](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(14)60970-3/fulltext); Michelle Remme, Christine Michaels-Igbokwe and Charlotte Watts, *What Works to Prevent Violence against Women and Girls? Evidence Review of Approaches to Scale Up VAWG Programming and Assess Intervention Cost-Effectiveness and Value for Money*, June 2014, available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/337939/approaches-to-scaling-up-prog-intervention-vfm-j.pdf.

by civilians), and not on those to address the many needs of victims. While some of these principles apply specifically to conflict-related sexual violence, some may also apply to other types of violence against civilians by armed organizations.

1. *The observed variation in conflict-related sexual violence strengthens the case for holding commanders accountable for sexual violence by their combatants* if the usual criteria for effective command are met. The demonstrated fact that armed actors can build institutions that inculcate and enforce norms against rape and other forms of sexual violence of civilians if they care to do so should strengthen efforts to hold accountable those who do engage in rape. Commanders exercising effective command should be held responsible, whatever analytical category best describes the organization's pattern of violence, whether strategic (including institutionalized forms of sexual violence), opportunistic or as a practice.⁷⁸

2. *Policy-makers and practitioners can learn from those organizations that do not engage in conflict-related sexual violence.* In the case of an armed organization seeking to minimize sexual violence by its members, strengthening its institutions for the socialization of combatants against sexual violence, including the reasons for its prohibition (rather than only emphasizing disciplinary institutions), would contribute to its effective prevention. However, it may not be easy to "graft" specific institutions (for example, ongoing training for officers that emphasizes the organization's respect for and dependence on civilians) onto the armed organization if there is little resonance with its existing organizational culture.

3. *Policies should be informed by a sophisticated understanding of gender rather than treating conflict-related sexual violence as a women's issue.*⁷⁹ In particular, policy-makers should seek to analyze how combatants understand their engagement in sexual violence, exploring, for example, how conceptions of failed or compensatory masculinity may drive the social dynamics of rape of girls and women as a practice.⁸⁰ Moreover, such an understanding would also illuminate the conditions under which an armed organization targets men and boys with sexual torture and rape, those under which female combatants perpetrate sexual violence, and those under which organizations target members of sexual minorities.⁸¹ Efforts should be made to adopt a gender-neutral definition of rape, such as that used by the International Criminal Court.⁸²

78 X. Agirre Aranbaru, above note 57; A. Hoover Green, above note 40; E. J. Wood, above note 4; E. J. Wood, above note 16.

79 Kimberly Theidon, Kelly Phenicie and Elizabeth Murray, "Gender, Conflict, and Peacebuilding: State of the Field and Lessons Learned from USIP Grantmaking", *Peaceworks* No. 76, United States Institute of Peace, September 2011.

80 M. Eriksson Baaz and M. Stern, "Why Do Soldiers Rape?", above note 58; J. A. Turchik and S. M. Wilson, above note 77.

81 See Chris Dolan, "Letting Go of the Gender Binary: Charting New Pathways of Humanitarian intervention on Gender-Based Violence", in this issue of the *Review*.

82 See above note 1.

4. *Policy will be more effective if tailored to the organization's particular pattern of violence, taking into account its repertoire and targeting.* Policies designed to address rape are unlikely to address forced abortion; policies to address forced abortion are unlikely to address the sexual torture of men. Moreover, documenting the organization's complete pattern of violence – the repertoire of each sub-organization (including sexual violence) and the targeting of each element of the repertoire – may strengthen efforts to pressure commanders to limit violence against civilians.

5. *Policy will be more effective if informed by whether conflict-related sexual violence occurs as a practice, as a strategy, or opportunistically.* If rape (or other forms of sexual violence such as institutionalized sexual slavery) occurs as a strategy, then persuading or forcing organization leaders to countermand the strategy may be sufficient to end it. In the case of opportunistic sexual violence or sexual violence as a practice, policy faces the challenge of persuading individual commanders to no longer tolerate practices that are already formally prohibited, and doing so without counterproductive consequences. In both cases, the armed organization's cultural dynamics – its informal forms of initiation, ostracism and punishment – may prove quite resilient to change.

6. *Policy-makers can learn from policies that succeed in combating sexual violence in peacetime.* Examples include social norms marketing campaigns and some male-to-male peer counselling programmes.⁸³ However, such policies may need to be radically adapted to the armed organization's structure, its culture and its particular pattern of sexual violence.

7. *Policy-makers can learn from successful campaigns against violence during conflict.* As many have pointed out, the campaign against conflict-related rape that began in the 1990s was very successful in that it led to the international criminalization of sexual crimes and the adoption of a series of UN Security Council resolutions.⁸⁴ Yet implementation is at best uneven, and consequences may include unintended ones such as the conditioning of health services to women in conflict areas on a claim to have been raped. What can analysis of the successes and failures of other campaigns (such as those against land mines, child soldiers and “blood diamonds”) teach us about policy design and implementation?

8. *Policy-makers should be aware of settings that are at high risk for conflict-related sexual violence.* Recent research identifies a number of such settings, where indicative factors include recruitment by abduction or press-ganging,⁸⁵ the torture of detainees (which often takes sexual form), refusal to give International

83 Elizabeth Levy Paluck and Laurie Ball, *Social Norms Marketing Aimed at Gender Based Violence: A Literature Review and Critical Assessment*, International Rescue Committee, New York, May 2010; M. Remme, C. Michaels-Igbokwe and C. Watts, above note 77.

84 See Mala Htun and S. Laurel Weldon, “The Civic Origins of Progressive Policy Change: Combating Violence against Women in Global Perspective, 1975–2005”, *American Political Science Review*, Vol. 106, August 2012, pp. 548–569, among many others.

85 D. K. Cohen, above note 2.

Committee of the Red Cross delegates access to detainees,⁸⁶ the separation of female and male detainees during ethnic violence, and inadequate provisioning of troops, particularly if it makes having a family impossible.⁸⁷

9. *After war, policy should be informed by the risk of increased sexual violence but also by the potential for enduring change.* Sexual violence may increase after conflict⁸⁸ because norms proscribing it have weakened over the course of the war, because potential victims are denied status in their community and may therefore be further targeted with impunity, or because protective family, religious and gendered networks have disappeared. And if some armed organizations re-mobilize, they may return to their wartime patterns of sexual violence. Nonetheless, the changes wrought by war may make possible more just gender relations, as when women have assumed new roles in the economy and in the leadership of displaced communities, victims' associations and political organizations.⁸⁹

10. *Policy-makers should beware the unintended consequences of their efforts,*⁹⁰ including an over-emphasis on gathering and publicizing statistics that are inaccurate or that stigmatize victims.⁹¹ For example, in preliminary results from a project to assess the impact of international prosecution on levels of conflict-related sexual violence, Michael Broache finds that prosecution may not have a deterring effect and, under some conditions, may even be followed by increased levels of conflict-related sexual violence.⁹²

Conclusion

Despite the advances summarized above, there is much we still do not understand about conflict-related sexual violence.⁹³ Perhaps most troubling is the fundamental question: why is violence sometimes sexual and sometimes not? More specifically,

86 M. Leiby, above note 40.

87 M. Eriksson Baaz and M. Stern, "Why Do Soldiers Rape?", above note 58.

88 See D. K. Cohen and R. Nordås, above note 2, p. 425.

89 Elisabeth Jean Wood, "The Social Processes of Civil War: The Wartime Transformation of Social Networks", *Annual Review of Political Science*, Vol. 11, pp. 539–561; Rebecca Nielsen, *War, Networks, and Women in Politics: Female Secret Societies in Liberia and Sierra Leone*, PhD dissertation in progress, Yale University, 2015.

90 M. Eriksson Baaz and M. Stern, *Sexual Violence as a Weapon of War?*, above note 58.

91 Dara Kay Cohen and Amelia Hoover Green, "Dueling Incentives: Sexual Violence in Liberia and the Politics of Human Rights Advocacy", *Journal of Peace Research*, Vol. 49, No. 3, 2012, pp. 445–458; Françoise Roth, Tamy Guberek and Amelia Hoover Green, *Using Quantitative Data to Assess Conflict-Related Sexual Violence in Colombia: Challenges and Opportunities*, Benetech Human Rights Program and Corporación Punto de Vista, 2011, available at: www.hrdag.org/resources/publications/SV-report_2011-04-26.pdf

92 Michael Broache, *The Effects of Prosecutions on Sexual Violence in Armed Conflict during the 'ICC Era,' 2002–2009*, paper presented at the Workshop on Sexual Violence and Armed Conflict: New Research Frontiers, Harvard Kennedy School, Harvard University, 2–3 September 2014.

93 See Maria Eriksson Baaz, Maria Stern and Chris Dolan, *Poking Heads Above the Parapet: Theorizing Sexuality and Violence in Conflict-Related Sexual Violence*, and Elisabeth Jean Wood, *The Policy Implications of Recent Research on Wartime Sexual Violence*, papers presented at the Workshop on

what is the relationship between rape and sexuality? This “uncomfortable subject”⁹⁴ remains the question at the heart of this field. How precisely does gender matter in constructing variations in specific patterns, especially rape? We have seen that broad notions of patriarchy cannot explain the full spectrum of observed variation in rape by armed actors, but surely gender matters deeply. Relatedly, under what conditions does torture include sexual torture, sexual slavery take the form of forced marriage, and targeting include boys and men at high levels as well as girls and women?

As discussed above, many scholars currently focus on the social construction of gender, sexuality and the costs of sexual violence within the armed organization to analyze its pattern of sexual violence, both its specific strategies and particular practices. There remains much that we do not as yet understand about the origins of both strategies and practices. What accounts for commanders’ perceptions and beliefs about the strategic utility of different patterns of violence and the institutions to implement them? Do the same psychological mechanisms and dynamics that undergird rape in the context of university campuses, youth gangs, sports clubs and prisons operate in armed organizations that rape as a practice (but not in those that do not)? To what extent do ideologies, institutions, strategies and practices emerge independently, and to what extent do they diffuse from organization to organization through imitation of other organizations (perhaps across different conflicts) or the desertion of combatants from one to another? Is rape as a practice more common during war than as a strategy? Several researchers suggest that the answer is yes, but the claim has not been explicitly explored.⁹⁵

Rape is not inevitable during war.⁹⁶ It is not an unavoidable collateral damage of war – its victims, women and men of all ages, were not brought down by crossfire or an errant missile but were intentionally violated. As Neil Mitchell has emphasized, “rape is not done by mistake”.⁹⁷ Nor is it an inevitable consequence of patriarchy: many armed organizations – non-State actors as well as State militaries – often choose to prohibit rape by their members, and do so effectively.

What is not inevitable can be ended. Policy informed by recent research on conflict-related sexual violence should be better able to prevent or mitigate its occurrence. Policy guidelines of the type sketched above will perhaps contribute to this shared effort.

Sexual Violence and Armed Conflict: New Research Frontiers, Harvard Kennedy School, Harvard University, 2–3 September 2014.

94 M. Eriksson Baaz and M. Stern, *Sexual Violence as a Weapon of War?*, above note 58.

95 D. K. Cohen, above note 2; M. Eriksson Baaz and M. Stern, *Sexual Violence as a Weapon of War?*, above note 58; E. J. Wood, above note 16; M. Eriksson Baaz, M. Stern and C. Dolan, above note 93.

96 E. J. Wood, above note 4; E. J. Wood, above note 16.

97 N. J. Mitchell, above note 40, p. 50.

Q&A: ON SEXUAL VIOLENCE IN DETENTION

Through the eyes of a detention doctor: Interview with Raed Aburabi*

Dr Raed Aburabi has been working for the International Committee of the Red Cross (ICRC) for twenty years. He is currently in charge of the health in detention unit at the ICRC's Headquarters in Geneva. As part of his work, he visits countries in which the ICRC operates in order to develop a dialogue with the detaining authorities on improving health services and conditions in places of detention.

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In prison, as in the outside world, sexual violence occurs when acts of a sexual nature are imposed by force or coercion. Detention places are, by their very essence, coercive environments where the notion of consent cannot be understood in isolation from the relationship of authority between those with power (be they guards or detainees) and those without. The powerful can, often unchallenged by outside oversight, impose formal and informal rules and regulations. Moreover, the scarcity which is a feature of even the best-run detention environment may lead detainees to engage in acts of a sexual nature in order to access basic goods or services, such as food, water and health care. Sex is further used in detention to pay debts, to gain access to means of communication and to obtain protection. As a result, in detention what may seem to be consensual sex is often far from it, and acts of sexual violence may not be perceived as such.

By virtue of its mandate, the ICRC comes face-to-face with different manifestations of sexual violence in detention and aims to develop a multidisciplinary approach to securing detainees' safety from sexual violence. This includes combating torture and other forms of ill-treatment, but also ensuring acceptable conditions of

* This interview was conducted by Vincent Bernard, Editor-in-Chief, and Elvina Pothelet, Thematic Editorial Assistant, on 30 April 2013 in Geneva.

detention and equitable access to food, water, health services, and so on. It also includes supporting better management and oversight, restoration and maintenance of family contacts, and respect for legal safeguards.

In this interview, Dr Raed Aburabi, an ICRC detention doctor, provides a first-hand account of the many manifestations of sexual violence in detention, and reflects on the multiple related needs of detainees and the ways in which an institution such as the ICRC can work to address them.¹

Dr Aburabi, could you describe some of the manifestations of sexual violence you and your colleagues have encountered in detention places visited by the ICRC? What are some of the causes or risk factors for sexual violence in detention?

First, it is important to mention that it is extremely difficult for victims to speak out about sexual violence, as it affects one's intimacy and sense of dignity. This is true of sexual violence occurring in the outside world, too. But in prisons, sexual activity among prisoners, and between prisoners and staff, is often a disciplinary or even criminal offence. In addition, some forms of sexual activity and sexuality may be considered taboo – for example, same-sex relations and homosexuality – and prisoners often have little opportunity to seek help safely from independent persons. This can make sexual violence a particularly invisible phenomenon. Sexual violence is more common in detention than most people imagine.

Second, while sexual violence is most often referred to in relation to detained women and girls, there is a high prevalence of male victims among detainees. Certainly, in detention places, many women are victims of sexual violence committed by males (including those who demand sex as a condition for access to basic services). But of the ten million or so prisoners around the world, only about 6% are women, so quantitatively, we can say that sexual violence in detention has a great effect also on men and boys.

As for the perpetrators, although staff can certainly commit acts of sexual violence vis-à-vis detainees, sexual violence is also inflicted by detainees on fellow detainees (including children upon other detained children). Sometimes it is possible to observe a hierarchy within the cell or ward. There is a “boss” deciding who can access the shower, or the health clinic for example, and at what price. Then you also have the guards, who may seek to benefit from that bargaining system. In some contexts, the internal stratification is taken to an extreme: the “upper hierarchy” designate fellow inmates as “untouchables”, the lowest status in the prison hierarchy. Untouchables struggle to have proper access to food or

1 Editor's note: For a historical background on the ICRC's activities in detention, see Alain Aeschlimann, “Protection of Detainees: ICRC Action Behind Bars”, *International Review of the Red Cross*, Vol. 87, No. 857, 2005, pp. 83–122, available at: www.icrc.org/eng/resources/documents/article/review/review-857-p83.htm.

showers; they wear dirty clothes and are completely marginalized – nobody will shake hands with them, eat with them, or have any kind of social interaction. An untouchable carries a high risk of being a victim of sexual violence – of being raped by one or more detainees and even becoming permanently used for sex.

Sexual violence occurs in various degrees around the globe, as a manifestation and vector of the prison system of power and control. It can comprise all manner of humiliating, degrading, cruel and violent acts, including acts inflicted on the sexual organs, and may culminate in rape. There are specific moments when detainees may be at higher risk of sexual violence, for example during initial detention, when the detainee is most disoriented and isolated from the usual support systems. We see many instances of sexual violence in police stations, or during arrest. Perpetrators seem to think that nobody will know what happens during this “transitory” stage, especially when there is no lawyer present, no independent oversight, and/or no one knows where the detainee is and in whose hands. There is also a high prevalence in interrogation centres, where sexual violence is used as a form of torture to obtain information. Other moments of high risk are searches and, for detainees, when sleeping, undressing, washing and using toilets. It is important to understand that not only detainees but also their family members may experience sexual violence in places of detention, both in relation to its use to obtain information and to search procedures required in order to obtain a visit with a detained relative.

You pointed to the fact that sexual violence is to a large extent an invisible phenomenon. How does the ICRC identify detainees who are, or risk becoming, victims of sexual violence?

Although detention doctors have a particular role and opportunity in relation to victims of sexual violence, ICRC visiting teams are not only composed of detention doctors and it is not only they who have the opportunity to conduct private interviews with detainees. ICRC delegates also have that opportunity. The primary source of information on which ICRC visiting teams base their actions on behalf of detainees is usually the accounts given by detainees during these interviews. The information obtained can be supplemented by observation of physical or psychological traces or access to the confidential medical files of individuals, or by more general observations not requiring the intervention of a medical professional. To the extent possible, we make sure that the visiting team is multidisciplinary and gender-balanced, to increase trust and allow the detainees the possibility to talk to someone of the preferred gender. All members of the visiting team know that their role is not to interrogate but to facilitate. It sometimes helps to approach the sensitive issue of sexual violence by talking about risks and personal safety in the prison in general, instead of focusing on individuals. Collecting background information on sexual violence in the context that we visit is also important, including to be able to understand attitudes and allusions to sexual acts, according to the local culture.

In general, you can sometimes pre-identify those particularly at risk of violence. This can be very context-specific, but young detainees, first-time detainees, those with a certain appearance, those with learning or other disabilities, as well as lesbian, gay, bisexual, transgender and intersex persons can be particularly vulnerable. The ICRC detention team must understand relationships of power and control: who are those detainees benefiting from all the privileges, and exercising control over fellow inmates, and who are those at the bottom of the food chain (in the eyes of detainees and staff). When you identify the ones obliged to clean the toilets and the ones being waited on, you can understand who are the “bosses” or those with purchasing power, and conversely, who are the detainees who might be most at risk of sexual violence. This is why understanding the local culture in and outside detention and observing prison life through regular visits are important preliminary steps to successfully addressing sexual violence.

Each ICRC visiting team is aware that it is not only us who observe the detainees’ lives; they also observe us. Sexual violence victims will turn to us only if they know they can trust us – and we have to earn this trust. The ability to build a relationship of trust with the detainee, and to create the space for a confidential dialogue, is absolutely key. That requires time, time alone with the detainee. For former detainees, talking about their sexuality inside the prison, and possibly the sexual violence they have suffered from, is a very difficult thing. So imagine what it is to talk about it when you are still inside the prison, when anything you say or do can have a dramatic impact on the way other inmates or staff perceive and treat you. This is a real challenge. As a doctor, I happened to examine patients who had very visible injuries, who were bleeding, but when I asked them what happened to them they would tell me they fell from the stairs, by chance, or they fell on a stick. It is always by accident; they have real difficulty at first in acknowledging that they were victims of an attack of a sexual nature. There are others who show no visible signs, be they physical, psychological or social. So, from my point of view, the best way to approach the topic with a detainee we suspect has been the victim of sexual violence is to let him/her bring up the incident by himself/herself. And you have to give him/her the space to do so. This is not achieved in a single, rushed prison visit – it requires time, and the ability to listen.

Approaching the issue from the medical angle can make things easier, which is why in my opinion it is crucial to have health staff visiting the detention places. I think our role and expertise as doctors explains why detainees often confide more readily in us. You know, our patients do not come to us to talk about the attack itself, but to ask if we can treat the physiological or psychological consequences they suffer from. So they will start to talk about the pain they feel, their symptoms. And little by little, visit after visit, through simple questions the patient will start to share more about what happened. Open-ended questions allow the patient to orient the discussion in the direction he/she feels comfortable with. Sometimes, you can also sense they are expecting you to give them a helping hand or give them a few hints to bring up the issue. Then, some of them

will start to cry; others prefer to put an end to the discussion because it brings back too many painful feelings. As ICRC staff, and as medical professionals, we can give assurances that everything they share with us is confidential and will remain between the two of us if they choose so. These assurances usually allow reopening the dialogue and consideration of how best to address the detainee's needs.

Concretely, how can the ICRC visiting teams, and the detention doctors in particular, assist victims of sexual violence?

Sexual violence is an extremely sensitive topic to address – and especially when committed against men – so the first difficulty is to establish a dialogue with the victim. Once we have established a relationship of trust, we can start addressing the issue. Detainees may face the same physical and mental health consequences as victims of sexual violence *extra muros*. They also suffer social difficulties (exclusion, isolation from other detainees, and a higher risk of being a victim of other forms of abuse), as well as economic ones: being isolated and stigmatized, they may be denied access to goods, including food, or work in the prison. The abuse may also prevent them from being able to economically support themselves and their family once outside the prison – physical or mental harm, as well as lack of self-esteem, can be insurmountable barriers to finding a job. Victims of sexual violence in detention also often face the additional challenge of having to continue living in proximity with the perpetrator(s).

As detention doctors, our aim is thus primarily to inform, reassure and advise the detainee on therapies and services available to them in the prison, if any, and outside, when they are released. We also try, to the extent possible, to address their mental wounds. This implies first sitting and spending time discussing with them, with sympathy, humanity and professionalism – we treat them as any patient, and we do not neglect them. We decide with them what steps we can take to address the harm they have suffered, but also to make the abuse stop.

Indeed, addressing only the consequences cannot be a satisfying end in itself. Always subject to the principle of confidentiality and our patient's consent, the ICRC's visiting team can address the issue with the authorities and/or help the detainee initiate procedures if he/she so wishes. That always happens in accordance with confidentiality rules and with the patient's consent, just as it happens with our patients outside detention facilities. I would ask my patient if he/she wants the prison doctor – or any other prison staff – to know; if my patient refuses, I will not report his/her story. I would not even share the individual story with my ICRC colleagues unless I have the patient's consent. This is the way we build trust – the patient knows we will always respect his/her will, and this spreads quickly amongst other detainees. Sometimes, it takes time. I would visit my patient a second time, and third time, and so on, and over time he/she will realize that I did not share his/her secret with anyone, that I am here to help him/her, and that he/she can trust me and my advice. In this sense, patients may find it easier to confide in an ICRC doctor – someone independent

coming from the outside. This is the preliminary step before reporting the information to anyone outside of the doctor–patient relationship.

If the patient refuses to share the information with the prison authorities, then I would provide him/her with the appropriate treatments and/or advice depending on my medical diagnosis. But if he/she agrees, then I would let the prison doctor know about the file, and we would discuss what can be done (transfer of the detainee, change of cell, etc.). When the measures that the prison doctor can take are insufficient to protect the detainee, as a team we would initiate a dialogue with the prison director – again, subject to the patient’s consent. And it is then his/her responsibility to treat the allegation of sexual violence in good faith, to conduct an investigation and to take the necessary measures to put an end to it. This will usually require amendments to a range of procedures and practices and the removal and punishment of perpetrators.

Now, on tackling the issue more generally, as I have already mentioned, the taboo surrounding sexual violence – and sexuality in general – in detention is an enormous obstacle. Yet, it cannot be a reason to ignore it. When I refer the problem of sexual violence to directors of prisons around the world, in the beginning there is often complete denial. After a few days of discussion, tongues are loosened and the prison authority admits that there is sexual violence in the prison, and that they do not know how to address it. Sometimes they do not want to interfere with it. Why? Because they consider that what happens in the prison should stay within the prison walls. There is an incentive for prison staff to turn a blind eye to sexual violence when it constitutes an essential component of the social hierarchy system between inmates – and hence an indirect, albeit violent, means of controlling the detainees. But our role as the ICRC is to bring up the issue, to get the authority to admit that sexual violence is happening behind the prison walls. And then we explain to them that it is their role to address it, and that they actually have an obligation to protect detainees from sexual violence.

Of course, what the ICRC, and those responsible for the care of those detained, should aim for is *preventing* sexual violence from being inflicted in the first place. That can only be done through dialogue aimed at a properly functioning prison system, where safety, dignity and humanity are paramount. But how we get there is a topic for another, long conversation...

OPINION NOTE

Letting go of the gender binary: Charting new pathways for humanitarian interventions on gender-based violence

Chris Dolan

Chris Dolan has worked extensively as an academic, practitioner and activist with refugees, internally displaced persons (IDPs) and ex-combatants in conflict and post-conflict settings in sub-Saharan Africa. As Director of the Refugee Law Project, a university outreach project in Uganda working with refugees and IDPs from across the Great Lakes region, he has established new programming for male survivors of conflict-related sexual violence alongside existing work with women survivors, as well as drawing attention to the specific needs of lesbian, gay, bisexual, transgender and intersex refugees. He has consulted widely with the UN and non-governmental organizations on the same.

Keywords: sexual violence, gender equality, gender inclusivity, humanitarian response, GBV, LGBTI, humanitarian imperative, Inter-Agency Standing Committee.



Increasing acknowledgement in some quarters that women and girls are not the only victims of sexual violence, and that sexual violence is not the only form of

gender-based violence (GBV), has yet to be adequately reflected in policy and practice in the humanitarian world.

Current mainstream approaches to GBV, as generated by and reflected in international humanitarian and developmental discourse, and as embedded in policy and practice in crises around the globe, have improved humanitarian responses to women and girl victims. They have also brought partial sight to some of the previously gender blind, and generated some political discussion and action aimed at preventing such violence. The Global Summit on Ending Sexual Violence in Conflict, held in London in June 2014 and spearheaded by UK Foreign Secretary William Hague and pop-culture icon Angelina Jolie, is an indicator of the unprecedented traction the issue has gained on (parts of) a global stage.

Notwithstanding these important advances in terms of political recognition of GBV, the situation for victims in conflict and humanitarian settings remains cause for concern. If gender is a potentially powerful analytical, practical and political engine, it is one which is currently firing on only half its cylinders. This article highlights some emerging thinking about GBV, examines the Inter-Agency Standing Committee's (IASC) 2005 Guidelines on GBV prevention, and argues that as a ten-year review process of the Guidelines nears completion, a number of key shifts in the conceptualization of GBV in humanitarian settings are required, for unless understandings of GBV shift from an emphasis on gender equality towards an ethos of gender inclusivity, the situation of victims will not improve, and social justice and change agendas will continue to falter.

For mainstream humanitarian approaches significantly to increase the effectiveness of prevention, mitigation and response to GBV, the 2005 focus on sexual violence cannot be lost.¹ However, the range of victims and survivors that are not just recognized but also addressed needs to be more inclusive – most urgently male and lesbian, gay, bisexual, transgender and intersex (LGBTI) victims and survivors – and a range of non-sexual forms of GBV must also become the target of humanitarian attention.

To achieve this, the importance and appropriateness of pursuing male–female gender equality when people are in crisis must be questioned and the primacy of humanitarian principles must be reaffirmed; static models of gender vulnerability must be replaced with analysis of situational vulnerability; opportunistic use of statistics must yield to consistent concern with establishing relevant data; and the concentration of expertise in the hands of “gender experts” cannot be allowed to substitute the larger task of attitudinal change in humanitarian personnel as a whole.

Some signs of change in thinking about gender-based violence

In a range of national and international spaces, there are signs of change in perspectives on and approaches towards addressing GBV. Women and men alike

1 The full title of the IASC 2005 Guidelines is *Guidelines for Gender-based Violence Interventions in Humanitarian Settings: Focusing on Prevention of and Response to Sexual Violence in Emergencies*, September 2005, available at: www.humanitarianinfo.org/iasc/downloadDoc.aspx?docID=4402.

increasingly recognize that not only women should be fighting for women's rights, and there is a corresponding growth in attention to the objective of and methods for engaging men in ending violence against women – a shift which, in some instances, also engages men in ending violence against men. The MenEngage movement, for example, emphasizes the centrality of “masculinities in different domains and disciplines of development and social justice related action in a globalizing world”,² and focuses on men's responsibilities in addressing blatant injustices against women while also emphasizing nurturing aspects of normative masculinities, such as fatherhood.³ Funding support from UN Women and other key stakeholders championing gender equality has also given this approach a certain legitimacy and ensured its gradual adoption in GBV policy and programming.⁴

The White House's September 2014 “It's On Us” campaign offers a good example of the “men engage” approach.⁵ As President Obama himself urges people to “learn how and take the pledge” to “help keep women and men safe from sexual assault”, he epitomizes an engaged man, a role model to millions who need help to redefine their masculinity. Regardless of the multiple possible motivations for this presidential involvement,⁶ the political significance of having a national leader who acknowledges a problem of sexual assault at home, and is simultaneously a leader on the global stage, should not be underestimated.⁷

For the purposes of this paper it is also significant that, as silence is broken, new language emerges. In 2005, in his Foreword to the IASC GBV Guidelines, Jan Egeland wrote of the need to address “women's and girls' risk to sexual violence”.⁸ By simply including in his 2014 statement on sexual assault the two words “and men”, President Obama both indicated and gave visible leadership to what had

2 See the announcement of the second MenEngage Global Symposium, available at: www.xyonline.net/content/cfp-2nd-menengage-global-symposium-new-delhi-india-november-10-13th-2014 (all internet references were accessed in October 2014).

3 Examples can be found at www.menengage.org/take-action/.

4 It can be seen, for example, in the IASC's Gender Equality Policy Statement, which puts “Actively involving boys and men as allies in the promotion of gender equality” as one of its seven principles. See IASC, “Policy Statement: Gender Equality in Humanitarian Action”, 20 June 2008 (Gender Equality Policy Statement), available at: <https://icvanetwork.org/resources/iasc-policy-statement-gender-equality-humanitarian-action>

5 See the webpage www.itsonus.org/#pledge; and the video “It's On Us: Sexual Assault PSA”, available at: <https://www.youtube.com/watch?v=wNMZo31LziM>.

6 The US Army's published 2012 statistics regarding sexual assault within the military, for example, show that 53% of 26,000 reported cases in that year involved male-on-male assault. What this means for the victims has been reported in depth in popular media; see, for example, Nathaniel Penn, “Son, Men Don't Get Raped”, *GQ*, undated, available at www.gq.com/long-form/male-military-rape. Stemple's work demonstrates how changing definitions of rape have led to new statistics that fundamentally redraw the map when it comes to the gendered distribution of sexual assault and sexual violence; see Lara Stemple and Ilan H. Meyer, “The Sexual Victimization of Men in America: New Data Challenge Old Assumptions”, *American Journal of Public Health*, Vol. 104, No. 6, June 2014, pp. 19–26.

7 It is not just rhetoric: the US State Department is thus far the first government donor to take seriously the issue of sexual violence against men and boys in conflict settings.

8 IASC 2005 Guidelines, above [note 1](#), p. iii.

until recently been a rather quiet revolution in understanding driven by activists and academics and their individual allies in the major institutions.⁹

Within the humanitarian context, the age, gender and diversity (AGD) policy of the United Nations High Commissioner for Refugees (UNHCR) provides a noteworthy example of an institutional effort to go beyond a focus on women and girls. The policy's objective is "to ensure that all persons of concern enjoy their rights on an equal footing and are able to participate fully in the decisions that affect their lives and the lives of their family members and communities". The rationale for the approach is spelled out as follows:

By analyzing the AGD dimensions as interlinked personal characteristics, we are able to better understand the multifaceted protection risks and capacities of individuals and communities, and to address and support these more effectively. By promoting respect for differences as an enriching element of any community, we promote progress toward a situation of full equality.¹⁰

This rather radical statement (in policy terms) combines (i) a nuanced understanding of difference which goes far beyond a blunt gender binary with (ii) an immediate and actionable protection objective and (iii) an understanding of how this progresses us towards that valuable but nonetheless elusive political goal, "a situation of full equality".¹¹ Although the UNHCR's AGD approach is policy rather than law, its extensive definition of diversity¹² is considerably more elaborated than the five grounds for protection established more than half a century earlier in the 1951 Refugee Convention,¹³ thereby demonstrating how policy can be a vehicle of change, even as we wait for the law to catch up.

- 9 For humanitarians, the IASC's own 2008 Gender Equality Policy Statement already talked of the need to "ensure women, girls, boys and men have equitable access to and benefit from humanitarian protection and assistance response" (Gender Equality Policy Statement, above note 4, p. 4), but with regard to addressing sexual violence the most important signal of this shift towards including men and boys came with the declaration on preventing sexual violence in conflict adopted by G8 foreign ministers in London on 11 April 2013 and UNSC Res. 2106 of June 2013, which, within a statement on the women, peace and security framework, included men and boys as victims, albeit alongside secondary victims. For more detailed discussion, see Chris Dolan, "Has Patriarchy Been Stealing the Feminists' Clothes?", *IDS Bulletin*, Vol. 45, No. 1, 2014. The difference between these earlier statements and Obama's involvement in a 35-second video short a year later is in the level of intentional visibility; whereas UNSC Res. 2106 was a reluctant compromise that most people never heard about, Obama's statement is intended to reach millions.
- 10 UNHCR, "Age, Gender and Diversity Policy: Working with People and Communities for Equality and Protection", 2011, available at: www.unhcr.org/4e7757449.html.
- 11 My recent experience in some field settings suggests that the roll-out of these policy positions, or perhaps more accurately their internalization by country- and field-level staff, still has quite some way to go. However, having participated in one of the earliest pilots of the AGD mainstreaming approach in the eastern Democratic Republic of the Congo in 2005, I believe I can safely say that even in its earliest formulations it opened the door to new discussions and dialogues and thereby to important attitudinal change.
- 12 AGD is defined as referring to "different values, attitudes, cultural perspectives, beliefs, ethnic background, nationality, sexual orientation, gender identity, ability, health, social status, skill and other specific personal characteristics"; see UNHCR, above note 10, para. 5.
- 13 These are race, religion, nationality, membership of a particular social group, and political opinion. See Article 1, on the definition of the term "refugee", of the 1951 Convention Relating to the Status of Refugees.

A third area in which there has been considerable progress, at least amongst major institutional stakeholders in the protection sector, is in levels of recognition for the rights of LGBTI persons. The Office of the United Nations High Commissioner for Human Rights' (OHCHR) fact sheet on homophobic and transphobic violence describes violence against LGBTI persons as "a form of gender-based violence, driven by a desire to punish those seen as defying gender norms".¹⁴ This brings to the fore the nexus of gender, sexuality and GBV in a manner that – unfortunately – has been sorely lacking in much of the action and thinking on GBV to date. Growing recognition of the rights of LGBTI persons is visible in changing *de facto* funding conditionality in situations with aggressive patterns of homophobia,¹⁵ and in the humanitarian sphere it is reflected in increasing efforts by the UNHCR to understand¹⁶ and in some situations respond to the specific needs of LGBTI asylum seekers and refugees.¹⁷

The centrality of the IASC Guidelines in shaping humanitarian interventions on GBV

The initiatives described above – including those of the lead humanitarian agency, the UNHCR – are not representative of the mainstream, at least not yet. Even in the second decade of the twenty-first century, they are outliers in an otherwise somewhat monolithic GBV discourse.¹⁸ They model exciting future possibilities both for progressive approaches to gender that go beyond a simple male-female binary, and for correspondingly more nuanced understandings of GBV. It remains to be seen, however, whether or not these possibilities will be endorsed and promoted by one of the major arbiters of humanitarian matters at a global level, the IASC.

Established in June 1992,¹⁹ the IASC represents an important proportion of humanitarian stakeholders operating internationally, with a correspondingly

- 14 UN, "Homophobic and Transphobic Violence", fact sheet, available at: www.ohchr.org/Documents/Issues/Discrimination/LGBT/FactSheets/unfe-27-UN_Fact_Sheets_Homophobic_English.pdf
- 15 In 2014, for example, the US government withdrew substantial HIV funding from the Inter-Religious Council in Uganda in reaction to the latter's public support for Uganda's infamous Anti-Homosexuality Bill and Act (2014).
- 16 The UNHCR should be commended on its *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/12/09, 23 October 2012, available at: www.unhcr.org/cgi-bin/texis/vtx/home/opendocPDFViewer.html?docid=509136ca9&query=lgbt%20policy; on its Need to Know Guidance Note on "Working with Lesbian, Gay, Bisexual, Transgender and Intersex Persons in Forced Displacement", 2011; and on the availability of an extensive collection of LGBTI-related policy documentation, at www.refworld.org/sogi.html.
- 17 For example in response to the influx of LGBTI asylum seekers from Uganda into Kenya in the wake of the presidential assent to the Anti-Homosexuality Act.
- 18 For a discussion of the manner in which the Women, Peace and Security architecture arising from UNSC Res. 1325 and subsequent related resolutions have contributed to this discourse, see C. Dolan, above [note 9](#).
- 19 The IASC was created by UNGA Res. 48/57, A/RES/48/57, 14 December 1993. It comprises nine full members (FAO, OCHA, UNDP, UNHABITAT, UNHCR, UNICEF, WFP, WHO) and nine standing invitees (ICRC, ICVA, IFRC, InterAction, IOM, OHCHR, UNFPA, World Bank, Steering Committee

significant responsibility for populations in humanitarian crisis settings.²⁰ Its first Guidelines on GBV interventions were produced in 2005 with the title *Guidelines for Gender-Based Violence Interventions in Humanitarian Settings: Focusing on Prevention of and Response to Sexual Violence in Emergencies*. As described by Jeanne Ward, the impetus for the Guidelines arose “in large part from the failure of humanitarian agencies to institute basic protection against sexual violence in Darfur, with the longer-term goal of establishing essential steps all humanitarian actors could take in their areas of operation to reduce the risk of exposure to GBV”.²¹ In the IASC’s own words, the Guidelines are “designed for use by humanitarian organisations, including UN agencies, non-governmental organisations (NGOs), community-based organisations (CBOs), and government authorities operating in emergency settings at international, national, and local levels”.²²

The 2005 Guidelines are not only a barometer of the key perspectives prevalent in the wider discourse on GBV in humanitarian and development circles at the time they were written; they have for the last decade also played a part in creating and consolidating these into an agenda for humanitarian action, having been “rolled out in humanitarian settings globally via training and other information-sharing activities”.²³ When the size of their intended beneficiary populations is taken into account,²⁴ coupled with the role of GBV in fuelling forced displacement and the risks of GBV to which populations requiring humanitarian intervention are exposed, it is evident that the potential impact of the IASC’s policy positions on GBV is considerable.

What’s wrong with the 2005 IASC Guidelines?

The 2005 Guidelines were a milestone when first published, signalling as they did a new level of awareness of GBV as it affects women and girls, and an institutional endorsement of greater efforts to respond to such violence within humanitarian settings. Ten years later, however, it is evident that even if adopted and implemented in their entirety, they would address only certain parts of the

for Humanitarian Response, Office of the Special Representative on the Human Rights of Internally Displaced Persons).

- 20 Several of the standing invitees are themselves umbrella bodies for a multiplicity of organizations; InterAction, for example, has more than 180 members. See www.interaction.org/members/about-members.
- 21 Jeanne Ward, “Revising the 2005 IASC Guidelines for Gender-Based Violence Interventions in Humanitarian Settings: Prioritising Accountability”, *Humanitarian Exchange*, No. 60, February 2014, available at: www.odihpn.org/humanitarian-exchange-magazine/issue-60/revising-the-2005-iasc-guidelines-for-gender-based-violence-interventions-in-humanitarian-settings-prioritising-accountability.
- 22 IASC 2005 Guidelines, above note 1. They also gave rise to a range of derivative related materials, such as the UNFPA’s e-learning course on “Managing Gender-Based Violence Programmes in Emergencies”, available on the Global Protection Cluster website at: <https://extranet.unfpa.org/Apps/GBVinEmergencies/index.html>.
- 23 J. Ward, above note 21.
- 24 In 2008 the number of people newly displaced by natural disasters was estimated at 36 million, while in 2014 the estimates for internally displaced persons and refugees are above 43 million. See www.un.org/en/globalissues/briefingpapers/refugees/.

spectrum of gender-based violence and harms that afflicts persons in humanitarian crises. The shortfall can, in my view, be traced to a number of major conceptual and practical limitations of the GBV model adopted in the Guidelines.

Focus on women and girls

The limitations begin with the demarcation of persons of concern. The opening sentence on page 1 of the Guidelines reads as follows: “Gender-based Violence (GBV), and in particular sexual violence, is a serious, life-threatening protection issue primarily affecting women and children.”²⁵

The conflation of victims with women and (girl) children begins even before page 1: in his Foreword to the Guidelines, the then UN undersecretary-general for humanitarian affairs and emergency relief coordinator Jan Egeland stressed that the document provided practical advice on how to ensure “that humanitarian protection and assistance programs for displaced populations are safe and do not directly or indirectly increase *women’s and girls’* risk to sexual violence”.²⁶ Although the subsequent text talks of women and *children*, there is little to suggest that the sexual abuse of boys is given any serious consideration.²⁷ When it is acknowledged that “Men and boys are also vulnerable to sexual violence, particularly when they are subjected to torture and/or detention”, this is immediately qualified by the statement that “[n]evertheless, the majority of survivors/victims of sexual violence are females”,²⁸ and further undermined by the almost total absence of other categories of victim throughout the body of the text.

The focus on women and girls/children offers little support to those who are sexually or gender “non-conforming”. As the OHCHR’s elegant statement indicates, those who are sexually non-conforming are, by virtue of that sexual non-conformity, simultaneously *gender* non-conforming. Yet gender experts can be reluctant to address the often extreme difficulties confronting lesbian and trans women as a result of their minority status within the overarching category of “women”. The heteronormativity of this position and its systemic underpinnings in patriarchal gender constructs have yet to be adequately addressed in humanitarian spaces.

There are good grounds for challenging the statement that sexual violence affects women and children primarily; firstly, as I shall return to below, humanitarian response should not be restricted to what is seen as the “majority” of those suffering from a given form of violence. Secondly, evidence is slowly but surely emerging that men are victims of sexual violence in a range of conflict settings. In those places where gender-inclusive statistics on sexual violence are

25 IASC 2005 Guidelines, above [note 1](#), p. 1.

26 *Ibid.*, p. iii, emphasis added.

27 The list of “vulnerable groups” further forecloses consideration of males: “Groups of individuals that are often more vulnerable to sexual violence include, but are not limited to, single females, female-headed households, separated/unaccompanied children, orphans, disabled and/or elderly females.” *Ibid.*, p. 8.

28 *Ibid.*, p. 4.

available, they tend to confirm that overall more women than men are affected, but they certainly do not show that male victims are so few as to require no attention – instead, they suggest that the numbers of male victims whose needs are currently entirely unaddressed should be a matter of concern and concerted action.²⁹ Documentation of sexual violence against boys in conflict is even more lacking than that for men, but in countries where figures for sexual abuse of girl and boy children do exist, they again indicate that while the documented abuse of boys is less than that of girls, it is not insignificant.³⁰ When it comes to abuses of LGBTI persons, the impacts of homophobia and transphobia on LGBTI persons are also increasingly being documented, as is the fact that such violence frequently prompts affected persons to seek protection in humanitarian settings.³¹ As such, the data that do exist do not support the kind of one-sided focus on women and girls that the word “primarily” has been used to justify.

The prioritization of sexual violence

In prioritizing sexual violence against women and girls, the 2005 Guidelines did not simply obscure a range of victims of sexual violence who are not necessarily women or children. They also downplayed the many forms of violence that fall outside this reductivist focus on a supposedly asexual “sexual” violence – forms that should nonetheless be regarded as gender-based and as worthy of humanitarian attention.

While female genital mutilation/cutting, female infanticide, intimate-partner violence, transactional sex and trafficking are sometimes referred to in the 2005 Guidelines, there is little discussion of forms of violence that target and affect men in particular ways.³² How are we to qualify what happens to the men and boys who, in addition to purposive emasculation and attacks on sexual identity through the use of sexual violence, are, to borrow a phrase, “disproportionately affected” by landmines, abduction/military conscription and forcible recruitment, gender-specific massacres, and being forced to commit atrocities against others (with all the resultant psychological damage to themselves)? Indeed, why do we still fail to see that the militarization of men is

29 For a fuller discussion of available literature and statistics, see Chris Dolan, “Into the Mainstream: Addressing Sexual Violence against Men and Boys in Conflict”, briefing paper prepared for the workshop held at the Overseas Development Institute, London, 14 May 2014, available at: www.refugeelawproject.org/resources/briefing-notes-special-reports/87-sprpts-gender/358-into-the-mainstream-addressing-sexual-violence-against-men-and-boys-in-conflict.html.

30 The organization 1 in 6, for example, provides a number of sources for the statistic that one in six boys in North America experiences sexual abuse; see <https://1in6.org/the-1-in-6-statistic/>. The British organization Mankind argues that three in twenty men are affected by sexual violence; see www.mankindcounselling.org.uk/index.php.

31 See, for example, Organization for Refuge, Asylum and Migration, “Blind Alleys: The Unseen Struggles of Lesbian, Gay, Bisexual, Transgender and Intersex Urban Refugees in Mexico, Uganda and South Africa”, February 2013, available at: www.oraminternational.org/en/component/content/article/39-english/publications/264-blind-alleys.

32 For an important discussion of this, see Charli Carpenter, “Recognizing Gender-Based Violence Against Civilian Men and Boys in Conflict Situations”, *Security Dialogue*, Vol. 37, No. 1, 2006, pp. 83–10. See also Adam Jones, “Gendercide and Genocide”, *Journal of Genocide Research*, Vol. 2, No. 2, 2000, pp. 185–211.

an egregious form of GBV that should be of paramount concern to gender experts the world over, not only because the products of militarization are highly represented amongst perpetrators of sexual violence in conflict, but also because in the course of becoming and being militarized, men themselves are victims of lethal doses of GBV that, according to some analysts, leave them psychologically disabled for life?³³

Equally, why would we fail to recognize repeated evictions from accommodation and work, as well as denial of access to basic health and education services, and resultant exclusion and structural disadvantage, as forms of GBV that are highly prevalent against LGBTI persons – not least in humanitarian crises?

Unidirectional and static model of gender-based violence

The 2005 Guidelines argued that:

The term “gender-based violence” highlights the gender dimension of these types of acts; in other words, the relationship between females’ subordinate status in society and their increased vulnerability to violence. It is important to note, however, that men and boys may also be victims of gender-based violence, especially sexual violence.³⁴

This definition is problematic in several senses. It arises from a particular moment in the history of addressing women’s needs and circumstances.³⁵ It asserts a unidirectional causal relationship between being a woman, having subordinate status and being correspondingly vulnerable to violence. It assumes a direct overlay of femininity onto biological women or females. By concentrating on females’ subordinate status rather than the subordinate status of the feminine, it thus misses the vulnerabilities of gender non-conforming men, for example, and limits itself to systemically reproduced gender inequality manifest within a (heterosexual) male–female binary.

It also misses the vulnerability to violence of normative men in that it assumes that it is *subordinate* status in society that creates vulnerability to violence, and fails to see that the inverse logic can and does also hold true. Higher social status can render men’s subordination through sexual violence strategic; men’s assumed greater strength can make them more likely targets of forcible military recruitment and abduction, as well as of sex-selective massacres; men’s greater freedom to move, or their (often forcible) involvement in armed forces can render them more vulnerable to landmines, and so on.

33 For an insider view of how militaries purposively work on men’s sense of self, see Lt. Col. Dave Grossman, *On Killing: The Psychological Cost of Learning to Kill in War and Society*, 2nd ed., Open Road Integrated Media, New York, 2009. See also Aaron Belkin, *Bring Me Men: Military Masculinity and the Benign Façade of American Empire, 1898–2001*, Hurst & Co, London, 2012.

34 IASC 2005 Guidelines, above [note 1](#), p. 7.

35 Gender Equality Policy Statement, above [note 4](#), p. 7.

Despite the manner in which the 2005 Guidelines' statement qualifies a unidirectional model of harm by suggesting that "men and boys may also be victims", my own interactions in various fora suggest that many GBV "experts" do not in fact believe that sexual violence against men is a GBV issue. Instead, they feel that to tag it as such is to dilute the very meaning of GBV (and detract from the gains made for women and girls). When asked what a sexualized attack on both a man's sense of masculinity and sexuality is if not a gender issue, no answer is forthcoming. How is it possible, one wonders, that the mantra that "rape is about power not sex" applies only when the victim is female? Are those who say that the rape of men is not GBV – and therefore presumably not about (gender) power – suggesting that it is perhaps after all about sex? Do they still believe (along with the nineteenth-century drafters of British colonial penal codes) that a man cannot be raped, that a "real man" could defend himself under any circumstances, and that therefore the man who is raped must secretly have wanted it (and is therefore a homosexual)? Whatever the underlying reason, the reality is that in practice, despite acknowledging the possibility ("they *may* be") of male victims, mainstream humanitarianism continues to make virtually no provision for male survivors.

The use and abuse of statistics

A unidirectional and static model of GBV and gender harms can only be sustained through the selective and opportunistic use of statistics. The 2005 Guidelines and the IASC 2008 Gender Equality Policy Statement do make certain empirical claims that appear to support the focus on women and children (for example, "civilian women and children are often targeted for abuse, and are the most vulnerable to exploitation, violence, and abuse simply because of their gender, age, and status in society"³⁶), but at the same time they argue that "[a]ll humanitarian personnel should ... assume and believe that GBV, and in particular sexual violence [which we were told on page 1 affects primarily women and girls], is taking place and is a serious and life-threatening protection issue, regardless of the presence or absence of concrete and reliable evidence".³⁷ Where figures from actual crises are given they are all estimates,³⁸ but they are offered in a way that implies that they are clear and consistent enough to merit no further interrogation.

While the existing statistics on sexual violence tend to confirm that in a global aggregate there are more *reported* cases of sexual violence against women than against men,³⁹ to deduce from this that in every specific situation women

36 *Ibid.*

37 IASC 2005 Guidelines, above note 1, p. 2.

38 For Rwanda, "it is estimated that between 250,000 and 500,000 [women] survived rape". For Bosnia and Herzegovina "[i]t is estimated that between 20,000 and 50,000 women were raped during the war". *Ibid.*, p. 4.

39 The 2005 Guidelines draw on a global figure and apply it unquestioningly to complex emergencies: "At least one in three of the world's female population has been either physically or sexually abused at some time in her life." *Ibid.*, p. 3.

and girls are the primary targets is problematic. Not only is it generally acknowledged that sexual violence against women and girls is underreported, it is also widely believed that reporting is frequently even more difficult for men and boys than for women and girls. Any statistics on sexual violence, therefore, should be treated with caution. Building on such an unstable empirical foundation becomes particularly dangerous when it is conjoined with the “majoritarian” thinking evident in the statement that “[m]en and boys are also vulnerable to sexual violence, particularly when they are subjected to torture and/or detention. Nevertheless, the majority of survivors/victims of sexual violence are females.”⁴⁰ This statement implies that the numeric majority automatically trumps and displaces the presumed numeric minority.⁴¹ The manner in which this assumed majority status of female victims becomes both the beginning of an extensive exploration of that victimhood and the end of any analysis of the impacts on and needs of the assumed minority of victims is extraordinary: no serious social scientist, no donor and no committed humanitarian should allow so much action to be premised on such shaky empirical foundations. At best, a first-past-the-post electoral system, in which those who get the largest number of votes get all the power, has been applied to the allocation of humanitarian aid such that those who are believed to be the largest percentage of victims get all the assistance.⁴² At worst, the allocation has been rigged, with ballot papers for male victims removed from the count.

The absence of data on male victims is not an objective reflection of levels of violence, but rather a symptom of immense difficulty – both on the part of male victims themselves and, for different reasons, on the part of those tasked with shaping GBV support interventions – in acknowledging that men too can be rendered vulnerable by virtue of their gender. This difficulty is reflected both in the design of data-collection instruments, and in those moments when the evidence that has been collected is ignored or downplayed because it contradicts the model of a unidirectional male–female power and vulnerability relationship.

The 2015 IASC Guidelines: Will humanitarian action on GBV be held back or move forward?

In 2012, an extensive and lengthy review process of the IASC Guidelines was begun,⁴³ in part to ensure that “a number of important lessons, strategies and

40 *Ibid.*, p. 4.

41 For further discussion about recent data on sexual assault against men, see C. Dolan, above [note 29](#).

42 If the same logic were applied to landmine victims there would be very little attention to women and girl victims, given that they represent only 15% of direct victims globally.

43 The review process, prompted in part by the fact that “the 2005 Guidelines predate the Humanitarian Reform and Transformative Agenda processes and therefore do not reflect the Cluster System and other changes in humanitarian coordination, leadership, accountability and partnership”, involved “direct dialogue with over 100 individuals representing all regions of the world, all clusters and AoRs [Areas of Responsibility], all crosscutting areas, 26 international NGOs, 11 UN agencies and other entities (e.g. Red Cross/Red Crescent) and five donor agencies. In addition, two surveys were

tools” generated in the decade since first publication could be fully reflected, and in part because it was felt that the Guidelines had not been wholly successful in delivering the message that humanitarian actors should be accountable for GBV occurring under their watch.⁴⁴ Ward’s description of the process further suggests that the primary concern of the review was to ensure that the revised Guidelines would align with and be readily inserted into the new humanitarian architecture. The acknowledgement in the IASC’s own 2008 Gender Equality Policy Statement that “the humanitarian community is recognizing the need to know more about what men and boys face in crisis situations”⁴⁵ perhaps offered additional motivation to move beyond the emphasis on women and girls that permeates the 2005 Guidelines.

Letting go of the gender binary

How far the revised Guidelines will move beyond the existing emphasis depends on whether or not the mainstream can let go of what is now clearly an anachronistic framing of “gender” as a simple male–female binary. Letting go of a perspective that has held sway for several decades will not be easy, not least for institutions that have structured themselves around it, but it must be done if the “different needs, capacities and *vulnerabilities* of women, girls, boys and *men*” noted in the IASC 2008 Gender Equality Policy Statement⁴⁶ are to be recognized.

A number of steps may help facilitate the process – steps which are not necessarily sequential. It would be crucial, for example, that the 2015 Guidelines go beyond acknowledgement of the potential victimhood of men by providing guidance on how to actually address their specific health, sanitation, nutrition, shelter and camp management needs when they are victims.⁴⁷ This is a major practical challenge insofar as the existing framing of GBV has resulted in a deficit of examples of how to address these needs. It is likely also to prove a political challenge for those gender “experts” who have been trained to see a perpetrator–victim binary as co-terminous with a simplistic male–female gender and biological binary. Ultimately, however, it will result in more sustainable outcomes and shifts in gender power and relations.

Another step is to recognize homophobia and transphobia as forms of GBV that cannot be adequately addressed through an exclusive focus on sexual violence, and that necessarily demand that we discard an oversimplified gender binary. It is evident that the humanitarian sector needs to engage fully with these dynamics if it is to meet its own commitments and to avoid becoming complicit through its inaction on these particular forms of violence. If LGBTI issues are not to remain to “gender” as oil is to water (two substances that can be added together but ultimately cannot be

distributed globally in four languages to approximately 160 individuals and organisations and eight interagency distribution lists, which resulted in 428 completed responses.” J. Ward, above [note 21](#).

44 *Ibid.*

45 Gender Equality Policy Statement, above [note 4](#), p. 7.

46 *Ibid.*, p. 2 (emphasis added).

47 The specific health needs of male victims of sexual violence, for example, include medical personnel with particular attitudinal competencies, as well as specific surgical skills in repairs to rectal and genital damage.

combined), humanitarians will have to proactively address the specific difficulties facing LGBTI persons in accessing protection, food, shelter, education, health care, water and sanitation. The principle of ensuring that women are represented in decision-making and staffing will have to be extended to LGBTI persons as well as representatives of the many other at-risk groups such as male victims. If this is not done, separate boxes will be created wherein “those people” can be conveniently isolated, and the limitations of working simply on creating equality between (heterosexual) women and (heterosexual) men will be left untouched.

Over and above these two clearly defined steps towards expanding our vision of who the persons of concern to humanitarians should be, an even larger and, in some respects, more difficult step in letting go of the gender binary is to embrace a broader perspective on what non-sexual *forms* of violence should be recognized as GBV. Is it possible, for example, to recognize sexual violence against men as a form of GBV, but then to go beyond this to also include militarization and a whole range of related forms of violence (abduction, forcible recruitment, gender-specific massacres, landmines⁴⁸ etc.) as egregious – and complex – sites of GBV, the primary targets of which are male?⁴⁹

The broadening of GBV to include – among other things – homophobia, transphobia and militarization creates a raft of areas to which humanitarian GBV interventions have hitherto paid little attention. Siting camps, for example, to maximize the protection of male youth from abduction may be no less important than discussion about location of gender-segregated latrines for women and girls. The mental and physical health needs of, among others, ex-combatants may require as much attention as those of survivors of sexual violence.

Each of the above steps involves an intellectually and emotionally challenging and time-consuming engagement with the ambiguities of gender power and vulnerability. Given that in the heat of a humanitarian emergency this attitudinal change may not be realistic, an interim measure is to develop lists of vulnerable or at-risk groups of which humanitarians need to be aware. Thus, it is to be hoped that the revised version of the Guidelines will include a far more extensive list of “at-risk groups” than the 2005 list of “vulnerable groups”.⁵⁰ This could potentially include male rape victims, ex-combatants, victims of torture, adolescent boys and so forth. If, as suggested here, attention to sexual forms of GBV is extended to non-sexual forms, then this list will inevitably become somewhat lengthy.

48 It is generally agreed that men and boys constitute 85–90% of landmine victims. See “Why Mainstreaming Gender in Mine Action?”, Gender and Mine Action website, available at: www.gmap.ch/index.php?id=8. It is important, however, to take the analysis deeper, lest it lead us to the kind of “majoritarian” thinking that has done such a disservice to male victims of sexual violence. Additional questions to be posed in determining whether landmines are a form of GBV might take us back to intention: did those who set the mines intend to target men more than women? Does it matter, if the impacts are felt not just by the direct victims but also – particularly if the victim is the household breadwinner – by their families?

49 These are gender-based forms in the sense that they are informed by gendered assumptions about masculinity and femininity. They are complex in that gender constructs – particularly militarized masculinities – simultaneously craft perpetrators and victims out of the same human being (deliberate de-individualisation in boot camps and their equivalent military training processes, coerced participation into acts of extreme violence that are antithetical to the individual’s own moral framework, etc.).

50 See above [note 27](#).

Recognizing and documenting the contextual nature of gender harms

To reduce the risk that a new listing will simply create another hierarchy of victims and reinforce a static view of privilege and vulnerability as opposed to a context-by-context analysis of how those play out in a particular population, it will be important to train people on how to integrate the intersection of gender with other axes of power and vulnerability.⁵¹

Part of the challenge of revising the 2005 Guidelines is that they have to a certain extent structured interventions over the last ten years and, because they themselves were structured on a very partial analysis, they have also resulted in a paucity of examples, case studies and statistics on which to base guidance to humanitarian actors. In the absence of adequate documentation, the admonition that “[a]ll humanitarian personnel should ... assume and believe that GBV, and in particular sexual violence, is taking place ... regardless of the presence or absence of concrete and reliable evidence”⁵² is essential.

However, simply assuming that GBV has taken, is still taking and will continue to take place against women, girls, men, boys and others, without developing situation-specific analyses of the distribution of GBV, will do little to overturn existing beliefs about who the likely targets are, and risks an unsustainable dilution of resources. Alongside a default assumption that anyone could be a victim until proven otherwise, therefore, there must be a consistent concern with establishing relevant data that allows context-specific and evidence-based interventions.⁵³ Such documentation will, in my view, be one of the major steps towards complicating understandings of the gender binary.⁵⁴ Documentation is not a matter of stand-alone research projects, as these are neither desirable nor particularly feasible in many crisis situations. What is required instead is to ensure that in the routine collection of data (registration data, food distribution lists, clinic attendance, health screening, etc.), the right questions are asked and the resultant data are subjected to a gender analysis.⁵⁵

51 This itself raises questions about the professionalization and technicization of “gender”: as the issues of GBV, and within that of sexual violence, have gained increasing traction, there has been a corresponding professionalization of the field of “gender”. While this is in principle a good thing, it is also a problem if those professionals have been trained in terms of the unsatisfactory frameworks outlined here. There is also a tension between the need to develop specific expertise on gender issues and the resultant tendency to technicize and compartmentalize what are fundamentally social, cultural, economic and political issues that require profound increases in self-awareness and resultant attitudinal change across the board.

52 IASC 2005 Guidelines, above note 1, p. 2.

53 This is neatly captured as the first of the IASC 2008 Gender Equality Policy Statement’s seven principles for achieving gender equality, namely: “Routine collection and reporting of key data by sex and age to allow analysis of the different needs and capacities of women, girls, boys and men of all ages.” Gender Equality Policy Statement, above note 4, p. 7.

54 It will flesh out the implications of the IASC’s own argument that gender “refers to the social differences between females and males throughout the life cycle that are learned, and though deeply rooted in every culture, are *changeable over time*, and have *wide variations both within and between cultures*.” *Ibid.* (emphasis added).

55 In many cultures, for example, the vast majority of people expect to marry in their early twenties; the existence of single persons above a certain age on food distribution lists might trigger enquiries into

Reaffirming humanitarian principles and developing more sustainable approaches of gender equality

For many humanitarians, the focus on sexual violence against women and children has come to be seen as an integral component of the pursuit of gender equality – interpreted as focusing on those areas in which women are seen to be more discriminated against or more vulnerable than men. Although the IASC’s 2008 Gender Equality Policy Statement “urges individual members to strengthen their own actions to ensure that the human rights of women, girls, boys and men are *equally* promoted and protected, and their different needs and responsibilities addressed”,⁵⁶ in practice women’s rights have been promoted and protected when it comes to GBV, with little attention given to the different needs of men and others. In this sense the pursuit of gender equality by way of GBV interventions has been at the cost of humanitarian principles.⁵⁷

Not only can this particular approach to pursuing gender equality be seen as opportunistic and unsustainable if done at a time when social status and social relations are already severely disrupted, but it also frequently creates pushback and resistance from men once situations have stabilized somewhat. To minimize such pushback, the “engaging men” paradigm may be helpful in pre-empting such resistance. Equally, the principle of involving all those at risk of or already affected by GBV in discussions about response, mitigation and prevention of GBV is essential, as is seeking representation from identified vulnerable groups in staffing of projects, committees and the like. In this regard, bringing understandings of the impact of GBV on men into gender work with men can provide an opportunity to ensure that men are not just engaged in what has largely been presented as someone else’s struggle, but are engaged with as actual or potential co-victims of the same system.

From gender equality to gender inclusivity

The mainstream discourse of a decade ago, as embodied in the exclusionary language and logical inconsistencies of the 2005 IASC Guidelines, should be of serious concern to humanitarians, reproducing as it does some of the very same oppressive assumptions and frameworks and practices that the goal of gender equality demands be dismantled. The focus on sexual forms of GBV and on one

whether their solitary existence was an indicator of prior experiences of GBV that resulted in either stigmatization and exclusion by the community, or depression and withdrawal by the affected person.

56 *Ibid.*, p. 1.

57 It is important to note that the ICRC added a disclaimer to the Gender Equality Policy Statement, arguing that while the “ICRC, standing invitee to the IASC, consistent with its unique mandate to protect and assist all victims of armed conflict, strives to address specifically the needs of women in all its programs”, it “does not have a policy of transforming gender relations in the contexts it works in”. *Ibid.*, p. 1. The need to place such a disclaimer indicates a recognition that it is not easy to separate gender equality from a social change or transformation agenda, and that in the process the commitment to all victims of armed conflict, which is the core of the humanitarian imperative, can easily be compromised.

constituency of victims silenced the experiences of large numbers of other victims and forms of GBV and underlying systemic and institutionalized gender power, thereby constituting a serious obstacle to understanding the full scale and locations of human need, and a corresponding block on realizing the humanitarian imperative “that action should be taken to prevent or alleviate human suffering arising out of disaster or conflict, and that nothing should override this principle”.⁵⁸

Dependence on a partial narrative had the cumulative impact of inverting a patriarchal prioritization of male over female (at least in the need-for-assistance stakes) and replacing one form of discrimination with its almost equally unsatisfactory mirror image. At a grass-roots level, this inversion, by failing to establish common ground between all those whose gender is used against them, has proven self-defeating. The marginalization from assistance of a sizeable segment of those suffering has contributed to the intellectual and political alienation of the victims concerned from the specific political change agenda to which humanitarian response has been yoked, namely the pursuit of a narrowly envisaged male–female gender equality. This marginalization has also had the unfortunate effect of reinforcing patriarchal and heteronormative assumptions about who is rendered vulnerable by their gender – and who we are supposed to assume is immutably resilient by virtue of their gender.

To reverse the current malfunction of gender as an analytical, practical and political engine, we must replace women and girls as the default at-risk group with more gender-inclusive formulations. This requires us to break down conceptual barriers, foremost of which are the assumption that gender power and inequality is unidirectional, the belief that gender power always has the same biological targets and the related view that (sexual) violence against women and children is the paradigmatic expression of these unidirectional inequalities. We need to rigorously remind ourselves that if gender truly is a social construct rather than a simple reflection of biology, then logically the holders of gender power are also constructed and their power is correspondingly destructible rather than biologically irreducible. Men and boys *can* therefore be vulnerable, particularly in contexts of conflict designed to destabilize the *status quo*; their privilege in peacetime can become the source of their vulnerability in conflict.

Recognizing various forms of militarization, homophobia and transphobia as GBV, and providing interventions in support of their victims, will prompt a sea change in the struggle for equality. In addition to fulfilling human rights and humanitarian commitments, such interventions, rather than being co-opted in the pursuit of a self-limiting gender equality agenda, will instead demand a new commitment to gender inclusivity that destabilizes a simple male perpetrator/female victim gender binary, and throws into sharp relief the profound heteronormativity and associated limitations of pursuing only male–female gender equality as a strategy for ending GBV.

58 See Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response*, 2011, p. 20, available at: www.sphereproject.org/handbook/.

As the humanitarian imperative recovers meaning, the risk of a narrowing professionalization of gender as a domain of action will be reversed, gender will recover its analytical, practical and political potential, the present discourse's self-marginalizing tendencies will be overcome, a larger proportion of victims of GBV will be able to come forward and be treated, and we shall shift from the pursuit of male–female gender equality to the realization of gender inclusivity.

Sexual violence in armed conflicts: A violation of international humanitarian law and human rights law

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Abstract

Sexual violence is prevalent in contemporary armed conflicts. International humanitarian law and human rights law absolutely prohibit all forms of sexual violence at all times and against anyone; international criminal law moreover provides for the individual criminal responsibility of sexual crimes' perpetrators. These three bodies of law importantly reinforce each other in this field. The discrepancy between the facts on the ground and the law is a matter of concern that cannot be explained by potential legal gaps or uncertainties. What is needed is to find new ways of improving implementation for existing laws at the domestic and international levels.

Keywords: rape, sexual violence, international humanitarian law, international human rights law, international criminal law, gender-based violence, conflict-related sexual violence, weapon, method of warfare, torture, cruel, inhuman or degrading treatments, crimes against humanity, acts of genocide, implementation, prosecution.

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Sexual violence has occurred during armed conflicts at all times, on all continents. It is still prevalent in a number of contemporary armed conflicts, such as in the Central African Republic, Colombia, Democratic Republic of the Congo (DRC), Mali, South Sudan and Syria.¹ Some organizations² and academics³ have provided figures that are alarming, but these data may show only the tip of the iceberg. One of the specific issues related to sexual violence is that it remains an “invisible” crime because feelings of guilt or shame, fear of retaliation or taboos may prevent victims from coming forward and talking about it. Material barriers such as security risks, physical distance and transportation costs may also prevent victims from seeking help. For humanitarian organizations that want to prevent sexual violence and respond to the needs of victims, this is a challenge. In its operational work, the International Committee of the Red Cross (ICRC) has therefore recently adopted a new approach. It presumes that sexual violence occurs in armed conflicts and endeavours to provide an appropriate humanitarian response to the victims of sexual violence even in the absence of allegations.⁴

Sexual violence, including when conflict-related, often has no relation to sexual desire, but is instead linked to power, dominance and abuse of authority.⁵ While women and girls are particularly vulnerable, men and boys are also victims of sexual violence,⁶ which may be committed by a variety of perpetrators: State actors, members of organized non-State armed groups, peacekeepers, members of private military and security companies, or simple individuals. Often, sexual violence is not perpetrated in isolation but accompanied by other violations, such

- 1 Peter Maurer, *ICRC President Calls for Action on Sexual Violence in Conflict*, statement of 12 June 2014, available at: www.icrc.org/eng/resources/documents/statement/2014/06-12-sexual-violence-statement-maurer.htm (all internet references were accessed in October 2014).
- 2 According to the United Nations (UN), over 200,000 women have suffered sexual violence in the DRC since the armed conflict began; between 250,000 and 500,000 women were raped during the 1994 genocide in Rwanda; and between 20,000 and 50,000 during the armed conflict in Bosnia in the early 1990s. See UN Resources for Speakers on Global Issues, “Ending Violence Against Women and Girls”, available at: www.un.org/en/globalissues/briefingpapers/endviol/.
- 3 In 2014, researchers from Harvard Kennedy School, the Peace Research Institute Oslo and Yale University released a Sexual Violence in Armed Conflict Dataset which tracks reports of conflict-related sexual violence committed against civilians (men, women, boys and girls) by armed actors involved in armed conflict over a recent twenty-year period. They report conflict-related sexual violence in 57% of the individual conflicts analyzed, with 14% at the highest prevalence level. See Dara Kay Cohen and Ragnhild Nordås, *Sexual Violence in Armed Conflict Dataset*, 4 November 2014, available at: www.sexualviolencedata.org; Dara Kay Cohen and Ragnhild Nordås, “Sexual Violence in Armed Conflict: Introducing the SVAC Dataset, 1989–2009”, *Journal of Peace Research*, Vol. 51, No. 3, May 2014, p. 423.
- 4 See the Q&A with ICRC President Peter Maurer in the issue of the *Review*. See also Pierre Krähenbühl, “Sexual Violence in Armed Conflicts: Addressing the Causes and the Consequences”, interview, 19 December 2013, video available at: www.youtube.com/watch?v=mXRTffjrpU0; Pascale Meige, “Sexual Violence in Armed Conflicts: An Invisible Tragedy”, interview, 7 March 2014, video available at: www.icrc.org/eng/resources/documents/audiovisuals/video/2014/03-07-sexual-violence-pascale-meige.htm.
- 5 See, among many others, Dara Kay Cohen, Amelia Hoover Green and Elisabeth Jean Wood, “Wartime Sexual Violence: Misconceptions, Implications, and Ways Forward”, *Special Report of the United States Institute of Peace*, No. 323, February 2013, p. 6, available at: www.usip.org/sites/default/files/wartime%20sexual%20violence.pdf; Patrick Chiroro, Gerd Bohner, G. Tendayi Viki and Christopher Jarvis, “Rape Myth Acceptance and Rape Proclivity: Expected Dominance Versus Expected Arousal in Acquaintance-Rape Situations”, *Journal of Interpersonal Violence*, Vol. 19, No. 4, 2004, pp. 427–442.
- 6 For a contribution challenging the assumption that women and girls are more vulnerable to rape and other forms of sexual violence, see the Opinion Note by Chris Dolan in this issue of the *Review*.

as unlawful killings, child recruitment, destruction of property or looting. Its causes (direct and indirect) can be numerous, including the climate of impunity which is rampant in armed conflicts, the absence of clear orders/instructions prohibiting sexual violence, the proliferation of small arms and light weapons used to threaten victims, the increased vulnerabilities of victims of armed conflicts (internally displaced persons, migrants, widows, etc.), and the destruction of community ties and individual coping mechanisms. Sexual violence can also be used in a strategic or tactical way by parties to armed conflicts. In all cases, it has devastating consequences – primarily for the victims themselves, of course, because of its negative physical, psychological, social and economic effects, but also for the victims’ relatives, who face possible trauma, feelings of indignity and guilt at having been unable to protect their next-of-kin. It may also have consequences for entire communities when it creates fear and destroys the social fabric.⁷

Despite its prevalence, sexual violence is not an unavoidable consequence of warfare and violence. Like any other violation, it can be prevented. A precondition for this is a strong legal framework and the existence of solid institutions to implement the prohibition of sexual violence. This article will demonstrate that sexual violence is absolutely and adequately prohibited under international law, and more precisely under international humanitarian law (IHL) and human rights law. Moreover, during the last twenty years, international criminal law has considerably evolved and has criminalized the most serious forms of sexual violence at the international level. These three bodies of international law strongly complement and positively influence each other in this field. This is not to say that sexual violence does not give rise to legal controversies, but rather that international law as it is – even if not perfect – provides sufficient and adequate rules. The implementation of these rules at the national and international levels, however, needs to be strengthened to effectively eliminate or at least reduce the occurrence of sexual violence.

Before providing an overview of the international legal framework relating to sexual violence under IHL, human rights law and international criminal law, key terms such as sexual violence and rape will be defined. In the last section, the discrepancy between the law and the facts on the ground will be addressed and potential solutions presented.

What are rape and sexual violence?

Defining sexual violence

In the *Akayesu* case, the International Criminal Tribunal for Rwanda (ICTR) Trial Chamber held that sexual violence is “any act of a sexual nature which is committed

7 On the phenomenon of sexual violence, see ICRC, “Sexual Violence: Questions and Answers”, 10 November 2013, available at: www.icrc.org/eng/resources/documents/faq/sexual-violence-questions-and-answers.htm. See also ICRC, “Engaging with Students and Professors on the Issue of Sexual Violence in Armed Conflicts: Workshop”, 25 August 2014, available at: www.icrc.org/eng/resources/documents/feature/2014/08-25-sexual-violence-workshop-tool.htm.

on a person under circumstances which are coercive”.⁸ The term “act of a sexual nature” is very broad. It may range from penetration to comments having a sexual connotation. “Coercion” moreover must be understood broadly as including not only a show of physical force but also “[t]hreats, intimidation, extortion and other forms of duress which prey on fear or desperation”.⁹ The Trial Chamber further held that “sexual violence is not limited to a physical invasion of the human body and may include acts which do not involve penetration or even physical contact”.¹⁰ From this definition, it is clear that sexual violence encompasses and is broader than rape. But is there a minimum threshold of gravity to consider an act as “sexual violence” when committed under coercive circumstances?

There is no clear-cut answer to this question. The Statute of the International Criminal Court (ICC) criminalizes “sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity”.¹¹ This is a non-exhaustive list of the most serious forms of sexual violence falling under the jurisdiction of the ICC, which does not help to define the minimum gravity threshold for an act to be considered “sexual violence”. Case law and legal writings nevertheless provide a number of additional concrete examples of sexual violence: for instance, trafficking for sexual exploitation,¹² mutilation of sexual organs,¹³ sexual exploitation (such as obtaining sexual services in return for food or protection),¹⁴ forced abortions,¹⁵ enforced contraception,¹⁶ sexual assault,¹⁷ forced marriage,¹⁸ sexual harassment

8 ICTR, *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4, Judgment (Trial Chamber), 2 September 1998, para. 688; ICTR, *Prosecutor v. Alfred Musema*, Case No. ICTR-96-13, Judgment (Trial Chamber), 27 January 2000, para. 965.

9 *Ibid.*

10 ICTR, *Akayesu*, above note 8, para. 688.

11 Rome Statute of the International Criminal Court, 17 July 1998 (entered into force 1 July 2002), UN Doc. A/CONF.183/9 (Rome Statute), Arts 7(1)(g), 8(2)(b)(xxii), 8(2)(e)(vi) (emphasis added).

12 See Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000, 2237 UNTS 319 (Protocol), Art. 3.

13 ICTR, *Prosecutor v. Théoneste Bagosora*, Case No. ICTR-96-7, Judgment (Trial Chamber), 18 December 2008, para. 976.

14 Megan Bastick, Karin Grimm and Rahel Kunz, *Sexual Violence in Armed Conflict: Global Overview and Implications for the Security Sector*, Geneva Centre for the Democratic Control of Armed Forces, 2007, p. 19. See also World Health Organization (WHO), *World Report on Violence and Health*, ed. Etienne G. Krug, 2002, p. 149.

15 M. Bastick, K. Grimm and R. Kunz, above note 14, p. 19; WHO, above note 14, p. 149.

16 M. Bastick K. Grimm and R. Kunz, above note 14, p. 19.

17 See Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949 (GC IV), Art. 27; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 8 June 1977 (AP I), Art. 75(2) (b); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 8 June 1977 (AP II), Art. (4)(2)(e); Rome Statute, Art. 8(2)(e)(vi); Statute of the International Tribunal for Rwanda, 8 November 1994 (ICTR Statute), Art. 4(e); Statute of the Special Court for Sierra Leone, 16 January 2002 (SCSL Statute), Art. 3(e); and UN Transitional Administration in East Timor, Regulation No. 2000/15, Section 6.1(e)(vi).

18 M. Bastick K. Grimm and R. Kunz, above note 14, p. 49; WHO, above note 14, p. 149.

(such as forced stripping),¹⁹ forced inspections for virginity²⁰ and forced public nudity have been qualified as sexual violence.²¹

According to the World Health Organization (WHO), sexual violence can be defined 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, including but not limited to home and work”.²² If one accepts such a definition, then, it seems that the threshold of gravity is very low and that the term “violence” encompasses not only physical but also verbal or psychological violence.²³

It should also be noted that if the ICC prosecutes only sexual violence of certain gravity, this does not mean that forms of sexual violence which may not reach that gravity cannot be considered an international crime under other treaties or national legislations. This is evidenced by the fact that, for instance, the Statute of the Special Court for Sierra Leone criminalizes – under crimes against humanity – “rape, sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual violence”.²⁴

Defining rape

At the international level, rape has been essentially defined by the international criminal tribunals for Rwanda and the former Yugoslavia through three main cases. The first is the *Akayesu* case before the ICTR, in which the Trial Chamber (and then the Appeals Chamber) adopted a very broad and generic definition of rape.²⁵ The ICTR simply held that rape is “a physical invasion of a sexual nature, committed on a person under circumstances which are coercive”.²⁶

While the International Criminal Tribunal for the former Yugoslavia (ICTY) seemed initially to follow the approach taken by the ICTR,²⁷ it shifted to a more precise definition of rape in the *Furundžija* case.²⁸ Others would say that the ICTY did not radically depart from the ICTR definition but rather provided additional details on the constituent elements of acts considered to be rape.²⁹ After having noted that it was not possible to draw the elements of rape from

19 ICTR, *Akayesu* (Trial Judgment), above note 8, para. 693.

20 M. Bastick K. Grimm and R. Kunz, above note 14, p. 19; WHO, above note 14, p. 150.

21 ICTR, *Akayesu* (Trial Judgment), above note 8, para. 688; ICTY, *Prosecutor v. Dragoljub Kunarac and Others*, Case No. IT-96-23&23/1 (Trial Chamber), 22 February 2001, paras 766–774.

22 WHO, above note 14, p. 149.

23 See also “Definitions of Sexual and Gender-based Violence”, IRIN, available at: www.irinnews.org/indepthmain.aspx?InDepthId=20&ReportId=62847.

24 SCSL Statute, Art. 2 on “Crimes against Humanity”.

25 ICTR, *Akayesu* (Trial Chamber), above note 8; see also Judgment (Appeals Chamber), 1 June 2001.

26 *Ibid.* (Trial Chamber), paras 596–598, 686–688. See also ICTR, *Musema*, above note 8, para. 965.

27 ICTY, *Prosecutor v. Zejnil Delalić and Others (Celebici case)*, Case No. IT-96-21, Judgment (Trial Chamber), 16 November 1998.

28 ICTY, *Prosecutor v. Anto Furundžija*, Case No. IT-95-17-1, Judgment (Trial Chamber), 10 December 1998, para. 185.

29 ICTR, *Prosecutor v. Mikaeli Muhimana*, Case No. ICTR-95-1B, Judgment (Trial Chamber), 28 April 2005, paras 547–551.

international treaty law or customary law, the ICTY Trial Chamber conducted a comparative law analysis in order to extrapolate the “common denominators” of rape in the criminal law of major legal systems. It concluded that the objective elements (*actus reus*) of rape are:

- i) the sexual penetration, however slight: a) of the vagina or anus 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 third person”.³⁰

In the *Kunarac* case, the Trial Chamber considered that the *Furundžija* definition was too narrow.³¹ While it maintained part (i) of the definition, it went one step further by clarifying – or rather broadening – part (ii). For the Trial Chamber, an act of sexual penetration constitutes rape not only if accompanied by “coercion or force or threat of force against the victim or a third person” but also if there are other factors which would render the act “non-consensual or non-voluntary” on the part of the victim. The key criterion is therefore the lack of consent or voluntary participation. The Trial Chamber further held that “[i]n practice, the absence of genuine and freely given consent or voluntary participation may be evidenced by the presence of ... various factors ... – such as force, threats of force, or taking advantage of a person who is unable to resist”.³² In other words, these factors are not elements of the crime of rape, but rather evidence of the lack of genuine consent. The Trial Chamber therefore “replaced” in the *Kunarac* case the second part of the *Furundžija* definition with “where such sexual penetration occurs without the consent of the victim”.³³

The ICC *Elements of Crimes* integrate these case-law evolutions and provide an even more refined definition of rape. An act is considered rape if:

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.
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 person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.³⁴

30 ICTY, *Furundžija* (Trial Chamber), above note 28, para. 185.

31 ICTY, *Kunarac* (Trial Chamber), above note 21, para. 438.

32 *Ibid.*, para. 458.

33 *Ibid.*, para. 460. See also ICTY, *Prosecutor v. Dragoljub Kunarac and Others*, Case No. IT-96-23&23/1 (Appeals Chamber), 12 June 2002, paras 125–133. In this case, the Appeals Chamber made clear that detention may substitute for non-consent.

34 See, e.g., ICC, *Elements of Crimes*, 2011, Art. 8(2)(b)(xxii)-1, available at: www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf.

The international community generally accepts this definition as the most authoritative.³⁵ A number of national legislations have been adopted or modified to include the crime of rape and other sexual crimes as defined by the ICC.³⁶

Sexual violence versus gender-based violence

In contradistinction with rape and sexual violence, there is no internationally agreed-upon definition of “gender-based violence”. As a consequence, many different definitions of this term can be found.

The Committee on the Elimination of Discrimination against Women (CEDAW Committee) defined gender-based violence in its General Recommendation No. 19 in 1992 as “violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.”³⁷ While this definition is broad in terms of acts covered, it seems limitative regarding the persons covered. Gender-based violence is described as a form of discrimination³⁸ against women exclusively. This restriction may be due to the mandate of the CEDAW Committee, or perhaps to the fact that, in practice, women and girls are (or at least are perceived as) the persons most affected by gender-based violence because of the subordinate status of women and girls vis-à-vis men and boys in a number of societies. Nowadays, the term “gender-based violence” is usually understood as covering not only women and girls but also men and boys. As noted by the Inter-Agency Standing Committee (IASC),³⁹ although the term “gender-based violence” is often used interchangeably with the term “violence against women”, men and boys may also be victims of gender-based violence – especially sexual violence⁴⁰ – based on socially determined roles, expectations and

35 For instance, WHO seems to rely on the ICC definition, although its working definition seems less precise and complete. See WHO, above note 14, p. 149: “Sexual violence includes rape, defined as physically forced or otherwise coerced penetration – even if slight – of the vulva or anus, using a penis, other body parts or an object.”

36 See the national legislations of Australia, Belgium, Canada, Georgia, New Zealand, the Republic of Korea, South Africa and the United Kingdom mentioned in the Practice related to Rule 93 of Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, Vol. 1: *Rules*, ICRC, Cambridge University Press, Cambridge, 2005 (ICRC Customary Law Study). See also, e.g., Philip Weiner, “The Evolving Jurisprudence of the Crime of Rape in International Criminal Law”, *Boston College Law Review*, Vol. 54, No. 3, 2013, p. 1218. For instance, some organizations have reported that in the DRC a new law on rape and sexual violence has been adopted in 2007 and has been inspired by the ICC Statute. See Victim’s Rights Working Group, *The Impact of the Rome Statute System on Victims and Affected Communities*, April 2010, p. 27, available at: www.vrwwg.org/VRWG_DOC/2010_Apr_VRWG_Impact_of_ICC_on_victims.pdf.

37 CEDAW Committee, *General Recommendation No. 19*, 1992, para. 6.

38 *Ibid.*, para. 7.

39 On the IASC, see www.humanitarianinfo.org/iasc/pageloader.aspx?page=content-about-default.

40 IASC, *Guidelines for Gender-Based Violence Interventions in Humanitarian Settings: Focusing on Prevention of and Response to Sexual Violence in Emergencies*, September 2005, p. 4; See also UN Office for the Coordination of Humanitarian Affairs, “Gender-Based Violence”, available at: www.irinnews.org/indepthmain.aspx?InDepthId=20&ReportId=62847.

behaviours linked to ideas about masculinity. Thus, the IASC provides for a broad – and often-used – definition of 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”.⁴¹ Similarly, the ICRC defines gender-based violence as an “overall term, including sexual violence and other types of gender-specific [violence that are] not necessarily sexually-based”.⁴² In turn, the ICRC defines “gender” as

culturally expected behaviour of men and women based on roles, attitudes and values ascribed to them on the basis of their sex, whereas the term “sex” refers to biological and physical characteristics of a person. Gender roles vary widely within and between cultures, and depend on the particular social, economic and political context.⁴³

Examples of gender-based violence include domestic violence, rape, sexual exploitation/abuse, forced prostitution, trafficking, forced/early marriage, female genital mutilation, honour killings and compulsory sterilization or abortion.⁴⁴

From these definitions and examples, one can deduce first that gender-based violence is generally broader than sexual violence. Indeed, gender-based violence includes not only acts of sexual violence, such as rape, sexual mutilation (e.g. breast mutilations) and other forms of sexual abuse, but also acts of a non-sexual nature such as certain forms of domestic violence (e.g. battery) or honour killings (e.g. dowry deaths). Second, what distinguishes “gender-based violence” from any other form of violence is not the act in itself (e.g. killing, rape, battery, mutilation) but that it is “gender-specific”. In other words, the violent act is committed “based on socially ascribed (gender) differences between males and females” or because of the gender of the victim. For instance, if a person has been murdered because he/she was transgender or homosexual, this is a gender-based crime. In this sense, sexual violence can be seen as sometimes broader than gender-based violence. A detainee may be raped in detention – as a method of torture – independently of his/her gender or socially ascribed role in society. The argument has sometimes been made, however, that sexual violence is always a form of gender-based violence because the links between sex and gender are too intricate to be distinguished. This is not the view of the author of this article – such an interpretation would conflate the meanings of sex and gender, which are different, as noted above.

41 IASC, above note 40. See also the definition of the European Institute for Gender Equality, available at: <http://eige.europa.eu/content/what-is-gender-based-violence>. For a critical assessment of the IASC 2005 Gender-Based Violence Guidelines, see the Opinion Note by Chris Dolan in this issue of the *Review*.

42 Charlotte Lindsey, *Women Facing War Study*, ICRC, Geneva, 2001, pp. 35–36.

43 See Charlotte Lindsey-Curtet *et al.*, *Addressing the Needs of Women Affected by Armed Conflict: An ICRC Guidance Document*, ICRC, Geneva, 2004, p. 7; C. Lindsey, above note 42, p. 35.

44 IASC, above note 40; CEDAW Committee, above note 37; C. Lindsey, above note 42, pp. 35–36.

The prohibition of sexual violence under IHL

Does IHL overlook sexual violence?

IHL treaties have sometimes been criticized because they allegedly do not take appropriately into account the needs of women in armed conflicts and because they do not prohibit and criminalize sexual violence in a sufficiently robust way.⁴⁵ It is submitted that this criticism is excessively harsh. While the Geneva Conventions of 1949 and their Additional Protocols of 1977 may not be perfect in their approach to sexual violence, they provide the necessary protections from and prohibitions against rape and other forms of sexual violence. This is done in different ways: first, rape is expressly prohibited; and second, the prohibition of rape and other forms of sexual violence is encompassed in less explicit provisions such as the prohibitions against cruel treatment and torture, outrages upon personal dignity, indecent assault and enforced prostitution, and those intended to ensure respect for persons and honour.

Rape was already expressly prohibited in the famous Lieber Code of 1863. Its Article 44 provided that:

All wanton violence committed against persons in the invaded country ... all rape, wounding, maiming, or killing of such inhabitants, are prohibited under the penalty of death, or such other severe punishment as may seem adequate for the gravity of the offense. A soldier, officer or private, in the act of committing such violence, and disobeying a superior ordering him to abstain from it, may be lawfully killed on the spot by such superior.⁴⁶

Interestingly, the sanction – death – was particularly severe.

Among early treaties regulating armed conflict, the Hague Regulations of 1899 and 1907 protect the “family honour and rights” of the population of an occupied territory.⁴⁷ The 1929 Geneva Convention on prisoners of war provides that prisoners of war are entitled to respect for “their persons and honour” and that “women [prisoners of war] shall be treated with all consideration due to their sex”.⁴⁸ From an early stage, IHL treaties showed an awareness of sexual violence during armed conflict and aimed at preventing it, even though, as products of their time, they did not address it in express terms.

45 Judith Gardam, “Women, Human Rights and International Humanitarian Law”, *International Review of the Red Cross*, No. 324, September 1998, pp. 421–432; Judith Gardam and Michelle Jarvis, *Women, Armed Conflict and International Law*, Kluwer Law International, The Hague, 2001. See also, on the criticisms made by these authors, Helen Durham, “Women, Armed Conflict and International Law”, *International Review of the Red Cross*, Vol. 84, No. 847, 2002, pp. 655–659.

46 *Lieber Code: Instructions for the Government of Armies of the United States in the Field*, General Order No. 100, 24 April 1863, Art. 44, available at: www.icrc.org/ihl/INTRO/110.

47 Convention (II) with Respect to the Laws and Customs of War on Land and its Annex: Regulations Concerning the Laws and Customs of War on Land, The Hague, 1899, Art. 46; Convention (III) relative to the Opening of Hostilities, The Hague, 1907, Art. 46.

48 Convention relative to the Treatment of Prisoners of War, Geneva, 27 July 1929, Art. 3.

In contemporary IHL treaties, rape and other forms of sexual violence are prohibited in both international and non-international armed conflicts. In international armed conflicts, the Third Geneva Convention of 1949 continues to provide that prisoners of war are “in all circumstances entitled to respect for their persons and honour” and that “women shall be treated with all regard due to their sex”.⁴⁹ The drafters used the same language as the 1929 Convention on prisoners of war. The Fourth Geneva Convention is more explicit and provides that civilian “women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault”.⁵⁰ While the Fourth Geneva Convention – adopted in 1949 as the first treaty specifically on the protection of the civilian population during armed conflict – expressly addresses rape and other forms of sexual violence, this phrasing has been criticized because rape and sexual violence seem to be characterized as an intrusion on the victim’s honour and thus as not reflecting the seriousness of the offence, i.e. an attack against the physical and psychological well-being of the victim.⁵¹ This wording indeed seems euphemistic and old-fashioned today, but the notion of “honour” had a completely different connotation at the time. While they seem weak and symbolic today, notions of honour (as evidenced by the principle of chivalry, for instance) were considered highly important constraints in war and were at the core of IHL rules in 1949 and before.⁵² In any case, and because of these fundamental changes of values and societal norms, the connection between sexual violence and honour is less present in more recent IHL treaties.⁵³ Additional Protocol I to the Geneva Conventions (AP I), of 1977, provides that “outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault”, are “prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents”.⁵⁴ Two additional provisions protect specifically women “against rape, enforced prostitution and any other form of indecent assault”⁵⁵ and children “against any form of indecent assault”.⁵⁶

In non-international armed conflicts, Article 3 common to the four Geneva Conventions – which has been described by the International Court of Justice (ICJ) as reflecting “elementary considerations of humanity” applicable in all types of armed conflicts⁵⁷ – implicitly also prohibits sexual violence when it outlaws “violence to life and person, in particular ... mutilation, cruel treatment and

49 Geneva Convention (III) relative to the Treatment of Prisoners of War, 12 August 1949 (GC III), Art. 14.

50 GC IV, Art. 27.

51 J. Gardam, above note 45; C. Lindsey, above note 42, p. 57.

52 Terry D. Gill, “Chivalry: A Principle of the Law of Armed Conflict”, in M. Matthee *et al.* (eds), *Armed Conflict and International Law: In Search of the Human Face*, TMC Asser Press, The Hague, 2013, pp. 33–51. See also Louise Doswald-Beck and Sylvain Vité, “International Humanitarian Law and Human Rights Law”, *International Review of the Red Cross*, No. 293, March–April 1993, pp. 94–119.

53 C. Lindsey-Curtet, above note 43, p. 12.

54 AP I, Art. 75(2)(b).

55 AP I, Art. 76(1)

56 AP I, Art. 77(1).

57 ICJ, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Judgment, *ICJ Reports 1986*, para. 218. See also ICJ, *The Corfu Channel Case*, Judgment, *ICJ Reports 1949*, p. 22.

torture” as well as “outrages upon personal dignity, in particular humiliating and degrading treatment”. It is complemented by Additional Protocol II (AP II) of 1977, which, where/when applicable, prohibits, in the provision on fundamental guarantees, “outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault” for “all persons who do not take a direct part or who have ceased to take part in hostilities” (i.e. civilians and persons *hors de combat*).⁵⁸ This is the first IHL provision explicitly prohibiting rape without distinction between women and men.

Customary IHL also prohibits rape and other forms of sexual violence.⁵⁹ According to the ICRC Customary Law Study, this prohibition has been found to apply both in international and non-international armed conflicts and protects women, girls, boys and men.⁶⁰ The Customary Law Study relied on a vast body of national and international practice – such as, in particular, military manuals, domestic legislations and national case law, international case law and United Nations (UN) resolutions – to reach this conclusion.⁶¹

Which “conflict-related” sexual violence amounts to a violation of IHL?

Sexual violence can be committed in peacetime, or during armed conflicts or other situations of violence. It can be committed by a variety of actors for a variety of purposes. Even when committed in times of armed conflict, sexual violence is not necessarily “conflict-related”.

The term “conflict-related sexual violence” is not used in IHL treaties and is not properly legal. It is however increasingly used⁶² and sometimes understood as a synonym of sexual violence that amounts to an IHL violation. Various actors define “conflict-related sexual violence” differently. The UN, for instance, describes “conflict-related sexual violence” as

58 AP II, Art. 4(2)(e).

59 ICRC Customary Law Study, above note 36, Rule 93.

60 *Ibid.*

61 For the practice, see the Customary International Humanitarian Law Online Database, available at: www.icrc.org/customary-ihl/eng/docs/v1_rul_rule93.

62 See note 63 below. See also UN Women, *Addressing Conflict-Related Sexual Violence: An Analytical Inventory of Peacekeeping Practice*, June 2010, available at: www.unwomen.org/~media/Headquarters/Media/Publications/en/04DAnAnalyticalinventoryofPeacekeepingPracti.pdf; UN Department of Political Affairs, *Guidance for Mediators: Addressing Conflict-Related Sexual Violence in Ceasefire and Peace Agreements*, New York, 2012, available at: www.un.org/wcm/webdav/site/undpa/shared/undpa/pdf/DPA%20Guidance%20for%20Mediators%20on%20Addressing%20Conflict-Related%20Sexual%20Violence%20in%20Ceasefire%20and%20Peace%20Agreements.pdf; Sarah S. Shteir, *Conflict Related Sexual and Gender-Based violence: An Introductory Overview to Support Prevention and Response Efforts*, Civil-Military Occasional Papers, Australian Civil-Military Centre, January 2014, available at: <http://fr.slideshare.net/CivMilCoE/occasional-paper-12014-conflictrelated-sexual-and-genderbased-violence>; Organization for Security and Cooperation in Europe (OSCE), *Combating Impunity for Conflict-Related Sexual Violence in Bosnia and Herzegovina: Progress and Challenges*, Sarajevo, February 2014, available at: www.isn.ethz.ch/Digital-Library/Publications/Detail/?lng=en&id=179069.

sexual violence, that ... occur[s] in conflict or post-conflict settings or other situations of concern (e.g. political strife) [and that] ... ha[s] a direct or indirect nexus with the conflict or political strife itself, that is, a temporal, geographical and/or causal link. In addition to the international character of the suspected crimes (which can, depending on the circumstances, constitute war crimes, crimes against humanity, acts of genocide or other gross violations of human rights), the link with conflict may be evident in the profile and motivations of the perpetrator(s), the profile of the victim(s), the climate of impunity/State collapse, cross-border dimensions and/or the fact that they violate the terms of a ceasefire agreement.⁶³

If one accepts such a wide definition of “conflict-related sexual violence” – which is understandable from a humanitarian and operational perspective – it is clear that not all conflict-related sexual violence amounts to a violation of IHL and a war crime.⁶⁴ IHL applies only in armed conflict situations and to acts that have a direct, or at least sufficient, link or nexus to an armed conflict.⁶⁵

It is true that the notion of nexus cannot be found in IHL treaties and has been mainly developed in international criminal case law for the purpose of determining the jurisdiction of the tribunal or, in other words, establishing whether a war crime has been committed.⁶⁶ It is submitted, however, that the requirement of a nexus to distinguish war crimes/other violations of IHL from ordinary crimes that may be committed during an armed conflict but that have no link with it exists both under IHL and international criminal law. In this specific context, the notion of nexus should be defined in a similar way under both international criminal law and IHL.⁶⁷ Ultimately, to be considered a war crime, the applicability of IHL must be accepted since war crimes are serious

63 *Conflict-Related Sexual Violence: Report of the Secretary-General*, UN Doc. A/66/657-S/2012/33, 13 January 2012, para. 3; see also “Analytical and Conceptual Framing of Conflict-Related Sexual Violence”, Stop Rape Now, available at: www.pakresponse.info/LinkClick.aspx?fileticket=QmSWiCA4rUw%3D&tabid=71&mid=433.

64 It is to be noted that not all IHL violations constitute war crimes; war crimes are serious violations of IHL. See below section “Does Sexual Violence Always Amount to a Grave Breach and/or a War Crime?”

65 ICTY, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, Judgment (Trial Chamber), 7 May 1997, para. 572; ICTY, *Prosecutor v. Kordić and Čerkez*, Case No. IT-95-14/2-T, Judgment (Trial Chamber), 26 February 2001, para. 32. It shall be noted that the ICTY, unlike the Preparatory Commission for the ICC, has apparently treated the nexus as being merely a jurisdictional requirement. See Knut Dörmann, *Elements of War Crimes Under the Rome Statute of the International Criminal Court*, Cambridge University Press, Cambridge, 2002, p. 27. In the same vein, the ICTR used the terminology of a “direct link”, “direct connection” or “direct conjunction” with the armed conflict. Cf. ICTR, *Akayesu* (Trial Chamber), above note 8, para. 643; ICTR, *Prosecutor v. Kayishema and Ruzindana*, Case No. ICTR-95-1-T, Judgment (Trial Chamber), 21 May 1999, paras 602–603, 623; ICTR, *Musema* (Trial Chamber), above note 8, para. 260; ICTR, *Prosecutor v. Ntakirutimana*, Case No. ICTR-96-10 and ICTR-96-17-T, Judgment (Trial Chamber), 21 February 2003, para. 861.

66 *Ibid.*

67 Under IHL, the notion of nexus is also used for instance in the context of the definition of the notion of direct participation in hostilities. See Nils Melzer, *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law*, ICRC, Geneva, 2009, pp. 58–64. This context is however different because the notion of nexus is used to answer another question, i.e. “Does the act amount to direct participation in hostilities?”, not “Is the act a violation of IHL?”

violations of IHL. In order to clarify the notion of nexus in this context, the following example can be considered.

In the context of a non-international armed conflict, if a military commander rapes a subordinate soldier in a military barracks as a form of punishment – as he may have done already in peacetime – without this act having any link to the armed conflict situation, IHL would not apply to the act. This rape would/should however be prohibited under domestic law. It also constitutes a human rights violation if the military commander committed the rape in his official capacity (i.e. by using his position of authority and the means of his function). On the other hand, in the same armed conflict, if the military commander rapes a person detained for reasons connected to the armed conflict, such an act clearly constitutes a violation of IHL (and human rights law). The nexus derives from a number of elements here: the identity of the perpetrator (a military commander), the identity of the victim (a person detained for reasons related to the armed conflict), and the context (situation of vulnerability of detainees to the Detaining Power).

While these examples might seem obvious, the nexus with the armed conflict is not always so easy to determine.⁶⁸ It is not because IHL is *applicable* at a given place and time that all acts occurring in this context are governed by IHL. The ICTY case law clarified moreover that for a nexus to exist, it is not necessary that substantial clashes be going on at the time and place in which the crimes were allegedly committed.⁶⁹ It is sufficient that the alleged crimes were closely related to the hostilities occurring in other parts of the territories controlled by the parties to the conflict.⁷⁰ It is not necessary either for the crime to be “part of a policy or practice officially endorsed or tolerated by one of the parties to the conflict, or that the act be in actual furtherance of a policy associated with the conduct of the war or in the actual interest of a party to the conflict”.⁷¹ In the *Kunarac* case – which can safely be described as the reference case for defining the nexus requirement – the Appeals Chamber held that:

What ultimately distinguishes a war crime from a purely domestic offence is that a war crime is shaped by or dependent upon the environment – the armed conflict – in which it is committed. It need not have been planned or supported by some form of policy. The armed conflict need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator’s ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed. Hence, if it can be

68 For an article showing the difficulties in identifying the contours of the nexus and attempting to clarify (in a restrictive manner) the concept, see Harmen van der Wilt, “War Crimes and the Requirement of a Nexus with an Armed Conflict”, *Journal of International Criminal Justice*, Vol. 10, No. 5, 2012, pp. 1113–1128.

69 *Ibid.* See also ICTY, *Prosecutor v. Blaškić*, Case No. IT-95-14, Judgment (Trial Chamber), 3 March 2000, para. 69; ICTY, *Kunarac* (Appeals Chamber), above note 33, para. 57.

70 *Ibid.*

71 ICTY, *Blaškić* (Trial Chamber), above note 69, paras 69 ff.; ICTY, *Tadić* (Trial Chamber), above note 65, para. 573.

established, as in the present case, that the perpetrator acted in furtherance of or under the guise of the armed conflict, it would be sufficient to conclude that his acts were closely related to the armed conflict.⁷²

The formula “under the guise of the armed conflict” has sometimes been criticized as overly broad.⁷³ The ICTR has however usefully explained that “the expression ‘under the guise of the armed conflict’ does not mean simply ‘at the same time as an armed conflict’ and/or ‘in any circumstances created in part by the armed conflict’”.⁷⁴ It gave the example of a non-combatant taking advantage of the lessened effectiveness of the police in conditions of disorder created by an armed conflict to murder a neighbour he had hated for years, and affirmed that this would not, without more, constitute a war crime.⁷⁵ Contrariwise, the killings of civilian Tutsis by military officials and civilians alike were considered as having a nexus with the armed conflict taking place at the time between Rwandan government forces and the Rwandan Patriotic Front (RFP, an organized non-State armed group consisting of Tutsis), and thus as amounting to war crimes. The fact that the Tutsi ethnic minority was identified with the RFP, the participation of military officials in the killing and the fact that the identification of infiltrators from the RFP served as an alleged motive for the killings of Tutsis were considered as indicia for the nexus.⁷⁶

In the *Kunarac* case, the Appeals Chamber also identified a number of factors to determine whether or not an alleged offence is sufficiently related to the armed conflict to constitute a war crime (and hence a violation of IHL). These factors included:

the fact that the perpetrator is a combatant; the fact that the victim is a non-combatant; the fact that the victim is a member of the opposing party; the fact that the act may be said to serve the ultimate goal of a military campaign; and that the crime is committed as part of or in the context of the perpetrator’s official duties.⁷⁷

These factors are not exhaustive; they are not cumulative either. For instance, not only combatants but also civilians can commit war crimes, and they can do so even if they have no special relationship with one party to the conflict.⁷⁸ The *Kunarac* factors are provided simply as examples of what factors could be taken into account to determine the existence of a nexus. As evidenced by these

72 ICTY, *Kunarac* (Appeals Chamber), above note 33, para. 58.

73 H. van der Wilt, above note 68, p. 1125.

74 ICTR, *Prosecutor v. Rutaganda*, Case No. ICTR-96-3-A, Judgment (Appeals Chamber), 26 May 2003, para. 570.

75 *Ibid.*

76 ICTR, *Prosecutor v. Semanza*, Case No. ICTR-97-20-T, Judgment (Trial Chamber), 15 May 2003, paras 518 ff.

77 ICTY, *Kunarac* (Appeals Chamber), above note 33, para. 59.

78 ICTR, *Akayesu* (Trial Judgment), above note 8, para. 444. See also ICTY, *Prosecutor v. Vasiljević*, Case No. IT-98-32-T, Judgment (Trial Chamber), 29 November 2002, para. 57; and *contra*, H. van der Wilt, above note 68, p. 1128.

examples, the *ad hoc* tribunals have always used an “objective test” to determine the existence of a nexus; they did not require any mental element.⁷⁹

Along the lines of the *ad hoc* tribunal case law, the ICC *Elements of Crimes* provide that for a war crime to exist, it must be committed “in the context of and associated with” an armed conflict.⁸⁰ The wording “in the context of” refers to the existence of an armed conflict, and “associated with” refers to the nexus requirement. Conflict-related sexual violence must thus be committed by a person (whether combatant or civilian) in the context of and associated with an armed conflict in order to amount to a war crime under the Rome Statute. The Rome Statute formulation does not offer more precision compared to the case law of the international criminal tribunals for the former Yugoslavia and Rwanda. It is difficult, however, to define *in abstracto* precise criteria to determine the existence of a nexus that would offer an adequate response to all possible scenarios. Such a determination needs to be made on a case-by-case basis.

Sexual violence as a weapon or method of warfare?

Sexual violence in armed conflict, particularly rape, is sometimes qualified as a “weapon of war” and/or as a “method of war”.⁸¹

Under IHL, a generally accepted definition of “weapon” does not exist, even though some attempts have been made to circumscribe the notion. A cursory analysis of different definitions adopted at the national and international levels reveals the existence of two common elements in the understanding of the notion: “weapon” refers to (i) an object, material, instrument, mechanism, device

79 K. Dörmann, above note 65, p. 27. See also Guénaél Mettraux, *International Crimes and the Ad Hoc Tribunals*, Oxford University Press, Oxford, 2005, p. 45.

80 See, for instance, *Elements of Crimes*, above note 34, Art. 8(2)(a)(i)-1.

81 For the UN, see, for instance, UNGA Res. 48/143 (1993); UN Doc. A/RES/48/143; Office of the High Commissioner for Human Rights, “Rape: Weapon of War”, available at: www.ohchr.org/en/newsevents/pages/rapeweaponwar.aspx; UNICEF, “Sexual Violence as a Weapon of War”, available at: www.unicef.org/sowc96pk/sexviol.htm. For the media, see, for instance, Laura Smith-Spark, “How Did Rape Become a Weapon of War?”, *BBC News*, undated, available at: <http://news.bbc.co.uk/2/hi/4078677.stm>; Kate McGuinness, “Rape as a Weapon of War”, *Huffington Post*, 28 November 2012, available at: www.huffingtonpost.com/kate-mcguinness/rape-as-a-weapon-of-war_b_2202072.html; “Hague And Jolie Hail Anti-Rape Military Action”, *Sky News*, 28 March 2014, available at: <http://news.sky.com/story/1233609/hague-and-jolie-hail-anti-rape-military-action>. According to the latter article, UK Foreign Secretary William Hague said that “rape has unjustly been considered a ‘lesser’ crime, ... it has only recently been understood as a method of warfare”. See also Global Justice Center, *Rape as a Weapon of War*, available at <http://globaljusticecenter.net/index.php/our-work/geneva-initiative/rape-as-a-weapon-of-war>; Janet Benshoof, *The Other Red Line: Holding States Accountable for the Use of Rape as an Unlawful Weapon or Tactic of Warfare*, excerpts on file with the author. The author writes: “Although strategic rape is condemned as a weapon of war, some IHL experts narrow that characterization by insisting that strategic rape is a ‘tactic’ or ‘method’ of war, without denoting what underlying weapons, such as the penis, are used to effectuate strategic rape. ... [I]n practice the term ‘tactic’ can have the practical effect of removing it from further scrutiny under the IHL weapons framework.” For scholars, see for instance Anna Maedl, “Rape as a Weapon of War in the Eastern DRC? The Victims’ Perspective”, *Human Rights Quarterly*, Vol. 33, No. 1, 2011, pp. 128–147; Judith Gardam, “Women and the Law of Armed Conflict: Why the Silence?”, *International and Comparative Law Quarterly*, Vol. 46, No. 1, 1997, p. 59: “rape in the conflict of the former Yugoslavia assumed the characteristic of a method of warfare”.

or substance that is used to (ii) kill, injure, damage, threaten or destroy.⁸² If such a definition is accepted, it is clear that the characterization of rape or other forms of sexual violence as a weapon of war is inaccurate from a strict IHL perspective. Instead, sexual violence is an unlawful and criminal *behaviour*.⁸³

In contrast, a “method of warfare” is generally understood as the way in which a weapon is used,⁸⁴ or as any specific tactical or strategic way of *conducting hostilities* that is intended to overwhelm and weaken the adversary.⁸⁵ Sometimes, sexual violence is resorted to as a tactical or strategic way of overwhelming and weakening the adversary, either directly, or indirectly by hurting the civilian population perceived as supporting the enemy. This is particularly the case when it is carried out in a systematic manner and covered by the chain of command. It is in this sense that sexual violence may sometimes have been referred to as a “method of warfare”. It is important to point out, however, that this characterization of rape or other sexual violence may create a confusion between the conduct of hostilities in the strict and technical sense of the term (and the – lawful or unlawful – methods used in that context), and the treatment of persons in the hands or power of the enemy. The lawfulness or unlawfulness of certain weapons or methods of warfare depends ultimately on their indiscriminate nature, and on whether they cause superfluous injury or unnecessary suffering or a combination thereof.⁸⁶ Sexual violence, instead, is prohibited *as such* against anyone, irrespective of status. In practice, sexual violence can only be committed against persons who are under the control of the perpetrator. Any type of violence – such as sexual violence – committed against persons in the hands or power of the enemy is absolutely prohibited by IHL rules on the treatment of persons. Sexual violence is, by definition, unnecessary or “superfluous” as the person against whom it is committed is already *hors de combat*. Reference to the prohibition of superfluous injury or unnecessary suffering in this context would therefore be redundant and might even be

82 ICRC, *A Guide to the Legal Review of New Weapons, Means and Methods of Warfare: Measures to Implement Article 36 of Additional Protocol I of 1977*, ICRC, Geneva, 2006, p. 9, fn. 17. This guide provides several national definitions of weapons. See also Program on Humanitarian Policy and Conflict Research, Harvard University, *Manual on International Law Applicable to Air and Missile Warfare*, 2009, p. 6: a weapon is “a means of warfare used in combat operations, including a gun, missile, bomb or other munitions, that is capable of causing either (i) injury to, or death of, persons; (ii) damage to, or destruction of, objects”. See also the definition proposed in the *Weapons Law Encyclopedia* by the Geneva Academy of International Humanitarian Law and Human Rights: “A weapon is a device that is construed, adapted or used to kill, injure, disorient, or threaten a person or to inflict damage on a physical object. A weapon may act through kinetic energy or by other means, such as transmission of electricity, diffusion of chemical substances or biological agents or sound, or direction of electromagnetic energy”.

83 At best, the appellative of “weapon” could be attributed to the bodily fluid of an HIV-positive person. The latter had been defined “deadly weapon” (alongside the penis) by a US National Court. See Court of Appeals of Texas, *Jose Fonseca Najera v. The State of Texas*, Case No. 03-96-00189-CR, 1997.

84 Yves Sandoz, Christophe Swinarski and Bruno Zimmermann (eds), *Commentary on the Additional Protocols*, ICRC, Geneva, 1987, on AP I, Art. 51, para. 1957.

85 Marco Sassòli, Antoine Bouvier and Anne Quintin, *How Does Law Protect in War?*, ICRC, Geneva, 2011, p. 280.

86 See the 1907 Hague Regulations, Art. 23(e); AP I, Arts 35(2), 51(4)(b) and (c). For the customary nature of these rules, see ICRC Customary Law Study, above note 36, Rules 70 and 71.

considered erroneous as it relates to the conduct of hostilities (in the technical sense of the term) and not to the absolute protection of persons in the hands or power of the enemy against inhuman treatment. Characterizing rape or other forms of sexual violence as a method of warfare thus does not add to the absolute prohibition of such acts under IHL.

The characterizations of rape as a “weapon of war” or a “method of warfare” are nowadays very common, but these terms are usually resorted to in a non-technical way⁸⁷ to attach a particular stigma to the crime of rape⁸⁸ and to indicate that rape is not just a by-product of war – that it is not just committed opportunistically or randomly, but may be part of a strategy.⁸⁹ In order to keep that important connotation and stigmatization while avoiding confusion with IHL rules and principles on the conduct of hostilities, it may therefore be more accurate to characterize sexual violence as an unlawful policy, tactic or strategy during armed conflict.

The prohibition of sexual violence under human rights law

Human rights law applies at all times.⁹⁰ It is thus necessary to briefly analyze human rights rules that might possibly prohibit sexual violence and thus complement IHL in times of armed conflict (in particular regarding acts of sexual violence that have no nexus with the armed conflict), as well as to provide useful guidance on the interpretation and application of IHL prohibitions against sexual violence.

The lack of specific prohibitions against sexual violence in most human rights treaties

Surprisingly, most human rights treaties, universal and regional, do not contain explicit or specific prohibitions of sexual violence.⁹¹ Even the Convention on the

87 See, for example, the recurring mention of rape as a “weapon of war” in UNGA Res. 48/143 (1993), UN Doc. A/RES/48/143. The resolution states, for example, that “this heinous practice [rape and abuse of women] constitutes a deliberate weapon of war in fulfilling the policy of ‘ethnic cleansing’”. The resolution therefore defines a *practice* in terms of “weapon” even though the notion of weapons usually only encompasses objects, substances and materials, and not practices.

88 See, for instance, Global Justice Centre, *Fact-Sheet: Stopping the Use of Rape as a Tactic of War: A New Approach*, June 2014, available at: http://globaljusticecenter.net/index.php?option=com_mtree&task=att_download&link_id=412&cf_id=34: “Embedding strategic rape within the purview of the laws of war governing the legality of tactics and weapons will foster its stigmatization, which has proven critical to stopping the use of other abhorrent weapons and tactics.”

89 In this sense, see L. Smith-Spark, above note 81.

90 ICJ, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, *ICJ Reports 1996*, para. 25; ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, *ICJ Reports 2004*, para. 106; ICJ, *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, *ICJ Reports 2005*, paras 216–217. There is, however, a minority view according to which human rights law does not apply to armed conflicts. See ICJ, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, *ICJ Reports 1996*, para. 24.

91 See, for instance, the International Covenant on Civil and Political Rights (ICCPR), 1966; European Convention on Human Rights (ECHR), 1950; American Convention on Human Rights (ACHR), 1969; African Charter on Human and Peoples’ Rights, 1981.

Elimination of Discrimination against Women (CEDAW) of 1979 does not contain any provision to that effect. Only “traffic in women and exploitation of prostitution of women” is explicitly prohibited.⁹² IHL treaties – and even the 1949 Geneva Conventions – appear thus to be more explicit, specific and precise than human rights treaties in general as regards the prohibition of sexual violence.

There are rare exceptions. For instance, at the universal level, the Convention on the Rights of the Child of 1989 provides that States Parties must protect children from all forms of sexual exploitation and sexual abuse, including through the adoption of appropriate legislative, administrative, social and educational measures.⁹³ States Parties must also prevent particularly: “(a) The inducement or coercion of a child to engage in any unlawful sexual activity; (b) The exploitative use of children in prostitution or other unlawful sexual practices; (c) The exploitative use of children in pornographic performances and materials.”⁹⁴ The State thus has an obligation to prevent and protect children from being sexually abused not only by State actors, but also by private actors (due diligence obligation).

At the regional level, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women of 1994 prohibits “violence against women”, which includes not only physical and psychological but also sexual violence, whether it is committed in the public or private sphere.⁹⁵ This Convention drew its inspiration from the non-binding United Nations Declaration on the Elimination of Violence against Women of 1993, which contains similar provisions. The Protocol to the African Charter on Human and Peoples’ Rights of Women in Africa (Maputo Protocol) of 2003 prohibits violence against women in a similar way and contains a number of provisions aimed at protecting women from sexual violence.⁹⁶ One provision deals specifically with armed conflicts and provides that:

States Parties undertake to protect asylum seeking women, refugees, returnees and internally displaced persons, against all forms of violence, rape and other forms of sexual exploitation, and to ensure that such acts are considered war crimes, genocide and/or crimes against humanity and that their perpetrators are brought to justice before a competent criminal jurisdiction.⁹⁷

In the European system, there is no particular treaty on sexual violence or on the protection of women. In 2002, however, the Council of Europe adopted a recommendation on violence against women which defines violence against women as including rape and other forms of sexual violence and which notably

92 Convention on the Elimination of Discrimination against Women (CEDAW), 1979, Art. 6.

93 Convention on the Rights of the Child, 1989, Arts 19(1) and 34.

94 *Ibid.*, Art. 34.

95 Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, 1994, Arts 1–3.

96 See Protocol to the African Charter on Human and Peoples’ Rights of Women in Africa, 2003 (Maputo Protocol), Arts 3(4), 4(2), 11(3), 12(1)(c)(d), 13(c), 14(2)(c), 22(b), 23(b).

97 *Ibid.*, Art. 11(3).

recommends that Member States “penalise rape, sexual slavery, forced pregnancy, enforced sterilisation or any other form of sexual violence of comparable gravity as an intolerable violation of human rights, as crimes against humanity and, when committed in the context of an armed conflict, as war crimes”.⁹⁸

Although not treaties, there are a number of other non-binding human rights documents that refer to the issue of sexual violence. The Beijing Declaration and Platform for Action, adopted at the Fourth World Conference on Women, deserves a special mention as it identified already in 1995 the themes of “violence against women” and “women and armed conflict” as critical areas of concern requiring urgent action, and highlighted that “acts of violence against women include violation of the human rights of women in situations of armed conflict, in particular ... systematic rape, sexual slavery and forced pregnancy”.⁹⁹

Sexual violence as torture or cruel, inhuman or degrading treatment or punishment

The fact that most human rights treaties do not contain a specific prohibition against sexual violence does not mean that they do not prohibit rape and other forms of sexual violence. The non-derogable (even *jus cogens*¹⁰⁰) prohibition of torture or cruel, inhuman or degrading treatment or punishment contained in all general human rights treaties¹⁰¹ provides a strong basis to prohibit virtually all forms of sexual violence at all times.

Torture is defined in the UN Convention against Torture (CAT) as

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.¹⁰²

98 Council of Europe, Recommendation Rec(2002)5 of the Committee of Ministers to Member States on the Protection of Women against Violence, adopted by the Committee of Ministers on 30 April 2002 at the 794th meeting of the Ministers’ Deputies, available at: <https://wcd.coe.int/ViewDoc.jsp?id=280915>.

99 Beijing Declaration and Platform for Action, adopted at the Fourth World Conference on Women, 1995, paras 112–130 on “Violence against Women” and paras 131–149 on “Women and Armed Conflict”, available at: www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf.

100 See, e.g., Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan E. Méndez, UN Doc. A/HRC/25/60, 10 April 2014, para. 40: “The prohibition against torture and other cruel, inhuman or degrading treatment or punishment enjoys the enhanced status of a *jus cogens* or peremptory norm of general international law.”

101 See ICCPR, Art. 7; ECHR, Art. 3; etc.

102 UN Convention against Torture (CAT), 1984, Art. 1. See also the definition of torture in the Inter-American Convention to Prevent and Punish Torture, 1985, which provides similar conditions.

Rape can be presumed as always causing “severe pain or suffering”.¹⁰³ It is moreover always “intentionally inflicted”. It may have a specific purpose such as obtaining information and probably always has the purpose of coercing the victim. This latter coercive element can be seen as inherent in armed conflict situations.¹⁰⁴ Lastly, the CAT requires that torture be committed with the more or less direct involvement of a public official. This is not to say, however, that torture by a private individual does not raise human rights questions. States have a duty to protect individuals from torture by private individuals.¹⁰⁵ Moreover, the European Court of Human Rights has considered that the prohibition against deporting a person to a third State where he/she may be tortured exists even if a non-State actor poses the threat of torture (provided that “the authorities of the receiving State are not able to obviate the risk by providing appropriate protection”).¹⁰⁶

The Special Rapporteur against Torture had already noted in 1986 that sexual abuse is one of the various methods of physical torture.¹⁰⁷ The case law of human rights bodies provides a number of concrete examples where sexual violence has been considered as amounting to torture or cruel, inhuman or degrading treatment or punishment. In particular, rape has often been considered as torture. For instance, in a case taking place in the context of Peru, the Inter-American Commission on Human Rights (IACHR) considered that the rape by a Peruvian soldier of a woman who was suspected of belonging to a subversive group and whose husband had been abducted by the Peruvian army amounted to torture in the sense of the Inter-American Convention to Prevent and Punish Torture because it was committed intentionally by a State official with the purpose of punishing her personally and intimidating her.¹⁰⁸ It is interesting to note that the IACHR relied *inter alia* on IHL to support its argument that

103 In the *Kunarac* case, the Appeals Chamber held that “sexual violence [not rape] necessarily gives rise to severe pain or suffering, whether physical or mental, and in this way justifies its characterisation as an act of torture”. ICTY, *Kunarac* (Appeals Chamber), above note 33, para. 150.

104 ICTY, *Delalić* (Trial Chamber), above note 27, para. 495: “Rape causes severe pain and suffering, both physical and psychological. The psychological suffering of persons upon whom rape is inflicted may be exacerbated by social and cultural conditions and can be particularly acute and long lasting. Furthermore, it is difficult to envisage circumstances in which rape, by, or at the instigation of a public official, or with the consent or acquiescence of an official, could be considered as occurring for a purpose that does not, in some way, involve punishment, coercion, discrimination or intimidation. In the view of this Trial Chamber this is inherent in situations of armed conflict.” See also ICTY, *Prosecutor v. Brđanin*, Case No. IT-99-36, Judgment (Trial Chamber), 1 September 2004, para. 485; ICTY, *Prosecutor v. Stanišić and Zupljanin*, Case No. IT-08-91-T, Judgment (Trial Chamber), 27 March 2013, para. 48; ICTY, *Kunarac* (Appeals Chamber), above note 33, para. 151; ICTR, *Akayesu* (Trial Judgment), above note 8, para. 682.

105 See, e.g., Human Rights Committee (HRC), *General Comment 20/44: Prohibition of Torture*, 3 April 1992, para. 2.

106 See European Court of Human Rights (ECtHR), *HLR v. France*, Application No. 24573/94, Judgment, 29 April 1997, para. 40.

107 Report of the Special Rapporteur on Torture, UN Doc. E/CN.4/1986/15, 19 February 1986, para. 119.

108 IACHR, *Raquel Martín de Mejía v. Peru*, Case No. 10.970, Report No. 5/96, *Annual Report 1995*, OEA/Ser. L/V/II.91 Doc. 7 rev. (1996), p. 185.

[c]urrent international law establishes that sexual abuse committed by members of security forces, whether as a result of a deliberate practice promoted by the State or as a result of failure by the State to prevent the occurrence of this crime, constitutes a violation of the victims' human rights, especially the right to physical and mental integrity.¹⁰⁹

The European Court of Human Rights (ECtHR) reached a similar conclusion, notably in the *Aydin v. Turkey* case of 1997 that concerned the rape of a 17-year-old girl detained by security forces on the basis of suspicion of collaboration by herself or members of her family with members of the PKK. The Court noted that the rape (together with other ill-treatments: the applicant was blindfolded, beaten, stripped and placed inside a tyre and sprayed with high-pressure water), which served the purpose of obtaining information, amounted to torture.¹¹⁰ The case law of the international criminal tribunals for the former Yugoslavia and Rwanda confirms that rape amounts to torture.¹¹¹

Not only rape but also other forms of sexual abuse can amount to torture or cruel, inhuman or degrading treatment or punishment. For instance, the IACHR considered that forcing someone to witness the rape of close relatives constitutes "a form of humiliation and degradation that is a violation of the right to humane treatment".¹¹² The Committee against Torture held that imposing involuntary sterilization is a cruel treatment.¹¹³ The ECtHR described the strip-searching of a male prisoner in the presence of a female prison officer as a degrading treatment.¹¹⁴ The ICTY held that sexual assaults (including ramming a police truncheon in the anus of a detainee or forcing male prisoners to perform oral sex on each other, sometimes in front of other prisoners) amounted to torture.¹¹⁵ The prohibition against using sexual violence of any kind as an official punishment is also clearly established.¹¹⁶ This list is far from exhaustive.

Lastly, it shall be noted that the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment explicitly

¹⁰⁹ *Ibid.*

¹¹⁰ ECtHR, *Aydin v. Turkey*, Application No. 57/1996/676/866, Judgment, 25 September 1997, paras 83–86. The Court noted: "Rape of a detainee by an official of the State must be considered to be an especially grave and abhorrent form of ill-treatment given the ease with which the offender can exploit the vulnerability and weakened resistance of his victim. Furthermore, rape leaves deep psychological scars on the victim which do not respond to the passage of time as quickly as other forms of physical and mental violence. The applicant also experienced the acute physical pain of forced penetration, which must have left her feeling debased and violated both physically and emotionally. ... [T]he Court is satisfied that the accumulation of acts of physical and mental violence inflicted on the applicant and the especially cruel act of rape to which she was subjected amounted to torture in breach of Article 3 of the Convention. Indeed the Court would have reached this conclusion on either of these grounds taken separately."

¹¹¹ See notes 103 and 104 above.

¹¹² IACHR, *Ana, Beatriz and Celia González Pérez v. Mexico*, Case No. 11.565, Report No. 53/01, *Annual Report 2000*, OEA/Ser.L/V/II.111 Doc. 20 rev. p. 1097 (2001), para. 53.

¹¹³ Committee against Torture, "Concluding Observations, Peru", UN Doc. CAT/C/PER/CO/4, 25 July 2006, para. 23.

¹¹⁴ ECtHR, *Valasinas v. Lithuania*, Application No. 44558/98, Judgment, 24 July 2001.

¹¹⁵ ICTY, *Prosecutor v. Simić, Tadić and Zarić*, Case No IT-95-9, Judgment (Trial Chamber), 17 October 2003, paras 728 and 772.

¹¹⁶ CEDAW Committee, above note 37, para. 8. See also ICRC Customary Law Study, above note 36, Rule 93.

imposes a duty to proceed to a prompt and impartial investigation wherever there are reasonable grounds to believe that an act of torture has been committed.¹¹⁷ Although general human rights treaties do not contain a similar provision, human rights case law has clarified that, by virtue of the fundamental nature of the prohibition of torture or cruel, inhuman or degrading treatment or punishment, the mere fact that a State has not effectively investigated allegations of such violations, and has not prosecuted – and eventually punished¹¹⁸ – the perpetrators, may give rise to a separate violation of the prohibition against torture or other ill-treatment under its procedural limb and/or of the right to an effective remedy.¹¹⁹

The interpretive value of human rights treaties for IHL as regards sexual violence

The definition of torture, cruel, inhuman or degrading treatment or punishment under human rights law, and the numerous examples of human rights case law dealing with rape and other forms of sexual violence as a form of torture and other ill-treatments, are useful not only when interpreting these concepts under human rights law, but also when doing so under IHL and international criminal law. In the *Kunarac* case, for instance, the Trial Chamber of the ICTY highlighted that IHL does not contain any definition of torture.¹²⁰ It thus referred to human rights law to define “torture” under both Articles 3 (violation of the laws and customs of war) and 5 (crime against humanity) of the ICTY Statute. Importantly, the Trial Chamber highlighted that:

Because of the paucity of precedent in the field of international humanitarian law, the Tribunal has, on many occasions, had recourse to instruments and practices developed in the field of human rights law. Because of their resemblance, in terms of goals, values and terminology, such recourse is generally a welcome and needed assistance to determine the content of customary international law in the field of humanitarian law.¹²¹

This does not mean, however, that the exact same definition applies under these different bodies of law: a certain amount of translation or transposition is necessary. The specificity of each body of law must be kept in mind.¹²² In particular, the ICTY Trial Chamber had to determine whether the criterion of the

117 CAT, Art. 12.

118 As highlighted in Rule 93 of the ICRC Customary Law Study, above note 36, there is an increased recognition of the need to punish all persons responsible for sexual violence. See, e.g., UNGA Res. 48/104 proclaiming the UN Declaration on the Elimination of Violence against Women, Art. 4(c); CEDAW Committee, above note 37, para. 9.

119 ECtHR, *Aydin*, above note 110, para. 103 (under Art. 13 of ECHR); ECtHR, *M.C. v. Bulgaria*, Application No. 39272/98, Judgment, 4 December 2003 (under Arts 3 and 13 of ECHR), paras 169–187; IACHR, *Mejía v. Peru*, above note 108 (under the violation of Arts 1(1), 8(1) and 25 of ACHR).

120 ICTY, *Kunarac* (Trial Chamber), above note 21, paras 465–497.

121 *Ibid.*, para. 467.

122 *Ibid.*, para. 470.

involvement of a public official belongs to customary international law for the purpose of IHL and of Article 3 of the ICTY Statute. The Trial Chamber concluded that while this criterion is required under human rights law, it is not required under IHL because of the crucial structural differences as regards the role and position of the State as an actor in these two bodies of international law.¹²³ In brief, even if the definition of torture – and of rape as torture or other inhuman or degrading treatment – is not exactly the same under human rights law, IHL and international criminal law, it is clear that the definitions provided under human rights law are of highly important interpretive value.

Sexual violence as other human rights violations?

Sexual violence can also be encompassed into other human rights violations depending on the circumstances. For instance, sexual slavery is included in the broader prohibition of slavery.¹²⁴ There are a number of human rights treaties and instruments that require States to prevent, suppress and punish the trafficking of persons for the purpose of prostitution of others or other forms of sexual exploitation.¹²⁵ The ECtHR and IACHR have also considered that sexual violence violates the right to privacy or to a private life.¹²⁶ Lastly, gender-based violence – which includes, in many instances, sexual violence – constitutes discrimination.¹²⁷

Here again, human rights practice and case law can constitute very useful tools of interpretation when it comes to concepts such as slavery or discrimination that can also be found under IHL and international criminal law. Human rights law also complements IHL by providing for additional rights/prohibitions such as the prohibition of human trafficking or the right to privacy or to a private life that have no real equivalent under IHL.

123 IHL applies to all parties to an armed conflict, while human rights law binds *de jure* only States.

124 See, e.g., ECtHR, *Rantsev v. Cyprus and Russia*, Application no. 25965/04, Judgment, 7 January 2010, paras 272–309.

125 See, e.g., CEDAW, Art. 6. For human rights treaties on trafficking especially, see Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, approved by UNGA Res. 317(IV) of 2 December 1949; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime, adopted by UNGA Res. 55/25, 15 November 2000; South Asian Association for Regional Cooperation, Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002. See also the following non-binding instruments: UN High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, text presented to the Economic and Social Council as an addendum to the report of the United Nations High Commissioner for Human Rights, UN Doc. E/2002/68/Add.1, 2002; ECOWAS, Declaration on the Fight against Trafficking in Persons; OAS Inter-American Commission of Women, Res. CIM/RES 225 (XXXI-0/02); “Human Rights Standards for the Treatment of Trafficked Persons”, developed by the Human Rights Caucus of the International Human Rights Group and a number of NGOs and distributed by the Office for Democratic Institutions and Human Rights of the OSCE, January 1999.

126 See, for instance, IACHR, *Mejía v. Peru*, above note 108; ECtHR, *X and Y v. The Netherlands*, Application No. 8978/80, Judgment, 26 March 1985.

127 CEDAW Committee, above note 37.

Sexual violence as an international crime

Does sexual violence always amount to a grave breach of IHL and/or a war crime?

For international armed conflicts, the Geneva Conventions of 1949 and AP I of 1977 criminalize certain serious violations of IHL through the specific system of grave breaches.¹²⁸ They provide that each High Contracting Party is under an obligation to enact necessary legislation to provide effective penal sanctions for suspected offenders, to search them regardless of their nationality and of the place of the offence, and either prosecute them or extradite them to another High Contracting Party for trial.¹²⁹ Requiring each High Contracting Party to bring alleged perpetrators, “regardless of their nationality, before its own courts”, the grave breaches system underlines that these parties must try not only their own nationals but also foreign nationals alleged to have committed a grave breach. This latter obligation, to prosecute where nationality of the alleged offender as a traditional basis for jurisdiction is not given (and where, without this being explicitly stated, also other traditional jurisdictional bases such as nationality of the victim or territoriality jurisdiction may not be given), marks the principle of universal jurisdiction as one of the important features of the grave breaches system.

The list of grave breaches under the Geneva Conventions and AP I is rather short and does not explicitly contain rape or other forms of sexual violence.¹³⁰ Some authors have analyzed this lack of express reference as an indication that States at the time did not consider rape and other forms of sexual violence as belonging to the most horrendous crimes that required specific criminalization.¹³¹ One can only speculate as to whether that was true in 1949 or even in 1977, but it is a matter of fact that rape and other forms of sexual violence were rarely prosecuted also at the international level before the emergence of the *ad hoc* international criminal tribunals for the former Yugoslavia and Rwanda in the 1990s.¹³²

Today, it is clear that rape and other forms of sexual violence do amount to grave breaches if committed against protected persons in the context of and associated with an international armed conflict, when these acts fall into the categories of “torture or inhuman treatment” or “wilfully causing great suffering or serious injury to body or health”. In the ICRC Customary IHL Study, the Commentary to Rule 156 (“Definition of War Crimes”) explains that:

128 Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Geneva, 12 August 1949 (GC I), Arts 49–50; Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Geneva, 12 August 1949 (GC II), Arts 50–51; GC III, Arts 129–130; GC IV, Arts 146–147; AP I, Arts 11, 85–86.

129 GC I, Art. 49; GC II, Art. 50; GC III, Art. 129; GC IV, Art. 146.

130 GC I, Art. 50; GC II, Art. 51; GC III, Art. 130; GC IV, Art. 147; AP I, Arts 11, 85–86.

131 See, for example, J. Gardam, above note 45.

132 See C. Lindsey, above note 42, p. 19. For some rare examples, for some rare examples, see *W. Awochi Case*, in UN War Crimes Commission, *Law Reports of Trials of War Criminals*, Vol. 13, 1949, p. 125 (on enforced prostitution); and *Hoess Trial*, in UN War Crimes Commission, *Law Reports of Trials of War Criminals*, Vol. 7, 1948, p. 15 (on enforced sterilization).

Although rape was prohibited by the Geneva Conventions, it was not explicitly listed as a grave breach either in the Conventions or in Additional Protocol I but would have to be considered a grave breach on the basis that it amounts to inhuman treatment or wilfully causing great suffering or serious injury to body or health.¹³³

The participants in the International Conference for the Protection of War Victims, held in Geneva from 30 August to 1 September 1993, went as far as declaring that “acts of sexual violence directed notably against women and children ... constitute grave breaches of international humanitarian law”.¹³⁴ The case law of international criminal tribunals has demonstrated that rape, notably, amounts to torture¹³⁵ and, as such, can be prosecuted under the grave breaches provisions. For instance, in the *Delalić* case, some of the accused – in charge of the sadly famous Celebici camp – were convicted for rape as torture under Article 2 of the ICTY Statute (grave breaches).¹³⁶ Other serious forms of sexual violence have also been prosecuted under the grave breaches provisions; for instance, in *Prlić*, the ICTY Trial Chamber held that inhuman treatment under Article 2(b) of the ICTY Statute (grave breaches) can consist of “any sexual violence inflicted on the physical and moral integrity of a person by means of threat, intimidation or force, in such a way [*sic*] as to degrade or humiliate the victim”.¹³⁷ More generally, rape and other forms of sexual violence can also be qualified as war crimes in the context of international armed conflicts, without necessarily being grave breaches. This is important to note in particular for sexual abuses that do not enter into the specific categories of grave breaches or that are committed against individuals who do not fall within the category of protected persons.

Under the lead of the United Kingdom, in the context of its Preventing Sexual Violence in Conflict Initiative (PSVI),¹³⁸ States made two declarations in 2013 recalling that “rape and other forms of *serious* sexual violence in armed conflict are war crimes and constitute grave breaches of the Geneva Conventions and their first Protocol” (emphasis added).¹³⁹ It is unclear whether these declarations aim at adding a new category into the list of grave breaches or whether they simply recall that rape and other forms of sexual violence amount to grave breaches when they enter into the already existing categories of “torture

133 ICRC Customary Law Study, above note 36, Rule 156.

134 Final Declaration of the International Conference for the Protection of War Victims, para. I.3, reprinted in *International Review of the Red Cross*, No. 296, September–October 1993, p. 377.

135 See above discussion and in particular above notes 103 and 104.

136 ICTY, *Delalić* (Trial Chamber), above note 27.

137 Emphasis added. ICTY, *Prosecutor v. Prlić*, Case IT-04-74-T, Judgment (Trial Judgment), 29 May 2013, para. 116.

138 On the UK PSVI, see www.stabilisationunit.gov.uk/how-to-get-involved/preventing-sexual-violence-initiative.html.

139 The first Declaration was adopted by the G8 in April 2013. Available at: www.gov.uk/government/publications/g8-declaration-on-preventing-sexual-violence-in-conflict. The second was adopted during the UN General Assembly Ministerial Week in September 2013 and has now been endorsed by more than 140 countries, available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/244849/A_DECLARATION_OF_COMMITMENT_TO_END_SEXUAL_VIOLENCE_IN_CONFLICT_TO_PRINT....pdf.

or inhuman treatment” or “wilfully causing great suffering or serious injury to body or health” and are committed against protected persons during international armed conflicts. The use of the verb “recall” in the declarations tends to imply the latter, and a representative of the UK has confirmed this interpretation.¹⁴⁰ Moreover, the adjective “serious” added before sexual violence tends to indicate that not all forms of sexual violence would necessarily amount to a grave breach and a war crime generally. Since the lower threshold for an act to be qualified as sexual violence remains unclear, as discussed above,¹⁴¹ it is submitted that everything depends on the definition of “sexual violence” adopted. If sexual violence is understood as including, for instance, unwanted sexual comments or advances as suggested by the WHO,¹⁴² then it is probable that such an act would be considered as falling below the threshold of gravity of grave breaches of the Geneva Conventions and AP I, and of war crimes more generally.

With respect to non-international armed conflicts, surprising as it may be today, neither common Article 3 of the Geneva Conventions nor AP II of 1977 provide for the criminalization or prosecution of violations of IHL regulating non-international armed conflicts. As made clear in the *Tadić* case, however, serious violations of common Article 3 also constitute war crimes.¹⁴³ Rape and other forms of sexual violence are implicitly or explicitly prohibited in common Article 3, as well as in AP II.¹⁴⁴ To the extent that rape and other forms of sexual violence amount to a serious violation of these provisions, there is no doubt that they also amount to war crimes when committed in non-international armed conflicts. In the ICTY Statute, rape and other forms of sexual violence are not mentioned among the crimes that can be prosecuted when committed in a non-international armed conflict, i.e. in Article 3 on violations of the laws or customs of war. This did not impede the ICTY, however, from considering rape and other forms of sexual violence as constituting war crimes in non-international armed conflicts. As is well known, Article 3 of the ICTY Statute has been interpreted as a residual clause covering any serious violation of IHL not covered by other articles of the Statute.¹⁴⁵ The conditions for determining which violations fall within Article 3 of the ICTY were elaborated in the *Tadić* case (i.e. the famous four “Tadić conditions”).¹⁴⁶ On this basis, in the *Kunarac* case, for instance, the three accused were charged with and found guilty notably of violations of the laws and customs of war in the form of rape and torture and outrages upon personal dignity (for other forms of sexual violence) in the context of the

140 Theo Rycroft, “Criminalization and Prosecution of Sexual Violence in Armed Conflict at the Domestic Level: Grave Breaches and Universal Jurisdiction”, *Proceedings of the Bruges Colloquium: Vulnerabilities in Armed Conflicts – Selected Issues, 14th Bruges Colloquium, 17–18 October 2013*, College of Europe/ICRC, 2014, pp. 77, 79.

141 See above section “Defining Sexual Violence”.

142 Above note 22.

143 ICTY, *Prosecutor v. Tadić*, Case No. IT-94-1-AR72, Decision (Appeals Chamber), 2 October 1995, paras 71 ff.

144 See above section “The Prohibition of Sexual Violence under IHL”.

145 ICTY, *Tadić* (Appeals Chamber), above note 143, paras 89, 91.

146 *Ibid.*, para. 94.

non-international armed conflict in Bosnia and Herzegovina between 1992 and 1993.¹⁴⁷ This case related to the systematic rape committed against Muslim women and girls mainly in private houses and apartments by members of the Bosnian Serb Army and of a Serb unit in the Foca area, which was being ethnically cleansed. In the ICTR Statute, Article 4 (violations of common Article 3 and AP II) explicitly criminalizes rape, enforced prostitution and any form of indecent assault. In the *Musema* case, for instance, the accused, the director of a tea factory, was charged notably with rape under Article 4 of the ICTR for having raped a Tutsi woman and encouraged his employees to do so in the context of the non-international armed conflict in Rwanda.¹⁴⁸

Moreover, rape and other forms of sexual violence have now been explicitly recognized by States as a stand-alone category of war crimes (i.e. as grave breaches or serious violations of common Article 3 independent of a qualification as torture or inhuman treatment, wilfully causing great suffering or serious injury to body or health etc.) in both international and non-international armed conflicts. The Rome Statute, adopted by States in 1998, provides that “rape, sexual slavery, enforced prostitution, forced pregnancy, ... enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions” or a “serious violation of article 3 common” are war crimes in respectively international and non-international armed conflicts.¹⁴⁹ This list implies that a certain threshold of gravity must be reached, but it is open-ended, thus leaving some room for jurisprudential interpretations.¹⁵⁰ The wording “any other form of sexual violence also constituting a grave breach” for international armed conflicts, and “any other form of sexual violence also constituting a serious violation of article 3 common” for non-international armed conflicts, is not entirely clear. Does it mean that “other forms of sexual violence” must already constitute a grave breach/serious violation of common Article 3 to be criminalized under Articles 8(2)(b)(xxii) or 8(2)(e)(vi) of the ICC Statute? If the answer to this question were positive, the added value (*effet utile*) of this provision would be rather thin. The ICC *Elements of Crimes* tend to indicate that what actually matters is that “the conduct was of a gravity comparable to that of a grave breach” or “to that of a serious violation of article 3 common to the four Geneva Conventions”.¹⁵¹ Acts of sexual violence not reaching this threshold of gravity

147 ICTY, *Kunarac* (Trial Chamber), above note 21; see also the Appeals Chamber Judgment of 12 June 2002.

For another case before the ICTY concerning the crime of rape as a violation of the laws or customs of war, see ICTY, *Prosecutor v. Kvočka et al.*, Case No IT-98-30/1 (Trial Chamber), 2 November 2001; see also the Appeals Chamber Judgment of 28 February 2005.

148 He was, however, not found guilty under that count, as the prosecutor had failed to establish the nexus with the armed conflict. See ICTR, *Musema* (Trial Chamber), above note 8. See also ICTR, *Bagosora* (Trial Chamber), above note 13.

149 See Rome Statute, Art. 8(2)(b)(xxii), which applies to international armed conflicts, and Art. 8(2)(e)(vi), which applies to non-international armed conflicts “that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups” (see Art. 8(2)(f)).

150 See, in this sense, K. Dörmann, above note 65, p. 332.

151 See *Elements of Crimes*, above note 34.

might still constitute an international crime, for instance as “outrages upon personal dignity, in particular humiliating and degrading treatment” in international armed conflicts as per Article 8(2)(b)(xxi) of the Rome Statute.

National case law recognizing that rape and other forms of sexual violence amount to war crimes when committed in the context of and associated with an armed conflict – whether international or non-international – is numerous today and tends to indicate that this is now part of customary law.¹⁵²

Can sexual violence amount to a crime against humanity and/or an act of genocide?

In armed conflict situations, not only war crimes can be committed but also crimes against humanity and acts of genocide. It is therefore necessary to analyze whether rape and other forms of sexual violence can give rise to crimes against humanity and acts of genocide. If the answer is positive, this means that even acts of sexual violence that are not directly linked to the armed conflict can constitute international crimes.

The post-Second World War Control Council Law No. 10 was the first international legal instrument that expressly included rape in the list of crimes against humanity.¹⁵³ It was followed by the ICTR Statute,¹⁵⁴ the ICTY Statute¹⁵⁵ and the ICC Statute.¹⁵⁶ The latter added to the list as sexual acts constituting crimes against humanity: “sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity” (along the lines of the list of sexual crimes as war crimes¹⁵⁷). To amount to a crime against humanity, sexual crimes must however be committed as “part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”. In other words, there must be a policy or a practice of committing crimes that are tolerated or condoned by a government or *de facto* authority. An isolated rape will be difficult to portray as a crime against humanity. The *Kunarac* case can be cited as a case in point in which rape and other forms of sexual violence amounted to a crime against humanity.¹⁵⁸ The accused – members of either the Bosnian Serb Army or of Serb forces – were convicted for crimes against humanity in the form of rape, torture and enslavement because they took Muslim women and girls on a regular basis, raped

152 China, War Crimes Military Tribunal of the Ministry of National Defence, *Takashi Sakai case*, Judgment, 29 August 1946; Germany, Federal Prosecutor General, *Charges against Two Alleged Leading Officials of the “Democratic Forces for the Liberation of Rwanda” (FDLR)*, press release, 17 December 2010; United States, Court of Military Appeals, *John Schultz case*, Judgment, 5 August 1952; United States, District Court of Columbia, *Comfort Women case*, Memorandum Opinion and Judgment, 4 October 2001. For more cases, see the Practice related to Rule 93 of the ICRC Customary Law Study.

153 Control Council Law No. 10, available at: <http://avalon.law.yale.edu/imt/imt10.asp>.

154 ICTR Statute, Art. 3(g).

155 ICTY Statute, Art. 5(g).

156 Rome Statute, Art. 7 (1)(g).

157 See above section “Does Sexual Violence Always Amount to a Grave Breach and/or a War Crime?”

158 ICTY, *Kunarac*, above notes 21 and 33.

them and kept them in servitude in the context and furtherance of the ethnic cleansing of the Foca area.¹⁵⁹

Sexual violence can even amount to an act of genocide when committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.¹⁶⁰ Rape and other forms of sexual violence can fall into different categories of acts of genocide, in particular “causing serious bodily or mental harm to members of the group”, “deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part” or “imposing measures intended to prevent births within the group”.¹⁶¹ The most famous case in which sexual crimes were considered as acts of genocide is the *Akayesu* case.¹⁶² Jean-Paul Akayesu, *bourgmestre* of Taba commune in Rwanda from April 1993 to June 1994, was convicted for crimes against humanity and for acts of genocide, notably because he knew that members of the Interahamwe had systematically committed rapes and other forms of sexual violence against Tutsi girls and women, he took no measures to prevent or to punish the perpetrators, and he ordered, instigated and aided and abetted sexual violence.¹⁶³ The Trial Chamber highlighted:

With regard, particularly, to ... rape and sexual violence, the Chamber wishes to underscore the fact that in its opinion, they constitute genocide in the same way as any other act as long as they were committed with the specific intent to destroy, in whole or in part, a particular group, targeted as such. Indeed, rape and sexual violence certainly constitute infliction of serious bodily and mental harm on the victims and are even, according to the Chamber, one of the worst ways of inflict[ing] 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, mutilated, and 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 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 group as a whole. The rape of Tutsi women was systematic and was perpetrated against all Tutsi women and solely against them.¹⁶⁴

Rape and other forms of sexual violence can thus also amount to genocide.

159 *Ibid.* See, in particular, Trial Judgment, above note 21, paras 436–464.

160 ICTR Statute, Art. 2; ICTY Statute, Art. 4; Rome Statute, Art. 6. See also Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948.

161 Rome Statute, Arts 6(1)(b)(c) and (d).

162 ICTR, *Akayesu* (Trial Judgment), above note 8.

163 *Ibid.*, paras 449–452.

164 *Ibid.*, paras 731–732.

The discrepancy between the law and the facts

No gap under international law

Rape and other forms of sexual violence are not only violations of human rights law and IHL entailing State responsibility; as discussed above, they can also amount to international crimes and, as such, entail individual criminal responsibility.

The prohibition of rape and other forms of sexual violence is one of the areas where IHL, human rights law and international criminal law go in the same direction, complementing and reinforcing each other. It is fascinating to see how frequently human rights bodies and the international criminal tribunals cite each other in order to reinforce their analysis in the field of sexual violence. For instance, in the *Delalić* case, the ICTY cited the ECtHR and the IACHR among other human rights bodies in order to conclude that rape amounts to torture.¹⁶⁵ In the *Pérez v. Mexico* case, the IACHR notably cited the ICTY and the ECtHR for the same purpose.¹⁶⁶ The latter, for instance, referred to the ICTY findings in the context of the *M.C. v. Bulgaria* case dealing with the alleged rape of a 14-year-old girl by two men, to reject force as a necessary element of rape and to conclude that any sexual penetration without the victim's consent constitutes rape.¹⁶⁷ This phenomenon of exchange between the various branches of international law has been called “cross-fertilization” by certain authors.¹⁶⁸

On this basis, and as demonstrated in the previous sections, it can safely be said that the prohibition and criminalization of rape and other forms of sexual violence at the international level is strong and fairly adequate. This is not to say that international law is perfect in this regard. Some legal uncertainties always remain: for instance, is there a lower threshold for an act to amount to sexual violence? When does sexual violence committed during an armed conflict amount to a war crime? What is the lower threshold of gravity for sexual violence to constitute a *serious* violation of IHL? Should the notion of rape as torture be interpreted in the same way under human rights law, IHL and international criminal law?¹⁶⁹ These grey areas have a rather limited impact in practice, however.

One may think that even though State practice and international case law have clarified a number of issues, it would still be useful to have a new binding treaty assembling these evolutions and/or integrating IHL, human rights and international

165 ICTY, *Delalić* (Trial Chamber), above note 27, paras 480–493.

166 IACHR, *González Pérez v. Mexico*, above note 112, paras 45–48.

167 ECtHR, *M.C. v. Bulgaria*, above note 119, para. 163.

168 Gloria Gaggioli, *L'influence mutuelle entre les droits de l'homme et le droit international humanitaire à la lumière du droit à la vie*, Pedone, Paris, 2013, p. 196 (which contains references to other authors mentioning this “cross-fertilization”). See also Gloria Gaggioli, “The Relevance of International Criminal Law for Interpreting and Applying Human Rights Treaties: A Study of the Case Law of the European Court of Human Rights”, in Robert Kolb and Damien Scalia, *Droit international pénal*, Helbing Lichtenhahn, Basel, 2012, pp. 397–422; Olivier de Frouville, “The Influence of the European Court of Human Rights’ Case Law on International Criminal Law of Torture and Inhuman and Degrading Treatment”, *Journal of International Criminal Justice*, Vol. 9, No. 3, 2011, pp. 633–649.

169 On this issue, see G. Gaggioli, “The Relevance of International Criminal Law”, above note 168.

criminal law rules pertaining to sexual violence. Given the already existing strong international legal framework, the lack of appetite among States for new treaties nowadays and the inherent risk that every treaty-making exercise entails (i.e. opening for negotiation points which were solved through case law and other practice, thus jeopardizing the existing legal framework), it is unlikely that such an enterprise would bring more benefits than costs.

That being said, there is a shocking discrepancy between the prohibition and criminalization under international law of rape and other forms of sexual violence and the prevalence on the ground of such crimes in situations of armed conflict. It is submitted, however, that this discrepancy cannot be explained by the existence of a gap or lack of clarity in international law. What is urgently needed are not more international law rules but rather a better implementation of existing rules at the domestic level and effective prosecutions of perpetrators of sexual crimes at the domestic and international levels.

Need for better implementation and prosecution

International law rules prohibiting and criminalizing sexual violence remain dead letters if they are not properly implemented at the national level. This means first that international law rules must be integrated into domestic law. The domestic legal framework must prohibit and criminalize sexual violence in an adequate manner, in conformity with international rules and standards. Police and military orders, doctrines, rules of engagement etc. must also be in conformity with the international and domestic prohibition/criminalization of sexual violence. But even this – i.e. a strong domestic legal and administrative framework – is not sufficient.

These rules, to be effective, must be supported by robust State institutions. The security sector (i.e. the police, the military and other security forces) needs to be staffed and trained appropriately. Police and armed forces must put in place appropriate procedures so that disciplinary and criminal sanctions to prevent and punish sexual violence by State officials can be applied. They must also be trained to be able to recognize sexual violence when it happens and to protect the population from such crimes by non-state actors. The justice system needs to be staffed and trained appropriately in order to be able to investigate allegations of sexual violations and prosecute and sanction perpetrators. In many countries, rape and other forms of sexual violence are prohibited and criminalized, but the prosecutions for such crimes are virtually non-existent. The reasons for this might be numerous and varied. Sometimes the lack of referral systems for victims of sexual violence or the prospect of excessively long procedures explains why victims do not seek justice. At other times, it is the lack of trust in the State institutions that discourages victims of sexual violence from seeking justice. There might also be a lack of willingness on the part of the judicial system to prosecute sexual crimes, which are wrongly considered lesser crimes. Finally, a strong health system – with staff specially trained to recognize sexual violence and to provide the necessary assistance to victims – is also needed. Victims of sexual

violence usually turn first to the health system for assistance; the role of medical personnel is therefore paramount to identifying sexual violence and to referring victims to the appropriate police and judicial authorities if the patient so wishes. In this context, notably, respect for medical ethics and confidentiality is absolutely essential. Assistance to victims of sexual violence is not limited to medical assistance. Economic assistance might also be needed: victims of sexual violence might lack a means of livelihood because, for instance, they have been rejected by their families and communities. Psychosocial support to the victims, but also their families and entire communities, is often required, in particular when sexual violence is committed on a large scale. Assistance to victims indirectly prevents sexual violence from occurring again as it helps reduce the vulnerability of the concerned persons and communities. Eliminating and preventing sexual violence might thus require profound reforms.¹⁷⁰ These measures can and should already be taken in peacetime and are even more needed in armed conflicts and post-conflict settings.

In the context of armed conflicts, organized non-State armed groups also play an important role in the prevention of sexual violence. They too must enforce norms against rape and other forms of sexual violence by their members and by civilians in the territory they control.¹⁷¹ Although armed groups usually do not have “institutions” like States and cannot “prosecute” rape and other forms of sexual violence, they can take effective measures to prevent sexual violence: the existence of clear orders prohibiting any form of sexual violence, the appropriate training of members of the armed group, and the enforcement of disciplinary measures and sanctions against perpetrators are basic measures that can truly help to eliminate and prevent sexual violence.

The need to improve the implementation of IHL in the field of sexual violence was highlighted at the 31st International Conference of the Red Cross and Red Crescent in 2011, in the Four-Year Action Plan for the Implementation of IHL, which integrated as an objective the “[p]revention of sexual and other gender-based violence against women”. The Action Plan provides that:

States ensure that all feasible measures are employed to prevent all serious violations of international humanitarian law involving sexual and other forms of gender-based violence against women. Such measures include: pre-deployment and in-theatre gender training of armed forces on their responsibilities, as well as the rights and particular needs and protection of women and girls; military disciplinary measures and other measures such as reporting requirements on incidents of sexual violence to avoid impunity; ensuring that female detainees and internees are supervised by women and

170 As noted by J. Gardam already in 1998, “to be effective, any enforcement regime for prohibitions on sexual violence in armed conflicts must incorporate procedural reforms”. J. Gardam, above note 45.

171 “Indeed, where groups enforce norms against rape by civilians (including spousal rape) as well as by combatants, the frequency of rape during war may be significantly *less* than peacetime levels.” Elisabeth Jean Wood, “Armed Groups and Sexual Violence: When is Wartime Rape Rare?”, *Politics and Society*, Vol. 37, No. 1, 2009, pp. 131–161.

separated from male detainees and internees, except where families are accommodated as family units; ensuring, whenever possible, that female personnel are present during the interrogation of female detainees; and ensuring, whenever possible, women's participation in decision-making in peace processes.¹⁷²

Since then, the ICRC has made a number of statements before UN bodies notably affirming the urgent need to improve the implementation of IHL and other international rules prohibiting and criminalizing sexual violence.¹⁷³ It has already been suggested that the theme of sexual violence be put on the agenda of the 32nd International Conference of the Red Cross and Red Crescent that will take place in December 2015.¹⁷⁴

The UN has also stressed the need to address the immediate and profound causes of sexual violence, notably in the thematic resolutions of the UN Security Council on the Protection of Civilians in Armed Conflict, on Women, Peace and Security, and on Children and Armed Conflicts. In these resolutions, the Security Council has linked the issue of sexual violence to the peace and security agenda.¹⁷⁵ The Security Council took concrete actions and even applied sanctions against individuals for complicity in widespread and systematic sexual violence perpetrated in the DRC.¹⁷⁶ The UN has also linked the issue of sexual violence with the "transitional justice" agenda,¹⁷⁷ thus showing the UN belief that broad "institutional reforms are necessary to prevent the repetition of gender-based and sexual violence".¹⁷⁸ These evolutions aim at improving the implementation of the prohibition of sexual violence at the international level.

Despite these positive developments, the need for better implementation and prosecution of sexual violence also exists at the international level. The lack

172 ICRC, *31st International Conference 2011: Resolution 2 – 4-Year Action Plan*, 2011, available at: www.icrc.org/eng/resources/documents/resolution/31-international-conference-resolution-2-2011.htm.

173 See, e.g., UN General Assembly, 69th session, Third Committee, item 27 of the agenda, statement by the ICRC, New York, 17 October 2014, available at: www.icrc.org/en/document/advancement-women-icrc-statement-united-nations-2014#.VHeG8BzP87k; UN General Assembly, 69th session, Third Committee, item 64 of the agenda, statement by the ICRC, New York, 17 October 2014, available at: www.icrc.org/en/document/promotion-and-protection-rights-children-icrc-statement-united-nations-2014#.VHeHqBzP87k; UN HRC, 25th regular session, statement by the ICRC, Geneva, 25 March 2014, available at: www.icrc.org/eng/resources/documents/statement/2014/03-25-human-rights-council-combating-sexual-violence-drc.htm.

174 See Council of Delegates, *Report on the Workshop "Movement Response to Sexual and Gender-Based Violence in Armed Conflict and Disaster"*, 2013, available at: www.icrc.org/eng/assets/files/red-cross-crescent-movement/council-delegates-2013/cod13-ws9-sgbv-final-report-eng.pdf.

175 S/RES/1820 (2008), op. para. 1; S/RES/1888 (2009), op. para. 1; S/RES/1960 (2010), op. para. 1; S/RES/2106 (2013), op. para. 11.

176 S/RES/1807 (2008), para. 13(e).

177 For the UN, transitional justice means: "the full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. Transitional justice consists of both judicial and non-judicial processes and mechanisms, including prosecution initiatives, truth-seeking, reparations programmes, institutional reform or an appropriate combination thereof. Furthermore, comprehensive national consultations, particularly with those affected by human rights violations, have been recognized as [a] critical element of transitional justice." See UN Doc. A/HRC/27/21, 30 June 2014, para. 6.

178 UN Doc. A/HRC/27/21, 30 June 2014.

of IHL compliance mechanisms to identify, prevent and halt IHL violations (including sexual violence) and the need to develop new ones is a much wider issue that is the subject of an ongoing debate among States in the context of the Swiss-ICRC initiative on Strengthening Legal Protection for Victims of Armed Conflicts (“compliance track”).¹⁷⁹

Regarding prosecutions, international criminal law has made immense progress in the last two decades. However, international prosecutions of sexual violence remain rare in practice (compared to the occurrence of these crimes in the contexts that have been addressed by the *ad hoc* tribunals and by the ICC). In the context of the *Lubanga* case, for instance, criticisms were expressed because the ICC prosecutor did not bring charges related to sexual violence despite evidence that came out in court pointing to widespread sexual violence against child soldiers; and because the judges did not re-characterize the evidence of sexual violence under the existing charges of war crimes, notably the crime of enlistment, conscription of children or use of children in hostilities.¹⁸⁰ There were, however, both substantial and procedural impediments. On the substantial side, the prosecutor held that amending the indictment during the presentation of the prosecution case would have been contrary to the due process rights of the accused. On the procedural side, the ICC Appeals Chamber considered that it was not permissible for the judges to change the legal characterization of the facts to include crimes associated with sexual violence.¹⁸¹

One of the possible reasons why sexual violence is rarely prosecuted is its frequent invisibility and the inherent difficulty in the collection of evidence necessary to prove that sexual crimes have been committed, as well as in the identification of perpetrators. Another possible reason might be the fact that international courts and tribunals often prosecute high-ranking officials and that, in practice, it may be particularly difficult to prove their responsibility for the perpetration of sexual crimes by their subordinates, especially if orders were not given to that effect and if sexual crimes were simply tolerated. In the context of its PSVI initiative, the United Kingdom has thus drafted – after having consulted a range of experts in the field – an International Protocol on the Documentation and Investigation of Sexual Violence in Armed Conflicts, and launched it in

179 For further information, see www.icrc.org/eng/what-we-do/other-activities/development-ihl/strengthening-legal-protection-compliance.htm.

180 See Dissenting Opinion of Juge Odio Benito in ICC, *Prosecutor v. Lubanga*, Case No. ICC-01/04-01/06, Judgment (Trial Chamber), 14 March 2012. See also International Federation for Human Rights (FIDH), *Crimes of Sexual Violence and the Lubanga Case: Interview with Patricia Viseur Sellers*, 12 March 2012, available at: www.fidh.org/International-Federation-for-Human-Rights/Africa/democratic-republic-of-congo/DRC-ICC/Crimes-of-sexual-violence-and-the. See also Dov Jacobs, “Lubanga Decision Roundtable: Lubanga, Sexual Violence and the Legal Re-Characterization of Facts”, *Opinio Juris*, 18 March 2012, available at: <http://opiniojuris.org/2012/03/18/lubanga-decision-roundtable-lubanga-sexual-violence-and-the-legal-re-characterization-of-facts/>; Lisa Gambone, “Failure to Charge: The ICC, Lubanga and Sexual Violence Crimes in the DRC”, *Foreign Policy Association*, 22 July 2009, available at: <http://foreignpolicyblogs.com/2009/07/22/failure-to-charge-the-icc-lubanga-sexual-violence-crimes-in-the-drc/>.

181 See ICC, *Prosecutor v. Lubanga*, Case No ICC-01/04-01/06, Judgment (Trial Chamber), 14 March 2012, paras 629–630. See also the discussions of the commentators in the previous footnote.

2014.¹⁸² The purpose of this non-binding protocol is to put an end to the impunity of perpetrators of sexual violence in conflict situations by helping national and international practitioners to investigate and document sexual violence worldwide. It provides guidelines on the documentation of sexual violence in practice and tackles issues such as documentation/investigation planning, identification of survivors and witnesses, testimonies, interviewing, and storing of information.

The international community has been very active in recent years in its efforts to combat sexual violence in various and complementary ways. It is to be hoped that these efforts will bear fruit.

Conclusion

Rape and other forms of sexual violence are absolutely prohibited under both IHL and international human rights law. The Geneva Conventions and their Additional Protocols prohibit expressly rape. They also outlaw cruel or inhuman treatment and torture, outrages upon personal dignity, indecent assault and enforced prostitution, and require respect for persons and honour. The IHL prohibition of rape and other forms of sexual violence applies to both international and non-international armed conflicts and is also part of customary law. Human rights law prohibits sexual violence at all times. This is done first and foremost through the prohibition of torture or cruel, inhuman or degrading treatment or punishment. Other human rights are also relevant, such as the prohibition of sexual slavery, trafficking of persons for the purpose of prostitution of others or other forms of sexual exploitation, the right to privacy or to a private life, and the prohibition of discrimination. Rape and other forms of sexual violence can amount to international crimes – war crimes, crimes against humanity and acts of genocide – when the conditions for such crimes (including the contextual elements) are fulfilled. As such, they entail individual criminal responsibility.

The international legal framework for the prohibition and criminalization of sexual violence is thus extremely strong, even if imperfect. Sexual violence is one of those areas where the different international law branches (IHL, human rights law, international criminal law) echo and reinforce each other, providing for an essential complementarity.

Despite these legal achievements, the reality on the ground is appalling. In order to fill the gap between the law and the reality, there is an urgent need to strengthen the implementation of the international prohibition of sexual violence and the prosecution of sexual violence both at the domestic and international levels. At the domestic level, proper implementation of the prohibition of sexual violence goes beyond a mere translation of international law and into domestic rules. Large institutional reforms are needed sometimes to ensure respect for the

182 This protocol is available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/319054/PSVI_protocol_web.pdf.

law. At the international level, effective IHL compliance mechanisms are needed and further efforts must be made to ensure that sexual crimes are properly investigated and prosecuted by international judicial bodies.

Eliminating sexual violence in armed conflicts is an ambitious – some would say utopic – project. States and humanitarian actors must not capitulate, however, as sexual violence is neither an inevitable nor an inherent component of armed conflicts.

Domestic accountability for sexual violence: The potential of specialized units in Kenya, Liberia, Sierra Leone and Uganda

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Abstract

From 2011 to 2014, the Human Rights Center at the UC Berkeley School of Law conducted qualitative research in Kenya, Liberia, Sierra Leone and Uganda to identify accountability mechanisms and challenges related to sexual violence committed during periods of conflict or political unrest. This article shares two aspects of that research: first, it presents key challenges related to the investigation, prosecution and adjudication of sexual violence committed during and after the periods of recent conflict. Second, it flags the emergence of specialized units tasked with investigating and prosecuting either sexual and gender-based violence or

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international crimes, noting the operational gap between these institutions. It notes that if not bridged, this gap may impede responses for the intersecting issue of sexual violence committed as an international crime. The article closes with recommendations for a more coordinated response and more accountability at the domestic level.

Keywords: sexual violence, conflict-related sexual violence, international crimes, Rome Statute, complementarity, accountability, wartime rape, specialized units, Kenya, Liberia, Sierra Leone, Uganda.



Despite increased attention to sexual violence in armed conflict since the adoption of United Nations (UN) Security Council Resolution 1325 in 2000, few perpetrators have been prosecuted at international tribunals for sexual violence as a war crime, crime against humanity or genocide. Even fewer have been convicted.¹ Prosecutors at the international tribunals have found evidence collection to be challenging due to distance, cultural or political sensitivities and the passage of time. Moreover, they must target those believed to bear the greatest degree of responsibility for the most egregious atrocities. Mid-level and low-level perpetrators are generally not in their crosshairs.

In truth, *national* legal systems play an increasingly crucial role in delivering accountability for most sexual violence violations, including sexual violence that occurs during conflict. In countries that have domesticated the Rome Statute, national courts not only have their normal jurisdiction to hear cases of “general” sexual violence (i.e. not related to armed conflict or other situations of violence), but can also adjudicate cases of sexual violence committed as an *international* crime – that is, as a war crime, crime against humanity or act of genocide.

In order to address the “accountability gap” that may arise where international tribunals cannot or will not reach, it is imperative to understand national legal systems and their capacity to respond to conflict-period sexual violence. This is essential when promoting the principle of complementarity, or the notion that national systems can and should take responsibility for the prosecution of international crimes.² Which national institutions are responsible for investigating and prosecuting the full spectrum of sexual violence that occurs

1 See useful early discussion in Kelly D. Askin, “Sexual Violence in Decisions and Indictments of the Yugoslav and Rwandan Tribunals: Current Status”, *American Journal of International Law*, Vol. 93, No. 1, 1999, pp. 97–123.

2 States signatory to the Rome Statute accept their obligations under the principle of complementarity: the concept that the International Criminal Court (ICC) has complementary jurisdiction to national criminal courts over serious crimes, with primacy resting in the national courts. Among other things, this means that national courts should prosecute crimes considered as such under international law (including sexual violence). See Lee Stone and Max du Plessis, “The Implementation of the Rome Statute in African Countries”, available at: www.issafrika.org/cdromestatute/pages/document.pdf (all Internet references were accessed in December 2014). See also Elizabeth Muli, “The Domestication of the Rome Statute: A Case Study of the International Crimes Bill in Kenya”, *Moi University Law Journal*, Vol. 2, No. 1, 2008, pp. 50–53.

during periods of armed conflict and other situations of violence? And how able are they to do so?

From 2011 to 2014, researchers from the Human Rights Center at the University of California, Berkeley, School of Law undertook a study to examine national-level accountability systems serving survivors of sexual violence in four countries affected by armed conflicts or other situations of violence: Kenya, Liberia, Sierra Leone and Uganda.³ The study was framed around the following questions:

1. What are the general challenges to reporting, investigating and prosecuting sexual violence in each of the four countries?
2. What conflict-specific challenges exist in reporting, investigating and prosecuting sexual violence during recent conflict periods?
3. What strategies have been used to respond to these challenges?

After the pilot study period in Kenya (2010–2011), our fieldwork trips to four countries resulted in 279 semi-structured qualitative interviews with representatives of government, civil society and UN agencies who worked in health care, law enforcement, prosecution, the judiciary, community-based organizations and traditional justice systems.⁴ We conducted interviews both within capital cities and, where time and resources permitted, in rural areas directly affected by the conflict.

Our interviews broadly explored accountability and support systems benefiting survivors of sexual violence at the ground level in Kenya, Uganda, Liberia and Sierra Leone. To the extent that actors were also able to respond to sexual violence committed as an international crime, we also attempted to ask them about relevant challenges and strategies. Interview data were analyzed to identify key themes in the challenges and strategies related to sexual violence response during and after conflict periods.

In the course of our general enquiry, discussions with local judges, prosecutors and police revealed a fascinating emergence of separate legal institutions addressing any sexual and gender-based violence on the one hand

3 For the purposes of this study, we defined “conflict period” in our case studies as follows. Liberia: from 1989 to 1996 and from 1999 to 2003; Sierra Leone: from 1991 to 1999; Uganda: conflict in northern Uganda, lasting from 1986 to 2006 and running up to the end of the formal encampment period in 2008; Kenya: post-election violence period, late December 2007 through February 2008. We understood that Kenya’s 2007–2008 post-election violence may not constitute an armed conflict in the strict sense under international humanitarian law. However, we included Kenya as a case study because of the relatively recent nature of the conflict there, the diversity it provided in terms of length of duration of emergency period, and the potential for finding helpful response strategies in such a highly developed country. Also, the incidents of sexual violence reported to local and international investigators during Kenya’s 2007–2008 post-election violence were sufficiently similar to acts of sexual violence committed in other conflict contexts as to invoke the same questions of accountability and response.

4 Study participants were selected purposefully based on their involvement in and/or knowledge about responses to sexual violence during or after the conflict period. Sampling aimed to include both policy-makers and practitioners working in health care, law enforcement, the judiciary, prosecution units, civil society organizations and traditional justice systems.

and any international crimes on the other. Intrigued by the possible complications this bifurcation may pose for the investigation and prosecution of *sexual violence that amounts to an international crime*, we now explore these parallel structures and their practical implications.

Though the question of institutional structures may seem relatively mundane and administrative as compared to countless acute accountability challenges, it is nonetheless essential to address. Specialized units focused on either sexual violence or international crimes have potentially complementary roles to play. At a minimum, those focused on general sexual and gender-based crimes may contribute expertise in investigating and prosecuting acts of sexual violence that may later be understood to constitute the “crime base” in relatively complex international crimes. Bridging the disparate structures as they evolve should improve local actors’ ability to identify and respond to the intersecting issue of sexual violence committed as an international crime should these events arise again. Moreover, this disconnect may be relatively easy to remedy so early in its emergence.

This article presents a summary of the sexual violence that took place during the most recent period of armed conflict or other situations of violence in each case study country, as well as the reported challenges to its investigation and prosecution. It then summarizes research findings regarding the emergence of specialized police, prosecution and court units focused on sexual and gender-based violence—as well as a few new units focused on international crimes generally. The article closes with observations as to the implications of this two-track development and recommendations for bridging these tracks in order to improve accountability for conflict-period sexual violence at the domestic level.

Conflict-period sexual violence

Some sexual violence that occurs during armed conflict is “connected” to the armed conflict (in the sense that the armed conflict played a role in the perpetrator’s decision or ability to commit it), and some is not. Recent data increasingly confirm substantial variation in the forms, perpetrators and motives of sexual violence committed during periods of armed conflict.⁵ It may or may not be enacted by someone with a gun. The perpetrator is not always a stranger. The victim is not always a woman.⁶ The spaces in which sexual violence occurs can

5 Dara Kay Cohen, Amelia Hoover Green and Elisabeth Jean Wood, *Wartime Sexual Violence: Misconceptions, Implications, and Ways Forward*, United States Institute of Peace Special Report No. 323, United States Institute of Peace, Washington, DC, February 2013.

6 Kirsten Johnston, Jennifer Scott, Bigy Rughita, Michael Kisielewski, Jana Asher, Ricardo Ong and Lynn Lawry, “Association of Sexual Violence and Human Rights Violations with Physical and Mental Health in Territories of the Eastern Democratic Republic of the Congo”, *The Journal of the American Medical Association*, Vol. 304, No. 5, 2010, pp. 553–562; Kirsten Johnson, Jana Asher, Stephanie Rosborough, Amisha Raja, Rajesh Panjabi, Charles Beadling and Lynn Lawry, “Association of Combatant Status and Sexual Violence with Health and Mental Health Outcomes in Postconflict Liberia”, *The Journal of the American Medical Association*, Vol. 300, No. 6, 2008, pp. 676–690.

vary during active conflict as well, ranging from border crossings to private homes, or from refugee camps to detention centres.⁷ Violence is also reportedly perpetrated within social spheres – perhaps by male combatants against their female counterparts, or by relief workers, neighbours or spouses.⁸

The motivations may vary. Sexual violence during conflict periods may be committed in an attempt to control reproduction, to promote social cohesion and bonding among combatants, to destroy local communities, or for myriad other strategic reasons.⁹ It may also occur for non-strategic reasons, or as part of an ongoing rhythm of gender inequality that to some extent existed before conflict, endures throughout it, and will likely persist after.¹⁰

For these reasons, we use the term “conflict-period sexual violence” to capture the full spectrum of sexual violence that occurs during a period of armed conflict – whether it is strategically motivated by that conflict’s existence or not.¹¹ Within “conflict-period sexual violence”, then, we assume two rough categories of harm for the purposes of this study: “general” sexual violence and sexual violence as an international crime.

For the purposes of this study, “sexual violence as a general crime” refers to an act of a sexual nature committed against someone through coercion or without consent, or an effort to force a person to commit such an act against another; this might include acts like rape, sexual torture or forms of domestic violence.¹²

- 7 Lynn L. Amowitz, Chen Reis, Kristina Hare Lyons, Beth Vann, Binta Mansaray, Adyinka M. Akinsulure-Smith, Louise Taylor and Vincent Iacopino, “Prevalence of War-Related Sexual Violence and Other Human Rights Abuses Among Internally Displaced Persons in Sierra Leone”, *The Journal of the American Medical Association*, Vol. 287, No. 4, 2002, p. 518; Recovery of Historical Memory Project (REHMI), *Guatemala: Never Again! The Official Report of the Human Rights Office, Archdiocese of Guatemala*, Orbis Books, Maryknoll, NY, 1999.
- 8 United States Office on Colombia, ABColombia and Sisma Mujer, *Colombia: Women, Conflict-Related Sexual Violence and the Peace Process*, 2013, available at: www.abcolombia.org.uk/downloads/ABColombia_Conflict_related_sexual_violence_report.pdf.
- 9 Dara Kay Cohen, “Explaining Rape during Civil War: Cross-National Evidence (1980–2009)”, *American Political Science Review*, Vol. 107, No. 3, 2013, pp. 461–477; Tamara Tompkins, “Prosecuting Rape as a War Crime: Speaking the Unspeakable”, *Notre Dame Law Review*, Vol. 70, No. 4, 1994, pp. 845–890.
- 10 Tia Palermo, Jennifer Bleck and Amber Peterman, “Tip of the Iceberg: Reporting and Gender-Based Violence in Developing Countries”, *American Journal of Epidemiology*, Vol. 179, No. 5, 2014.
- 11 Use of the term “conflict-related sexual violence” to describe some of these harms has gained substantial traction in recent years. Though inconsistently described by academics and policy-makers, this has foggly come to include acts such as rape, sexual slavery, coerced undressing, forced pregnancy, forced abortion, sexual mutilation, sexual exploitation and other non-penetrative sexual assault, usually by one or more armed actors. Thus the more private, perennial forms of sexual violence that are not unique to conflict periods but nonetheless occur during them – like intimate-partner violence – fall out of the lexicon and to the conceptual and political wayside. See Elizabeth Jean Wood, “Variation in Sexual Violence during War”, *Politics & Society*, Vol. 34, No. 3, 2006, pp. 307–341; Suk Chun and Inger Skjelsbaek, “Sexual Violence in Armed Conflicts”, PRIO Policy Brief, International Peace Research Institute, Oslo, January 2010; Michele Leiby, “State-Perpetrated Wartime Sexual Violence in Latin America”, Ph.D dissertation, University of New Mexico, July 2011.
- 12 The World Health Organization has described 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, including but not limited to home and work ... Sexual violence includes rape, defined as physically forced or otherwise coerced penetration – even if slight – of the vulva or anus, using a penis, other body parts or an object.” See Rachel Jewkes, Purna Sen and Claudia Garcia-Moreno, “Sexual

Domestic penal law determines which acts constitute “general” crimes of sexual violence in a jurisdiction; it also generally requires proof as to the perpetrator’s identity and intent, along with some showing of coercion or lack of consent on the part of the victim.

The latter, sexual violence as an international crime, increasingly refers to sexual violence as defined by the Rome Statute of the International Criminal Court (ICC), which explicitly proscribes “rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity”.¹³ Each of these acts may also constitute a “general” crime of sexual violence in certain jurisdictions. However, its characterization as an *international* crime requires several additional elements.

First, depending on the perpetrator’s motivation and the relationship of the action to the surrounding armed conflict or crisis, these acts may be recognized as one of three kinds of international crimes: war crimes, crimes against humanity or acts of genocide.¹⁴ To properly categorize the “crime base” or act in question, a prosecutor must first understand who committed it, upon whom it was committed, why, and with what relationship to the ongoing conflict or crisis. For example, was the rape in question committed for a strategic or military purpose? Was it committed as part of a widespread or systematic attack on a civilian population? Second, to connect the crime committed to the accused party, a prosecutor charging an international crime must also charge the accused under a specific “mode of liability” (the type of direct or indirect responsibility a defendant bears).¹⁵ This may require linking a commander or other superior to the acts of his or her subordinates.

Investigating and prosecuting sexual violence

Researchers asked health-care staff, police officers, lawyers, judges and other key informants about critical challenges and strategies that arise in the documentation, investigation and prosecution of sexual violence – both during

Violence”, in Etienne G. Krug *et al.* (eds), *World Report on Violence and Health*, World Health Organization, 2002, available at: http://whqlibdoc.who.int/publications/2002/9241545615_chap6_eng.pdf.

- 13 Rome Statute of the International Criminal Court, UN Doc. A/CONF.183/9, 17 July 1998 (entered into force 1 July 2002) (Rome Statute), Art. 7(1)(g), “Crimes against Humanity”. See also Art. 8(2)(b)(xxii), Art. 8(2)(e)(vi) on “War Crimes”. Sexual violence could also constitute an act of genocide under Art. 6 (b), “Causing Serious Bodily or Mental Harm to Members of the Group”.
- 14 *Ibid.*; see also ICC, *Elements of Crimes*, Document No. ICC-PIIDS-LT-03-002/11_Eng, The Hague, 2011, Art. 6 (p. 2), Art. 7 (p. 5) and Art. 8 (p. 13).
- 15 Rome Statute, Arts 25, 28 and 30. This may be “direct responsibility” if the accused committed (directly or indirectly), ordered, solicited, induced, aided and abetted or otherwise contributed to the commission of the crime (by action or omission). Direct responsibility is also borne where a group acted with a common purpose. Alternatively, an accused may be culpable via “command” or “superior” responsibility. Broadly speaking, this can be proven where the accused is a military or civilian commander who is shown to have had effective “command and control” or authority over subordinates; to have known or disregarded the fact that subordinates were committing the crimes in question; and to have failed to take reasonable measures to prevent their commission, punish the perpetrators or submit the matter to competent authorities for investigation.

periods of recent conflict and today. This section first summarizes what is known of sexual violence committed during those conflict periods. It then notes some of the main investigation and prosecution challenges that interviewees described.

Conflict-period sexual violence in case-study countries

The earliest of the four case study conflicts arose in Uganda between 1986 and 2006. Sexual and gender-based violence was a significant aspect of the twenty-year conflict in northern Uganda. Observers of the conflict believe that both the Lord's Resistance Army (LRA) and the Ugandan People's Defence Force (UPDF) committed widespread sexual violence. From 1992 to 2005, it is reported that the LRA abducted between 60,000 and 80,000 children from northern Uganda.¹⁶ Boys were used as child combatants and girls were often forced to be "wives" to the soldiers as soon as they attained puberty.¹⁷ The women and girls in these forced marriages were required to have sex, which often led to forced child-bearing. Rape outside of these forced marriages was not widely reported. For their part, members of the UPDF are said to have raped both men and women, especially in operational areas.¹⁸ There was a high incidence of sexual and gender-based violence in the displacement camps, including rape, defilement and physical assault. Perpetrators reportedly included family and community members within the camps as well as external actors such as LRA combatants and the UPDF.¹⁹ In addition, women are believed to have engaged in "survival sex" with UPDF soldiers or camp leaders in order to protect their families or access resources.

In Liberia, sexual violence was a prominent feature of two back-to-back civil wars (December 1989 to April 1996, July 1997 to August 2003). The Liberian Truth and Reconciliation Commission catalogued

brutal acts of rape, gang rape and multiple rapes, vaginal and anal rape and also with objects, guns, cassava plants, sticks, boots and knives. It overlapped with forced labor in that the women who were taken to wash and cook for the fighters were also sexually abused and kept as sexual slaves.²⁰

Combatants also suffered greatly: a 2008 study found that 42.3% of female combatants and 32.6% of male combatants were exposed to sexual violence

16 Jeannie Annan and Morah Brier, "The Risk of Return: Intimate Partner Violence in Northern Uganda's Armed Conflict", *Social Science and Medicine*, Vol. 70, No. 1, 2010, p. 152.

17 *Ibid.*

18 Dyan Mazurana *et al.*, *Making Gender-Just Remedy and Reparation Possible: Upholding the Rights of Women and Girls in the Greater North of Uganda*, Feinstein International Center, August 2013; Amnesty International, *Uganda Doubly Traumatized: Lack of Access to Justice for Female Victims of Sexual and Gender-Based Violence in Northern Uganda*, AFR 59/005/2007, 2007, p. 3; anonymous interview with representative of international justice organization, Uganda, March 2013.

19 Moses Crispus Okello and Lucy Hovil, "Confronting the Reality of Gender-Based Violence in Northern Uganda", *International Journal of Transitional Justice*, Vol. 1, No. 3, 2007, p. 439.

20 Liberian Truth and Reconciliation Commission, *Report of the Liberian Truth and Reconciliation Commission*, Vol. 3: *Appendices*, Title 1: *Women and the Conflict*, 2009, p. 40.

during conflict.²¹ According to the 2007 Liberian Demographic Health Survey, high rates of sexual violence also took place between intimate partners during conflict.²²

In Sierra Leone, women and girls were particularly targeted in acts of widespread rape, sexual slavery and additional practices of sexual violence during the civil war (1991–1999). The exact number of individuals who were raped is unknown, but testimonies from survivors suggest thousands of victims.²³ Instances of rape and gang rape include women and girls being held at gunpoint or knifepoint as well as rape using objects, such as sticks. At times, rape occurred in front of family members, and in some instances, relatives were forced to rape their own kin. Women and girls who were kidnapped were referred to as “wives” and kept by members of the Revolutionary United Front (RUF). Some experienced rape or gang rape several times, and if they succeeded in escaping one RUF group, there was a risk they could be subsequently captured by another. Pregnant women were not immune: witnesses reported mutilated bodies of pregnant women with fetuses cut out of wombs as well as gunshot wounds targeting a pregnant woman’s abdomen.²⁴ According to local providers, boys and men were also raped by male and female fighters.²⁵

Most recently, in the wake of the December 2007 elections, Kenya collapsed into waves of upheaval for approximately three months. According to the Commission of Inquiry into Post-Election Violence, over 900 cases of sexual violence were reported throughout the country during the emergency period, and evidence suggests that even more instances went unreported.²⁶ Between 27 December 2007 and 29 February 2008, as many as 322 cases of sexual violence and rape of women and girls were admitted to Nairobi Women’s Hospital alone.²⁷ Although sexual violence against women was more likely to be reported, men too experienced forms of sexual violence²⁸ including sodomy, forced circumcision and mutilation of their penises.²⁹ According to a 2011 survey, unlike the gang rapes generally seen in other conflicts, post-election sexual

21 Kristen Johnson *et al.*, “Association of Combatant Status and Sexual Violence with Health and Mental Health Outcomes in Post-Conflict Liberia”, *JAMA*, Vol. 300, No. 6, 2008, pp. 676–690.

22 Liberia Institute of Statistics and Geo-Information Services *et al.*, *Liberia Demographic and Health Survey 2007*, June 2008, pp. 231–241, available at: <http://dhsprogram.com/pubs/pdf/fr201/fr201.pdf>.

23 Human Rights Watch, *Sowing Terror: Atrocities against Civilians in Sierra Leone*, July 1998, available at: www.hrw.org/legacy/reports/reports98/sierra/.

24 *Ibid.*

25 Forum for African Women Educationalists Sierra Leone treated fourteen boys between the ages of nine and fifteen who had been raped. Human Rights Watch, “‘We’ll Kill You If You Cry’: Sexual Violence in the Sierra Leone Conflict”, Human Rights Watch Short Report, Vol. 15, No. 1(A), 2003, p. 42.

26 Commission of Inquiry into the Post-Election Violence in Kenya, *Report of the Findings of the Commission of Inquiry into the Post-Election Violence in Kenya*, 2008 (Waki Report), pp. 237–271, available at: http://reliefweb.int/sites/reliefweb.int/files/resources/15A00F569813F4D549257607001F459D-Full_Report.pdf.

27 *Report from OHCHR Fact-Finding Mission to Kenya, 2–28 February 2008*, United Nations High Commissioner for Human Rights, available at: www.ohchr.org/Documents/Press/OHCHRKenya-report.pdf, p. 13.

28 Kirsten Johnson, Jennifer Scott *et al.*, “A National Population-Based Assessment of 2007–2008 Election-Related Violence in Kenya”, *Conflict and Health*, Vol. 8, No. 2, 2014, available at: www.conflictandhealth.com/content/8/1/2.

29 Waki Report, above note 26, pp. 238–239.

violence in Kenya was most commonly “single-person rape, molestation and genital mutilation overwhelmingly perpetrated by men and, to a lesser extent, women who were affiliated with a government or political group(s)”.³⁰

Overview of challenges

The pursuit of legal accountability for survivors of sexual violence is rife with difficulty even under the best of circumstances. It is no wonder, then, that State and civil society actors in each of the four case studies experienced serious challenges in investigating and prosecuting sexual violence during the active conflict periods. This was largely due to myriad obstacles both in terms of survivors’ willingness and ability to come forward amid the chaos of conflict and the capacity of State institutions to receive them at the time. Strain on general infrastructure, resources and transportation complicated the collection of sufficient evidence to support prosecution.

Survivors’ willingness and ability to report

Informants noted several ways in which survivors’ reluctance to come forward to report their experiences of sexual violence served as an initial challenge to accountability. First, many health-care providers, women’s rights advocates, police and prosecutors noted that one basic reason survivors of sexual violence during conflict did not seek justice through formal mechanisms was simply because they were not emotionally or psychologically able to. Given the dearth of psychosocial support available to survivors during periods of active conflict, this was often a difficult issue to remedy. As one Ugandan prosecutor noted, “[m]ost of the witnesses are traumatized and they need psychosocial support. The witnesses are left to deal with these issues and for many, it is too, too much for them.”³¹

Second, interviewees stressed the importance of stigma as a reporting barrier. As one informant in Liberia observed:

The stigma surrounding a survivor reduces as her age gets lower. You can’t blame a one-year-old or a five-year-old, but when you start to get to puberty, the blame starts to shift: “She was acting that way, showing her body off.” When you get to adult women, the stigma and shame shifts dramatically.³²

Another interviewee in Kenya explained the general reluctance to speak of these issues: “We do not like to talk about sex in the first place. Can you imagine asking us to talk about rape?”³³

30 K. Johnson *et al.*, above note 28, p. 8.

31 Anonymous interview with prosecutor, Uganda, September 2013.

32 Anonymous interview with a representative of a civil society organization, Liberia, September 2013.

33 Anonymous interview with a representative of a civil society organization, Kenya, May 2011.

Third, general insecurity and disruption of public transport during periods of active conflict often kept survivors in their homes and prevented them from seeking police or immediate medical care in all four countries. One woman in the heavily hit Kibera area of Nairobi described hiding in her house for days while the police were shooting in the streets after the 2007 election. Women who did eventually set out to seek health care or report to the police often did so days after the violation occurred – physical evidence of rape had often been washed away or discarded. Moreover, families and communities were often displaced from their homes during conflict periods, making it difficult for individual survivors to know how to access services or protection in their new or changing environs.

Finally, informants emphasized survivors' lack of safety and confidence in the legal system. According to these interviewees, it often seemed that perceptions of ineffectiveness, inefficiency and corruption bred a general reluctance on the part of sexual violence survivors to see the legal system as a viable avenue to justice – even in peacetime. As one interviewee explained with regard to the conflict period in Sierra Leone, “[t]he police were feared. They were and are corrupt. This was not the route to report. Communities reported to communities, not to systems.”³⁴ Several interviewees observed that these fears seemed heightened during periods of conflict, when political or ethnic divisions became more pronounced. They noted unwillingness to report sexual violence (or any violence) to the police or to public hospitals or clinics, particularly where the State – or the police force itself – was implicated in the violence.

One interviewee from Uganda explained: “The women and girls are really at risk because the security officers, the rebels and other men just do it with impunity and the poor women have nowhere to report.”³⁵ Similarly, an interviewee in the Kibera district of Nairobi alluded to a related fear of law enforcement during the 2007–2008 post-election violence: “You must understand that Kibera is mostly [opposition party] territory. So it was the police themselves who were standing on the main road there, shooting into our homes. Who were we to report to?”³⁶ Another Kenyan interviewee working on police reform conceded that “[t]here was a lot of brutality from the police ... which included sexual and gender violence.”³⁷

Lack of safe shelter or witness protection was also believed to be a major concern for those who feared reprisals for reporting violence. This was particularly true where the perpetrators were armed actors, affiliated with the State, or were at least still physically present in the community.³⁸ As one Ugandan prosecutor noted, “You can’t get the rebels; this would be a death warrant.”³⁹

34 Anonymous interview with a representative of a civil society organization, Sierra Leone, November 2013.

35 Anonymous interview with a representative of a civil society organization, Uganda, January 2013.

36 Anonymous interview with shelter staff member, Kenya, March 2014.

37 Anonymous interview with government official, Nairobi, Kenya, March 2014.

38 Anonymous interviews with shelter staff members in Liberia, August 2012, and Kenya, March 2014.

39 Anonymous interview with prosecutor, Uganda, September 2013.

Limited resources, infrastructure and transportation

Basic infrastructure necessary to respond to sexual violence either never existed or was broken down in the conflict-affected areas being studied. In all four emergency contexts, this meant that State functions were weak due to lack of reliable access to electricity, transportation, medical equipment and public services, particularly in rural areas. For three of the four conflicts occurring back in the 1990s, the issue of “sexual and gender-based violence” had not yet emerged in the political or legal vocabulary. A former aid worker in Sierra Leone explained:

Only after the war was rape given a name ... Although some may have said there was a way prior to the war to report rape, this would imply a systematic response or infrastructure to deal with rape which just didn't exist prior to or during the war.⁴⁰

Post-rape care was often difficult to secure: even if local clinics were normally equipped to provide these specialized services (and in the vast majority of cases, they were not), their facilities were often overcrowded and under-stocked due to a high volume of injuries in the community. In addition, health-care facilities were often understaffed due to the flight of medical staff or their inability to travel to work due to surrounding violence. Access to psychosocial support services during active conflict periods was also extremely limited. As one health-care provider in Nairobi explained: “During the post-election violence, we had so many patients who were admitted, but we couldn't counsel all of them. Our staff were also suffering. Our staff could not even come to work because it was dangerous at that time.”⁴¹

Access to police was not much better in many cases: officers were often not at the police station during outbreaks of violence, so there was no one to receive and respond to survivor complaints. Further, police or medical follow-up with survivors was difficult because survivors and their families were often on the move. Investigations themselves were often hampered by insufficient resources. This is still the case today – for example, police in all four countries studied mentioned that basic transport can be an enormous challenge that limits their ability to reach a crime scene or reach survivors. In Gulu, Uganda, all fifty officers share a single motorcycle. Vehicles were similarly scarce in areas of rural Liberia that researchers visited:

Yes, this is our motorbike. Some days, it does not have fuel. On days when it *does* have fuel ... and the abuser is right in front of my nose, what shall I do to arrest him? Ask him to kindly get on my bike so we can return to the police station? I hope he and his friends do not beat me up and take it!⁴²

40 Anonymous interview with former employee of an international aid organization, Sierra Leone, November 2013.

41 Anonymous interview with public hospital staff member, Kenya, March 2014.

42 Anonymous interview with WACPS unit police officer, Liberia, August 2012.

Police officers also reportedly lack basic items such as stationery for statement-taking and case management. In order to take notes or to print copies of the police report forms, officers may either rely on civil society organizations to provide paper or ask survivors to pay for it.

There was limited ability for civil society organizations to provide legal support in contexts where law enforcement and court systems were suspended during conflict periods. In Liberia, for example, the Association of Female Lawyers of Liberia attempted to provide legal aid outreach to rape survivors to help them navigate the legal system, but the courts were not consistently operational during the conflict period.⁴³

Finally, where it addressed sexual violence at all, humanitarian aid was geared more towards the female-victim paradigm, and male survivors were thus generally excluded from any post-rape care services. Though they were less visible, men and boys suffering from sexual violence were often in dire need of care. As one provider working with communities in Northern Uganda reflected: “We saw a number of male victims of rape, including children [in the camps for internally displaced persons]. When we had cases of male survivors, it was really severe.”⁴⁴

Evidence collection and prosecution

The general collapse of infrastructure and public services in conflict-affected areas contributed to a near universal failure to collect evidence of crimes of sexual violence during the emergency and conflict periods in each of the four countries studied.

The health-care providers who were able to operate during periods of conflict in Kenya, Liberia, Sierra Leone or Uganda were often the first and only point of contact for a survivor of sexual violence. But at the time, few health-care providers had training in collection and management of forensic evidence – and even if they had, evidence gathering and preservation for possible prosecution later could simply not be priorities during an emergency period.⁴⁵ As described by a women’s rights advocate active in Monrovia during Liberia’s second civil war, no one delivering emergency medical services to sexual violence survivors ever stopped to ask a patient, “What happened?”⁴⁶

Similarly, the likelihood of securing police investigation into a sexual violence claim was slim. Complaints of violence could often only be submitted in

43 Anonymous interview with staff member from civil society organization, Liberia, March 2013. For more information about legal support efforts during conflict periods, see Human Rights Center (HRC), University of California, Berkeley, School of Law, *The Long Road: Domestic Accountability for Sexual Violence in Conflict and Post-Conflict Settings*, forthcoming, 2015 (to be published on the HRC website, available at: www.law.berkeley.edu/hrc.htm).

44 Anonymous interview with staff member of international aid organization, Uganda, October 2013.

45 Anonymous interview with nurse, Liberia, August 2012.

46 Anonymous interview with women’s rights advocate, Liberia, August 2012.

one's neighbourhood police district. This made reporting futile for survivors who had fled from home due to the armed conflict or crisis.

Moreover, the sheer task of documenting and investigating sexual violence as it can occur during conflicts is daunting – particularly when it involves armed actors. Several interviewees mentioned the great difficulty in identifying direct perpetrators if they were members of an unfamiliar group or otherwise foreign to a survivor's community. Similarly, it was often difficult for survivors to identify or provide information about indirect perpetrators or higher-level commanders who were not at the scene of the crime.

Even today, a primary challenge to effective investigation of sexual violence cases is inadequate police competence to handle such cases, as noted by many interviewees. In Kenya and Uganda, key informants frequently felt that members of the general police force are insufficiently trained on how to handle cases of sexual and gender-based violence, resulting in weak investigations and case files that are not useful in court.

Part of the challenge may be the way in which training is approached – often on an *ad hoc* basis, depending on which civil society group is able to provide a course. Also, training is often a one-time event for many officers in the general police force. There is rarely any building upon the initial course to deepen or refresh knowledge:

Yes, they get a training on gender-based violence at the police academy now. But when does that lesson come? It comes on the last day, when they are packing up and polishing their shoes for graduation. It's not a priority; it's not meaningful.⁴⁷

Further, interviewees noted a gender bias within the police force that they felt affected police perceptions and treatment of sexual violence cases. In all four countries, despite recruitment of female officers, police forces remain overwhelmingly male-dominated. For example, in Liberia, only 19% of the investigating officers of the Liberia National Police are female.⁴⁸ Similarly, in Uganda, female officers represent only around 14% of the total Ugandan police force.⁴⁹ As one member of the Liberian police force put it,

there should be given some extra allowance to motivate and to encourage all of the officers, especially the females, to come. ... Females understand some things more. A female that has been to the war ... understands when a woman comes to speak to her, or when a child speaks to her. I am not saying men don't. Some

47 Anonymous interview with representative of a community-based organization, Kenya, March 2014.

48 Sabrina Karim, Ryan Gorman, C. Clarence Massaquoi, Abraham S. Kromah and William K. Mulbah, *Building a More Competent Security Sector: The Case of the Liberian National Police*, Working Paper, Emory University, 2014.

49 Robinah Rubimbwa and Maude Mugisha, *Security Council Resolution 1325: Civil Society Monitoring Report*, Global Network of Women Peacebuilders, Civil Society Monitoring, 2010, p. 119, available at: www.gnwp.org/wp-content/uploads/2010/02/Uganda.pdf; anonymous interview with police official, Uganda, January 2013.

men do. But not all men have passion. I think it would be better to have more women.⁵⁰

In terms of prosecution, it was rare to hear of sexual violence cases proceeding to court during periods of active conflict. In addition to the reporting and infrastructural challenges noted above such as court closures, interviewees also noted a lack of sensitization on the part of judges to issues of sexual and gender-based violence that persist today to some degree. Interviewees remarked upon many judges' lack of familiarity with relevant laws and their failure to understand the nature and limitations of evidence in these cases. One stated, "[I] get very angry at the magistrate when he asks a 9-year old whether she was raped at 4 or 5pm."⁵¹ Another said:

[T]here is a perception: if you're sexually active no one can rape you. And I've heard magistrates in the court of law saying, "Did you scream when this man was raping you? Who heard her scream? If no one heard her scream then there isn't a problem. There was no crime committed."⁵²

Some interviewees noted ruefully that judges are not immune to the myths and stereotypes about sexual violence that exist in the outside community. Even those who are sensitized and sympathetic to survivors may struggle to acknowledge "proof" of the alleged act.

Specialized units to address sexual violence

As noted, many challenges to the investigation and prosecution of sexual violence exist even in the pre- and post-conflict periods: access barriers, limited resources, lack of prioritization, and insufficient capacity and competence. These obstacles require multifaceted and sustained intervention that is beyond the scope of this article.

Research did point to one discrete and interesting strategy to improve the handling of "general" sexual violence: the creation of specialized entities that focus on gender-based violence, including sexual violence. This includes the increasing establishment of specialized police units focused on sexual and gender-based violence. To a lesser degree, researchers learned of similarly specialized prosecutorial units and even specialized courts. Though they are not generally trained or equipped to handle *international* crimes of sexual violence, these special units may have relevance for the investigation, prosecution and adjudication of such crimes in the future.

50 Anonymous interview with police inspector, Liberia, August 2013.

51 Anonymous interview with representative of women's rights organization, Kenya, March 2013.

52 Anonymous interview with civil society organization representative, Liberia. August 2013.

Specialized police

The establishment of specialized police units to respond to crimes of sexual and gender-based violence has emerged as a strategy to improve investigation of these matters in three of the four countries studied. On the more mainstreamed end of the spectrum, Kenya does not have a specialized police force, but “gender desks” have reportedly been established at all police stations in the country to provide an entry point for survivors seeking to open a case.⁵³

Diverse models

In terms of specialized police units, researchers observed diversity in unit type, mandate, and relationship to the larger police force. They ranged from police teams focused mainly on supporting victims of sexual violence to dedicated corps with exclusive mandate over sexual and gender-based violence case investigation.

Within the Uganda Police Force (UPF), cases of sexual and gender-based violence have typically been handled by two law enforcement entities: the Child and Family Protection Unit (CFPU) and the Criminal Investigations Directorate (CID).⁵⁴ CFPU officers support victims of sexual and gender-based violence in arbitration, networking, guidance and counselling. General officers from the CID typically conduct the investigations, calling upon colleagues from the CFPU for support with interviewing or survivor care as needed. In 2013, a special Gender-Based Violence Department was established within the CID to strengthen its competence in investigating these crimes.⁵⁵

In Sierra Leone, Family Support Units (FSUs) were established within the Sierra Leone Police Force as early as 2001. Once thought of as just an access point for women and girls to report domestic violence, FSUs now respond to a broader range of cases related to sexual and gender-based violence. FSU officers register claims and conduct investigations when a survivor of sexual and gender-based violence reports to a police station. Moreover, they also conduct countrywide outreach about these crimes through media and other educational programmes.⁵⁶

The most permanent and specialized police unit observed was in Liberia, where a dedicated Liberian police unit called the Women and Children’s Protection Service (WACPS) was established in 2005.⁵⁷ Housed under the

53 These gender desks are staffed by regular police officers who rotate duty. The officer at the gender desk may not have specialized training or experience in handling cases involving sexual or gender-based violence, but all of Kenya’s police recruits receive basic training on sexual and gender-based violence while at police academy; it is unclear whether systematic training is available after that.

54 In 1995, the UPF created “gender desks” – reception desks in police stations for women filing complaints of gender-based violence. In 1998, the UPF broadened the mandate to include children and the family and changed the name to the Child and Family Protection Unit.

55 The Gender-Based Violence Department of the CID was not functional at the time of fieldwork (September and October 2013).

56 For example, in cooperation with social workers of the Ministry of Social Welfare, Gender and Children’s Affairs, FSU officers also run a phone hotline to assist survivors calling in for support.

57 UNICEF, “News Note: New Women and Children Protection Section for Liberia’s Police”, 1 September 2005, available at: www.unicef.org/media/media_28159.html.

Criminal Investigations Division of the Liberia National Police, the WACPS is mandated to “investigate all forms of violence disproportionately affecting women, such as domestic violence, sexual abuse, prostitution, illegal adoption and child abandonment, and human trafficking”.⁵⁸ In practice, whenever a complaint involves a woman or a child, WACPS is expected to respond.⁵⁹ It is seen as more approachable and better sensitized to do so – in comparison to 19% of the overall national police force, 33% of WACPS officers are female.⁶⁰

Training and competence

The specialized police units observed in Sierra Leone, Liberia and Uganda receive focused training on the investigation of sexual and gender-based violence, relative to the general police forces in which they are embedded. For example, the initial certification course for members of Liberia’s WACPS included instruction in the creation of case reports, investigation of sexual offence cases, collecting evidence and maintaining confidentiality.⁶¹ WACPS officers are also trained to take survivors to a health-care facility for treatment and examination.

Similarly, in Uganda, after finishing general police training, CFPU officers take an additional “induction course” focused on topics relating to domestic violence, child abuse, and sexual and gender-based violence. They must pass written exams and their performance is reportedly monitored on a regular basis. Interviewees also noted that CFPU officers receive some exposure to international legal frameworks regarding sexual and gender-based violence.

In Sierra Leone, training on responding to sexual and gender-based violence recently became mainstreamed: the specialized course originally reserved for the FSUs became mandatory for all new recruits in the uniformed services in 2005.

Challenges

Unfortunately, the creation of specialized police units for sexual and gender-based violence crimes does not, in and of itself, guarantee successful investigation of these crimes. In addition to myriad challenges faced more broadly by law enforcement

58 Cecil Griffiths (ed. Anike Doherty and Aiko Holvikivi), *Mapping Study on Gender and Security Sector Reform Actors and Activities in Liberia*, Geneva Centre for the Democratic Control of Armed Forces, Geneva, 2011.

59 Anonymous interview with police official, Liberia, August 2013.

60 Laura Bacon, *Building an Inclusive, Responsive National Police Service: Gender-Sensitive Reform in Liberia, 2005–2011*, Innovations for Successful Societies, Princeton University, available at: http://successfultsocieties.princeton.edu/sites/successfultsocieties/files/Policy_Note_ID191.pdf; anonymous interview with police representative, Liberia, August 2012. Note that interviewees mentioned that even within this specialized unit, it can be hard to recruit and retain female officers. In Liberia, police rotations require years of service out in the rural counties, and there is not always separate living space for female officers. Also, informants explained that it is very difficult to move for each assignment when one has children, so not many women apply to join the police force.

61 L. Bacon, above note 60.

officers, the creation of specialized units raised a few specific challenges; three in particular are worthy of emphasis.

First, the relationship between a specialized sexual and gender-based violence unit and the rest of the police force was not uniformly easy. Interviewees in both Uganda and Liberia noted initial tensions and institutional sensitivity, particularly where officers from separate corps perceived competition for resources.⁶² Also, some general administrative practices like routine transfers of officers between units or locations were seen as undermining the stability and effectiveness of specialized units.

Second, specialized sex crimes units suffered from limited mobility that hindered their ability to make use of their special training. For example, FSU officers in Sierra Leone noted that they did not have the transportation needed to collect crime scene evidence – on rare occasions, they had even asked victims to provide funds for public transport so their cases could be investigated.⁶³ Similarly, WACPS officers in Liberia faced severe resource constraints that limited their ability to travel to crime scenes, especially in rural areas.⁶⁴ While most police in these contexts may face similar resource constraints, there are compounded implications where members of a specialized force are seen as having an exclusive mandate to respond to sexual offences but also cannot get around. Interviewees noted that if members of the smaller specialized team cannot travel to a survivor or crime scene, it is not always clear how effectively the more local “regular” police will respond.

Finally, these specialized teams may not have the competence or capacity to respond to sexual violence committed as an *international* crime. Though the CFPU in Uganda does receive training on relevant international legal frameworks surrounding gender-based violence, this is an exception and is available primarily on an *ad hoc* basis, when civil society actors are able to provide training.⁶⁵ Also, it was unclear to researchers whether the training specifically addresses sexual violence as an international crime, not only as a human rights violation.

Specialized prosecution

In theory, members of a specialized prosecution team can be trained intensively and continually on sexual and gender-based violence, and they can build legal competence by repeatedly trying cases under a closed set of relevant substantive and procedural laws. They may also develop superior skills in interviewing survivors of sexual violence, preparing them for trial, assessing evidence of sexual and gender-based crimes, and conducting effective witness examinations in court.

In terms of prosecution models for sexual offences, there were fewer specialized units than researchers found among police forces. Approaches ranged

62 Anonymous interviews with police officers in Uganda, September 2013, and Liberia, August 2012.

63 Anonymous interview with police investigator, Sierra Leone, February 2014.

64 Anonymous interview with police official, Liberia, August 2012.

65 Anonymous interview with prosecutor, Uganda, September 2014.

from the delegation of sexual and gender-based violence cases to specific prosecutors who also handled other kinds of cases, to one intensive, fully dedicated prosecution unit.

A semi-mainstreamed approach was found in Kenya and Uganda, where most sexual offence cases have traditionally been handled by general “police prosecutors” at courts of first instance. These “police prosecutors” are not lawyers, but senior police officers who present cases at the magistrate court level. Lacking specific training in either courtroom procedure or the prosecution of sexual or gender-based violence cases, police prosecutors are unlikely to master the evidentiary complexity of sexual and gender-based crimes.

As a partial remedy, the directors of public prosecutions in both countries have identified specific prosecutors to act as point persons to advise police prosecutors on cases of sexual and gender-based violence, and handle any that move up on appeal. Though it was not operational at the time of fieldwork, Uganda’s Directorate of Public Prosecution has created a Sexual Offences Section in Kampala, consisting of four full-time prosecutors who also handle other kinds of cases.⁶⁶ In Kenya, the Office of the Director of Public Prosecutions has a small gender-based violence unit whose prosecutors work on a variety of other cases as well.⁶⁷

Liberia, on the other hand, has adopted a more intensive approach to specialized prosecution. Liberia’s Sexual and Gender-Based Violence Crimes Unit (known locally as the Crimes Unit or SGBVCU) was established in 2009. The SGBVCU’s mandate is to improve prosecutorial response to complaints of sexual offences, based on a victim-centred approach.⁶⁸ The staff includes not only prosecutors but also case support staff, as well as staff focused on the welfare of the survivor engaging the formal legal system. In terms of operations, the SGBVCU exclusively prosecutes cases before Liberia’s special criminal court for sexual and gender-based crimes. Its four prosecutors are guided by a comprehensive *Sexual Assault and Abuse Prosecution Handbook* issued in 2009 by the Ministry of Justice and its civil society partners.⁶⁹

Finally, a few creative *ad hoc* prosecution efforts were found in Kenya. First, the Office of the Director of Public Prosecutions established a team of “special prosecutors” from civil society organizations who could be called upon on an *ad hoc* basis. It was unclear from interviewees, however, whether civil society attorneys on this roster had been actively engaged. Second, a special task force was rolled out in 2012 as a result of pressure from civil society, which demanded enquiry into sexual violence cases from the 2007–2008 post-election violence period. This task force was given six months to determine which cases might be actionable and whether additional suspects could be identified.

66 Anonymous interview with prosecutor, Uganda, September 2013.

67 Anonymous interview with prosecutors, Kenya, March 2014.

68 Emmanuel Saffa Abdulai, *Evaluation: Strengthening of Prosecution of SGBV Offenses through support to the Sexual and Gender Based Violence Crimes Unit (SGBVCU)*, UNFPA, Monrovia, November 2010, p. 14.

69 See www.cartercenter.org/resources/pdfs/peace/conflict_resolution/liberia/SGBV-ProsecutionHandbook-v1.pdf.

The task force reviewed approximately 6,000 files. In cases of sexual and gender-based violence, the task force found no forensic evidence and only witness statements that were late, incomplete or vague. As the head of the task force noted: “We are not saying that people were not raped, gang raped ... but the files were brought to us four years down the line, the reports were written one year [after the crimes].”⁷⁰ The insufficiency of evidence in the files led Kenya’s director of public prosecutions to conclude that the cases must unfortunately be closed. This decision invoked a fundamental prosecutorial challenge: hundreds of cases of rape and sexual torture could not be tried either as a general or international crime because of police failure to properly document and investigate these acts of sexual violence. Would a specialized police unit have been more successful in collecting evidence? Or was any investigation of any of the violence impossible at the time?

Specialized courts

Adjudication of sexual and gender-based crimes is handled differently across the four countries. In Kenya and Uganda, these cases are heard in the general magistrates’ courts and appealed through regular judicial channels along with other kinds of crime. In contrast, Liberia and Sierra Leone have taken a specialized approach to adjudication of sexual and gender-based violence cases. The former has established a dedicated court for sexual offence cases; the latter has carved out a dedicated hearing time. A brief look at these two specialized mechanisms is warranted.

Liberia’s Special Court E, also known as Criminal Court E, was created by the Act Establishing Court E (2008). The Act not only established a Sexual Offences Court in Monrovia but also provided for a Sexual Offences Division in every county’s circuit court.⁷¹ Until these divisions are operational, however, general circuit court chambers continue to exercise original jurisdiction over sexual offences.⁷² Part of the impetus to establish a specialized forum for these cases was to minimize the number of rape cases that were being “compromised”, or settled, in the community. Also, cases of sexual violence were reportedly not being handled well or prioritized by the magistrates who saw them at the time. Moreover, it was hoped that a dedicated court would shed some light on the crisis of rape in particular, which had until that time been “the silent crime”. As one Liberian judge noted, “This was civil society moving the government. This was driven by the women.”⁷³

70 See news coverage such as Athran Amran, “Post-Election Violence Suspects May Face International Law”, *Standard Digital*, 18 August 2012, available at: www.standardmedia.co.ke/?articleID=2000064300&story_title=post-election-violence-suspects-may-face-international-law&pageNo=1; quotation cited in Tom Maliti, “Kenya Prosecutor: Insufficient Evidence Has Made Prosecuting Post Election Violence Difficult”, *International Justice Monitor*, 26 October 2012, available at: www.ijmonitor.org/2012/10/kenyan-prosecutor-insufficient-evidence-has-made-prosecuting-post-election-violence-cases-hard/.

71 Act Establishing Court E, 2008, Section 25.1.

72 *Ibid.*, Section 25.2(3).

73 Anonymous interview with member of the judiciary, Liberia, August 2013.

Criminal Court E has gained some fame due to its protective measures. Most famous among them is the use of relatively sophisticated technology to provide *in camera* testimony to protect the testifying witness, who is able to sit in a private room at the rear of the courtroom, where he/she can view the proceedings and speak through a microphone. A camera planted high on a rear wall transmits a contemporaneous visual of the back of the witness's head onto a large screen behind the judge. In this way, the judge, lawyers and jury can view the witness in real time, though they cannot see her/his face. Dedicated trial space allows for the centralization of expertise: the judge and prosecutors are well versed in the relevant law, and victim support measures are in place. A victim support officer from the prosecutor's office sits nearby for the duration of the hearing.

Despite its clear role as Liberia's "sexual violence court", though, it was unclear among interviewees whether Criminal Court E would have jurisdiction to hear sexual violence cases brought under international criminal law.

In Sierra Leone, special "Saturday courts" for crimes of sexual and gender-based violence were established in February 2011, with support from the United Nations Development Programme (UNDP). However, rather than being a special court, these are simply a special hearing time: Saturdays, when the criminal court is not otherwise in session. According to a justice in the Supreme Court of Sierra Leone, this extra day was created not only to clear the backlog of cases but also to protect victims by offering a hearing on a day when the court was quiet and private.⁷⁴

The Saturday courts are mandated to hear all cases that arise from three gender-violence laws passed in 2007: the Devolution of Estate Act, the Domestic Violence Act and the Recognition of Customary Marriage and Divorce Act.⁷⁵ Cases brought under the more recent Sexual Offences Act (2012) can also be heard in special Saturday court proceedings. Aside from their scheduling, the Saturday courts operate like a regular court. They have reportedly been effective in cutting down the time required to hear a case from several months to a few weeks. Further, UNDP notes that a total of fifty-three convictions had been obtained as of June 2012 by the Saturday courts in Freetown and Bo.⁷⁶

Specialized units to address international crimes

While all four countries studied have signed and ratified the Rome Statute, there was great variety in the extent to which the domestic accountability process for

74 Anonymous interview with a judge, Sierra Leone, February 2014.

75 UNDP, "Saturday Courts Help Tackle Sexual and Gender-Based Violence in Sierra Leone", 2012, available at: www.sl.undp.org/content/sierraleone/en/home/ourwork/democraticgovernance/successstories/Saturday_Courts_Help_Tackle_SGBV/; UN Women, "Sexual Offences Law, 'A Victory for Sierra Leoneans' Says Minister Gaojia", August 2012, available at: unwomenwestafrica.blog.com/2012/08/21/%E2%80%9Ca-victory-for-sierra-leoneans%E2%80%9D-says-minister-gaojia-of-sierra-leone%E2%80%99s-enactment-of-sexual-offences-law/.

76 UNDP, *Improving the Rule of Law and Access to Justice Programme*, available at: www.sl.undp.org/content/sierraleone/en/home/operations/projects/democratic_governance/improving-the-rule-of-law-and-access-to-justice-programme/.

international crimes had developed.⁷⁷ In general, there was far less development of international crimes institutions than there was for sexual and gender-based crimes institutions.

While investigations of international crimes remain within the general Criminal Investigations Directorates of their respective national police forces, Uganda and Kenya have established distinct specialized units to manage the prosecution of international crimes. In Uganda, prosecution of international crimes is the responsibility of the International Crimes Unit within the Directorate of Public Prosecutions. This unit is staffed with prosecutors who have received specific training on international criminal law, though they do not work exclusively on international crimes cases. In Kenya, the Office of the Director of Public Prosecutions contains two relevant sub-units: the International Crimes Division and the Human Rights Division. Again, the attorneys belonging to these specialized units are not exclusive; they also participate in the Directorate's general caseload.

Among the four studied countries, Uganda also features the only judicial venue exclusively focused on international crimes: the International Crimes Division of the High Court. Originally established in 2008 as the War Crimes Division, the new International Crimes Division has exclusive jurisdiction over genocide, war crimes, crimes against humanity, terrorism, human trafficking, piracy and any other claims prescribed by law.⁷⁸ The International Crimes Division has handled only one case so far.⁷⁹

There is ongoing discussion about the creation of a similar court in Kenya, tracing back to a recommendation by the Commission of Inquiry on Post-Election Violence in 2008 which was never enacted, leading to the initiation of cases by the ICC.⁸⁰ More recently, the Judicial Service Commission of Kenya renewed the idea of creating a division in the High Court of Kenya to try international crimes. This proposal has been revived in recent months, with political desire to expand the scope of the envisioned court to include transnational crimes like trafficking and piracy as well. However, some worry that such an expansion will dilute the ability of the court to focus on war crimes, crimes against humanity and acts of genocide.

77 Kenya signed the Rome Statute on 11 August 1999 and ratified on 15 March 2005. Liberia signed the Rome Statute on 17 July 1998 and ratified it on 22 September 2004. Sierra Leone signed the Rome Statute on 17 October 1998 and ratified it on 15 September 2000. Uganda signed the Rome Statute on 17 March 1999 and ratified it on 14 June 2002. See the list of States party to the Rome Statute: "Rome Statute of the International Criminal Court", United Nations Treaty Collection, available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10&chapter=18&lang=en.

78 As defined by Legal Notice No. 10 in 2011. See "International Crimes Division", on the website of the Judiciary of the Republic of Uganda, available at: www.judicature.go.ug/data/smenu/18/International_Crimes_Division.html.

79 That of Thomas Kwoyelo, which is currently on hold due to deliberations about Kwoyelo's ability to be prosecuted as a beneficiary of an amnesty grant. For a glimpse of the amnesty-related aspects of the Kwoyelo trial, see www.judicature.go.ug/files/downloads/THOMAS%20KWOYELO%20ALIAS%20LATONI%20RULING.pdf.

80 For an excellent discussion of the proposal for an International Crimes Division of the High Court of Kenya, see Kenyans for Peace with Truth and Justice and the Africa Centre for Open Governance, *A Real Option for Justice? An International Crimes Division of the High Court of Kenya*, July 2014, available at: http://kptj.africog.org/wp-content/uploads/2014/08/A_Real_Option_for_Justice_The_International_Crimes_Division.pdf.

Observations on parallel specialization

Special police, prosecutorial units and courts focused on crimes of sexual and gender-based violence and international crimes have begun to emerge to different degrees in the four countries studied.⁸¹ The impetus behind their creation and the various challenges they face in their day-to-day operations are beyond the scope of this article.⁸² Moreover, they are still relatively new and data are lacking as to their effectiveness. However, because of the importance of domestic legal systems to future efforts to address conflict-period sexual violence, including that which is committed as an international crime, it is critical to understand the coexistence of these otherwise disconnected paths.

This article has highlighted a two-track implementation system (corresponding to two distinct legal frameworks):⁸³ one set of implementing institutions focuses on sexual violence generally speaking (whether connected to surrounding conflict or not), while another specializes in international crimes (including but not limited to sexual violence crimes). This increasingly bifurcated approach may complicate the investigation and prosecution of *international crimes of sexual violence*, which may fall right between the tracks. A few of the main reasons for this are presented below.

Incongruent definitions of common offences

Separate “special units” for sexual and gender-based violence on one hand and international crimes broadly on the other are generally trained in two specific and separate legal frameworks. This may pose challenges to accountability for sexual violence as an international crime because while there are a few forms of sexual violence that are named in both laws defining gender-based violence and laws defining international crime, their actual definitions or elements may be incongruent in significant ways.

For example, the Ugandan penal code contains a gender-specific definition of rape as “the unlawful carnal knowledge of a woman or girl without her consent or with consent, if obtained by force, threats or intimidation”.⁸⁴ Not only does the provision not anticipate male victims of rape, but a subsequent provision on “Unnatural Offences” creates the risk that a male survivor could himself be prosecuted for “carnal knowledge ... against the order of nature” if his lack of consent is not established.⁸⁵

81 Study data indicate possible advantages and disadvantages to this specialized approach, especially where “regular” police forces may then abdicate responsibility for sexual violence crimes, as was reportedly once the case in Liberia. For more details, see HRC, above note 43.

82 For more details regarding these specialized units, see *ibid.*

83 All four countries have recently adopted substantial legislation criminalizing various forms of sexual and gender-based violence. Similarly, all four have ratified the Rome Statute, with only Kenya and Uganda having passed domestic implementing legislation.

84 Uganda Penal Code, para. 123.

85 *Ibid.*, para. 145.

In contrast, the Rome Statute definition of rape – absorbed by State parties in their domestic legislation – is gender-neutral as to the perpetrator and the victim.⁸⁶

This difference can have significant implications for the on-the-ground response. A local police officer's understanding of the definition of rape will dictate what cases he responds to and how he investigates them. Officers trained to think of rape as only involving "carnal knowledge of a woman or girl" under local penal law – even specialized sexual and gender-based violence officers – will be unlikely to recognize or respond to a male rape survivor who may have suffered an international crime of sexual violence.

Disparate evidentiary requirements

As noted earlier, crimes of sexual violence under domestic penal law and crimes of sexual violence under international criminal law also trigger different evidentiary burdens.

In the case of the former, a prosecutor must usually prove that the act itself occurred (meeting any elements of the crime laid out in relevant domestic laws criminalizing rape) and that the accused person is the direct perpetrator. Under most domestic criminal law definitions of rape, this would ordinarily require physical evidence of penetration, lack of consent on the part of the victim, and identity and intent of the perpetrator. This is frequently attempted via sworn personal testimony, and occasionally through forensic evidence (e.g., from rape kits that collect semen, saliva or blood samples to generate a DNA profile).

In the case of the latter, a prosecutor has the additional task of proving the contextual elements for a war crime, crime against humanity or genocidal act (e.g., whether the act was committed in the context of and associated with an armed conflict, whether the attack was part of a widespread or systematic attack against a civilian population). In cases where the accused is allegedly guilty due to command responsibility, the prosecutor must typically offer extensive "linkage evidence" tying the accused to the specific act committed by his/her subordinates. This can involve detailed information about military structure, reporting procedures, official or private communications and even troop movement.⁸⁷ These forms of evidence may be unfamiliar to police focused on investigating general crimes of sexual violence, which usually have a single direct perpetrator, a single victim and a single set of circumstances to establish.

Local prosecutors skilled in taking general sexual violence cases forward under domestic penal provisions may excel in establishing a crime base for what may ultimately emerge as an international crime of sexual violence. However, they may still be unfamiliar with the additional contextual elements required to prove the international crimes, and with the adequate modes of liability.

⁸⁶ Rome Statute, Art. 7(1)(g).

⁸⁷ Xabier Agirre Aranburu, "Sexual Violence Beyond Reasonable Doubt: Using Pattern Evidence and Analysis for International Cases", *Leiden Journal of International Law*, Vol. 23, No. 3, 2010, pp. 609–627.

The silo effect

There is also a risk that, once a specialized unit or process for cases of sexual and gender-based violence or international crimes is established, other actors may abdicate responsibility for responding to that type of crime. This is particularly problematic where specialized responders are limited in number and not present everywhere, particularly in rural areas. General police officers must at least be able to detect and refer sexual and gender-based violence cases that arise in their jurisdictions.

Similarly, where one unit is focused on sexual and gender-based violence and another is focused on international crimes, their members may be blinded to the fact that some sexual violence may manifest as an international crime and vice versa. Without seeing themselves as potentially responsible for that *kind* of sexual violence or that *kind* of international crime, otherwise skilled experts may be blind to a very real kind of harm that falls within their mandates.

Finally, several units focused on sexual and gender-based violence rely on support from foreign donors or UN agencies. As such, they may be perceived as somehow outside the regular force or department. This can lead to exclusions from general benefits such as salary ranges, promotions and trainings. In addition, while foreign investment has enabled impressive work by some specialized units, it may not be as sustainable as funding derived from the usual State budgets. The cultivation of expertise on an issue like sexual and gender-based violence may then be lost, should the external funding disappear.

Conclusion

With the limited ability of the ICC to target mid- and low-level perpetrators, domestic legal systems face increasing expectations to address war crimes, crimes against humanity and genocide due to the principle of complementarity. However, fundamental competence, resource and political challenges continue to plague the pursuit of national-level accountability for sexual violence, including that which occurs during armed conflict and other situations of violence.

Where part of a State's strategy has been to create specialized institutions to improve competence around sexual and gender-based violence on the one hand and international crimes on the other, one discrete step towards improving accountability for sexual violence as an international crime is the enhancement of coordination and collaboration between units. This study indicates three potential strategies for consideration: (a) cross-thematic training across specialized units, (b) the development of clear mechanisms for cross-unit consultation and exchange, and (c) independent evaluation of specialized units to assess and improve capacity to respond to sexual violence as an international crime.

Cross-thematic training and competence

First, the development of cross-thematic training and competence for sexual and gender-based violence officers in particular would be helpful for three reasons.

Police units tasked with sexual and gender-based violence are “first responders”. They are often known at the community level due to their day-to-day work on gender violence cases and their inclusion in local “referral” pathways. They are the law enforcement actors to whom health-care providers, legal aid workers and community advocates are trained to send survivors of sexual or gender-based violence. Though referral and reporting of sexual violence cases are likely more challenging during periods of active conflict, specialized police units may still be the first “eyes and ears” and even “hands” of law enforcement when it comes to reports of sexual violence at these times. As such, they are physically and operationally well placed to contact other relevant actors, including government institutions responsible for responding to international crimes.

Police units tasked with sexual and gender-based violence response are also likely to have received more training on relevant laws, interview techniques, evidence collection and documentation standards than other police. Such units are increasingly being trained to engage with health-care providers to secure necessary certification of sexual assault medical examinations, as well as any available physical or forensic evidence. Even though there are certainly countless challenges, specialized sexual and gender-based police units have relative expertise in capturing evidence of crimes of sexual violence generally. This may improve the chances of later establishing the crime base for future acts of international crimes of sexual violence.

Finally, it is critical that police, prosecutors and judges understand the different scope, definitions and evidentiary requirements for sexual violence crimes under domestic penal law provisions and under the Rome Statute or domesticated international law. Existing gender violence laws should be assessed for possible conflict with Rome Statute provisions and definitions, so that these discrepancies can be resolved or at least addressed in training.

Coordination between specialized units

In terms of developing improved coordination between specialized units, directors of public prosecution, police commissioners and ministries of justice should establish mechanisms that enable joint investigation and consultation across units for future emergency periods, in order to recognize and respond to international crimes of sexual violence that may occur. This includes the development of clear and accessible guidance on the investigation of crimes of sexual violence and international crimes; it may also be useful to produce a simplified, pocket version of such guidance that newer officers can refer to easily while on duty. These resources would be useful to specialized units and general officers and prosecutors alike.

Evaluation of specialized units

Finally, more evaluation of these specialized units is necessary. Donors should fund rigorous assessment of units specializing in sexual and gender-based violence and international crimes, to evaluate both their individual effectiveness and their familiarity with the legal and practical aspects of the intersecting issue of sexual violence as an international crime.

Increased national-level response to sexual and gender-based violence on the one hand and international crimes on the other is a promising development despite the persistence of myriad practical challenges. Given appropriate resources and political support, the establishment of specialized units focused on each kind of crime may certainly be an effective strategy to improve accountability. However, this also runs the risk of paradox: too much specialization in one type of crime without awareness of the other may create a mutual blind spot of international crimes of sexual violence, whose investigation and prosecution requires the skills of both kinds of experts. Improved cross-training, exchange and evaluation now can help bridge the widening gap between institutions and enhance responses to sexual violence as a war crime, crime against humanity and act of genocide in the future.

Sexual violence, health and humanitarian ethics: Towards a holistic, person-centred approach

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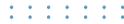
Abstract

Sexual violence and rape in armed conflicts are widespread phenomena, with devastating consequences. Over the last thirty years, our understanding of these phenomena has significantly improved. Today humanitarian and health professionals understand better the reality, scale and impact of sexual violence on the personal, physical, social and mental health of individuals and communities. Rape is recognized to have a dehumanizing effect, as much as torture or mass violence. Major efforts are put into providing an effective and ethical response, with respect and sympathy to the survivors. Health and humanitarian assistance contribute to the healing and resilience of survivors and communities. Looking

* This article was written in a personal capacity and does not necessarily reflect the views of the ICRC.

forward, programmes must be centred on the person, promoting their autonomy and dignity, and integrating medical, psychosocial and socio-economical responses.

Keywords: sexual violence, armed conflicts, humanitarian ethics, humanitarian assistance, access to health care.



Introduction: The slow recognition of sexual violence

Until quite recently, sexual violence has been a “blind spot” in the conscience of societies. It was a missing topic in the works of historians, sociologists and politicians; it was ignored by philosophers,¹ and nearly as much neglected by health and humanitarian professionals. Although rape has long been considered a serious offence, the societal and judiciary responses have been weak and inconsistent in many instances. Analyzing the history of rape in France, for instance, Georges Vigarello has observed in his seminal work that convictions for rape were exceptional in the Ancien Régime.² Despite the fact that sexual violence was, in theory, severely punished by law, in many instances perpetrators were excused or punished lightly, while the victims were ignored, rejected, ostracized, or blamed for the violence they had suffered. When sexual violence was considered a moral fault, the victim was often considered to be “contaminated” by the moral fault of the perpetrator. This was assimilated to tacit acceptance, and hence the victim was generally considered to have consented. The victim of rape was suspected of seducing the perpetrator, and of accepting or even participating in the act. This moralized understanding of victims and perpetrators contributed to the silence around sexual violence.

A similar attitude has been shown towards rape in war, which has long been considered as inevitable. Silence surrounding sexual violence in armed conflict was maintained by complacency, shame of professionals and society. While rape in war was recognized as a grave crime, reasons were found to excuse it, in order to avoid mass punishment.³

The history of addressing sexual violence reminds us of the importance of properly defining and addressing this phenomenon in order to respond effectively at the level of the victims, perpetrators and society. A major change in our understanding of sexual violence occurred when the focus shifted from the victims’ consent, to the coercion exerted against them. Looking forward, providing an effective and ethical response to survivors will require focusing on the person, promoting their autonomy and dignity, and integrating medical, psychosocial and socio-economic responses.

- 1 See Keith Burgess-Jackson’s Introduction in Keith Burgess-Jackson (ed.), *A Most Detestable Crime: New Philosophical Essays on Rape*, Oxford University Press, New York, 1999, p. 3.
- 2 Georges Vigarello, *Histoire du viol, XVIe-XXe siècle*, Seuil, Paris, 1998, pp. 73, 292–293.
- 3 Marianna G. Muravyeva, “Categorising Rape in the Military Law of Modern Russia”, in Raphaëlle Branche and Fabrice Virgili, *Rape in Wartime*, Palgrave Macmillan, London, 2012, pp. 17–33.

Approaching sexual violence

Definition

Defining sexual violence and rape poses conceptual difficulties, and has major practical implications. As history shows, the way societies respond to sexual violence depends on how they conceive and define it. Is it mainly considered a regrettable incident, a moral problem, a behavioural matter, or an aggression? Is it primarily viewed as a matter of sexuality, or an issue of violence? This is a central question. For instance, some states in the USA define rape as a crime of violence, without considering sex in the legal definition.⁴ At the other end of the spectrum, some experts consider principally the sexual dimension, somehow neglecting the element of violence. Others still insist on lack of consent, to the extent that a philosopher, oddly enough, defined rape as “a normal sexual activity, minus consent”.⁵ What, then, about sexual life, desires and contradictory feelings? Are these relevant criteria to take into consideration in defining a case? Is physical violence always present in rape, or are there other forms of coercion and abuse at play?

Following intense debates in the 1990s, sexual violence and rape are now generally defined by coercion in a sexual act.⁶ Force or coercion are the central elements in defining sexual violence. This approach recognizes that this is not primarily an issue of a sexual relationship that goes wrong; it is violence and abuse, in the context of sexuality.⁷

Lack of consent is often present; however, for various reasons, this element is not a central criterion for an operational definition, notably for legal, medical or public health purposes. In the presence of coercion or force, the value of consent is questionable. Likewise, in situations of generalized fear and a climate of violence, certain sexual “offers” may actually be coercive, even when women express consent to them. In addition, the question of consent puts the onus and the burden of proof on the victim. How can someone prove that he or she did not consent? Does a victim need to physically hurt the aggressor in order to express lack of consent, thus exposing her or himself to physical violence and maybe death? If the perpetrator affirms that the victim consented, then the victim must demonstrate that this was not the case, and that the perpetrator is lying; if the person is vulnerable or in a relationship of dependence with the aggressor, such a demonstration can be extremely difficult.

These questions suggest the variety of situations that might be encountered. The role and importance of coercion and consent may be influenced by other elements. First, at the individual level, there are the capacities and factors of

4 Keith Burgess-Jackson, “A History of Rape Law”, in K. Burgess-Jackson (ed.), above note 1, p. 24.

5 Quoted in Susan Brison, *Aftermath: Violence and the Remaking of a Self*, Princeton University Press, Princeton, NJ, 2002, p. 6.

6 Keith Burgess-Jackson, “A Theory of Rape”, in K. Burgess-Jackson (ed.), above note 1, p. 93.

7 Patricia Smith, “Social Revolution and the Persistence of Rape”, in K. Burgess-Jackson (ed.), above note 1, pp. 38–39.

vulnerability of the potential victim. Children, elderly persons, or persons with developmental deficiencies are exposed to higher risks, with low capacity to resist coercion or force, or to give consent. Secondly, there is the nature of the relationship between a potential victim and an aggressor, considering the elements of dependence: persons who are in a situation of poverty, displaced or detained are highly vulnerable to abuse by persons exerting economic, administrative, professional or other forms of power, including spiritual or educational. Thirdly, the social and institutional context will have an influence on the event – as mentioned above, consent has little value in a context of community violence and conflict.

Acts of “sexual violence” are generally defined in the Rome Statute of the International Criminal Court (ICC) as acts of sexual coercion directed against someone.⁸ Sexual violence encompasses rape, forced prostitution, sexual slavery, forced pregnancy, forced sterilization and other forms of sexual abuses. Under the Statute, the ICC has jurisdiction over sexual violence as a war crime and as a crime against humanity.⁹

The above legal definition is in agreement with the operational definition adopted by the World Health Organization (WHO) for public health purposes, a starting point for developing a public health approach to sexual violence.¹⁰ WHO 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, including but not limited to home and work”.¹¹ Rape, a specific form of sexual violence, is defined as “physically forced or otherwise coerced penetration – even if slight – of the vulva or anus, using a penis, other body parts or an object”.¹² This operational definition is a key element of WHO’s public health approach to sexual violence – an important endeavour that involves estimating the extent of the problem, its determinants and consequences, and evaluating health-care and preventive actions.¹³

8 The *Elements of Crimes of the International Criminal Court* explicitly use the wording “coercion” and “coercive environment” to define rape and sexual violence as a war crime and a crime against humanity: “The invasion was committed by force, or by the threat of force or coercion, such as that was caused by fear of violence, duress, detention, psychological oppression, or abuse of power, against such person or another person, or by taking advantage of a coercive environment or the invasion was committed against a person incapable of giving genuine consent” (emphasis added). See e.g. *Elements of Crimes of the International Criminal Court*, The Hague, 2011, Arts 7(1)(g)-1, 7(1)(g)-6, 8(2)(b)(xxii)-1, 8(2)(b)(xxii)-6, available at: www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf (all internet references were accessed in October 2014).

9 For the elements of the crime of rape as a war crime or crime against humanity, see *ibid.*, Arts 7(1)(g)-1, 8(2)(b)(xxii)-1, 8(2)(e)(vi)-1. For a detailed discussion of law and sexual violence in armed conflicts, see the article by Gloria Gaggioli in this issue of the *Review*.

10 Etienne G. Krug, Linda L. Dahlberg, James A. Mercy, Anthony B. Zwi and Rafael Lozano, *World Report on Violence and Health*, WHO, Geneva, 2002.

11 See *ibid.*, Chapter 6, “Sexual Violence”, p. 149, available at: www.who.int/violence_injury_prevention/violence/global_campaign/en/chap6.pdf.

12 *Ibid.*, p. 149.

13 See the WHO web page, available at: www.who.int/reproductivehealth/topics/violence/sexual_violence/en/.

Consequences on health

Sexual violence has severe consequences, potentially affecting all aspects of a person's life and health in their physical, mental, social and spiritual dimensions. Physical consequences include injuries, abrasions, burns, and abdominal or chest trauma.¹⁴ Sexually transmitted infections such as HIV/AIDS can occur. Acute or chronic pain can result from physical violence, or from other internal or psychosomatic trauma. Pain can be located in a specific region, such as the genital, anal, or abdominal region, or it can be of a general nature, with no specific location. Long-term after-effects of sexual violence also include infertility, vesico-vaginal fistulae, and an increased incidence of subsequent health problems.

Psychological and mental health consequences of sexual violence may include distress, self-blame, feelings of isolation and poor self-esteem; behavioural disorders, including sleeping or eating disorders, such as anorexia; substance abuse or high-risk sexual behaviour; and mental disorders including depression, traumatic syndromes such as post-traumatic stress disorder (PTSD), anxiety disorders including loss of speech or hearing, and suicidal ideation, suicide attempts and other forms of self-harm, potentially resulting in death.¹⁵ Many rape victims experience fear and terror as well as mixed feelings of confusion and indignity, anger and incapacity, with guilt and shame toward themselves, their family, and their deeper aspirations and spiritual beliefs.

Pregnancy following sexual violence often occurs in the context of shock, trauma, horror and confusion; it may add a further traumatic experience, and aggravate suffering and feelings of helplessness and despair.

Personal, conjugal and family life

Acts of sexual violence touch upon some of the most intimate and personal components of an individual's existence. They may damage his/her identity and self-esteem, personal history, moral life and spiritual aspirations. Rape also affects, in various ways, the spouse of the victim and his/her children. Rape is a violent intrusion into the person; it is also an aggression against marriage and conjugality. The spouse of the victim can be deeply affected, first as a witness of the traumatic event, and as a first-line listener to the traumatic narrative; but rape also directly offends the marital relationship of the spouses, their conjugality, their common projects and descendants. Studies reveal the distress of husbands, their feelings of indignity and guilt at having been unable to protect their wives, with fear and shame that they have themselves been soiled by these

14 WHO, Health Consequences: Understanding and Addressing Violence against Women, WHO/RHR/12.43, Geneva, 2012.

15 WHO, Mental Health and Psychosocial Support for Conflict-Related Sexual Violence: 10 Myths, WHO/RHR/HRP/12.17, Geneva, 2012.

dehumanizing acts. Husbands and partners can suffer deep trauma.¹⁶ In many instances rape causes repudiation or conjugal separations, during or following the conflict. Similar feelings of shock and terror affect the children, particularly if they witnessed the aggression. Rape may represent a break, a potential rupture in the person's genealogy and the path of filiation and generations. This dimension can have deep consequences also for the spouse and children, and potentially for the entire family and the community. In armed conflicts, this conjugal dimension takes a particular importance, and in some instances may be part of the intention behind acts of sexual violence.¹⁷

Women victims of rape interviewed in the Democratic Republic of the Congo (DRC)¹⁸ stressed the need for information and support to be provided to the husbands of victims, in order to avoid rejection and stigmatization and to make it possible for them to accept and raise a child born of rape. They also talked about the importance of community education, in order to provide information about sexual violence and to avoid social stigmatization and rejection of victims and children. Partners, children and witnesses need support, guidance and care, to help them overcome psychological trauma and rebuild their life and self-esteem.

Social consequences

The social consequences of sexual violence are closely related to its psychological and emotional consequences, and in turn contribute to aggravating these effects. Victims of rape are often blamed, considered as dishonoured, undignified, and stained with evil and moral fault. They are often "treated by their families and communities as if they have committed a crime".¹⁹ Strong and violent reactions occur, such as rejection of the victim, who is left isolated and unloved within the family or abandoned by family and community members. Social stigmatization and discrimination occurs, to the victims and eventually to their spouses, children and relatives.

Victims of rape suddenly find themselves in a situation of high vulnerability, with increased risks of further sexual violence, rejection or desertion of children born of rape, forced marriage, or loss of their means of subsistence.²⁰ Many live in constant fear, related to returning to the location where the violence

16 Jocelyn Kelly *et al.*, "'If Your Husband Doesn't Humiliate You, Other People Won't': Gendered Attitudes Towards Sexual Violence in Eastern Democratic Republic of Congo", *Global Public Health*, Vol. 7, No. 3, 2012, pp. 285–298.

17 Evelynne Josse, "'They Came with Two Guns': The Consequences of Sexual Violence on the Mental Health of Women in Armed Conflicts", *International Review of the Red Cross*, Vol. 92, No. 877, March 2010, pp. 177–195.

18 J. Kelly *et al.*, above note 16.

19 Richard Mollica, *Healing Invisible Wounds: Paths to Hope and Recovery in a Violent World*, Harcourt, Orlando, FL, 2006, p. 230.

20 R. Charli Carpenter, "War's Impact on Children Born of Rape and Sexual Exploitation: Physical, Economic and Psychosocial Dimensions", in R. C. Carpenter, *Born of War: Protecting Children of Sexual Violence Survivors in Conflict Zones*, Kumarian Press, Hartford, 2007.

took place. Death may eventually result from abandonment and deprivation, diseases such as AIDS, further violence and murder, or suicide or other self-harming behaviour.

Dehumanization, moral and social death

Whether we look at it from the perspective of the aggression itself, from the experience of the victim, or from the consequences on the personal, relational and social dimensions of life, rape is one of the gravest attacks on human integrity, life and dignity. Like torture, slavery or extreme violence, rape is dehumanizing. The philosopher Mari Mikkola explores rape as a paradigm case of dehumanization.²¹ She defines dehumanization as “an act or a treatment ... which is an indefensible setback on our legitimate human interests, and constitutes a moral injury”. This rather abstract definition corresponds in some way to the experience of victims of rape. Many describe themselves as being dead – as being humanly, morally lifeless. “This was just the first of many incidents in which I felt as if I was experiencing things posthumously”, writes Susan Brison, who survived rape and near-murder. For several months, she adds, “I felt as though I’d somehow outlived myself.”²² Many victims no longer feel like they are themselves – they feel like strangers to themselves and to their bodies, to their personal lives and their community. They feel soiled, having lost their dignity and their value as humans, and that they are not part of humanity anymore. This state is often aggravated by a massive reaction of denial from family and friends.²³ Victims are isolated, alone and misunderstood, in a world which has become insecure, violent and threatening for them.

At the social and community levels, sexual violence may radically transform social relationships and result in cultural annihilation.²⁴ Like mass violence or torture, these events appear to be sometimes planned and purposefully aimed at the annihilation of individuals, societies and nations.²⁵

Pregnancy and children born after rape

In this adverse and traumatic context, some women and girls soon discover that they are pregnant as a result of the rape. They often face an extremely difficult and painful situation, with major challenges and high risks to their health and survival. In recent conflicts in which the International Committee of the Red Cross (ICRC) has been active, some women and girls have been forced to carry pregnancies following rape. Many of them have abandoned babies. Among those who kept the child, many have faced ostracism and severe poverty; some have

21 Mari Mikkola, “Dehumanization”, in Thom Brooks (ed.), *New Waves in Ethics*, Palgrave Macmillan, Basingstoke, 2011, pp. 128–149, 141.

22 S. Brison, above note 5, p. 8.

23 *Ibid.*, p. 9.

24 R. Mollica, above note 19, p. 66.

25 *Ibid.*, p. 63.

been killed by their families or committed suicide. Many women and girls who have become pregnant as a result of sexual violence have had to abandon their family and community and move to another place in order to survive.

In some contexts, children born following rape, sexual slavery or sexual exploitation in wartime have been victims of abuse, neglect or, in some cases, infanticide; many have been rejected, stigmatized, discriminated against and deprived of their rights to education, family, identity and physical security. Some children have also suffered health and developmental problems, related to the circumstances of the pregnancy and birth and the psychosocial trauma of their mothers.²⁶ Some children born following sexual violence have been abandoned and placed in institutions or orphanages.

Responding to sexual violence and rape in armed conflicts

Humanity: respect and sympathy

Because of the moral trauma and feelings of dehumanization involved, sexual violence poses major medical and ethical challenges to health and humanitarian professionals. In addition to, and perhaps above, the medical and psychosocial needs, there are the profound moral wounds, aggravated by isolation or rejection from family and community and the need to survive in armed conflict, in a world of violence and direct threats against the most vulnerable.

A priority concern in building a response for survivors of sexual violence is to treat them with respect and sympathy – in a word, with humanity.²⁷ Treating someone with respect implies considering and promoting the dignity of the individual, as a human person, despite and beyond the traumatic experience and feelings of dehumanization. To treat with sympathy involves recognizing the vulnerabilities and the suffering of the person and expressing human solidarity, concern and support, while at the same time recognizing and promoting the capacities of the person. As Paul Ricœur has formulated it, the human individual is defined by his/her identity, capacities and vulnerabilities;²⁸ the person is an “acting and suffering” being. His/her identity is expressed in his/her name and his/her history, and also in his/her religion, culture and beliefs. He or she has the capacity, notably, to say, to act, to tell, to be accountable for his/her own actions, and to promise; on the other side, his/her vulnerability calls for solicitude and care. To treat someone humanely implies recognizing all these dimensions of the human person and respecting, protecting and promoting them. It involves recognizing the individual’s identity, name and history; promoting their autonomy and capacities; and recognizing their vulnerabilities and suffering.

26 Françoise Sironi, *Psychopathologie des violences collectives*, Odile Jacob, Paris, 2007, pp. 59–62.

27 Jonathan Glover, *Humanity: A Moral History of the Twentieth Century*, Pimlico, London, 2001, p. 383.

28 Paul Ricœur, *Soi-même comme un autre*, Seuil, Paris, 1990, p. 223.

A core ethical duty in humanitarian action is to provide care and solicitude to affected persons, promoting their autonomy and their capacities. Humanitarians must avoid reducing individuals to their vulnerabilities, dependency and suffering, to a traumatic event or to health needs. The humanitarian and health-care responses should be based on the needs of the person, always respecting his/her dignity and recognizing his/her identity, history, aspirations and capacities. The response must be centred on the person, in all aspects.²⁹ Putting people at the centre implies a fundamental shift of focus for many professionals, institutions and organizations. Respecting privacy and confidentiality is crucial, as is avoiding attitudes of victim-blaming or any discrimination based on age, gender or origin. The person needs a caring relationship, with clear information, support and the promotion of her capacity to choose the most appropriate response to her particular situation and needs.

In response to a person who has been a victim of sexual violence, with severe trauma and feelings of dehumanization, the key principle is absolute respect of the person and his/her autonomy. No pressure must be exerted, notably to collect a narrative of the events or to invite the patient to follow a particular medical procedure or treatment. A respectful and caring attitude, opening to a continuous relationship of listening and providing support, is a key element to helping a person overcome grave trauma and eventually start a process of healing and resilience.

Medical care

Sexual violence is a medical emergency. Victims should have access to medical care as soon as possible, for emergency care and support. It is crucial that rape victims receive care within seventy-two hours, for the purpose of preventing sexually transmitted diseases, including HIV, and for emergency contraception. A similar time frame is recommended for specialized examination and samples for medico-legal purposes.³⁰

As soon as possible, a medical consultation is needed for a detailed history, general medical examination and, if needed and available, specialized examination and complementary laboratory tests; the patient should receive treatment for injuries and disease, counselling about possible consequences and guidance for future care. Victims of sexual violence must have access to health facilities with functioning infrastructure and management, proper resources and skilled and committed staff providing treatment and care in line with recognized good practices. Health care should be organized in order to meet the needs of the patient, in an integrated and comprehensive way, and to ensure continuity of care.

The first encounter with a health professional may also be a privileged moment for the patient to give an account of the event. This requires an open

29 WHO, "Do's and Don'ts in Community-Based Psychosocial Support for Sexual Violence Survivors in Conflict-Affected Settings", WHO/RHR/HRP/12.16, Geneva, 2012.

30 WHO, Guidelines for Medico-legal Care of Victims of Sexual Violence, Geneva, 2003.

and welcoming attitude, a capacity to listen and a professional attitude that is non-judgemental, focuses on the person's needs and expectations, and maintains a just distance between coldness or indifference and closeness and affective fusion, in order to provide support and promote the patient's autonomy.³¹ In the presence of signs suggesting the possibility of sexual violence, inviting the patient to tell their story can be helpful; however, many patients might not be able to tell such a traumatic event until much later. It is essential to respect the patient's silence and his or her will and ability to tell, without ever forcing or pushing him or her to do so.

As for any medical care activity, health professionals should keep a record of all encounters with a patient who might have been a victim of sexual violence. If the patient so requests, the health professional should deliver a summary of the medical record, stating the identity, place and date of the encounter, a summary of the history told by the patient, and a description of the medical observations. The summary should briefly mention the essential facts, but should not mention any diagnosis or interpretation of these elements. In case of a prosecution, the summary might be produced by the patient in a court of justice.

In many contexts of armed conflict and humanitarian crisis, access to timely medical care is either unavailable or represents a major challenge. In many places medical infrastructure is limited, trained staff and medicines are frequently unavailable or minimal, and victims may have to travel long distances to obtain care. A study conducted in the DRC³² showed that less than 5% of interviewed survivors of rape would have had access to care within seventy-two hours. In the experience of the ICRC, similar situations occur in regions of Colombia and in many other countries affected by armed conflict.

Besides, many victims are unaware of the need to seek medical care and to continue their treatment. Because of trauma, confusion and shame, many survivors are unable to tell anyone about the abuse, or even to think of it. They keep silent about their experience, their suffering and trauma. Not infrequently, they may ignore or hide a pregnancy. Many survivors also fear for their own security in seeking health care. They may fear that if they come to a specialized clinic, they may be identified by a relative, an acquaintance or someone related to the perpetrators, and be threatened. In order to avoid such obstacles and security threats, and also to make access easier, specialized clinics should be fully integrated in general health-care activities. To ensure the security of the victims and their protection from further violations, it is essential to implement safety measures and to provide guidance on safety and risk reduction.

31 Paul Ricœur, "La prise de décision dans l'acte médical et l'acte judiciaire", in Paul Ricœur, *Le Juste 2*, Esprit, Paris, 2001, pp. 245–255.

32 J. T. Kelly, T. S. Betancourt, D. Mukwege, R. Lipton and M. J. VanRooyen, "Experiences of Female Survivors of Sexual Violence in Eastern Democratic Republic of the Congo: A Mixed-Methods Study", *Conflict and Health*, Vol. 5, No. 25, 2001, pp. 2–8.

Mental health care and psychosocial support

Mental health care should be provided to all victims of violence, together with medical care, and certainly with the same level of quality and professionalism. With increasing awareness of the issues and their mental health consequences, various programmes have been developed to respond to sexual violence. It was assumed that these interventions could only be helpful to victims, but ill-conceived interventions can be extremely damaging, destroying personal resources and creating disease.³³ All assistance must imperatively be evaluated as to its efficacy and possible negative impact on individuals and the community.

Considerable progress has been made over the last decade in shifting attention from vulnerabilities and trauma to resilience. Resilience has been defined as “a dynamic process encompassing positive adaptation within the context of significant adversity”.³⁴ This is not equivalent to individual qualities of resistance to stress or coping with adversity – rather, resilience describes “a biological, psycho-emotional, social and cultural process, which allows a neo-development, following a psychological trauma”.³⁵ It is a process in which the person plays an active role, with the support of and in interaction with others. Two essential ingredients contribute to the process of resilience: one is the presence of positive links with others; the other is the construction of a narrative out of the lived events, and the telling of this story.³⁶ Transforming the traumatic event into a narrative contributes to the process of resilience by making sense out of chaos.³⁷ However, two notes of caution are needed here. The first is that talking about and repeating a traumatic story may be extremely counterproductive. The trauma story may contribute to healing when it tells the facts and helps the victim to understand their meaning and thereby overcome the trauma; however, professionals should be careful not to overemphasize the brutal facts, as though telling someone about them might magically cure the victim.³⁸ Secondly, resilience does not develop alone, but with others. It is a developmental and interactive process. Particular care must be given to the relationship between the affected person and those who listen to the story. Working in groups of peers, sharing not only the trauma story but also its meaning and the strategies to survive it, is most effective, and possibly one of the safest ways to achieve healing from severe trauma.³⁹ In various countries, the ICRC has developed programmes which provide care and support to victims of sexual violence and address their psychological and social needs. The *maisons d’écoute*, or “listening houses”, in

33 R. Mollica, above note 19, p. 236.

34 Suniya S. Luthar, Dante Cicchetti and Bronwyn Becker, “The Construct of Resilience: A Critical Evaluation and Guidelines for Future Work”, *Child Development*, Vol. 71, No. 3, 2000, pp. 543–562.

35 Personal communication with Boris Cyrulnik on resilience, Paris, December 2010.

36 Boris Cyrulnik, *Un merveilleux malheur*, Odile Jacob, Paris, 1999.

37 Boris Cyrulnik, “Children in War and Their Resilience”, in Henri Parens, Harold P. Blum and Salman Akhtar, *The Unbroken Soul: Tragedy, Trauma and Resilience*, Jason Aronson, Lanham, MD, 2008.

38 R. Mollica, above note 19, p. 223.

39 *Ibid.*, p. 234.

the DRC, are a particularly successful model of intervention for victims of mass sexual violence.⁴⁰

Continuity of care and regular follow-up are essential over a period of time, including medical care, mental health and psychosocial support. In addition, economic support is often a vital form of assistance to victims who have been displaced or who have lost their means of subsistence. These persons frequently require shelter and economic support to be able to survive and to rebuild their lives. It is crucial to ensure that they are not excluded and that, if and when possible, they are reintegrated into the community and their families and do not suffer further trauma through stigmatization or abandonment.

Justice

Justice is, in principle, a component of any meaningful response to sexual violence. A fair exercise of justice, implying the prosecution of suspected perpetrators in a fair trial, may help victims overcome the trauma and build resilience. The function of justice is not therapeutic, nor is it exclusively to punish; its first role is to state the law.⁴¹ It is to name values and to locate rights and wrongs, thus helping to resolve confusion.⁴² In this respect justice is due, first, to the victim, who is “publicly recognized as an offended and humiliated being”.⁴³ This recognition has both a public dimension and a personal one, which concerns self-esteem. In this way, justice may contribute to the process of mourning,⁴⁴ and possibly to the development of resilience. Justice is due also to society, to help it to move away from vengeance and to replace it with indignation. Finally, justice is also due to the perpetrator. In the trial the guilty becomes an actor, recognized as a reasonable being, the author of his own acts. The sanction, then, opens the possibility of the restoration of the convict’s capacity to become a full citizen again.⁴⁵

Access to legal support services is important, with due consideration to the context and functioning of the relevant institutions, and respecting the wishes and security of the survivor. Most survivors need information and support in this regard, and many wish to seek justice and prosecution of the perpetrators. It must be recognized, however, that in some contexts, especially in times of conflict, access to judicial institutions and the possibility of a fair trial is not available. Besides, criminal trials seem to care more about punishing those who have committed crimes than about the personal experiences of survivors, their pain and suffering

40 For more information about the “listening houses”, see, for example, ICRC, “Democratic Republic of the Congo: Taming One’s Fear, by Helping Others”, 2009, available at: www.icrc.org/eng/resources/documents/feature/2009/congo-kinshasa-feature-220509.htm.

41 Paul Ricœur, “Justice et vengeance”, in P. Ricœur, *Le Juste 2*, Esprit, Paris, 2001, p. 261.

42 Denis Salas, “L’inceste, un crime contre la filiation”, in Gérard Neyrand, *Le cœur, le sexe, et toi et moi*, Panoramiques-Corlet, Paris, 1998, p. 34.

43 Paul Ricœur, “Sanction, réhabilitation, pardon”, in Paul Ricœur, *Le Juste*, Éditions Esprit, Paris, 1995, pp. 198–199.

44 *Ibid.*

45 *Ibid.*

and their own struggle for survival and healing.⁴⁶ Furthermore, denunciation can expose survivors to acts of vengeance against their integrity and life. In a study in the DRC, survivors of rape underlined the important role of justice, in particular the denunciation and prosecution of the perpetrators, as part of their rights and their care; they acknowledged, however, that these conditions were not met in regions where the police and the judicial system were inefficient and denunciation could lead to threats and retaliation against the victims themselves.⁴⁷

Protection, education and prevention

Protection efforts are an integral part of the response to sexual violence in armed conflicts. These include, firstly, environmental measures to increase the safety of individuals and reduce their vulnerability and exposure to risk. Examples in ICRC experience include providing women with fuel-efficient stoves to minimize the time spent venturing out to collect firewood, or working with communities in drilling boreholes closer to the villages in order to reduce security risks when collecting water or firewood.

Protection activities also involve dialogue with communities to raise awareness and develop strategies for their security, and confidential dialogue with authorities and armed groups about observed or alleged facts, their consequences for the victims and communities, their legal and criminal consequences, and possible measures to take in order to identify and sanction the perpetrators, to protect the population and to decrease the risk of such aggressions.

Prevention activities involve promoting understanding and awareness of international humanitarian law, including the prohibition of sexual violence in armed conflicts. Survivors of sexual violence have stressed the importance of information and education to family members and communities. In the DRC, survivors of rape insisted that their husbands needed information and support in order to avoid rejection and stigmatization, and to make it possible for them to accept and raise a child born of rape.⁴⁸ They also stressed the importance of community and education in order to provide information about sexual violence and to avoid social stigmatization and rejection of victims and children. An effective humanitarian response should include awareness-raising activities with communities, in order to mitigate rejection and stigmatization of survivors of sexual violence.

Health related and ethical issues around pregnancy and rape

Pregnancy care and safe abortion care

Pregnancy following rape raises a number of difficult issues, on operational and ethical grounds. All health and humanitarian professionals involved in providing

46 R. Mollica, above note 19, p. 212.

47 J. T. Kelly *et al.*, above note 32.

48 *Ibid.*

care and assistance to victims of violence must be prepared and ready to respond to these situations which they face day after day, often in a context of emergency. A clear institutional policy on these matters is essential. Lack of clarity regarding pregnancy or abortion care leads inevitably to confusion and inadequacy of programmes, and potentially blocks the development of specialized programmes by an institution.

Pregnancy as a result of rape may be an added traumatic and life-threatening event. In many instances it can be emotionally, rationally and practically impossible to cope with. For many survivors, carrying on a forced pregnancy is not a viable option, and interrupting the pregnancy is a necessary choice for the sake of their survival, family, health and recovery.

In such circumstances, in situations of armed conflicts or violence, access to emergency contraception and safe abortion care can be a lifesaving measure. It is a matter of public health. Emergency contraception, also called the “morning after pill”, is authorized in many countries up to three days (seventy-two hours) following intercourse. This care is not considered as pregnancy termination and is not regulated under abortion law in most countries, though there is some variation between countries as regards legality and delays. In some countries it is authorized up to five days after intercourse; however, the effectiveness of emergency contraception declines the longer the pill is taken after intercourse. In some countries emergency contraception is legal, whereas abortion is illegal. Emergency contraception is a safe and simple form of care, and it is well accepted by women.

Access to abortion care must be ensured, whenever this is possible and authorized, so that the survivor of sexual violence can choose whether or not she wants to carry on a pregnancy. In many instances, safe abortion care can be provided medically, in safe and relatively simple ways, without traumatic procedures or invasive intervention. Access to safe abortion care is directly dependent on the legal status of abortion.⁴⁹ This status varies across countries, in relation to diverging ethical responses as regards the status of the embryo. In almost all countries, the law permits abortion to save the woman’s life; furthermore, in the majority of countries abortion is allowed to preserve her physical and/or mental health. Some countries specifically recognize the legitimacy of abortion following a rape, thus recognizing that these situations pose particular ethical challenges. There is also the possibility for a country to adopt transitory provisions, recognizing the legal possibility of abortion care in the context of an armed conflict or a situation of violence. According to data on national laws in 2011, termination of pregnancy to save a woman’s life was accepted in 97% of countries around the world. In 51% of countries, abortion was specifically allowed in the case of pregnancy following rape.⁵⁰ The legal status of

49 WHO, “Safe Abortion Care: The Public Health and Human Rights Rationale”, in *Safe Abortion: Technical and Policy Guidance for Health Systems*, 2nd ed., Geneva, 2012, pp. 17–21.

50 United Nations, “World Abortion Policies 2013”, Department of Economic and Social Affairs, Population Division, UN Doc. ST/ESA/SER.A/329, 2013, available at: www.un.org/en/development/desa/population/publications/policy/world-abortion-policies-2013.shtml.

abortion has no effect on the likelihood that a woman will interrupt an unintended pregnancy.⁵¹ The authors of one international study explain that “some women who are determined to avoid an unplanned birth will resort to unsafe abortions if safe abortion is not readily available, some will suffer complications as a result, and some will die”.⁵² Besides legal restrictions, and those related to family or social pressures, barriers to safe abortion care include lack of available health services and medical supplies, difficulty in accessing such services, lack of competence or training on the part of health professionals, negative attitudes from professionals as regards sexual violence and/or pregnancy interruption, and medico-legal and forensic procedures requested in order to prove a rape.⁵³

Lack of, or limited access to, safe abortion care, including legal restrictions and social pressure, leads many women and girls to induce abortion themselves or seek abortion from unskilled providers.

A patient’s access to abortion care

Women who become pregnant as a result of rape and have no access to safe abortion care face major risks for their own survival and future life and health. They have a high probability of recourse to unsafe abortion practices, which entail very high risks for their health and life. Unsafe abortion is an important public health problem. It is defined as “a procedure for terminating an unintended pregnancy, carried out either by persons lacking the necessary skills or in an environment that does not conform to minimal medical standards, or both”.⁵⁴ WHO estimates that 22 million unsafe abortions take place each year. Close to 50,000 pregnancy-related deaths a year are due to complications relating to unsafe abortion.⁵⁵ One in four women and girls who undergo unsafe abortions are likely to develop temporary or lifelong disabilities requiring medical care.

Access to safe abortion care is thus a priority health-care service, both on an individual basis and from a public health perspective. Therefore, in places in which this is legally accepted, emergency contraception and safe abortion care should be made available as part of essential health-care services, including in situations of humanitarian emergency. In those places where abortion is legally accepted, making the service available is a responsibility of the public health authorities of the country; in a situation of humanitarian crisis, the humanitarian actors involved in providing health care to the affected population must also ensure that women victims of rape have access to comprehensive health care, including safe

51 WHO, above note 49.

52 Gilda Sedgh *et al.*, “Induced Abortion: Incidence and Trends Worldwide from 1995 to 2008”, *The Lancet*, Vol. 379, No. 9816, 2012, pp. 625–632.

53 K. I. Teklehaimanot and C. Hord Smith, “Rape as a Legal Indication for Abortion: Implications and Consequences of the Medical Examination Requirement”, *Medicine and Law*, Vol. 23, No. 1, 2004, p. 91.

54 WHO, above note 49.

55 WHO, *Unsafe Abortion: Global and Regional Estimates of the Incidence of Unsafe Abortion and Associated Mortality in 2008*, 6th ed., Geneva, 2011, p. 27.

abortion care. Humanitarian actors must also conform to the national legislation and codes of medical ethics as regards abortion care.

Humanitarian and health professionals must provide the patient with all useful information and promote her autonomy; they must respect the patient's choices and provide the needed support so that the patient has effective, timely and safe access to the needed care. This ethical duty applies irrespective of whether the patient chooses to perform a pregnancy interruption, to keep the pregnancy and raise the child, or to find another option such as adoption or foster care. All these options might be positive existential and ethical choices, depending on the context and the particular situation of the patient as well as her particular preferences, beliefs and religion.

In some instances a professional may personally disagree with a particular choice on the grounds of her or his own beliefs or religion. Issues of professional conscientious objection should not, however, create any added obstacle for the patient to have access to comprehensive care. As regards rules of medical deontology, the World Medical Association recognizes that a physician has a right not to perform an abortion according to his or her personal convictions; in that case the physician "may withdraw while ensuring the continuity of medical care by a qualified colleague".⁵⁶ However, the wording "continuity of medical care" is vague, and this statement may not effectively guarantee non-discriminatory access to abortion care. It tends to give a high weight to the physician's own values, rather than honouring and respecting those of the patient. It also tends to underestimate the physician's fiduciary responsibility.⁵⁷ The personal attitude of a physician can deeply influence the health-related behaviours or choices of their patient, as many examples in preventive medicine show, including in child immunization care.

The Code of Ethics of the International Federation of Gynaecologists and Obstetricians (FIGO) conceives the physician's role and duties in a way that is more committed to the patient's needs and choice. It gives to the professional a clear duty to actively refer the patient to a suitable health-care provider in case of disagreement and conscientious objection, stating that professionals should

[a]ssure that a physician's right to preserve his/her own moral or religious values does not result in the imposition of those personal values on women. Under such circumstances, they should be referred to another suitable health care provider. Conscientious objection to procedures does not absolve physicians from taking immediate steps in an emergency to ensure that the necessary treatment is given without delay.⁵⁸

56 World Medical Association (WMA), WMA Declaration on Therapeutic Abortion, Pilanesberg, South Africa, 2006.

57 Rosamond Rhodes, "The Professional Responsibilities in Medicine", in Rosamond Rhodes, Leslie P. Francis and Anita Silvers, *The Blackwell Guide to Medical Ethics*, Blackwell, Oxford, 2007, pp. 71–87.

58 FIGO, "Rights-Based Code of Ethics: FIGO Professional and Ethical Responsibilities Concerning Sexual and Reproductive Rights", October 2003, available at: www.figo.org/figo-committee-and-working-group-publications.

Issues related to conscientious objection and to the duties and responsibilities of health-care professionals have been the subject of important developments in medical ethics and law. Rosamond Rhodes has analyzed the fiduciary responsibility of the physician towards patients and society,⁵⁹ and asserts that while a health professional has a right to have his or her own ethical positions and values, he or she does not have any right to obstruct the patient's capacity to decide according to her own values, needs and circumstances. Julian Savulescu takes a similar stand, underlining that the primary goal of a health service is to protect the health of its recipients.⁶⁰

These debates have been developed essentially in times of peace, and in countries with widely available and accessible health-care services. The duty to provide care, and at least to ensure that the patient has the best possible access to care, is even more stringent in situations of armed conflict. Victims of rape in a situation of violence or armed conflict are in an extreme situation of vulnerability. In addition, most are in a situation of total dependency on a limited number of services, organizations and professionals. Health and humanitarian actors are often in a position of monopoly, their patients having no other choice than those they offer. The patients are in a situation of "unique dependence", similar to that described in the ethics of rescue in disaster.⁶¹ In such situations, in which a specific individual relies entirely on a professional or an organization for his or her health or survival, such professionals/organizations have a strong duty to act and to provide rescue and care, or at least to assist the patient in accessing care (including by referring her to another doctor). Misuse of conscientious objection arguments have been brought to court by women who had been denied access to lawful abortion in Colombia.⁶² A decision by the Constitutional Court of Colombia has established that health-care providers objecting to abortion have a duty to refer their patients to non-objecting providers.⁶³ Furthermore, it established that hospitals, clinics and other institutions have no rights to conscientious objection. At an international level,⁶⁴ it has been established that, in cases of developmental risks for the foetus, in countries where abortion is legal, governments have a duty to ensure that women have access to it; that a professional's responsibility to provide access to abortion care is not contingent upon his or her personal opinions; and that institutions have clear duties in this respect.

These ethical and legal conclusions confirm the centrality of the patient in health care.⁶⁵ Respecting the patient's dignity and autonomy is the first

59 R. Rhodes, above note 57.

60 Julian Savulescu, "Conscientious Objection in Medicine", *British Medical Journal*, Vol. 332, 2006, pp. 294–297.

61 Scott James, "Good Samaritans, Good Humanitarians", *Journal of Applied Philosophy*, Vol. 24, No. 3, 2007, pp. 238–254.

62 Rebecca J. Cook, Bernard Dickens and Monika Arango Olaya, "Healthcare Responsibilities and Conscientious Objection", *International Journal of Gynecology & Obstetrics*, Vol. 104, 2009, pp. 249–252.

63 See Colombia, Corte Constitucional [Constitutional Court], Sentencia T-388/09, 28 May 2009.

64 UN Human Rights Committee, *KL v. Peru*, Communication No. 1153/2003, CCPR/C/85/D/1153/2003, 22 November 2005.

65 WMA, *Medical Ethics Manual*, Ferney-Voltaire, 2005, p. 6.

consideration. The professional's duty is to respect the patient's choice, as long as this choice is recognized as good medical practice and is legal. If the professional is not willing or able to provide this care, then she or he must direct the patient to another colleague who is competent and agrees to provide the particular care.

Access to safe abortion care, with a caring relationship based on sympathy and professional counselling, allows the survivor of rape to make an informed and responsible choice regarding pregnancy. Continuous care is also needed following termination of pregnancy as a result of rape. These survivors also face major challenges in order to overcome trauma and rebuild their lives. They may face humiliation, exclusion or stigmatization for having terminated the pregnancy, and in some cases violence, even lethal violence, from family members or communities. In contexts where abortion is illegal, women may also be prosecuted and jailed.

Continuous care, pregnancy and child raising

For various reasons, many women or girls who become pregnant following sexual violence carry on the pregnancy. Their choice can be related to religious or moral convictions, cultural values or simply a personal decision. For some, this is the only possible choice due to lack of access to safe abortion care. In some cases, women have decided not to pursue an abortion following rape as an act of resistance against their victimization.⁶⁶ These persons choose to carry on the pregnancy despite the availability of safe abortion and support. Some survivors give the child to an orphanage for adoption. Others explain that they felt an urge to become the mother of these children imposed on them by violence; for them, giving a mother's love is an antidote to rape. There are a wide range of reasons, motivations and hopes which lead women and girls to carry out a pregnancy following rape and, eventually, to raise the child. In any case, the pregnancy, maternity and child raising pose particular challenges. In many instances, survivors of sexual violence and children born following rape are highly vulnerable and need particular care and support during pregnancy, at birth and throughout the child's development. Many women and girls face major difficulties related to their life and health, family links, social exclusion, isolation and poverty, in addition to the difficult process of surviving rape and attempting to recover from pain and trauma, to overcome fears and terrors and to rebuild their lives. These survivors of extreme violence have major needs, including a respectful and caring relationship, assistance, protection and guidance, and support in the difficult tasks they face in raising a child. These challenges might include building a positive and loving relationship with the child and helping the child overcome the rejection and social stigma that might eventually occur. Children born following sexual violence might themselves have specific needs – they should be considered as vulnerable children, at high risk of negative outcomes in their health and development. They might greatly benefit from

66 F. Sironi, above note 26, p. 61.

regular guidance and support from health, social or education professionals, in a regular and proactive way which starts early and is long-lasting, supporting the capacities and resources of the parent, the child and the community.⁶⁷

Humanitarian dialogue on law, pregnancy and abortion care

As a humanitarian organization active in medical care, the ICRC fully complies with the applicable law, and with the national policy and guidance of the public health authorities. In countries in which safe abortion care is not legally permitted, the ICRC respects this provision. In some contexts, the authorities have the possibility of adopting special provisions for the particular context of armed conflict or community violence, so that abortion care is legally authorized and available to women and girls who have become pregnant following rape in such a situation. These special provisions legitimate access to abortion care based on recognition of the desperate situation of the victims, the risks to their lives, the unfavourable personal, emotional and social conditions for the development of a pregnancy and a future child, and the risks related to unsafe abortion practices in the absence of safe abortion care.

Conclusion: For a person-centred and holistic approach to humanitarian care

The above overview has briefly described the evolution in our understanding of sexual violence in history, and has highlighted some practical obstacles and ethical challenges in responding to victims of sexual violence in armed conflicts and other situations of violence. Difficult challenges exist in attempting to respond to the trauma and suffering, the feeling of dehumanization and “death” experienced by the victims. There is no simple way or standardized technique to address such extreme situations of distress. The most essential duty is to treat victims with humanity, in a relationship of humanitarian care. That implies treating the person as a person, with respect and sympathy.

Providing care and assistance to victims of sexual violence, as for victims of torture or other forms of extreme violence, is a demanding activity which requires professionalism, humanity and humility. The response must be centred on the affected person and must follow a holistic approach, offering emergency medical care, medico-legal assessment, pregnancy and psychosocial care in an integrated way. It is crucial that health and humanitarian professionals are experienced in the fields of violence and of sexual and reproductive health and receive appropriate training on a continuous basis. Psychosocial support is crucial and requires particular care in listening to the trauma story, giving attention to its

67 For examples of effective programmes based on vulnerability and resilience, see Suniya S. Luthar, *Resilience and Vulnerability: Adaptation in the Context of Childhood Adversities*, Cambridge University Press, Cambridge, 2003.

meaning for the patient and to the ways he or she uses it to overcome trauma and distress. Working in groups of peers can be very helpful to survivors. Much progress has been recently achieved by moving from an approach restricted to vulnerabilities and trauma to supporting processes of healing and resilience.

The testimonies presented in this issue of the *Review*⁶⁸ illustrate in very expressive and moving ways many aspects discussed in this paper. These persons have benefited from programmes developed or supported by the ICRC, following extremely traumatic experiences. They all convey suffering, – many a sense of dehumanization, a feeling of being dead, or social exclusion, – and they highlight the importance of the care and support received, which helped them survive and to some extent overcome these events. Many express gratefulness to the professionals; some also mention the limits of the assistance received, and their current difficulties and unmet needs.

All these messages came from persons who benefited from assistance programmes, yet many victims have no such support, either because no programme exists or because they were not ready, not able, or not willing to participate in it. Despite such limitations, these messages are a unique and extremely precious encouragement to health professionals and humanitarian organizations in their efforts towards meaningful and respectful action to help victims of sexual violence. They certainly confirm the relevance of an ethical, comprehensive and integrated response, and the need to further develop the humanitarian response to sexual violence in armed conflicts.

68 See the opening section “Voices and Perspectives” in this issue of the *Review*.

OPINION NOTE

Responding to the needs of survivors of sexual violence: Do we know what works?

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During the past twelve months, the issue of sexual violence in conflict and emergencies has received an unprecedented amount of attention at the highest political and institutional levels. In 2013, the United Kingdom’s Department for International Development (DFID) launched a Call to Action to mobilize donors, UN agencies, non-governmental organizations (NGOs) and other stakeholders on protecting women and girls in humanitarian emergencies, culminating in the high-level event “Protecting Girls and Women in Emergencies” in November 2013. As of August 2014, over forty partners (including governments, United Nations (UN) agencies and NGOs) had made commitments to the Call to Action. Furthermore, in June 2014 the “Global Summit to End Sexual Violence in Conflict”, co-chaired by the UK Foreign Secretary and Angelina Jolie, Special Envoy for the UN High Commissioner for Refugees (UNHCR), gathered 1,700 delegates and 129 country delegations. In his summary, the chair of the Global

Summit states: “We must apply the lessons we have learned and move from condemnation to concrete action. We must all live up to the commitments we have made.”¹ In September 2014, the United States organized a Call to Action event in New York during the UN General Assembly with the purpose of sharing progress on commitments made in November 2013. It thus seems that efforts to raise awareness about sexual violence in conflict and emergencies and advocate for a much stronger commitment to action are well under way. But is this enough? Is there enough evidence from lessons learned to allow us to increase and improve our response?

The number of guidelines developed in recent years on many aspects of sexual violence in humanitarian settings seems to indicate that we know what to do. The UNHCR first published *Sexual Violence against Refugees: Guidelines on Prevention and Response* in 1995. The implementation of these guidelines was evaluated through an inter-agency process which led to the development of the 2003 *UNHCR Guidelines for the Prevention of and Response to Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons*.² Around the same time, the Inter-Agency Standing Committee had finalized guidance on protection from sexual exploitation and abuse by UN staff³, but its members expressed concern about increasing reports of sexual violence in conflict situations and the lack of a coherent and participatory approach to prevent and respond to this issue. This led to the development in 2005 of the *Guidelines for Gender-based Violence Interventions in Humanitarian Settings*,⁴ which are currently under revision. Since then, more specific aspects have also been addressed in guidance documents.⁵ In addition, many *ad hoc* trainings and some online courses have been developed and implemented in recent years.⁶

- 1 “Chair’s Summary – Global Summit to End Sexual Violence in Conflict”, UK Foreign and Commonwealth Office, 13 June 2014, available at: www.gov.uk/government/publications/chairs-summary-global-summit-to-end-sexual-violence-in-conflict/chairs-summary-global-summit-to-end-sexual-violence-in-conflict (all internet references were accessed in September 2014).
- 2 UNHCR, *Guidelines for the Prevention of and Response to Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons*, May 2003, available at: www.unhcr.org/3f696bcc.html.
- 3 The Inter-Agency Standing Committee Task Force on Protection from Sexual Exploitation and Abuse in Humanitarian Crises was established in March 2002. It provided guidelines for investigations and adopted six standards of behaviour to be included in UN and NGO codes of conduct. In October 2003, the Secretary-General issued a Bulletin entitled *Special Measures for Protection from Sexual Exploitation and Sexual Abuse*, ST/SGB/2003/13, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N03/550/40/PDF/N0355040.pdf?OpenElement>.
- 4 Interagency Standing Committee (IASC), *Guidelines for Gender-based Violence Interventions in Humanitarian Settings*, September 2005, available at: www.unhcr.org/453492294.html
- 5 See, *inter alia*, World Health Organization (WHO), *Mental Health and Psychosocial Support for Conflict-Related Sexual Violence: Principles and Interventions*, 2012, available at: http://apps.who.int/iris/bitstream/10665/75179/1/WHO_RHR_HRP_12.18_eng.pdf; International Rescue Committee (IRC), UNICEF, *Caring for Child Survivors of Sexual Abuse: Guidelines for Health and Psychosocial Service Providers in Humanitarian Settings*, 2012, available at: www.unicef.org/protection/files/IRC_CCSGuide_FullGuide_lowres.pdf; UNHCR, *Handbook for the Protection of Women and Girls*, March 2008, available at: www.unhcr.org/protect/PROTECTION/47cfae612.html.
- 6 UNFPA offers an e-learning course entitled “Managing Gender-Based Violence Programmes in Emergencies”; see <https://extranet.unfpa.org/Apps/GBVInEmergencies/intro/player.html>. Johns Hopkins University has developed “Confronting Gender-Based Violence”, a course focusing on clinical and

However, recent reviews of interventions to prevent and respond to sexual violence in humanitarian settings have repeatedly pointed to the lack of evidence on which to base interventions. One of the most cited and thorough scientific reviews was published in 2013, examining the impact of initiatives to reduce incidence, risk and harm from sexual violence in conflict, post-conflict and other humanitarian crises, in low- and middle-income countries. Only forty studies were identified in a twenty-year period from 1990 to September 2011. The authors noted that “most interventions addressed opportunistic forms of sexual violence committed in post-conflict settings. Only one study specifically addressed the disaster setting. Actual implementation of initiatives appeared to be limited as was the quality of outcome studies.”⁷ A follow-up review analyzing further evidence of good practice in prevention and response to gender-based violence in humanitarian contexts found that only fifteen of the approximately 100 guidelines, tools, papers, evaluations, studies and other documents reviewed were deemed robust enough to be included on the basis of their quality and relevance.⁸ The authors highlight the lack of evidence on quality and outcomes of interventions and of evidence from regions other than Africa. This has been echoed again by a recent special report in the *Lancet*, which states that “sexual violence in conflict remains a tenaciously difficult problem to study and therefore to address”.⁹

From a public health perspective, this apparent lack of an evidence base for responding effectively to the needs of survivors of sexual violence is worrisome. Evidence-based public health is defined as the development, implementation and evaluation of effective programmes and policies in public health through the application of principles of scientific reasoning, including systematic uses of data and information systems.¹⁰ This provides assurance that decision-making is based on scientific evidence and effective practices, and is particularly important when implementing new programmes. I would like to illustrate the lack of evidence on which humanitarian actors base their responses, and why it matters, with some examples related to different elements of the response; I will then discuss how we could improve the evidence base.

psychosocial care for women and men who are survivors and/or are at risk of gender-based violence; see <http://moodle.ccghe.net/enrol/index.php?id=58>.

- 7 Jo Spangaro, Chinelo Adogu, Geetha Ranmuthugala, Gawaine Powell Davies, Léa Steinacker and Anthony Zwi, “What Evidence Exists for Initiatives to Reduce Risk and Incidence of Sexual Violence in Armed Conflict and Other Humanitarian Crises? A Systematic Review”, *PLOS ONE*, Vol. 8, No. 5, 2013.
- 8 Rebecca Holmes and Dharini Bhuvanendra, “Preventing and Responding to Gender-Based Violence in Humanitarian Contexts”, Network Paper, Humanitarian Practice Network, Overseas Development Institute, No. 77, January 2014.
- 9 Ted Alcorn, “Responding to Sexual Violence in Armed Conflict”, *The Lancet*, Vol. 383, No. 9934, 2014, pp. 2034–2037.
- 10 Ross C. Brownson, Elizabeth A. Baker, Terry L. Leet and Kathleen N. Gillespie, *Evidence-Based Public Health*, Oxford University Press, New York, 2003.

Lack of evidence informing responses to sexual violence

Medical and psychosocial care

Medical care is recognized as a non-negotiable component of programmes to address the needs of survivors of sexual violence. The package of medical care to be provided is well codified and based on scientific evidence.¹¹ This has been adapted to displacement situations by the World Health Organization (WHO)/ UNHCR,¹² and to the needs of a medical humanitarian organization by Médecins Sans Frontières (MSF).¹³ So the question is not *what to do* to prevent and mitigate the health consequences of a sexual assault, but if and how this can effectively be *delivered* in humanitarian settings.

Accessibility of care

One of the main issues is unimpeded and timely access to services, in particular after rape, as some interventions will only be effective in the hours (e.g. treatment of injuries) or few days (e.g. HIV prophylaxis, emergency contraception) after the assault. Post-exposure prophylaxis (PEP) for HIV infection¹⁴ has to be started within seventy-two hours. If the patient presents after seventy-two hours, HIV testing should be offered, with careful explanation that PEP will not be provided, as it is not proven effective after seventy-two hours. Emergency contraceptive pills can effectively prevent pregnancy within the first seventy-two hours after unprotected sexual intercourse. From seventy-two to 120 hours (five days) the preventive treatment can still be given, but the effectiveness is reduced.

Two studies in South Kivu in the Democratic Republic of the Congo (DRC) exemplify how difficult timely access to services can be. A retrospective registry-based study of sexual violence survivors presenting to Panzi Hospital shows that the mean time delay between sexual assault and seeking care was 10.4 months.¹⁵ A different study based on another medico-social support programme for rape survivors showed that only 3% came within seventy-two hours.¹⁶ On a slightly more positive note, in a post-conflict setting in Liberia, 41% of survivors coming to clinics offering care to sexual violence survivors did so within seventy-two

11 WHO, *Guidelines for Medico-Legal Care for Victims of Sexual Violence*, 2003.

12 UNHCR and WHO, *Clinical Management of Rape Survivors: Developing Protocols for Use with Refugees and Internally Displaced Persons*, revised ed., 2004.

13 MSF, *Medical Protocol for Sexual Violence Care*, 2nd ed., May 2014 (unpublished but available on demand).

14 PEP consists of a short-term antiretroviral treatment (twenty-eight days) to reduce the likelihood of HIV infection after potential exposure, either occupationally or through sexual intercourse.

15 Susan A. Bartels, Jennifer Scott, Jennifer Leaning, Jocelyn T. Kelly, Nina R. Joyce, Denis Mukwege and Michael J. Vanrooyen, "Demographics and Care-Seeking Behaviors of Sexual Violence Survivors in South Kivu Province, Democratic Republic of Congo", *Disaster Medicine & Public Health Preparedness*, Vol. 6, No. 4, 2012, pp. 393–401.

16 Birthe Steiner, Marie T. Benner, Egbert Sondorp, Peter Schmitz, Ursula Mesmer and Sandrine Rosenberger, "Sexual Violence in the Protracted Conflict of DRC Programming for Rape Survivors in South Kivu", *Conflict and Health*, Vol. 3, 2009.

hours.¹⁷ Improved uptake of services is mainly judged by an increased number of survivors seeking care, but with no indication of how this relates to overall needs. The study mentioned above explicitly states: “The study limitations are that no data were available about the prevalence of sexual violence or survivor characteristics in the general population in Liberia, and therefore, we cannot accurately quantify which groups were, or were not, seeking care.”¹⁸ While it is difficult to compare between these studies, the higher percentage of survivors accessing services in a timely manner in Liberia could be due to the urban location (three clinics in Monrovia) and to extensive awareness-raising activities within the community.

The reasons for difficulties and delays in access have been documented in various settings. For example, a study in the DRC found that lengthy delays in seeking care were explained mainly by patients waiting for physical symptoms to develop or worsen before seeking medical attention, lack of means to access medical care, concerns that family would find out about the sexual assault, stigma surrounding sexual violence, and being abducted into sexual slavery for prolonged periods of time.¹⁹ However, there is little published evidence on how such issues could be successfully addressed. One programme in an urban slum in Nairobi shows that some of the barriers to early access and to high-quality medical care can be overcome.²⁰ Four years into the operation of a clinic for sexual violence survivors, the number of persons seeking care had greatly increased between 2007 (seven patients) and 2011 (866 survivors treated). In 2011, 73% of patients accessed services within seventy-two hours. Access to care has been facilitated by the geographical proximity of the clinic helping to avoid lengthy travel times, by twenty-four-hour opening times all days of the week (most patients come between 6pm and midnight),²¹ and by the fact that the clinic is well established, having run for several years.²² This model may be replicable in other urban or camp settings. While this project is undeniably a remarkable achievement, however, there is no indication how it relates to the prevalence of sexual violence and care needs in a population of 2.2 million.

To address barriers to access, a community-based programme in the DRC is using mobile clinics in six rural villages.²³ The case study describes how the programme has improved service provision and claims that it allows health

17 Katie Tayler-Smith, Rony Zachariah, Sven Hinderaker, Marcel Manzi, Eva De Plecker, Pieter Van Wolvelaer, Tatiana Gil, Stephan Goetghebuer, Helga Ritter, Luke Bawo and Charlyn Davis-Worzi, “Sexual Violence in Post-Conflict Liberia: Survivors and Their Care”, *Tropical Medicine & International Health*, Vol. 17, No. 11, 2012, pp. 1356–1360.

18 *Ibid.*, p. 1358.

19 S. A. Bartels *et al.*, above note 15.

20 V. Buard, R. Van den Bergh, K. Tayler-Smith, P. Godia, A. Sobry, R. J. Kosgei, E. Szumilin, A. D. Harries and M. Pujades-Rodriguez, “Characteristics, Medical Management and Outcomes of Survivors of Sexual Gender-Based Violence, Nairobi, Kenya”, *Public Health Action*, Vol. 3, No. 2, 2013, p. 110.

21 Personal communication, Dr Annick Antierens, MSF, Geneva, 11 November 2014.

22 Susan A. Bartels, “Sexual and Gender-Based Violence”, *Public Health Action*, Vol. 3, No. 2, 2013, p. 93.

23 Anjalee Kohli, Maphie Makambo, Paul Ramazani, Isaya Zahiga, Biki Mbika, Octave Safari, Richard Bachunguye, Janvier Mirindi and Nancy Glass, “A Congolese Community-Based Health Program for Survivors of Sexual Violence”, *Conflict and Health*, Vol. 6, No. 1, 2012, p. 5.

workers to reach members of the population that are difficult to access; however, it provides no clear evidence for this.

An overarching question thus is how access to and uptake of medical and psychosocial services can be improved in general. Organizations trying to respond to the needs of survivors find that many of them will never come forward to seek help. Stigma, shame, fear of rejection, lack of information, physical distance from the treatment centre, and lack of time and/or money are some of the barriers. While several elements of response have been proposed, the main elements seem to be guaranteeing safety, confidentiality and raising awareness about service availability.²⁴ Spangaro *et al.* hypothesize, based on evidence from the few available studies, that two distinct mechanisms are at play – “There is help for the problem” and “It is safe to tell” – and that both are required to operate concurrently for survivors to use services.²⁵ “There is help for the problem” implies that in order for survivors of sexual violence to get help, it is essential that they are made aware of the availability of services or other responses to provide support or redress. “It is safe to tell” means that survivors of sexual violence can determine that they can safely report assaults or receive help for the problem, without risk of punishment or sanction. The hypothesis is that these two mechanisms will operate positively with respect to survivor care, livelihood, and personnel and legal strategies. It will be important to further deepen this analysis in future studies and to test how these mechanisms can most effectively be operationalized.

Effectiveness of medical care

Beyond early access to service, the completion of follow-up visits is crucial to complete preventive treatments such as hepatitis B and tetanus vaccination and to test for pregnancy and HIV seroconversion²⁶. The above-mentioned study in Nairobi documented a very high attrition rate for follow-up injections for hepatitis B and tetanus vaccination after a high initial take-up. Only 46% of patients received the second follow-up injections for hepatitis B, and even less, 14%, for tetanus. Less than a third of patients returned for repeat HIV testing.²⁷ Similarly, the study conducted on a community-based programme including mobile clinics in the DRC found that 72% of patients returned for the first follow-up visit, with a dramatic drop for the second and third visits.²⁸ This drop occurred despite the provision of mobile clinic consultation four times during

24 MSF, *Shattered Lives: Immediate Medical Care Vital for Sexual Violence Victims*, Brussels, 2009.

25 Jo Spangaro, Anthony Zwi, Chinelo Adogu, Geetha Ranmuthugala, Gawaine Powell Davies and Léa Steinacker, “What Is the Evidence of the Impact of Initiatives to Reduce Risk and Incidence of Sexual Violence in Conflict and Post Conflict Zones and Other Humanitarian Crises in Lower- and Middle-Income Countries? A Systematic Review”, EPPI-Centre, Social Science Research Unit, Institute of Education, University of London, 2013.

26 HIV seroconversion is the interval, after HIV infection, during which antibodies are first produced and rise to detectable levels. Seroconversion takes place within three weeks in most infected individuals.

27 V. Buard *et al.*, above note 20.

28 A. Kohli *et al.*, above note 23.

one month. The authors hypothesize that this may be due to patients “feeling better” and not understanding the need for follow-up consultations.²⁹

Lack of follow-up points to another important issue: even if survivors seek medical care within seventy-two hours and thus are able to receive HIV PEP, is the twenty-eight-day treatment effectively taken? A systematic review of adherence to HIV PEP in victims of sexual assault shows that about 40% of patients default from care.³⁰ This is worrisome, as low adherence is related to a risk of reduced efficacy and increased resistance to antiretroviral therapy. This meta-analysis was based on twenty-four studies, none of them done in severely resource-constrained or conflict settings. The review also points to the lack of objective measures of adherence and the considerable variation in the way in which PEP is offered even in stable settings. A few studies examined causes for non-adherence to PEP, mainly identifying occurrence of side effects and lack of follow-up.

These are just some illustrations of the lack of evidence available on how to provide effective medical care to survivors of sexual violence in humanitarian settings. Further issues that would merit closer attention are prevention of pregnancy after rape and access to safe abortion services.

Mental health and psychosocial interventions

Interventions to address the mental and social consequences of sexual violence have increasingly been implemented in recent years, supported by the development of several sets of guidelines.³¹ However, the gap between widely promoted practices, such as psychological first aid, and knowledge on effectiveness of interventions is worryingly wide, as demonstrated by two recently published systematic reviews on psychosocial support interventions in conflict settings. In the first of these, a wide search of relevant articles on mental health and psychosocial support for victims of sexual violence in armed conflict settings published up to August 2011 returned 189 publications that ultimately allowed the authors to identify seven relevant studies.³² The conclusions of the authors are:

The seven studies, while very limited, tentatively suggest beneficial effects of mental health and psychosocial interventions for this population, and show feasibility of evaluation and implementation of such interventions in real-life settings through partnerships with humanitarian organizations. Robust

29 *Ibid.*, p. 7.

30 Liza Chacko, Nathan Ford, Mariam Sbaiti and Ruby Siddiqui, “Adherence to HIV Post-Exposure Prophylaxis in Victims of Sexual Assault: A Systematic Review and Meta-Analysis”, *Sexually Transmitted Infections*, Vol. 88, No. 5, 2012, pp. 335–341.

31 IASC, *Guidelines on Mental Health and Psychosocial Support in Emergency Settings*, 2007, available at: www.who.int/hac/network/interagency/news/mental_health_guidelines/en/; Kaz De Jong, *Psychosocial and Mental Health Interventions in Areas of Mass Violence: A Community-Based Approach*, MSF Guideline Document, 2nd ed., 2011, available at: www.msf.org/sites/msf.org/files/old-cms/source/mentalhealth/guidelines/MSF_mentalhealthguidelines.pdf.

32 Wietse Tol, Vivi Stavrou, Claire Greene, Christina Mergenthaler, Mark van Ommeren and Claudia Garcia Moreno, “Sexual and Gender-Based Violence in Areas of Armed Conflict: A Systematic Review of Mental Health and Psychosocial Support Interventions”, *Conflict and Health*, Vol. 7, No. 1, 2013, p. 16.

conclusions on the effectiveness of particular approaches are not possible on the basis of current evidence.

This very sobering statement is supported by the latest systematic review, published in March 2014.³³ Sixteen studies were identified, only four of which were published since 2011. Although some substantial improvements in certain outcomes could be demonstrated, the small number of studies and lack of comparability between studies does not allow any strong conclusions. The major challenges to creating a relevant evidence base for mental health and psychosocial support interventions are the large variety of interventions proposed, ranging from counselling to specific psychotherapeutic approaches or a mix of these and/or additional psychotropic drug treatment; the timing (as related to the sexual assault) and length of treatment; the differing professional level and origin (national or non-national) of health professionals; the different outcome measures used to assess effectiveness; and finally, the range of research designs, from descriptive case studies to randomized controlled trials. Another review examining evidence on mental health and psychosocial support in general in humanitarian settings (not specifically related to sexual violence) finds that the most rigorous available evidence currently supports practices that are complex and less likely to be implemented – that is, specialized interventions for Posttraumatic Stress Disorder (PTSD) and depressive outcomes.³⁴ Very little evidence exists for the most frequently promoted interventions, such as psychological first aid, community-based support and structured social activities.

Economic and legal support

Beyond medical and psychological care, survivors of sexual violence may need and wish for economic and legal support. Because victims of sexual violence are often rejected by their families and communities and are unable to work as they used to before the assault, economic support is essential in the rehabilitation process. It should allow them to meet essential needs (food, household items, etc.) and should facilitate their socio-economic reintegration (livelihood strategies, economic empowerment). Beyond immediate survival, the idea is that economic support should bolster self-esteem, facilitate the healing process and increase self-sufficiency, in particular when victims are rejected by their relatives. However, there are no published studies examining which types of short-term and medium-term economic support have achieved meaningful impacts for survivors.³⁵ This may be due to the fact that interventions in this area are much less standardized and are even more context-dependent than in the case of medical and psychosocial support.

33 Kaz de Jong, Jeroen W. Knipscheer, Nathan Ford and Rolf J. Kleber, “The Efficacy of Psychosocial Interventions for Adults in Contexts of Ongoing Man-Made Violence: A Systematic Review”, *Health*, Vol. 6, No. 6, 2014, pp. 504–516.

34 Wietse Tol and Mark van Ommeren, “Evidence-Based Mental Health and Psychosocial Support in Humanitarian Settings: Gaps and Opportunities”, *Evidence-Based Mental Health*, Vol. 15, No. 2, 2012, pp. 25–26.

35 J. Spangaro *et al.*, above note 25.

Allowing survivors to seek redress for the sexual offence is an important element of a comprehensive response. However, impunity for perpetrators of sexual violence is still widespread and access to justice for survivors is limited. Access may be hampered either because survivors of sexual violence do not seek to access justice due to the stigma, shame, humiliation and trauma involved, or because legal services and justice mechanisms are unavailable or inefficient. Survivors may have a lack of trust in national justice and police and may be afraid of experiencing further violence. A recent working paper provides a comprehensive overview of the challenges arising in investigation and prosecution of sexual violence and highlights some promising strategies in the handling of sexual violence cases.³⁶ In particular, it describes some interesting examples of strategies to improve access, mainly in the DRC, including an integrated model of medical and legal services (“one-stop shops”), using persons trained in legal issues within health facilities, setting up small legal clinics in remote areas, and establishing mobile courts. Some of these approaches have led to a remarkable increase in the number of cases filed and prosecuted, but it is not clear how this relates to overall needs and what the impact on survivors has been.

It would be well beyond the scope of this opinion note to examine in detail issues related to investigation and prosecution.³⁷ The central question here is whether legal services respond to the needs of survivors. One would want to know which type of legal set-up would best allow survivors who wish to seek redress to access the legal system; whether entering the justice system is beneficial or harmful to the survivor; and whether the outcomes are relevant to improving the quality of life of the survivor. In the review by Spangaro *et al.*, six studies examining the outcomes of legal interventions are mentioned, including global, national and local jurisdictions.³⁸ None of the studies explicitly attempt to assess the impact on the survivors. However, four studies provide some evidence of an increase in harm mainly related to lack of support during and retribution after testifying. While it has been recognized that reparations are the most significant means of making a difference in the lives of victims,³⁹ reparation programmes are largely unimplemented and their impact is not evaluated.⁴⁰

Overall it seems that while many efforts are currently under way to address the widespread persistence of impunity and to reduce risks to survivors seeking justice, the evidence on what works best, even in a specific context, is still sketchy.

36 Kim T. Seelinger, Helen Silverberg and Robin Mejia, “The Investigation and Prosecution of Sexual Violence”, Sexual Violence & Accountability Project, Working Paper Series, University of California, Berkeley, CA, May 2011.

37 On efforts to prosecute sexual violence crimes at the national level, see, *inter alia*, the article by Kim Seelinger in this issue of the *Review*.

38 J. Spangaro *et al.*, above note 25.

39 UN Security Council, “The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General”, S/2011/634, 12 October 2011, para. 26.

40 Ruth Rubio-Marín, “Reparations for Conflict-Related Sexual and Reproductive Violence: A Decalogue”, *William & Mary Journal of Women and the Law*, Vol. 19, No. 1, 2012, pp. 69–104.

Addressing the needs of men and boys

The extent of sexual violence against men and boys in armed conflict has only very recently been recognized and received attention.⁴¹ In a cross-sectional population-based survey in the DRC, almost a quarter of men reported lifetime exposure to sexual violence, two thirds of which was conflict-related.⁴² However, most if not all the studies mentioned above focus on female survivors of sexual violence, mostly women, sometimes girls and adolescents. It thus appears that if the evidence base for responding to the needs of female survivors of sexual violence is sketchy, it is absent with respect to male survivors. Some guidance on how to address their needs has been recently provided by the UNHCR,⁴³ but no studies on how to address the particular challenges in supporting them and respond effectively to their needs exist.

After this rather sobering overview of the scientific evidence on which we currently base our programmatic response to the needs of survivors of sexual violence, the question is if and how we can improve this dire state of affairs.

Can we improve the evidence base?

As noted by Spangaro *et al.*, an “overarching finding” from their review “is the acute lack of rigorous impact evaluations of interventions, leading to an insufficiency of clear evidence for effective interventions to address or prevent sexual violence”.⁴⁴

It may not be surprising that the evidence to inform the response to sexual violence is rather sketchy and not well established. Sexual and gender-based violence in general have received attention in the public health world only relatively recently. In 2002 the World Health Organization (WHO) report on violence and health for the first time stated that “[s]exual violence is a common and serious public health problem”, described the extent of the problem and provided guidance for effective responses⁴⁵. Recognizing the need for more research on sexual violence, especially in resource-poor settings, the Global Forum for Health Research established the Sexual Violence Research Initiative (SVRI) with the support of WHO in 2003.⁴⁶ Acknowledging the continued dearth of systematic information

41 Dustin A. Lewis, “Unrecognized Victims: Sexual Violence against Men in Conflict Settings under International Law”, *Wisconsin International Law Journal*, Vol. 27, No. 1, 2009, pp. 1–49; Chris Dolan, “Into the Mainstream: Addressing Sexual Violence against Men and Boys in Conflict”, briefing paper for the workshop held at the Overseas Development Institute, London, 2014.

42 Kirsten Johnson, Jennifer Scott, Bigy Rughita, Michael Kisielewski, Jana Asher, Ricardo Ong and Lynn Lawry, “Association of Sexual Violence and Human Rights Violations with Physical and Mental Health in Territories of the Eastern Democratic Republic of the Congo”, *Journal of the American Medical Association*, Vol. 304, No. 5, 2010, pp. 553–562.

43 UNHCR and Refugee Law Project, “Working with Men and Boy Survivors of Sexual and Gender-Based Violence in Forced Displacement”, UNHCR, Geneva, July 2012.

44 J. Spangaro *et al.*, above note 25.

45 Etienne G. Krug, Linda L. Dahlberg, James A. Mercy, Anthony B. Zwi and Rafael Lozano, *World Report on Violence and Health*, WHO, Geneva, 2002.

46 See the SVRI website at: www.svri.org/about.htm.

on the scope and effectiveness of programmes that prevent and respond to conflict-related sexual violence, WHO in collaboration with the SVRI developed a research agenda on sexual violence in conflict and post-conflict settings in 2012.⁴⁷ However, the invisibility and highly sensitive nature of sexual violence poses serious challenges for any data-gathering activity, and more so in emergency situations characterized by high insecurity, fear, dependence and a breakdown of societal structures. The question thus is which type of programmatic evidence an organization addressing sexual violence can and should gather at a minimum, and how one could move from monitoring towards methodologically sound evaluations, if not research.

Assessing the impact of programmes

Currently there is little internationally recognized guidance on how to monitor and evaluate programmes addressing the needs of survivors of sexual violence. A tools manual published by the Reproductive Health Response in Conflict Consortium in 2004 only proposes very broad “output and effect indicators”, mainly geared at refugee settings.⁴⁸ While WHO has published a remarkable document on ethical and safety issues related to data collection,⁴⁹ no similar guidance exists to date on data that should be gathered to assess the adequacy and impact of various aspects of sexual violence programmes. This implies that every organization designs its own set of indicators, data-gathering methods and impact measures, if such elements exist at all. To be able to compare implementation and impact of programmes across settings and across organizations, it would be imperative to agree on a standard set of indicators that could be complemented and enhanced depending on the specific context. This should include output (e.g. number of persons treated) as well as outcome measures, which is challenging as it implies agreeing on the desired outcome and being able to measure it. This may be relatively simple when applied to other public health problems: for example, one of the outcomes of a malaria control programme may be the number of persons cured (no longer infected) and/or a decreased malaria infection rate in the population; in the case of a nutritional programme, measurable outcomes may be improved nutritional status of individuals and of the target population (e.g. children under 5). But what are the indicators of success in a programme addressing sexual violence? In a programme providing medical care, important indicators could be, on the one hand, the proportion of all survivors accessing care, and on the other hand, the proportion of those accessing care who do so within seventy-two hours.

47 SVRI, *Executive Summary – A Research Agenda for Sexual Violence in Humanitarian, Conflict and Post-Conflict Settings*, WHO, Stop Rape Now, MRC South Africa, SVRI, available at: www.svri.org/ExecutiveSummary.pdf.

48 Reproductive Health Response in Conflict Consortium, *Gender-Based Violence Tools Manual: For Assessment & Program Design, Monitoring & Evaluation in Conflict-Affected Settings*, New York, February 2004.

49 WHO, *WHO Ethical and Safety Recommendations for Researching, Documenting and Monitoring Sexual Violence in Emergencies*, WHO, Geneva, 2007.

Regarding the first of these indicators, there is wide agreement that it is difficult to measure the extent of sexual violence in a given context. A recent systematic review of studies estimating the prevalence of sexual violence among refugees and displaced persons in humanitarian emergencies identified only nineteen studies, showing a wide range of prevalence estimates and also the enormous variation in study methodology.⁵⁰ In addition, it may be harmful and unethical to collect data on prevalence or incidence of sexual violence before responding to the needs of survivors.⁵¹ Thus, as it is rarely possible to estimate the overall number of survivors needing care, the first indicator, although desirable to indicate the impact of a programme, is probably not realistic in most settings. Therefore, we may have to rely on numbers of survivors coming for treatment and consider increasing numbers over time a success in and of itself. While such a metric will not tell us to which extent a programme covers the needs of a population, it can indicate that services are accepted and used. Regarding the second indicator proposed, the proportion of all survivors accessing care who do so within seventy-two hours is crucial to measuring the accessibility of services and gives a first indication of the potential effectiveness of services. Based on routine clinical data collected during the initial patient interview, this indicator is relatively easy to measure.

But none of these indicators will tell us if services provided are effective in achieving desired outcomes, such as prevention of HIV infection or prevention of pregnancy. We also do not know what the impact of early access to psychosocial services (psychological first aid) will be on the mental well-being of the survivor. To truly measure the effectiveness of these services, at least some more refined indicators should be determined and measured. Moreover, indicators do what they say: they indicate if an activity is achieving the desired results or not. An indicator does not tell us why these results were achieved or why we failed. It is thus essential to complement quantitative impact measures with qualitative assessments that allow us to better understand why things do not work and how they could be improved. These could include semi-structured interviews with survivors and focus group discussions in the community, with survivors, with care providers and with authorities. Such information gathering must be done with the utmost care to avoid risks to respondents and communities.⁵²

One attempt to collect, store and share data on gender-based and sexual violence should be briefly mentioned: the Gender-Based Violence Information Management System (GBVIMS).

The GBVIMS is a response to the fact that as of today, the humanitarian community does not have a system that allows for the effective and safe

50 Alexander Vu, Atif Adam, Andrea Wirtz, Kiemanh Pham, Leonard Rubenstein, Nancy Glass, Chris Beyrer and Sonal Singh, "Prevalence of Sexual Violence among Female Refugees in Complex Humanitarian Emergencies: A Systematic Review and Meta-Analysis", *PLOS Currents Disasters*, Edition 1, 18 March 2014.

51 WHO, above note 49, p. 15.

52 *Ibid.*

collection, storage, analysis and sharing of GBV-related data. This affects humanitarian actors' ability to obtain a reliable picture of the GBV being reported. It also minimizes the utility of collected data to inform program decisions for effective GBV prevention and care for survivors.⁵³

The GBVIMS is mainly driven by UN organizations, the Steering Committee being made up of representatives from the International Rescue Committee (IRC), UNHCR, United Nations Population Fund (UNFPA), United Nations Children's Fund (UNICEF) and WHO. It focuses on incident reports of gender-based violence, but does not capture a survivor's data over time and cannot monitor the quality of programme interventions. Although a remarkable effort to standardize information collected on cases of sexual violence, its usefulness is thus very limited in relation to monitoring services, let alone evaluating their effectiveness.

It would already be a great step forward if monitoring and evaluation of programmes for survivors of sexual violence were implemented in a systematic, coherent and more standardized way. A set of measurable and meaningful output and outcome indicators should be developed for the different components of a programme responding to the needs of survivors, with medical and psychosocial care being at the centre of the response and thus also the central focus of monitoring and evaluation activities. A further step would be to openly share results of quantitative and qualitative evaluations, including both successes and failures, within organizations and across organizations.

Can and should we do operational research?

A question frequently asked is: what do we mean by research as compared to evaluation? Would a methodologically well-conceived evaluation not be considered as research? There may be at times confusion or overlap between evaluation activities and conducting research. An important concept to clarify in this respect is operational research. From a public health perspective, this is the search for knowledge on interventions, strategies or tools that can enhance the quality, effectiveness or coverage of programmes in which the research is being done.⁵⁴ A strong connection exists between good monitoring and evaluation of programmes and operational research. For example, routinely collected quality data on survivors and treatment outcomes can be used to do operational research. Many of the studies referenced in the sections on accessibility and effectiveness of (medical) care above have used data routinely collected during service provision to analyze in more detail some of the treatment outcomes. Retrospectively analyzing data that has already been collected is the simplest way of conducting operational research. More sophisticated, resource-intensive and

53 See the GBVIMS website at: www.gbvim.org.

54 Rony Zachariah, Anthony D. Harries, Nobukatsu Ishikawa, Hans L. Rieder, Karen Bissell, Kayla Laserson, Moses Massaquoi, Micheal Van Herp and Tony Reid, "Operational Research in Low-Income Countries: What, Why, and How?", *The Lancet Infectious Diseases*, Vol. 9, No. 11, 2009, pp. 711–717.

ethically challenging methods of operational research are cross-sectional surveys and prospective cohort analyses. Beyond methods used in operational research, randomized controlled trials are the most rigorous way of determining whether a cause-effect relationship exists between treatment and outcome and for assessing the effectiveness of a treatment. Although they can be powerful research tools, their use is limited by ethical concerns and practical constraints. Some of the studies examining the efficacy of psychosocial interventions have used a randomized controlled or just a controlled research design (comparing between two interventions without randomly allocating people to one or the other). While a (randomized) controlled trial determines the efficacy of an intervention, operational research assesses effectiveness within routine settings. In the field of sexual violence, one would thus mostly conduct operational research, a controlled trial remaining the very rare exception.

A further question is: can and should we do research in highly insecure and volatile settings? While methodologically and ethically sound evaluation of programmes for survivors of sexual violence is not an easy endeavour, the issue of research is even more complex. The difficulty of conducting research in fragile settings is illustrated by two examples. A recent review of research on the effectiveness of health interventions in humanitarian crises in general identified only three papers on gender-based violence out of 706 studies.⁵⁵ A search of the MSF's field research site retrieved five peer-reviewed papers related to sexual violence and twenty-seven related to violence in general (including sexual violence). This compares to 262 papers on an HIV-related subject. The scarcity of research may be due to the lack of attention given to the issue until very recently, to difficulties in designing methodologically sound research, and/or to ethical concerns around conducting research in unstable and highly vulnerable contexts.

The overarching considerations in answering the question of whether it is desirable to do operational research in these contexts are: (1) will the benefits to survivors and the community be greater than the risks incurred by participating in the research, and (2) can the research question only be answered in a conflict setting? The value of conducting research in conflict zones must indeed be carefully considered: if the research question(s) could as well be answered by research in post-conflict or other fragile settings, this would be ethically more acceptable.⁵⁶ I will provide two examples to illustrate my point. There is wide agreement that access, and in particular early access, to medical and psychosocial services is paramount to effectively responding to the needs of survivors. Testing new service models to increase access is essential to improving our response. These have to be tested in conflict and post-conflict settings to be relevant. However, one would rather do this research in controlled settings such as refugee camps (e.g. Syrian refugees in Jordan), in violent urban settings (e.g. Mexico,

55 Karl Blanchet, Vera Sistenich, Anita Ramesh *et al.*, "An Evidence Review of Research on Health Interventions in Humanitarian Crises", Final Report, London School of Hygiene and Tropical Medicine, London, 22 November 2013.

56 Nathan Ford, Edward Mills, Rony Zachariah and Ross Upshur, "Ethics of Conducting Research in Conflict Settings", *Conflict and Health*, Vol. 3, No. 1, 2009, p. 7.

Honduras) or in protracted conflict settings (e.g. the DRC) than in highly insecure conflict areas such as, currently, South Sudan, the Central African Republic or Syria. Similarly, research to test and compare different psychological interventions should rather be done with survivors of sexual violence in stable, post-conflict settings than during acute conflicts mainly because of ethical issues and insecurity. Promising interventions can then be applied and evaluated during a conflict. This implies that the intervention tested is to some extent replicable and can thus be adapted for survivors in different contexts.

The only publicly available research agenda for sexual violence in humanitarian, conflict and post-conflict settings is the one proposed in 2012 by WHO and the SVRI.⁵⁷ Some of the thematic areas focus on the effectiveness of programmes to respond to conflict-related sexual violence. A next step should be to refine this research agenda, involving humanitarian organizations actively engaged in the response, and to explore possible methodological approaches to answering some of the most burning questions.

Conclusion

The review of the published literature shows that we have many gaps in our knowledge. We know a small amount about providing services to female survivors of sexual violence in emergency and conflict situations, most of it from African settings. We know very little about responding to the needs of men and boys, and there are virtually no publications on the response to sexual violence during natural disasters. Amnesty International documented the dramatic increase in rape and other forms of gender-based violence in Haiti's camps after the earthquake, pointing to the inadequacy of the measures put in place to prevent and respond to sexual and gender-based violence.⁵⁸ While the increased incidence of rape and other sexual abuse of women and girls displaced in the aftermath of natural disasters has lately received more attention, and while some of the interventions may be similar to those applied in conflict settings, one would at least wish for a thorough evaluation of the response.

We thus have to be aware of the limitations of our knowledge of what works, and how it works, to address sexual violence in crises. This may imply that some of the interventions proposed and implemented do not work or are not as effective as we would hope them to be. However, this opinion note does not want to imply that we should wait for better evidence to do something. We should continue doing what we think may work using common sense and the available (scientific) information. At the same time, we should strive to do better and thus undertake much more stringent evaluations and if possible some

57 SVRI, above note 47.

58 Amnesty International, "Aftershocks: Women Speak Out against Sexual Violence in Haiti's Camps", London, 2011, available at: www.amnesty.org/en/library/asset/AMR36/001/2011/en/57237fad-f97b-45ce-8fdb-68cb457a304c/amr360012011en.pdf.

research as is suitable and feasible. As this will be a bumpy road, made of trials and errors, we must have the willingness and courage to share not only our successes but also our difficulties and failures. The sharing of lessons learned is essential to advance our common knowledge base. This may not necessarily happen during large, high-level events, but may rather need smaller workshops and conferences to allow honest and in-depth exchanges.

Care for victims of sexual violence, an organization pushed to its limits: The case of Médecins Sans Frontières

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Abstract

Over the past ten years, Médecins Sans Frontières (MSF) has provided medical care to almost 118,000 victims of sexual violence. Integrating related care into MSF general

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assistance to populations affected by crisis and conflicts has presented a considerable institutional struggle and continues to be a challenge. Tensions regarding the role of MSF in providing care to victims of sexual violence and when facing the multiple challenges inherent in dealing with this crime persist. An overview of MSF's experience and related reflection aims to share with the reader, on the one hand, the complexity of the issue, and on the other, the need to continue fighting for the provision of adequate medical care for victims of sexual violence, which despite the limitations is feasible.

Keywords: sexual violence, rape, victim, medical care, MSF, unwanted pregnancy, caring for sexual violence victims, children born out of rape, medical certificates.

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Sexual violence occurs in all societies and in all contexts at any time. Destabilization of societies often results in increased levels of violence, including sexual violence. These are the contexts in which MSF works most, bringing assistance to people affected by crisis and conflict. Sexual violence is particularly complex and stigmatizing and generates long-lasting consequences; care for its victims is a priority, and every MSF project should be prepared to offer related assistance. However, the challenges are multiple and need to be considered as part of care efforts: legal considerations, confidentiality, protection, stigma and perception, as well as access to, and acceptance of, assistance and its instrumentalization.

This article aims to share an analysis of Médecins Sans Frontières' (MSF) involvement in the care for victims of sexual violence. MSF has been providing assistance to victims of sexual violence in numerous locations since 1999. The strategy and organization of assistance vary depending on the location and context. MSF focuses on medical care for victims of sexual violence; most of the victims seen by MSF teams are victims of rape.¹ Assistance includes treatment of injuries, prevention of sexually transmitted infections (STIs), prevention and management of unwanted pregnancy, post-exposure prophylaxis (PEP) for the prevention of HIV infection, vaccinations for tetanus and hepatitis B, psychological support and the provision of medico-legal certificates.

Over the past ten years, MSF has provided medical care to almost 118,000 victims of sexual violence in over sixty countries.² The ten countries with the highest caseload during this period were the Democratic Republic of the Congo (DRC),

1 For the purposes of this article, we understand sexual violence to mean "any sexual act or attempt to obtain a sexual act by violence or coercion, unwanted sexual comments or advances, acts to traffic a person or acts directed against a person's sexuality, regardless of the relationship to the victim", according to the World Health Organization (WHO). See WHO, *World Report on Violence and Health*, 2002, p. 149. In turn, we understand rape as an act of obliging an individual to have sexual intercourse against his or her will, using force, violence and any other form of coercion. It is considered a felony in the criminal laws of most countries. See Françoise Bouchet-Saulnier, *The Practical Guide to Humanitarian Law*, 2nd English-language ed., Rowman & Littlefield, Lanham, MD, 2007, p. 355.

2 A review of reports and websites of different humanitarian actors, while reflecting involvement in sexual violence, does not provide details on medical care; comparison is thus difficult. The International Rescue Committee states that it "[c]ounselled and provided essential services to over 27,000 survivors of gender-based violence" in its 2013 report, available at: www.rescue.org/blog/2013-annual-report-read-about-irc%E2%80%99s-lifesaving-work-and-impact (all Internet references were accessed in December 2014).

Liberia, Burundi, Zimbabwe, Kenya, Guatemala, Nigeria, Haiti, South Africa and Papua New Guinea. They account for 90% of all the victims of sexual violence that MSF has assisted.³

The first part of this article looks at the main events and circumstances that led the organization to develop specific medical care for victims of sexual violence. The second part gives an overview of the assistance that has been provided over the past ten years. The third part discusses the challenges MSF encounters in the implementation of assistance and includes reflection on the limits of MSF action, which highlight the complexity of the issue of sexual violence as part of an aid response in contexts of armed conflict and other crisis.

MSF's history of response to victims of sexual violence

For several years following its creation in 1971, MSF offered a limited response to victims of rape until the need for specific medical care became clear. The first treatment programme for victims of sexual violence was established in the Republic of the Congo (RC) in 1999.⁴ Former members of the MSF leadership⁵ in the 1970s and 1980s state that the issue of rape had long been on the agenda of the board of directors but was not followed up with the launch of specific action because it was considered to relate more to human rights than to emergency medical action.

Historically, several events led MSF to realize both the magnitude of the sexual violence problem and its human and medical consequences.⁶ First, in the Bosnian and Rwandan conflicts in the 1990s,⁷ where MSF ran important assistance programmes, large-scale sexual violence terrorized the population. Both contexts had high international media coverage, and the violence to which the civilian population was subjected led to the creation of two *ad hoc* international tribunals resulting in the indictment of Jean-Paul Akayesu regarding his role in the Rwandan genocide, to name but one.⁸ While the organization was appalled by the human suffering of such violence, it took time and other events for MSF to assume an institutional role regarding sexual violence and to develop a

3 MSF, International Typology data, internal MSF document. Yearly figures as of 2005–2006 are available in the *MSF International Activity Reports*, available at: www.msf.org/international-activity-reports.

4 Marc Le Pape and Pierre Salignon (eds), *Une guerre contre les civils: réflexions sur les pratiques humanitaires au Congo Brazzaville (1998–2000)*, Khartala, Paris, 2003, p. 109.

5 Personal verbal communication with former members of the board of MSF France, 2008.

6 Françoise Duroch and Sophie Marchand, *Forgotten Crimes: Sexual Violence in the Context of Armed Conflict*, MSF, Etat d'Urgence Production, 2006, available at: www.dailymotion.com/video/xrn91h_forgotten-crimes-sexual-violence-in-the-context-of-armed-conflict_news.

7 Claire Fourçans, "De la répression par les juridictions internationales des violences sexuelles pendant les conflits armés: rappel de quelques exemples récents", *Science and Video*, No. 2, 2010, pp. 155–156.

8 The *Akayesu* case, which found Jean-Paul Akayesu guilty of rape as a crime against humanity, amongst other crimes, was the first international judgement to define rape, thereby setting an important precedent. International Criminal Tribunal for Rwanda (ICTR), *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Judgement (Chamber I), 2 September 1998. See also F. Bouchet-Saulnier, above note 1, p. 551.

systematic medical response for victims. The awareness of the political nature of systematic rape in both contexts contributed to the initial caution when approaching sexual-violence-related needs.⁹

Second, the threat of the HIV pandemic¹⁰ and the discovery of post-exposure prophylaxis (PEP) in 1997, as a means to preventing the deadly consequences of HIV infection for rape victims, became the starting point for relevant medical activity¹¹ in MSF. PEP presented a treatment with a proven added value for the patient. It would allow MSF to function within the known framework of medical care and a “patient–medical staff” relationship.¹²

Finally, the Mano River scandal in 2002¹³ created a new perspective regarding sexual violence that required urgent action: the role of assistance in creating opportunities for sexual violence and other forms of abuse, as well as the direct responsibility of humanitarian actors in preventing their own contribution to such forms of abuse. An Inter-Agency Steering Committee report¹⁴ stated that “[t]he foundations of sexual exploitation and abuse are embedded in unequal power relations”, and while the conclusions of the report were not validated,¹⁵ the suggestion that systematic exploitation could involve all humanitarian actors did resonate in the international aid arena. Most sexual violence programmes started as of 2003.¹⁶

The latter two elements were the main factors that influenced MSF’s current perception of activities relating to care for victims of sexual violence.

The call to act: An epidemic of rape and an aid scandal

In the RC in 1999, the medical assistance that MSF could offer victims of rape began to take shape. MSF assisted the displaced population who were fleeing fighting in the

9 Jean-Hervé Bradol, former president of MSF France, remembers his own reaction when, during a discussion with a European Community Humanitarian Office consultant about the Burundian refugee camps in Rwanda in 1993, he was asked: “You have nothing planned for the women?” He explains: “The question annoyed me at the time, because of the degree of difficulty we had to deal with in the camps. But overall, the consultant was right. In these camps, single women were at a high risk of being raped. At the very least we can spread the word that contraceptives exist. A raped woman does not have to fall pregnant.” See M. Le Pape and P. Salignon (eds), above note 4, p. 161.

10 United Nations High Commissioner for Refugees (UNHCR), *Sexual Violence against Refugees: Guidelines on Prevention and Response*, 1995, p. 7.

11 François Bourdillon, *Compte rendu de mission Congo Brazzaville: prise en charge médicale des femmes ayant subi des violences sexuelles*, internal MSF document, 2000.

12 Françoise Duroch, “Le viol, l’humanitaire en désarroi”, *Revue Les Temps Modernes*, No. 627, 2004, p. 3.

13 The Mano River scandal erupted in 2002, when UNHCR and Save the Children Fund published a report accusing tens of non-governmental organizations of exchanging help for sexual favours in the refugee camps of Guinea, Sierra Leone and Liberia. See Daphne Lagrou, *Sexual Violence Response in OCB-Projects: Recommendations and Analysis*, internal MSF report, 2011, p. 13. See also Note for Implementing and Operational Partners by UNHCR and Save the Children UK, “Sexual Violence and Exploitation: The Experience of Refugee Children in Guinea, Liberia and Sierra Leone”, February 2002, available at: www.unhcr.org/3c7cf89a4.html.

14 Inter-Agency Standing Committee, Report of the Task Force on Protection from Sexual Exploitation and Abuse in Humanitarian Crisis, June 2002, p. 1.

15 Pierre Hazan, “L’Onu relativise les dérives de l’humanitaire”, *Libération*, 25 October 2002.

16 D. Lagrou, above note 13, p. 7.

Pool region and returning to Brazzaville, offering medical aid at way-stations and upon arrival in the capital. Apart from the obvious needs, which included high levels of malnutrition and trauma, people's accounts of events in Pool and on their way to Brazzaville described the systematic rape of women and children.¹⁷ The main effort of assistance was initially focused on malnutrition, and it took months for MSF to get involved in assisting victims of rape. Some of the rape victims received care in the form of a specialized consultation at the Makelekele or Talangai hospital, supported by a non-governmental organization called the International Rescue Committee. Care was basic: antibiotics were provided when available. Prevention of HIV infection, management of unwanted pregnancy and psychological support were not part of any systematic care. The potential of HIV infection changed the perception of the consequences of rape; it attributed a gravity that was measurable in terms of morbidity-mortality. A request to let victims of rape benefit from PEP was met with months of refusal from the Ministry of Health in Brazzaville. The MSF team also had to fight strong resistance within the organization and among other aid actors, who disregarded the need for specific assistance because, as some said at the time, "one does not die of rape".¹⁸ The shocking lack of empathy implied in that statement still resonates. At the time, the tensions such attitudes created, and eventually the overwhelming number of victims, led to an agreement for a systematic medical approach.¹⁹ A medical doctor of the Brazzaville team²⁰ had worked with HIV-positive patients in Europe and knew the potential of PEP; the team pushed for its use for victims of rape, together with the morning-after pill and treatment for the most common STIs.²¹

In Brazzaville MSF invested for years and explored different avenues to assist victims of sexual violence far beyond the organization's core medical role, including social and legal support, and understanding the importance of public awareness as a tool to reduce stigma. The "Tika Bika Viol" campaign²² in 2003 aimed to foster political will and generated a more favourable environment for

17 MSF, "MSF Top 10 Under-Reported Humanitarian Stories of 1999", available at: www.msf.org/article/msf-top-ten-under-reported-humanitarian-stories-1999. In the RC, the problem of rape had been known to the community since the end of the first war in 1997 and an awareness campaign had been organized by the United Nations Fund for Population (UNFPA) and the International Rescue Committee before the war broke out again. F. Bourdillon, above note 11, p. 2.

18 Personal interview with Dr Joanne Lui, MSF International President, Geneva, October 2014.

19 Dr Jean-Herve Bradol, "Images du malheur et qualité des secours", in M. Le Pape and P. Salignon (eds), above note 4, p.10.

20 Personal interview with Dr Jean-Clément Cabrol, Director of Operations, MSF Switzerland, Geneva, September 2014.

21 Marc Le Pape, "Guerres et viols au Congo: des urgentistes à Brazzaville, 1999–2000", *Seconde journée d'étude Guerre et Médecine*, February 2004, Paris, available at: www.msf-crash.org/drive/2b0a-mlp-2004-guerre-et-viols-au-congo-des-urgentistes-a-brazzaville_fr-art-p.8_.pdf. MSF had just started a campaign to push for access to essential drugs (see Access Campaign, available at: www.msfaccess.org/the-access-campaign), including antiretrovirals, which were practically inaccessible to HIV patients in the contexts where MSF worked. The MSF clinical guidelines at the time (1999) did not yet include PEP as a protective measure for health staff, and neither was it considered a preventive option for victims of sexual violence (MSF, *Clinical Guidelines*, 1999, p. 191).

22 MSF, *Tika/Bika, viol. Viol, je dis non!*, briefing paper, February 2003, available at: www.msf.fr/actualite/publications/tikabika-viol-viol-je-dis-non.

victims to come forward and receive assistance. An assessment in 2005, however, showed no increase in the number of victims attending MSF sexual violence consultations in Brazzaville,²³ a context where the incidence of rape is likely to have stayed high for quite some time.

The experience of responding to sexual violence has also pushed MSF to its limits in terms of legal and social support:

If the legal environment was explored in the interest of better understanding, it seems clear that, beyond the medico-legal certificate, MSF does not have a particular added value in an environment where the juridical system is dysfunctional. The same applies to social support; the activities directly related to patient care have proven to be a real added value, but beyond this, MSF does not have the means to assume a larger role in this area.²⁴

The situation in the RC was brought to international public attention,²⁵ but the recognition of the problem and the clarification of the relevant medical role that MSF could have²⁶ did not immediately result in an expansion of assistance to victims of rape in other contexts, such as in the DRC, where MSF had worked for many years. That change happened in 2002 with the Mano River scandal.²⁷ The public exposure²⁸ of the problem galvanized MSF into assessing the reality of abuse in MSF operations, establishing related preventive measures,²⁹ reflecting on the challenges inherent to the work in contexts where insecurity and violence are prevalent³⁰ and animating a movement-wide discussion on MSF's role in reducing/preventing rape and assisting victims of violence.³¹ Most importantly, however, it triggered the start-up of several projects in Burundi, South Africa, Sierra Leone and Guinea in 2003 in order to respond to the needs of victims of sexual violence.³² Public pressure played some role in this, but equally important was the need to understand the reality of the victims and how best to assist them.

23 Emmanuelle Chazal, Gaëlle Fadida and Claire Reynaud, *Victimes de violence sexuelles: L'expérience de Brazzaville 2000–2005*, internal MSF document, p. 3.

24 *Ibid.*, p. 29.

25 MSF, above note 17.

26 “The programme has allowed MSF to understand that a patient who has been raped requires specific care. Much has been said about the ‘victims of sexual violence’ model; from a medical perspective, it took time for the approach to adequately address basic questions – hepatitis B vaccination, provision of antiretroviral treatment to those patients tested HIV positive, termination of pregnancy ... Today, the protocol is distributed throughout missions and medical kits have been adapted according to this [new] need.” E. Chazal, G. Fadida and C. Reynaud, above note 23, p. 29 (our translation).

27 See above note 14.

28 “Sierra Leone: les agences réagissent aux problèmes des abus sexuels”, *IRIN News*, 6 June 2002, available at: www.irinnews.org/fr/report/66876/advancedsearch.aspx.

29 MSF, Code of Ethical Behaviour, internal MSF document, 2005.

30 Guillaume Le Gallais, *Quelques réflexions sur les enjeux de sécurité*, internal MSF document, 2004, p. 2.

31 Françoise Duroch, “Violence sexuelles: éléments historiques et anthropologiques”, *Messages* (internal MSF journal), No. 130, May 2004, p.8, available at: www.msf.fr/sites/www.msf.fr/files/2004-05-01-Messages130VF.pdf.

32 *MSF International Activity Report 2003–2004*, available at: www.msf.org/international-activity-report-20032004.

For MSF, it was necessary to gain experience and to strengthen the medical approach when responding to the needs of this particular group of people. Also, it was necessary to act in order to gain the legitimacy needed to speak out about the relatively underexposed problem of sexual violence in the context of conflict and crisis. Indeed, there was tension within MSF regarding the organization's initial imbalance between voice and action regarding sexual violence:

While we are just starting to work on some of these issues, i.e. to provide care to women who were victims of rape, it is indecent for MSF to embark on large pontificating speeches that demand the immediate end of the impunity and universal access to healthcare in a devastated country where the state postpones the resumption of its operations.³³

Over 100,000 victims assisted in ten years: Development of operational support and policies, 2004–2013

Since 2004, MSF has undertaken a yearly inventory of key medical activities in the field. This data collection includes the number of victims of sexual violence treated medically³⁴ in MSF projects; it does not yet include a breakdown according to sex and age, but this is planned for the near future. The data reflected in the *MSF International Activity Reports*³⁵ are strictly defined and only include action that is implemented under the direct responsibility of MSF.³⁶ Over a ten-year period, MSF teams assisted a total of 117,618 victims³⁷ of sexual violence, predominately rape, in sixty-one countries.

Figure 1 shows the number of projects providing care (blue line) and the number of victims who received medical care. It reflects a relatively stable investment over the past ten years.

In the DRC, large numbers of sexual violence victims come forward and the task of helping them comes under the general assistance that MSF provides in situations of conflict and displacement. Elsewhere, the majority of projects with high caseloads (more than 500 cases in one year) were set up specifically with the intention of addressing sexual violence care either as specialized care or as part of HIV or women's health care. These interventions are in post-conflict or stable settings rather than in conflict areas. In the latter, where sexual violence can be expected as part of the general upsurge of violence, few MSF projects apart from those in the DRC have seen a large caseload of victims of sexual violence. Rather than representing the incidence of sexual violence, this shows the difficulty that

33 Jean-Hervé Bradol, "Dossier: l'offre de soins aux femmes", *Messages*, No. 30, May 2004, p. 5.

34 MSF, *Typology Definitions*, internal MSF document, 2010, p. 4.

35 *MSF International Activity Reports* are available at: www.msf.org/international-activity-reports.

36 "All recorded activities should be conducted by MSF teams. In other words, MSF assumes the entire responsibility of the medical act. Medical activities conducted by others (Ministries of Health) through donations or funding should not be considered as an activity." MSF, *Typology Definitions*, internal MSF document, 2005, p. 1.

37 MSF, *International Typology data and MSF International Activity Reports, 2004–2013*, see above note 35.

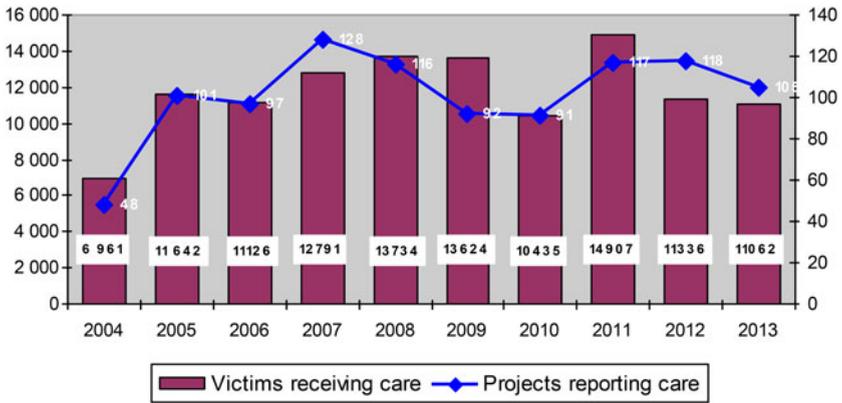


Figure 1. Medical care for victims of sexual violence in MSF projects, 2004–2013. Source: MSF, International Typology data, 2004–2013.

teams have in offering care in conflict settings and the difficulty that victims have in coming forward, be it for lack of access or fear of stigma and retaliation.

Data on the age and sex of victims of sexual violence are generated at project level; variations in age groups are partly due to an effort to adapt to countries’ national data reporting on the issue. What we do know from different reports and studies is that the overwhelming majority of the victims of sexual violence seen in MSF projects are female. Men and boys represent approximately 5%, which, according to other reports is low³⁸ and reflects the additional barriers men may have³⁹ in coming forth to seek assistance. Around half of the victims seen in MSF projects are under the age of 18, with a significant number being young and even very young children.⁴⁰

Ensuring more and better training and guidance for staff

MSF is essentially a “generalist” organization with multiple medical ambitions; care for victims of sexual violence is one of many health needs that MSF responds to as

38 Kirsten Johnson, Jennifer Scott, Bigy Rughita *et al.*, “Association of Sexual Violence and Human Rights Violations with Physical and Mental Health in Territories of the Eastern Democratic Republic of the Congo”, *The Journal of the American Medical Association*, Vol. 304, No. 5, 2010, pp. 553–562.

39 Clayton M. Bullock and Mace Beckson, “Male Victims of Sexual Assault: Phenomenology, Psychology, Physiology”, *Journal of the American Academy of Psychiatry and Law*, No. 39, No. 2, pp. 197–205, April 2011, available at: www.jaapl.org/content/39/2/197.long.

40 MSF, *Final Report: Comprehensive Care Project for Sexual Violence Survivors, Guatemala City, 2007–2012*, 2012, p. 15; Vincent Buard *et al.*, “Characteristics, Medical Management and Outcome of Survivors of Sexual Gender-Based Violence, Nairobi, Kenya”, *Public Health Action*, Vol. 3, No. 2, 2013, p. 110; MSF, *Rapport de capitalization du partenariat MSF Suisse et Sofepadi 2010–2013, Bunia, RDC*, internal MSF document, 2013, p. 28; Jerlie Loko Roka, Rafael Van den Bergh, Sokhieng Au, Eva De Plecker *et al.*, “One Size Fits All? Standardized Provision of Care for Survivors of Sexual Violence in Conflict and Post-Conflict Areas in the Democratic Republic of Congo”, *Public Library of Science*, Vol. 9, No. 10, 2014, p. 3.

part of its assistance to populations in need. Any prepared medical team needs to be able to provide medical care to victims of rape; this cannot rely only on specialists. Other aid actors seem to increasingly opt for specific sexual violence advisers and officers to increase their response capacity. In MSF, the main strength for response is seen in the critical mass of staff that has organized sexual violence care over the past ten years in many different contexts and which allows the increasing integration of care, despite competing priorities and limitations, into all relevant operations, be they emergency response or regular programmes.

Preparing staff to respond to needs arising from sexual violence is increasingly addressed in briefings and training, but a number of other issues are on the list of priorities. MSF policy on sexual violence and related care is not systematically included in relevant trainings and meetings.⁴¹ There are one-week-long sexual violence trainings offered in the field,⁴² and a day session on sexual violence is part of the two-week training for midwives and medical doctors involved in women's health-care projects.⁴³

Since 1999, different MSF projects have documented the approach to sexual violence care, the strategies that were used, and related outcomes. These projects also reflect important efforts made in terms of awareness, both of the problem of sexual violence itself and of the barriers to adequate assistance. Local, regional and international advocacy efforts have contributed to overcoming some of these obstacles in different contexts and to creating an environment for dialogue with national and international actors. This is part of the experience of sexual violence care, and can help to inform teams of its added value – but also of the backlash that can be experienced when taking a public stance on issues as sensitive as sexual violence.⁴⁴

Different operational centres of MSF have developed tools and guidance for sexual violence care.⁴⁵ These practical guides are developed to allow staff with no specific experience to be able to recognize needs related to sexual violence, to organize medical care including patient flow, to manage outreach and public

41 Sexual violence training is generally presented as a part of reproductive health-care sessions. MSF, *Overview SV Related Documents and Tools*, internal MSF document, 2014. Limited e-learning tools are available.

42 In Nairobi for Somali staff, and in Kampala for staff in the region, in 2012; two trainings are forthcoming in 2015 in Kampala and for staff in the Central African Republic.

43 These trainings have included forty to forty-five MSF staff, both international and national, every year since 2008. Debbie Cunningham, *Follow-Up Evaluation of MSF Intersectional Sexual and Reproductive Health Course 2006–2010*, MSF, 2012, available at: http://issuu.com/msfuk/docs/cunningham_srh/1?e=1061369/9715426.

44 In 2005, MSF's head of mission in Sudan was arrested and charged with crimes against the State following MSF's report on sexual violence. See MSF, "MSF Shocked by Arrest of Head of Mission in Sudan – Charged with Crimes against the State", press release, 31 May 2005, available at: www.msf.org/article/msf-shocked-arrest-head-mission-sudan-charged-crimes-against-state.

45 MSF, *Care for Victims of Sexual Violence: Situations with Displacement of Population*, pocket guide, Version 3.0, 2013; MSF, *Sexual Violence: Guidelines for Medical and Psychological Care of Rape Survivors*, 2010 ed.; MSF, *Sexual and Gender-Based Violence: A Handbook for a Response in Health Services Towards Sexual Violence* (internal documents). To facilitate the preparation of teams in the field, a "rape kit" was developed; it includes enough drugs and vaccines to treat fifty adults and twenty-five children.

information, to deal with medical certificates and patient confidentiality, and to record data and monitor activities.

There is agreement on the medical preventive and therapeutic measures that should be offered to any victim of sexual violence approaching MSF for assistance. However, the lack of common implementation guidelines within MSF on why, when, where and how to start specific sexual violence care seems somewhat symbolic of the lack of consensus on the organization's role. The absence of a transversal effort to address sexual violence throughout relevant MSF trainings may be indicative of the subject being overlooked among the organization's priorities.

Challenges in caring for sexual violence victims

Sexual violence as part of conflict is as old as humankind itself.⁴⁶ As an aid organization, however, it is the ten-year delay between the direct exposure to large-scale sexual violence in Rwanda and Bosnia and the implementation of a specific aid response which concerns MSF. Related dynamics have been analyzed closely in MSF and beyond, and several challenges emerge as factors explaining the delay in starting specific care in the first place.

Conflicting priorities are a central challenge that continues to be relevant today, and implementing programmes related to sexual violence remains a particularly difficult task.⁴⁷ The issue obliges humanitarian organizations to rethink their strategies, including their position regarding the provision of contraception and safe abortion care – a situation that might isolate them from the political support they need, notably (but not solely) to obtain funds. Moreover, due to the risk of victims' stigmatization, humanitarian actors need to ensure a sensitive approach, adapted to local possibilities and the cultural environment and able to evolve with the setting.⁴⁸ The issue of sexual violence forces them to assess and study with particular care the environment in which they are working before delimiting their scope of intervention. Several people in MSF have highlighted the technical and ethical challenges inherent in caring for victims of sexual violence, particularly those related to the status of women and the difficulty that staff face in dealing with the sensitivities around sexuality in societies where MSF is called to assist and where the organization's understanding of cultural norms is limited.⁴⁹ Furthermore, the concrete medical needs arising from rape and the way to address the most delicate of these, in a

46 Sylvie Joye, "La femme comme butin de guerre à la fin de l'Antiquité et au début du Moyen Âge", in Marion Trevisi and Philippe Nivet (eds), *Les femmes et la guerre de l'Antiquité à 1918*, Economica/Institut de Stratégie Comparée, Paris, 2010, pp. 91–108.

47 Françoise Duroch, "Violences sexuelles en République Démocratique du Congo: résistances et appropriations institutionnelles par les ONG", *L'Autre, Cliniques, Culture et Sociétés*, Vol. 11, No. 2, 2010, p. 209.

48 F. Duroch, above note 12, p. 3.

49 Rapes directly compete with other priorities that also require action, and predominantly Western teams have a hard time understanding the cultural components involved: phenomena linked to sexuality are a

context where customs and perceptions are relatively unknown, are recognized as important challenges:

All areas dealing with the status of women make us feel uneasy. Speaking to a raped woman about psychological support, what does that mean in Africa? She tells us she needs an abortion. What do we do? We know very well that we will be dealing with difficult questions, which will permanently lead us back to the role of women in society.⁵⁰

Another issue that emerges for MSF – as for other humanitarian actors, particularly emergency organizations – is the difficulty in determining the limits of its role and responsibilities when faced with victims who require medical care, but also assistance and consideration beyond the medical, often in the longer term.⁵¹ The social and cultural perception of rape – as well as its inherently sensitive nature – requires that any medical intervention be undertaken in such a way as not to contribute to harming the victim any further. Victims are often invisible,⁵² as women and particularly men are frequently very reluctant to seek assistance; consequently, reaching them requires a proactive approach. Meanwhile, the structure of operations may make it extremely difficult to maintain victim confidentiality – a major concern, given that the stigma and taboos surrounding sexual violence in many cultures can potentially lead to harm rather than help. The difficulty lies in reaching a justifiable balance between the added value that medical care can have for the victim, both in the short and long term, and the exposure to the social risk that rape-related stigma involves, including the risk of the victim being ostracized.

Finally, a persistent inability within MSF to agree on a common terminology regarding sexual violence seems somewhat symbolic of the varying ambitions that are pursued implicitly and explicitly around the subject. “Rape” describes a specific act of violence; the majority of victims of sexual violence MSF sees are actually victims of rape. “Sexual violence” defines a larger scope of sexual acts and attempts thereof that use force, including coercion,⁵³ and that violate the physical and/or emotional integrity of a person. “Gender-based violence” and “violence against women” emerge from a rights-based concern for gender inequity and for the reduced status of women that allows violence to be committed against them. The term “gender” in this case tends to implicitly exclude concern for male victims of sexual violence, although this is the result of

sensitive point (taboos, discrimination, sensitivity). Joanne Liu and Pierre Salignon, “Victimes de viols, dispositifs de soins”, in M. Le Pape and P. Salignon (eds), above note 4, pp. 112–113.

50 Quote by former MSF France President Jean Hervé Bradol in M. Le Pape and P. Salignon (eds), above note 4, p. 160.

51 Augustin Nallet, “Violence Against Women in Conflict Affected Settings: An Overview of the Policies Designed and Implemented by NGOs”, cited in Françoise Duroch, “Résistance et appropriations institutionnelles des Organisations Non Gouvernementales autour de la notion de violences sexuelles”, Thèse de Sciences de l’éducation, UMR Education et Politique, presented 17 December 2008.

52 Françoise Duroch, “Figures de l’altérité féminine victimaire”, *Science and Video*, No. 2, 2010, available at: <http://scienceandvideo.mmsh.univ-aix.fr/numeros/2/Pages/Duroch.aspx>.

53 WHO, above note 1, Chapter 6, p. 3.

an erroneous interpretation of the term. The term “gender” was promoted through the 1995 Beijing conference in strong association with the subject of women’s empowerment.⁵⁴ “Victim” is the term used in legal documents and procedures,⁵⁵ but “the stigmatization and perceived powerlessness associated with being a victim” was seen as a drawback of the terminology as early as 1995.⁵⁶ “Patient” describes the medical status of a person who has been subjected to an assault, with its related need for medical assistance and the commitment to confidentiality that is due to all patients. Further, the denomination “patient” recalls the medico-legal responsibility of medical practitioners when treating a victim of an assault, which is regulated under most national legislation. Finally, “survivor” is a commonly used term that addresses the above-mentioned concerns regarding stigmatization. Literally, a survivor is a person who has overcome a deadly threat, be it violence, disease or accident, but related to sexual violence the term is often used specifically to honour the strength of an individual and their efforts to heal, and to empower them.⁵⁷ The implications that different terms involve can be in contradiction and can, when used systematically or for the sake of political correctness, lead to misunderstanding regarding the objective pursued. In MSF, this discussion has happened on and off for years, with strong opinions against the systematic use of mainstream language.⁵⁸ For MSF, as a medical and humanitarian actor, the terms “patient” and “victim” seem most appropriate.

Regarding mainstream language, the inherent risk of the near-systematic denomination of sexual violence as a “weapon of war” should be highlighted. This term is often used by international agencies and organizations when referring to large-scale rape in the eastern DRC. Such labelling risks introducing a hierarchy of victims, with priority attention given to those thought to be a result of military practice. In reality, the distinction between sexual violence as a planned military strategy or a tolerated practice amongst armed groups and the

54 The 1995 Fourth World Conference on Women in Beijing marked a significant turning point for the global agenda for gender equality. The Beijing Declaration and the Platform for Action, adopted unanimously by 189 countries, is an agenda for women’s empowerment and considered the key global policy document on gender equality. It sets out strategic objectives and actions for the advancement of women. Available at: www.unwomen.org/en/how-we-work/intergovernmental-support/world-conferences-on-women#sthash.hjeATv8c.dpuf.

55 See, for example, Rome Statute of the International Criminal Court, 17 July 1998 (entered into force 1 July 2002), UN Doc. A/CONF.183/9 (Rome Statue).

56 “The term ‘victim’: Although the term ‘victim’ is used in these Guidelines, the stigmatization and perceived powerlessness associated with being a ‘victim’ should be avoided by all concerned parties. While victims require compassion and sensitivity, their strength and resilience should also be recognized and borne in mind.” UNHCR, above note 10, p. 3.

57 Clark University, “A Definition of Rape, Sexual Assault and Related Terms”, available at: www.clarku.edu/offices/dos/survivorguide/definition.cfm.

58 “It is not worth supporting a mass of political correctness. When I hear MSF in the DRC denouncing ‘rape as a weapon of war’ and at the same time calling the victims ‘rape survivors’, I am baffled by the contradiction. A survivor is someone who exceptionally escaped near-certain death. Often, combatants aim for the large-scale use of rape, as a strategy of terror that wants women to survive, even wants them to become pregnant ... Survival in this case is not the exceptionally happy outcome the term suggests.” Jean-Hervé Bradol, above note 33, p. 5.

sexual violence that occurs in a conflict setting but has no direct relation to military instructions is rarely clear. The label is also highly counterproductive to efforts that seek to reintegrate victims of sexual violence into a social framework of ever-evolving ethno-political alliances in some contexts.⁵⁹

The above challenges, which all contributed to the organization's initial hesitation to engage, continue to be relevant and to influence decisions relating to maintaining and expanding sexual violence care in MSF projects. Experiences in care for victims of sexual violence over the past decade have revealed additional challenges, including the need for continuous efforts to overcome both internal resistance and external factors that stand in the way of adequate assistance to victims of sexual violence.

Challenges related to the organization and acceptance of medical treatment

More than the medical treatment itself, the challenges involved in caring for victims of sexual violence are related to the organization and acceptance of care within the specificities of each context.

For the most part, the medical treatment of victims of sexual violence, particularly rape, is straightforward. There are cases, however, where the trauma inflicted is so extreme that intensive care and emergency surgery are required and reparative surgery may be necessary to avert long-term suffering from traumatic fistula.⁶⁰ For most victims of sexual violence, however, medical care consists of a set of basic curative and preventive measures, which can be provided in any prepared health facility – but there are a number of technical and ethical challenges involved. Without this care, rape can lead to important short- and long-term health consequences.

Timely medical assistance

MSF will assist any victim of sexual violence, even if the assault took place a long time ago. Coming forward and speaking about the event is important, even months or years afterwards. Vaccinations against tetanus and hepatitis B⁶¹ will be relevant for months after the assault, and treatment of some STIs can prevent significant long-term health consequences. The potential of some preventive measures is, however, limited to the first few days after the assault. PEP for the prevention of HIV infection has to begin within seventy-two hours of the assault, and although emergency contraception can be offered up to 120 hours after the

59 Véronique Moufflet, "Le paradigme du viol comme arme de guerre à l'Est de la République démocratique du Congo", *Afrique Contemporaine*, Vol. 3, No. 227, 2008, pp. 119–133, available at: www.cairn.info/revue-afrique-contemporaine-2008-3-page-119.htm.

60 A medical condition in which trauma leads to the development of a hole between the vagina and bladder and/or rectum, resulting in chronic incontinence among other issues.

61 MSF, *Medical Protocol for Sexual Violence Care*, 2nd ed., MSF Reproductive Health and Violence Care Working Group, internal document, 2014, p. 2.

event, it is most effective in the first seventy hours; after this, the success rate halves. Even in established programmes where MSF works specifically on sexual violence, not all and sometimes not even half of the victims come within seventy-two hours of the assault. This was observed as early as the initial Brazzaville intervention⁶² and remains valid today.⁶³

Adherence to treatment and follow-up

Another challenge is adherence to prophylactic treatment and vaccination schedules. PEP to prevent HIV infection as a result of rape requires a twenty-eight-day regimen of a triple therapy of antiretroviral drugs.⁶⁴ Studies from different MSF projects providing sexual violence care confirm compliance with the full treatment in around half of patients. Some patients may finish their treatment but do not come back for follow-up; their compliance cannot be confirmed by MSF.⁶⁵ Vaccination against tetanus and hepatitis B infection poses a similar problem: several doses are necessary to achieve adequate protection, but few patients come for follow-up.⁶⁶

The additional exposure to risk that follow-up visits can involve needs to be taken into account: the risk related to the stigma of being identified as a patient going to a health facility that offers sexual violence care, and the risk that is inherent in breaching geographical distance in many of the contexts where MSF works and which involves potential attack, robbery and rape. Coming to follow-up consultations requires patients to weigh the balance of risk and benefit, and often patients seem to err on the side of caution.

Prevention and management of unwanted pregnancy

A girl or woman who has been a victim of sexual violence may want to know whether she fell pregnant as a result of the rape or whether she was pregnant at the time of the rape, especially if she is considering terminating the pregnancy or putting the child up for adoption. A pregnancy test and emergency contraceptives are routinely offered to female victims of rape.⁶⁷ In projects where MSF cares for victims of sexual violence, a large number of the girls and women at risk of

62 E. Chazal, G. Fadida and C. Reynaud, above note 23, p. 5.

63 MSF, *Hidden and Neglected: The Medical and Emotional Needs of Survivors of Family and Sexual Violence in Papua New Guinea*, 16 June 2013, p. 1818, available at: www.doctorswithoutborders.org/sites/usa/files/06-15-Papua-New-Guinea-Sexual-Domestic-Violence%20report.pdf; Katie Tayler-Smith, Rony Zachariah *et al.*, "Sexual Violence in Post-Conflict Liberia: Survivors and Their Care", *Tropical Medicine and International Health*, Vol. 17, No. 11, 2012; MSF, *Final Report*, above note 40, p. 24; J. Loko Roka *et al.*, above note 40, p. 4.

64 MSF, above note 61, pp. 5–6.

65 Patients came back for follow-up consultation and completion of treatment was confirmed. Other patients may have completed, but did not return for a follow-up consultation. K. Tayler-Smith *et al.*, above note 63, p. 3158; MSF, *Final Report*, above note 40, p. 27.

66 V. Buard *et al.*, above note 40.

67 MSF, *MSF Policy for Reproductive Health and Sexual Violence Care*, final version, International Working Group on Reproductive Health and Sexual Violence Care, internal MSF document, March 2014.

pregnancy following rape accept the offered emergency contraception.⁶⁸ Most countries make specific allowances for the use of emergency contraceptives, generally and in the case of rape;⁶⁹ only exceptionally is the use of emergency contraceptives challenged in case of rape, and this situation then requires particularly careful handling by the teams.⁷⁰

Much more challenging is the question of abortion, where opposing forces include legal, religious and cultural dynamics. The first draft for field-testing of the *Clinical Management of Rape Survivors* guide elaborated by the World Health Organization in 2001 alludes to the problem of unwanted pregnancy as a result of rape and the need for safe abortion care. The guidelines seem to propose a compromise between political acceptance and medical needs, recommending that women be referred to safe⁷¹ and legal⁷² abortion services –in light of the lack of such services in many contexts, this continues to be a correct but impractical statement. The guidelines add:

Where safe abortion services are not available, women with unwanted pregnancies may undergo unsafe abortions. These women should have access to post abortion care, including emergency treatment of abortion complications, post abortion family planning counselling, and linkages to other reproductive health services.⁷³

Not much has changed in international guidance; in general, the legal directive rather than women's needs are stated as the reference frame determining the availability of safe abortion care. The specific provisions and restrictions coming from some donors⁷⁴ present a significant additional barrier for many organizations and agencies in their efforts to adequately address the need for safe abortion care.

Emergency contraceptives are only an effective measure against pregnancy in the first 72 hours after an assault. MSF sees women who arrive weeks or months after a rape with an advanced pregnancy, and who request termination. Provision of safe abortion care is part of MSF's medical protocol for sexual violence care⁷⁵ based on the medical and human needs of patients,

68 MSF, *Hidden and Neglected*, above note 63, p. 21; MSF, *Final Report*, above note 40, p. 29.

69 Center for Reproductive Rights, *Governments Worldwide Put Emergency Contraceptives in Women's Hands: A Global Review of Laws and Policies*, briefing paper, September 2004, available at: <http://reproductiverights.org/en/document/governments-worldwide-put-emergency-contraception-into-womens-hands>.

70 Anastasia Moloney, "No Option to Unsafe Abortion for Many Rape Victims in Honduras – MSF", Thomson Reuters Foundation, September 2014, available at: www.trust.org/item/20140909174405-khgtc/.

71 WHO, *Clinical Management of Rape Survivors*, 2001, p. 23.

72 This includes "[c]ountries where abortion is otherwise illegal [but where] pregnancy termination is allowed after rape". WHO, *Guidelines for Medico-Legal Care for Victims of Sexual Violence*, 2003, p. 66.

73 WHO, *Outcome of the Inter-Agency Lessons Learned Conference: Prevention and Response to Sexual and Gender-Based Violence in Refugee Situations – Draft for Field Testing*, Geneva, 27–29 March 2001, p. 19.

74 On US funding, see Louisa Blanchfield, *Abortion and Family Planning-Related Provisions in U.S. Foreign Assistance: Law and Policy*, Congressional Research Services, 31 January 2014, p. 3.

75 MSF, above note 61, p. 14; *MSF International Activity Report 2013*, p. 19, available at: www.msf.org/international-activity-report-2013-addressing-women%E2%80%99s-health-needs.

whenever feasible. Despite ongoing efforts to expand safe abortion care and independently of the legal framework which often makes allowances for specific circumstances (incest, rape, etc.),⁷⁶ ensuring care for all women and girls in need continues to be a challenge and is still not offered in all relevant MSF projects.⁷⁷ Religious, cultural and social dynamics in many contexts continue to render abortion unacceptable and stigmatizing, for women, communities and even for some health staff.

Caring for children

A number of MSF projects have reported that around half or sometimes more than half of the victims of sexual violence are children, including very young children.⁷⁸ Caring for children presents additional challenges, such as treatment protocols, the need for drugs in syrup form rather than pills and, more importantly, dealing at times with severe physical and psychological trauma. It is important that staff are at ease with children and can make them feel safe, and to ensure this, specific preparation of staff may be required. Often, however, immediate challenges are less related to the treatment itself; they are related to the child's safety, to the risk of future aggression and to the natural desire to protect the child.

This is particularly relevant as MSF's first project in Brazzaville already noted an increasing percentage of children among the victims of sexual violence in the post-conflict phase, and a shift to an increasingly complex domestic environment in which the future exposure of children to violence was a growing concern.⁷⁹ Similar situations have been observed in other MSF post-conflict situations, such as Burundi and Liberia, and MSF programmes with a specific focus on violence, like those in Papua New Guinea, Guatemala and Honduras. In a number of these MSF projects, the majority of the perpetrators are known to the victim and the assault happens in the home or close vicinity.⁸⁰ The question of the protection of the child becomes an inevitable one, but there are no ready-made answers. It seems that none of the alternatives are good: sending the child back to family or community and the known aggressor or exposing the child to an unknown environment, separated from family and community, and which may also then harbour risk of violence and abuse. For a medical team to see the same child over and over again, to treat the results of abuse a second and a third time without wanting to do something to protect the child, is impossible. In many contexts the capacity for MSF to contribute to an acceptable solution is, however, very limited.

76 UNFPA, *World Abortion Policies*, 2013.

77 MSF, *Reproductive Health and Sexual Violence Care in MSF*, activity report, 2013.

78 MSF, *Hidden and Neglected*, above note 63, p. 17; MSF, *Final Report*, above note 40, p. 16; K. Tayler-Smith *et al.*, above note 63, p. 1358; V. Buard *et al.*, above note 40, p. 110.

79 MSF, *Civilians Under Fire: Humanitarian Practices in the Congo, 1998–2000*, available at: www.doctorswithoutborders.org/civilians-under-fire-humanitarian-practices-congo-1998-2000.

80 K. Tayler-Smith *et al.*, above note 63, p. 1358; V. Buard *et al.*, above note 40, p. 110; MSF, *Hidden and Neglected*, above note 63, p. 16.

Caring for men

How to adequately respond to the needs of male victims also poses a great challenge,⁸¹ as the taboo around the subject remains huge, both for victims and for their families, and even for doctors and humanitarian workers.⁸² Sexual violence stays largely invisible due to the attached stigma, especially when committed against men.⁸³ Some polemics⁸⁴ have questioned whether MSF structures and the provision of care are well adapted to this type of patient: “One problem with the exclusive focus on sexual violence is that it tends to downplay the ways in which sexual violence is not only (or simply) – as sometimes suggested – a war against women or a ‘systematic pattern of destruction toward the female species’.”⁸⁵

Trauma, fear and guilt: The role of psychological support

The deepest wounds for a sexual violence survivor are often the ones that are invisible, with the trauma having long-lasting effects on a person’s ability to function and carry on with their lives. Psychological care is therefore part of MSF’s overall sexual violence care, and aims to reduce the impact of trauma related to the violence.⁸⁶

A baseline study that MSF undertook in 2011 in Mbare, Zimbabwe, in order to prepare a sexual violence response showed that 71% of people interviewed in the community acknowledged that psychological problems were one of the consequences of sexual violence.⁸⁷

In conflict and emergency situations, or within highly insecure contexts, providing psychological care can be a challenge. Teams are overwhelmed with work, or staffing may be reduced for security reasons, limiting the focus to life-saving activities. Space, together with language barriers, can be a constraint to adequate privacy and confidentiality for medical examinations and counselling. It is not only the knowledge of vocabulary but also the comprehension of different metaphoric

81 K. Johnson *et al.*, above note 38, pp. 553–562.

82 Wynne Russell, Alastair Hilton and Michael Peel, *Care and Support of Male Survivors of Conflict-Related Sexual Violence*, Sexual Violence Research Initiative Briefing Paper, 2011, available at: www.svri.org/CareSupportofMaleSurviv.pdf; Will Storr, “The Rape of Men: The Darkest Secret of War”, *The Observer*, 17 July 2011.

83 W. Russell, A. Hilton and M. Peel, above note 82, p. 4.

84 Marc Le Pape, “Viols en temps de guerre, les hommes aussi”, *Issues de secours* (blog of *Libération*), 1 November 2011, available at: <http://humanitaire.blogs.liberation.fr/msf/2011/12/-viols-en-temps-de-guerre-les-hommes-aussi-.html>.

85 Maria Eriksson Baaz and Maria Stern, *The Complexity of Violence: A Critical Analysis of Sexual Violence in the Democratic Republic of Congo (DRC)*, Nordiska African Institutet, Sida, 2010, p. 43.

86 Sarah Hustache, Marie-Rose Moro *et al.*, “Evaluation of Psychological Support for Victims of Sexual Violence in a Conflict Setting: Results from Brazzaville, Congo”, *International Journal of Mental Health Systems*, Vol. 3, No. 7, 2009, available at: <http://link.springer.com/article/10.1186%2F1752-4458-3-7#page-1>.

87 MSF, *Baseline Study Report on the Perception of Sexual and Gender-Based Violence in Mbare, Harare, Zimbabwe*, 2011, p. 14.

terms used to describe anything related to sexuality, and also applying the description of rape, that may cause problems. A translator may or may not be able and willing to understand and transmit the subtlety of exposed information and implications related to different social norms. Also, when working with translators, there is a degree of uncertainty as to the attitude that is displayed towards victims. Another (sometimes self-imposed) barrier can be the lack of expertise (or self-perceived expertise) needed to address psychological needs: “At times the medical care giver feels helpless when there is no psychologist in the project. This may lead to him/her avoiding the emotional aspect of caring for victims of sexual violence as it is considered too specialized.”⁸⁸

Psychological support is an integral part of the medical consultation of any victim of sexual violence; the dialogue with the patient aims to understand the circumstances of the assault and the specificities of the patient’s situation in order to propose the most adapted treatment approach and counselling. Compassionate listening and a respectful professional attitude towards the patient, as well as privacy and the assurance of confidentiality, are the bases for patients’ trust and willingness to share.

Often, the initial medical visit will be the only opportunity to assist the victim; though the figures differ depending on context, in general few patients come for follow-up visits. Reinforcing the skills of medical staff to ensure “psychological first aid” as part of the immediate care for victims of sexual violence is therefore a priority and is included in the majority of MSF projects.⁸⁹ That said, while data show low return rates of victims for follow-up sessions, MSF has not ventured into assessing the psychological support needs that victims may experience in the longer term. These may well manifest months or years after an assault, affecting emotional, sexual and physical well-being and requiring specialized follow-up and care at that time. The degree to which MSF could assist in the longer term requires further reflection and will depend largely on the context.

Medical examination and treatment: A patient’s choice

It is a legal and ethical principle that medical staff should seek patients’ valid consent before starting any kind of physical examination or medical intervention. This includes the medical examination of victims of sexual violence.⁹⁰ Medical staff who conduct examinations without the patient’s prior consent can be charged for assault in some contexts, and in some jurisdictions the results of an examination conducted without prior consent cannot be used in legal proceedings.⁹¹

88 D. Lagrou, above note 13, p. 41.

89 Experiences from different MSF projects seem to indicate that only a small number of patients require more specialized counselling than the “psychological first aid” that is part of the victim’s initial medical consultation. “Characteristics, Medical Management and Outcome of Survivors of Sexual Gender-Based Violence, Nairobi, Kenya”, *Public Health Action*, Vol. 3, No. 2, 21 June 2013, p. 111.

90 MSF, *Medico-Legal Issues: Case Management of Victims of Sexual Violence: Care and Protection*, internal MSF document, 2014, p. 3.

91 WHO, above note 72, p. 34.

Obtaining informed consent from a patient requires explaining all aspects of the consultation to the patient⁹² and asking for agreement to proceed. It requires ample time to put the patient at ease, to explain what is going to take place in understandable terms, to listen to the patient and to understand her/his needs and reactions. Consent of minors is particularly challenging; establishing the legal responsibility of an adult over a minor needs to be assessed case-by-case with the best interests of the child in mind.

Ensuring confidentiality: A long-term commitment

As a medical humanitarian organization, MSF's actions are driven by solidarity with individuals affected by conflict and crisis: the most vulnerable, the excluded, the victims of violence. Medical assistance is primarily an individual action, a "patient–medical staff" relationship based on a commitment that the assistance given will directly benefit the patient. It is this implicit promise and the related obligations to act at all times in the best interests of the patient and to preserve their confidentiality that are the foundation of trust which may motivate patients to come forward and seek assistance.

Medical confidentiality is a transversal notion to the whole process of medical care, but it is especially complex in relation to sexual violence. Considering MSF's contexts of intervention and activities, challenges are multiple with regard to the organization and identification of medical services, the flow of patients, communication and advocacy efforts, outreach and patient tracing activities, patient referral, and networking with other aid actors or authorities.

First, considering that the issue of sexual violence is heavy with stigma, privacy is a precondition for ensuring medical confidentiality, which is difficult to implement in some contexts – particularly emergency interventions, as already pointed out above. The sensitive nature of photographs, especially in a world of global communication,⁹³ adds to the challenge. Victims are increasingly anonymized as a means to ensure confidentiality, but also due to society's discomfort with the subject. The flip side of this preoccupation is underexposure, which does not permit victims to see their own resilience through voluntary and public exposure.

The second aspect of confidentiality is related to documentation and requires specific procedures, as well as a person in charge of the proper management of sensitive files.⁹⁴ MSF keeps a copy of each certificate available to each patient, and so that it can validate or invalidate the authenticity of a medico-legal certificate presented by a person as part of a criminal pursuit and/or compensatory claim.⁹⁵

92 *Ibid.*, p. 34.

93 Laure Wolmark, "Portraits sans visage, des usages photographiques de la honte", *Science and Video*, No. 2, 2010, available at: <https://scienceandvideo.mmsh.univ-aix.fr/numeros/2/Pages/Wolmark.aspx>.

94 MSF, *Be Prepared: 10 Steps* and "5 Step 2014 Analysis, Operational Center Amsterdam", internal MSF documents.

95 MSF, above note 90; V. Buard *et al.*, above note 40, p. 1357.

Thirdly, certain countries impose an obligation to report sexual violence to local authorities or the police.⁹⁶ This leads to the dilemma of medical confidentiality versus the fight against impunity.⁹⁷ Despite many obstacles that make victims unwilling or unable to seek justice,⁹⁸ important efforts of governments and international agencies focus on the fight against impunity. To this end, it is important that victims are identified and encouraged to file their cases. In the DRC, the identification of victims was sought by approaching medical facilities and requesting the patient files of victims of sexual violence. The resulting threat to patient confidentiality prompted MSF to call on the United Nations, saying that “[t]he UN strategy has to ensure a strict separation of roles, both in their attribution and in the way the medical and juridical roles are perceived amongst victims, perpetrators and the population at large”,⁹⁹ as the increasing political drive for the elimination of impunity may impact on the capacity to offer direct, independent and confidential medical care to victims. In several MSF projects in the DRC, staff now refuse to sign certificates because of threats and the potential legal obligations. From MSF’s perspective, it is not trivial to put one of its staff through a national or international judicial process, not only due to security risks but also due to the dangers of political repercussions; furthermore, the act of testimony is a delicate practice that few people are comfortable with.

Finally, confidentiality is a concern when working with local organizations. MSF’s assistance to victims of sexual violence requires forging relations with local actors, women’s groups and social and legal entities in order to create referral options that may address the needs of victims to which MSF has no or limited response. Within the communities associated with opposing parties to a conflict, the use of sexual violence is often endorsed as a statement of condemnation of the adversary and the resulting polarization requires MSF to seek dialogue and working relations with diverse organizations in order to safeguard independence and the capacity to assist all victims, independently of their chosen or perceived alliance.

96 MSF, *Lessons Learned: MSF’s Projects Working on Violence in Urban Settings*, internal MSF document, 2011 p.6.

97 United Nations Joint Human Rights Office, *Progress and Obstacles in the Fight against Impunity for Sexual Violence in the Democratic Republic of the Congo*, 2014, available at: www.monusco.unmissions.org/LinkClick.aspx?fileticket=Gyh_dUBNGcs%3D&tabid=10770&mid=13783&language=en-US.

98 As confirmed by internal MSF reports in the DRC, victims may be reluctant to report the attack to the authorities, often because of fear of reprisals or lack of trust in the judicial and penitentiary system – reinforced by the not uncommon prospect that the perpetrator will escape prison. Geographical distance and the perception of long and difficult judicial procedures (and even fruitless ones – see the recent *Minova* case) can also be strong disincentives.

99 UN Human Rights Council, “Human Rights Council Holds High-Level Dialogue on Combatting Sexual Violence in the Democratic Republic of the Congo”, 25 March 2014, available at: www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14435&LangID=E#sthash.jVEwL4wl.dpuf. The MSF statement was read during the Human Rights Council session in Geneva on 25 March 2014 (internal document).

The legal framework around sexual violence

The legal framework around sexual violence and its related consequences has implications for MSF's capacity to provide timely and adequate medical care. As mentioned above, laws regarding consent, medico-legal obligations, abortion, police involvement or the obligation to denounce, to name only a few, may represent a barrier to offering care to an individual who has been subject to aggression, rather than ensuring his/her protection.

Since the beginning of MSF's involvement in sexual violence care, much effort has been put into developing medico-legal documents and guidance regarding legal proceedings. General guidance cannot, however, respond to the specific situations and needs of each patient, and therefore a legal department in MSF ensures that case-by-case analysis and support is available.

With regard to the medico-legal obligations, the medical care of a victim of sexual violence requires the preparation of a medical certificate under the law of most countries,¹⁰⁰ where a template of such a certificate is usually available. MSF provides medico-legal certificates for all victims of sexual violence,¹⁰¹ including in emergencies.¹⁰²

Amid conflict-like situations, legal systems may collapse, leaving crimes unpunished; a medico-legal certificate can allow a person seeking legal action to provide evidence even years after the assault.¹⁰³ Experience from the RC shows the potential value that medical certificates have in legal proceedings; nine out of ten of the medical certificates produced by MSF and used by victims in court were admitted by the judge.¹⁰⁴

The justification for collecting patient data

For MSF, collecting patient data is part of the daily routine of medical staff. For victims of sexual violence, information is needed in order to provide adequate medical treatment and also to address potential needs for protection of the patient and for the purpose of the medico-legal certificate.

Basic information includes personal data (name, age, address) and when the assault took place, in order to establish the relevance of PEP and emergency contraception. Further information is required to guide the approach towards dealing with potential HIV infection and pregnancy. Both subjects involve a

100 MSF, above note 90.

101 The medico-legal certificate states the patient's account of the assault, including all elements that may prove relevant (e.g. time, place, characteristics of the aggressor/s), as well as the findings of the medical examination and related treatments of physical and mental injuries. It is important to note that the information on the assault is a transcript of the patient's account; medical practitioners have no role whatsoever in judging its veracity.

102 MSF pocket guide, above note 45, Sheet 20, "Need to Establish a Medico-Legal Certificate".

103 For crimes under the jurisdiction of the International Criminal Court, statutes of limitations do not apply. See Rome Statute, Art. 29; see also UN Res. A/RES/2391 (XXIII), Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, 26 November 1968, Preamble.

104 E. Chazal, G. Fadida and C. Reynaud, above note 23, p. 26 (our translation).

number of delicate questions: “Was there penetration? Were you bitten or did you bite the aggressor? Do you know your HIV status? Have you already had your period? Are you sexually active? Are you pregnant? Do you want to prevent potential pregnancy?”, and so on.

Information is required for the treatment approach, for the medico-legal certificate; as part of collective data, such information serves programme management purposes like medical supply management, staffing, location and opening hours of the clinic and the potential need for additional care sites. Finally, information on specific vulnerability of victims and the alleged aggressor’s characteristics may be sought as a means to identify potential individual protection needs and as a potential contribution to preventive efforts – for example, changing the location of water and wood for collection and providing recurrent facts regarding assaults to local or international protection forces.¹⁰⁵

The amount of questions addressed to one patient in the first consultation after a sexual assault can be overwhelming and can potentially alienate the patient and jeopardize the establishment of trust. Actors involved in providing assistance to victims of sexual violence do so with very different objectives in mind; from this emerges a demand for all organizations to contribute sexual-violence-related data on a large range of questions. For MSF, the central objective is the medical care of victims in order to avert the short- and long-term consequences of rape and to help victims recover. Information sought by MSF from individual patients and the corresponding analysis should focus on doing this more effectively.¹⁰⁶

Conclusion

Ensuring care for victims of sexual violence as part of MSF’s general assistance to populations affected by conflict and crisis has represented a considerable institutional struggle and continues to be a challenge. Some resistance within the organization may be seen in relation to the charged nature of the issue, which is at the crossroads of personal opinions and subconscious attitudes regarding the status of women, the notion of violence and the sexual character of this particular type of violence.

Over the past ten years, MSF has garnered important experience from the medical care provided to almost 118,000 victims of sexual violence, primarily victims of rape. This experience reflects limits in the organization’s capacity as

105 A central component of the UN’s strategy for preventing conflict-related sexual violence is addressing impunity and identifying perpetrators. Different resolutions outline related calls for timely and detailed information on assaults and perpetrators. The efforts to compile a database shared among agencies are another example of the drive for data related to sexual (and gender-based) violence. See Gender Based Violence Information Management System (GBVIMS) Steering Committee, “Overview of the GBVIMS”, Version 14, 2010, p. 1.

Claire Magone, “Collecting Data on Sexual Violence: What Do We Need to Know? The Case of MSF in the Democratic Republic of Congo”, *Humanitarian Exchange Magazine*, No. 60, February 2014, p. 20.

106 *Ibid.*

well as in the victims' acceptance of sexual violence care in the contexts where MSF works. Large caseloads of patients seeking care for sexual violence are seen more frequently in the projects MSF runs in post-conflict settings and in projects responding to urban violence. In the midst of emergencies and conflict, MSF's capacity to assist victims of sexual violence remains, with the exception of the DRC, limited. In these contexts, where MSF strives to address numerous competing needs, sexual violence is often not amongst the immediate priorities, which focus, in general, on actions with a direct impact on mortality.

In addition to the contextual constraints, the invisibility of patients and the need for a proactive approach, as well as the practical and ethical challenges involved in care for victims of sexual violence, all contribute to teams' difficulty in providing adequate and timely care. Where care is offered, the impact of medical treatments is limited; only half of the victims come in time to allow protective measures against HIV infection and unwanted pregnancy, and only some patients return for medical and psychological support follow-up.

Also, victims of sexual violence require more than medical assistance; protection, prevention and legal pursuit are the responsibility of national governments and need international support. But efforts to end sexual violence and related impunity need to be developed in complementarity to medical assistance, and must at all times safeguard and promote the capacity to provide direct, independent and confidential medical care. Further, victims excluded from family and community as a consequence of rape and those in danger of continuous assault and violent repercussions require psychosocial support and protection. These areas of assistance tend to be underserved in general and more so in the middle of a crisis; the benefit of medical care in those cases may be overshadowed by the forsaken perspectives of the victim. When other aid actors are present, be they local or international, it is necessary for MSF to seek collaboration and dialogue with both non-aligned actors and those aligned with the opposing powers in order to facilitate support to all victims in need.

The specific challenges related to care for victims of sexual violence accentuate the general difficulties that MSF faces in providing medical care to populations in crisis, because national laws and powers (State, Church or common perception) may create additional barriers for victims to access care and for care providers to be able to respond fully to the medical needs of victims of sexual violence, including those related to unwanted pregnancy.

MSF continues to struggle with the limits of its role: while the provision of medical care remains a central commitment, the specific difficulties arising from the criminal nature of rape, in legal, political and security terms, cannot be ignored. The potential instrumentalization of the subject of rape and related assistance – for a variety of purposes, including human rights in general, the status of women and the dynamics of conflict – presents a constant challenge. Finally, the multiple unmet needs of victims, beyond medical care, have to be acknowledged. The response to such needs often surpasses MSF's capacity and legitimacy, but few other actors seem to step up with concrete measures. Internally, the degree to which MSF engages in different contexts and at different

times in advocacy, prevention and protection efforts is subject to debate, differences and tensions.

Sexual violence care is one of many health needs that MSF aims to address; often, MSF teams are generalists with multiple medical-humanitarian ambitions. Guidelines, trainings and tools cannot replace the need for continuous investment and reflection at all levels of the organization; the main challenges MSF encounters are those inherent to each context, and they change over time. Sexual violence is often part of a larger dynamic of violence, be it during conflict, in post-conflict settings or in stable areas impacted by poverty, precarious living conditions and exclusion. Any assistance is ultimately faced with the complex social dynamics out of which sexual violence is born and with respect to which MSF, as an external actor, is in a delicate position.

MSF will need to continue challenging the limits of the organization's role and actions in order to expand medical care for victims of sexual violence to all relevant contexts and particularly in conflict settings, but will also need to remain vigilant to the risks of instrumentalization and strive to maintain independence from the political pursuits of national and international powers, however promising they may appear.

OPINION NOTE

The risks of instrumentalizing the narrative on sexual violence in the DRC: Neglected needs and unintended consequences

Laura Heaton

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Keywords: Democratic Republic of the Congo, sexual violence, war, conflict, peacekeeping, advocacy, aid.

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Public understanding of humanitarian emergencies tends to focus on one story and one type of victim.¹ Examples are manifold: amputees in Sierra Leone, victims of kidnapping in Colombia, or victims of chemical weapons in Syria. At times, the aid community, and the media in turn, seizes upon a particular injustice – landmines, female genital mutilation and child soldiers are examples from recent decades – and directs resources and attention its way. Similarly, thematic trends tend to dominate aid discourse, with funding proposals to donors replete with references to the framework *du jour*. In a related phenomenon highlighted by author and aid worker Fiona Terry, “[w]ords are commandeered to give a new

gloss to familiar themes: ‘capacity building’ became ‘empowerment’, which has now become ‘resilience’.”² In the Democratic Republic of the Congo (DRC), the conflict has been largely defined by sexual violence, and raped women are its most prominent victims.

It stands to reason that once one element of a story, and one category of victim, becomes the focus – to the detriment of considering other conflict dynamics and underlying causes – an understanding of what is required to stem the problem becomes more difficult to grasp. As a result, interventions may be limited in value or even create unintended consequences. In the case of the DRC, there is ample evidence that an incomplete comprehension of the conflict overall, and sexual violence in particular, has created a perverse incentive structure.³ Organizations recognize that their programmes are more likely to be funded if their beneficiaries are victims of sexual violence; people in need of assistance may in turn be inclined to adapt their story to such discourse. Over time, aid groups, government officials and people living in local communities have become savvy to the fact that this deeply private and emotional form of violence elicits the strongest response from journalists and donors. Examining a case that was initially seen to epitomize the extremity of the DRC’s sexual violence problem – albeit a severe example – helps to illuminate several problematic tendencies that are visible throughout the aid sector.

For several months in 2010, international media coverage of the DRC was dominated by reporting about an alleged mass rape incident in the remote village of Luvungi, in the country’s volatile eastern region. Not only did the attack make headlines, it also raised the overall profile of the long conflict in the DRC, placing the often overlooked war onto the front pages of newspapers and the feature pages of magazines. The author examined this most prominent case of mass rape reported in the DRC.⁴ This article is based on insights from an array of local contacts and sources present as the incident unfolded, as well as on subsequent research aimed at exploring how entrenched narratives affect responses to violence. The author did not set out to discredit coverage of the Luvungi case or question the severity of the problem of sexual violence in the DRC. On the

1 Maria Eriksson Baaz and Maria Stern, interview by email, 18 December 2012.

2 Fiona Terry, interview by email, 14 October 2014.

3 Several studies attest to this dynamic. See Maria Eriksson Baaz and Maria Stern, *The Complexity of Violence: A Critical Analysis of Sexual Violence in the Democratic Republic of Congo*, Swedish International Development Cooperation Agency, 2010; Human Security Report Project, *Human Security Report 2012: Sexual Violence, Education, and War: Beyond the Mainstream Narrative*, Simon Fraser University, 2012; Séverine Autesserre, “Dangerous Tales: Dominant Narratives on the Congo and Their Unintended Consequences”, *African Affairs*, Vol. 111, No. 443, 2012; Nynke Douma and Dorothea Hilhorst, “Fond de Commerce? Sexual Violence Assistance in the Democratic Republic of Congo”, Disaster Studies Occasional Paper No. 2, Wageningen University, 2012, available at: www.wmm.com/filmcatalog/study/justice_report.pdf (all internet references were accessed in October 2014); Maria Eriksson Baaz and Maria Stern, *Sexual Violence as a Weapon of War? Perceptions, Prescriptions, Problems*, Zed Books, New York, 2013.

4 For the findings of this investigation, see Laura Heaton, “What Happened in Luvungi? On Rape and Truth in Congo”, *Foreign Policy*, March/April 2013, available at: <http://foreignpolicy.com/2013/03/04/what-happened-in-luvungi/>.

contrary, the research aimed to understand the nature of the violence and the discrepancy between, on the one hand, the public narrative about “rape as a weapon of war” in the DRC, and, on the other, the failure to give visibility to and address the domestic sexual violence epidemic. In particular, in this article, the author inquires about the factors that contributed to the distortion of the facts in the Luvungi case and about how the dominant narrative about sexual violence in the DRC influences the funding of programmes and, in turn, factors into the stories that people – from villagers to international aid workers – share about their experiences and needs. Finally, the article questions the impact and adequacy of current responses, and closes with a few reflections on where efforts might be better focused.

“Rape as a weapon of war” in the DRC: A superlative case

Six years had passed since negotiations officially ended what has been called “Africa’s world war”⁵ in the DRC, but the country was still in the throes of the continent’s deadliest conflict when then US Secretary of State Hillary Clinton visited in 2009. She was the first American secretary of State, and the most high-profile foreign dignitary, ever to visit the eastern region, and she made a point of travelling there because, as she said, “[w]omen are being turned into weapons of war”.⁶

Nearly one year to the day after Clinton’s visit, information about what would become the largest reported case of mass rape began to emerge from a remote village called Luvungi. Medical workers, who had travelled to the scene of the incident several days after the combatants had retreated, told journalists of a four-day attack by hundreds of combatants that involved “lots of pillaging and the systematic raping of women”.⁷ Most major Western news outlets covered the story of Luvungi, primarily from afar. Reports described gruesome scenes of women being raped in front of their husbands and children; men taking turns violating a woman; and attacks perpetrated against a one-month-old boy and a 110-year-old great-great-grandmother.⁸ The harshest denunciation came down on United Nations (UN) peacekeepers, who had a base 20 kilometres away but allegedly failed to respond during the period when armed rebels occupied the village.⁹ For more than a month, photographers, reporters and increasingly

5 Gérard Prunier, *Africa’s World War: Congo, the Rwandan Genocide, and the Making of a Continental Catastrophe*, Oxford University Press, Oxford, 2008.

6 Jeffrey Gettleman, “Clinton Presses Congo on Minerals”, *New York Times*, 10 August 2009.

7 Michelle Faul, “Some 200 Women Gang-Raped Near Congo UN Base”, Associated Press, 24 August 2010.

8 Michelle Faul, “Congo Leaders: We Begged UN to Protect Civilians”, Associated Press, 1 September 2010.

9 Much of the media reporting about the incident highlighted the shortcomings of the peacekeepers in the headlines and ledes of their stories. See for example, the *New York Times* headline from 3 October 2010: “Mass Rapes in Congo Reveals U.N. Weakness”; see also the opening line of the Associated Press’s 1 September 2010 article: “Congolese community leaders say they begged local U.N. officials and army commanders to protect villagers days before rebels gang-raped scores of people, from a month-old baby boy to a 110-year-old great-great-grandmother.”

high-ranking officials made their way to Luvungi. The French tabloid *Paris Match* published a glossy spread of photographs of sombre survivors, surrounded by children, under the headline, “The Raped Women of Luvungi”.¹⁰

There was immediate debate over how many hundreds of victims had been raped. The American medical aid organization that was the original source of the statistics initially told journalists it had treated 179 women, but the number quickly rose.¹¹ Because of the trauma of the incident, the true number of survivors was likely even higher than reported, experts reasoned; people feared coming forward and admitting to being raped.¹² But none of the published reports had considered an alternate scenario, one that was inconclusive but widely accepted locally according to the author’s investigation: that many fewer people may have been raped during this specific incident and that the mass rape narrative took hold amid the rush of attention and influx of outsiders to the impoverished village. A series of interviews with members of civil society and leaders in the village and surrounding communities, medical personnel, peacekeepers, civilian UN staff and humanitarian workers revealed how and why the public narrative about the attack became distorted.¹³

A Congolese health-care provider near Luvungi provided insights into the source of the numbers from the mass rape account. The health clinic he was working in – the only medical facility in the immediate area – is officially a State-run facility, but financed by the American medical organization instrumental in publicizing the attack. He confirmed that between 30 July and 2 August 2010, rebels from the Mai Mai Sheka group were operating in the area. They destroyed some homes, wantonly looted, and assaulted residents, forcing people to flee to the bush to hide. He said that during the incident and in the days immediately following, he received six patients who reported rape. He administered four post-exposure prophylaxis (PEP) kits to women who arrived at the clinic within the 72-hour window during which rape can be medically confirmed. Notably, two of those women indicated that civilians, not the armed men occupying the village, had raped them.¹⁴ However, most of the approximately 100 patients that the health-care provider saw between 30 July and 6 August needed treatment for maladies common to the region, such as malaria and diarrhoea, and for injuries sustained while fleeing into the forest during the militia occupation.¹⁵ Four days after the end of the attack, an American medical group sent a team and took over the treatment of patients. The health-care provider recalled that patients then began arriving in large numbers, and the organization registered everyone as a victim of rape, even those treated for other ailments. The aid group disputed the health worker’s

10 Author’s translation. See Mariana Grépinet, “Les Femmes Violées de Luvungi”, *Paris Match*, 9 September 2010.

11 M. Faul, above note 7.

12 *Ibid.*

13 For the detailed findings of this investigation see L. Heaton, above note 4; and the ensuing rebuttal by International Medical Corps (IMC), “Our Experience in Luvungi”, *Foreign Policy*, 5 March 2013.

14 Health-care provider, interview, Walikale territory, DRC, 29 June 2011.

15 *Ibid.* For more details see L. Heaton, above note 4.

account, saying that the number of victims they released to other humanitarian groups and eventually to the public was based on the patients who reported rape and sought medical assistance.¹⁶

The Luvungi case is a compelling illustration not only of why community members might go along with the dominant narrative, but also of how focusing on the most sensational aspect of a conflict does not necessarily lead to benefits for those in need of assistance or for the community at large. The interviews conducted by the author revealed at least two rationales for the community elders to encourage the mass rape narrative and corresponding media attention. The first of these was to avoid having the potentially stigmatizing, singularly focused attention directed at just a small group of women, leaving them isolated. One woman in Luvungi took the occasion when no other residents were nearby to explain that there was an interest among members of the community in supporting the mass rape narrative, because it meant that the women who truly were raped would not be ostracized.¹⁷ Other civil society sources described the same dynamic, attributing this decision to local elders.¹⁸ However, that approach intended to promote community solidarity foundered, and in fact created social strife and conflicts within the community.¹⁹ The community had grown frustrated and hostile when the extensive attention did not lead to the assistance people had expected, and the elders were blamed because they had been the gatekeepers of the story – the people that any outsider would meet with first. “People wanted to kill them”, said one activist, “because they sold us”.²⁰

A second explanation is that the mass rape narrative would potentially attract much-needed funds to the community – the rationale being that the village’s underdevelopment would be apparent to the many visitors, who would respond in turn with assistance. However, in the years since the 2010 attack, the international coverage and ensuing response did little to improve the security of

16 IMC said in a statement that “no revisions were made to patient logs”. The organization explained the increase in the numbers by saying that “many reporting survivors did not come forward for weeks after the attack. ... Up until that point, survivors were simply too frightened to walk the distances required to seek medical attention.” Margaret Aguirre, IMC, statement, 24 June 2013, cited in L. Heaton, above note 4. The group’s Los Angeles-based communications director stated in correspondence with the author: “As a humanitarian, service-focused organization, IMC does not ever attempt to ‘verify’ reports of rape. We reported on the number of people we assisted with medical services who reported being raped. Our policy is to provide assistance that self-reporting survivors seek, without subjecting them to inquiry.” Aguirre later added that IMC “did not discuss internally or distort these figures in any way”.

17 L. Heaton, above note 4, p. 36.

18 As one leader explained, “Once the *gardiens de coutume* [elders] have made that decision, you can’t say anything different.” Civil society leader, interview, Walikale territory, DRC, 27 June 2011. A number of interviews with civil society leaders were conducted in Walikale territory, in April, June and July 2011 and in June 2012.

19 Interviews conducted by the author revealed that six members of the community who had been instrumental in conveying the mass rape narrative following the Luvungi attack in summer 2010 were relocated. Civil society leaders, interviews, Walikale territory, DRC, 14 June 2012; International Committee of the Red Cross, interview, Goma, DRC, 15 June 2012. The author’s further investigation suggests that the relocation is the result of anger expressed by the villagers at those they felt had instrumentalized them.

20 Civil society leader, interview, Walikale territory, DRC, 14 June 2012.

the community and to meet its basic needs. On several occasions after the 2010 attack, and with the support of international legal aid groups, women from the village travelled two hours away to the town of Walikale to provide testimony for a legal case against leaders of the Mai Mai Sheka allegedly responsible for the attack. The engagement of these women left the distinct impression among community members that assistance was on its way, thus fuelling frustration when the proceedings stalled, first due to security risks and then ostensibly because of donor funding shortages.²¹ However, a lawyer familiar with the case indicated that the political controversy surrounding the case and some concerns about the unusual similarities in the victims' testimonies factored into the decision to terminate the process.²² Apart from the insecurity, the assessment of the local health-care provider of conditions at the health clinic was optimistic, if circumscribed. The situation remained fragile, he said: "We never have shortages of PEP kits, even though we sometimes run out of other medicines."²³

Factors fuelling misunderstanding

The DRC is infamous for its high incidence of rape, by both combatants and civilians. Strong attention to sexual violence in any form is vitally needed. But the "rape as a weapon of war" narrative, now more aptly framed as "wartime rape" – that is, rape used by armed actors, be they State or non-State, as part of their military strategy or to demonstrate their power – has gained the most public traction. Several interrelated factors, recognizable in other humanitarian emergencies, contributed to this disproportionate focus on one type of atrocity over other abuses taking place in the eastern DRC's conflict zones.

Popular narratives

To encapsulate a conflict for a mass audience, journalists and humanitarian actors tend to hone in on characteristics that are particularly riveting or emotional. The dynamic is neither surprising nor difficult to understand. It is easier for international actors to find consensus when passing judgement on a feature of an emergency that is unequivocally "wrong", or even "evil". A foreign government is more likely to circumvent diplomatic challenges or avoid being critiqued as hypocritical if the atrocity it condemns is seen as abnormal or seems unfathomable in its own domestic context.

To better ensure that a story stands out among other news events of the day, or to move concerned spectators to take action, the narrative should also be captivating but not overwhelming; it must illuminate a problem that is devastating but not insurmountable. Certainly, this is best illustrated by the

21 Elders, group interview, Luvungi village, DRC, 28 June 2011.

22 Lawyer, American Bar Association Rule of Law Initiative, interview, Goma, DRC, 1 July 2011.

23 Health-care provider, interview, Walikale territory, DRC, 29 June 2011.

widespread framing of rape as a “weapon of war”, as best explained by scholars Maria Eriksson Baaz and Maria Stern: “When remarked on at all, throughout history wartime rape has been seen as an unfortunate and unavoidable aspect of warring. Labelling it a ‘weapon of war’ allows for seeing it as preventable, and as an important area for much-needed proactive security measures and victim services.”²⁴

Furthermore, there is a tendency in foreign reporting – some might argue especially in Western coverage of Africa – to highlight stories that are aligned with preconceived ideas of a place. A front-page *New York Times* headline for the story about the 2010 militia attack on Luvungi illustrates the point: “Mass Rapes in Congo Reveals U.N. Weakness”, the newspaper stated.²⁵ That synopsis draws on clear expectations or stereotypes about how protracted Congolese wars play out. According to the established public narrative about the conflict, a reader expects to hear that combatants have raped women *en masse* and presumes that UN peacekeepers feebly stood by.

The notoriety of the issue in the case of the DRC is also illustrative of the way in which personal attention from prominent figures can entrench singularly focused narratives (and is evidence of the success of the advocacy efforts). Among the most influential in the case of the eastern DRC are former US Secretary of State Hillary Clinton, American playwright Eve Ensler, and Margot Wallström, the former UN Special Representative of the Secretary-General on Sexual Violence in Conflict, who famously dubbed the DRC the “rape capital of the world”.²⁶ On her 2009 visit to the capital, Kinshasa, Secretary Clinton travelled to the war-torn east for a day. She visited the HEAL Africa Hospital, where surgeons perform reconstructive surgery for patients suffering from fistula; met with rape survivors in a refugee camp on the outskirts of the provincial capital, Goma; and announced new US funding to fight sexual violence.²⁷

Funding priorities

Even some of those who acknowledge the potential distorting effects of advocacy dismiss them; if the overly simplified narrative draws much-needed funding that can be used to help women, why not emphasize one particularly alarming aspect of the violence? Wartime rape is “graphic and revolting, and the extra violent element makes it sellable”, one aid worker said.²⁸ One argument goes a step further to contend that some circumstances justify prioritizing fact as secondary to galvanizing attention. Furthermore, as the aid worker said, “[h]umanitarian funding must be connected to conflict, so to get the money to do anything you have to show how it connects”. This highlights an important criteria delineating

24 Maria Eriksson Baaz and Maria Stern, interview by email, 18 December 2012.

25 Jeffrey Gettleman, “Mass Rapes in Congo Reveals U.N. Weakness”, *New York Times*, 3 October 2010.

26 “UN Official Calls DR Congo ‘Rape Capital of the World’”, BBC, 28 April 2010, available at: <http://news.bbc.co.uk/2/hi/africa/8650112.stm>.

27 ■■■.

28 International aid worker, interview, Goma, DRC, 15 June 2012.

the divide between “humanitarian” and “development” funding: humanitarian assistance is by definition related to an emergency, whether man-made conflict or natural disaster. Thus, the need to connect rape to the conflict is precisely why the terminology “rape as a weapon of war” is widely – and often wrongly – used.

A 2012 report published by Wageningen University examined how funding is allocated to address a range of challenges in the DRC: reform and training of its army and police, development of its judicial system, and large-scale internal displacement.²⁹ Researchers Nynke Douma and Dorothea Hilhorst compiled budgetary statistics from several multi-donor trust funds between 2010 and 2011 and found a disproportionate focus on sexual violence compared to nearly all other sectors. “[T]he sexual violence budget is nearly double the size of the budget for all security sector reform activities (SSR trust fund), and just under half the size of the entire peace building trust fund, which are arguably two themes geared towards prevention of sexual violence”, Douma and Hilhorst wrote.³⁰ Funding for internally displaced people – of which there were an estimated 1.4 million in the eastern DRC during the period of these budgets – was less than half of the funding for sexual violence.

The challenge and sensitivity of “verification”

If even one case of rape by a combatant took place during the course of the 2010 attack in Luvungi, the incident might be described as emblematic of “rape as a weapon of war” as it is understood in mainstream discourse. Regardless of the tally of victims, attention is warranted and assistance imperative. But the numbers do matter in this case, because they impact our understanding of how the event transpired and, therefore, who was affected and in need of assistance.

As with other entrenched narratives about conflict, though, expressing a dissenting view about emotional events or doubt about a victim’s story comes with a host of risks, including being criticized as out of touch, insensitive or chauvinistic – all the more so with sexual violence, and particularly if the person asking follow-up questions is male. Rather than risk censure, narratives may be taken in stride and misgivings left unspoken.

In the case of Luvungi, with all the visitors – including UN officials from New York – asking to meet the victims of sexual violence, the population quickly understood what was required to receive attention, and potentially aid. A civilian staff member of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) with intimate knowledge of the initial investigation carried out by MONUSCO’s civilian team in Luvungi provided this insight:

It was at that time – and I guess it still is – very difficult to confirm rape cases, and the reason is simple: apart from the testimony of the victims you have

29 N. Douma and D. Hilhorst, above note 3.

30 *Ibid.*, p. 37.

nothing. So we were talking to a lot of people [who were] telling us that they were victims of rape. What I'm expressing now is very personal and I guess the result of having worked for several years in eastern DRC investigating cases of rape. [Even before starting the investigation over this case, I expected] that a lot of people were going to tell us that they had been raped, because medical help comes easily to victims of rape, and aid, and support. So I thought that the villagers... if they didn't say that they had been affected by rape in one way or another, [then] they would be left out of the response to what had happened, if any response was sent.³¹

The source's observation emphasizes the difficulty of verifying details amid competing local needs and complicated contexts in which an outsider may not be fully versed, and how these challenges play into distortion and misguided responses. The civilian staff member added that the extraordinary international attention to the incident and subsequent lack of meaningful follow-up had detrimental ramifications for the community; further, the exclusive focus on one element of the attack rendered all other suffering invisible:

I remember when I came back to Luvungi some months later we met very difficult people, to put it diplomatically. We met very frustrated people, particularly the men, who felt that they had been left out. Which was true actually – the entire focus was on women victims of sexual violence, and no one really took care of the trauma of the attack itself.³²

Unintended consequences?

The public concern for a particularly emotional aspect of the conflict may compel policy-makers to dedicate attention and donors to direct resources to responding to sexual violence in the eastern DRC. But the impact of those interventions is difficult to measure at best, and at worst generates new detrimental dynamics.

An assessment by a former MONUSCO adviser was stark: "For any overarching strategy on sexual violence no baseline was established, so we have no clue how sexual violence looked five years ago compared to today." Donors have turned to statistics, like the number of rape survivors provided with medical treatment or the number of convictions in rape cases, to attempt to capture the results of their interventions, which is of limited value when not contextualized.³³ "There are a lot of failures in how money is spent, but it is not a question of the money not being necessary; it is about how you invest it, how you control your investments, and how you monitor" the impact of the programmes, the adviser said.³⁴

31 UN civilian staff member, interview by phone, 7 January 2013.

32 *Ibid.*

33 Former MONUSCO adviser on sexual violence, interview by phone, 18 December 2012.

34 *Ibid.*

Between 2006 and 2010, specialists Maria Eriksson Baaz and Maria Stern conducted a study on the factors contributing to sexual violence in the DRC, funded by the Swedish International Development Cooperation Agency (SIDA).³⁵ They explained: “Engaging in the rape issue became a lucrative source of attention, good will, and resources for a range of actors, not the least donors and both national and international NGOs. This is reflected in the exponential upsurge in NGOs working on the issue.”³⁶ Researchers Douma and Hilhorst sought to quantify this trend. Until 2002, a small number of mostly Congolese human rights groups worked to raise awareness about sexual violence as a war crime in the DRC; in South Kivu province, for instance, they numbered less than ten. In contrast, Douma and Hilhorst wrote, “[a]ssistance to sexual violence survivors has in recent years mushroomed to incorporate an estimated 300–400 Congolese and international professional organizations and community-based organizations in North and South Kivu”. Many groups have no history or established expertise in sexual violence work.³⁷

Expectations and pressure from donors pose important ethical questions in particular for doctors and medical aid groups; the causes of certain health issues may be conflated and therefore misunderstood by the wider public. For example, in the eastern DRC, since much of the attention on sexual violence has focused on the brutality of tactics employed by armed groups, fistula – a debilitating, stigmatized and sometimes life-threatening condition in which the tissue between a woman’s vagina and anus is torn – has come to be seen in the DRC context as almost exclusively the result of rape.³⁸ However, the statistics compiled by hospitals demonstrate a different reality. For instance, of the 350 fistula operations conducted at South Kivu province’s Panzi Hospital in 2011, one had a direct, reported link with rape.³⁹ For the same time period, HEAL Africa in North Kivu province reported that less than 3% of its fistula operations are linked to sexual violence.⁴⁰ The two hospitals are the only facilities equipped to perform reconstructive surgery in the region.

Fistula is caused by trauma, but more common – and found throughout the developing world – is obstetric fistula, which is caused by complications in childbirth where medical care is lacking or inadequate. For funding purposes, the causes of fistula are often conflated.⁴¹ Rather than turn away a woman who needs fistula treatment and cannot afford to pay, the case can be classified as the result

35 M. Eriksson Baaz and M. Stern, *The Complexity of Violence*, above note 3.

36 Maria Eriksson Baaz and Maria Stern, interview by email, 18 December 2012.

37 N. Douma and D. Hilhorst, above note 3, p. 9.

38 Medical care providers and NGO staff members, interviews, 2011, 2012, 2013.

39 Shame and the emotional trauma of rape still undoubtedly influence how and whether women report attacks, and living with a fistula is socially stigmatizing, regardless of the origin. Therefore, the true cause of a patient’s fistula can be difficult to ascertain – and is beside the point for the health providers treating these women.

40 N. Douma and D. Hilhorst, above note 3, p. 44.

41 Medical professional at HEAL Africa hospital, interview, 16 June 2012; Panzi Hospital researcher, interview by phone, 9 January 2013.

of rape if available funds are earmarked for rape survivors.⁴² To avoid forcing those sorts of pragmatic calculations, some donors do not differentiate between whether the patient has a fistula caused by rape or by childbirth; in either case the surgery is free.⁴³

In addition to the health sector, the judicial assistance sector in the DRC received a major boost in funding to address the dysfunctional nature of the system that, combined with a long history of blatant impunity, is seen as contributing to the scale of sexual violence. But also in this realm, the focus on sexual violence over all other crimes committed in the DRC – killings, torture, forced recruitment, forced labour, etc. – has led to circumstances in which “allegations of rape become a survival strategy”.⁴⁴ Donors have funded trials through a system of mobile courts that prosecute sexual violence crimes almost exclusively. In the absence of a judicial system with the resources and capacity to effectively try cases, legal proceedings related to sexual violence have come to be seen as a forum for settling personal scores or neutralizing a competitor. With public opinion skewed strongly against those charged of rape, accusations and the threat of trial have become an extortion and bargaining strategy.⁴⁵

Drawing on the insights of two Congolese lawyers, Douma and Hilhorst’s research also delves into this topic by producing an analysis of forty sexual violence case files from six jurisdictions in South Kivu. This review, supplemented by interviews, led them to conclude that “[u]nder pressure to combat impunity, ... an increasing number of suspects are (sometimes innocently) convicted on the basis of flawed proof”.⁴⁶ While the team did not seek to determine whether suspects were indeed guilty of the crime for which they were accused, they assessed whether the convictions had the necessary legal backing to be valid. Of the nineteen convictions, they found that half did not. “It is remarkable from our case studies that cases that result in release are much better argued by the judges than the cases that result in conviction”, they wrote, noting that some of their interviewees indicated that judges feel pressure to defend why they decided to release a suspect. As one interviewee stated: “If a presumed perpetrator of sexual violence is found not-guilty by the court, the media reports on such cases with disgust and incomprehension, influencing public opinion to believe that all suspected perpetrators should be convicted no matter what.”⁴⁷

One of the main criticisms of NGO support to legal proceedings around incidents of sexual violence is that while assistance is provided to the alleged victim, it is rarely within an NGO’s mandate to help with the defence of suspects. This inequity generates a system that creates new injustice: in an effort to address

42 Medical professional at HEAL Africa hospital, interview, 16 June 2012; Panzi Hospital researcher, interview by phone, 9 January 2013.

43 Panzi Hospital researcher, interview by phone, 9 January 2013.

44 M. Eriksson Baaz and M. Stern, *The Complexity of Violence*, above note 3, p. 13.

45 David Bodeli Dombi, interview, Goma, DRC, 16 June 2012; civil society leaders, interview, Goma, DRC, 2012; Maria Eriksson Baaz and Maria Stern, interview by email, 18 December 2012.

46 N. Douma and D. Hilhorst, above note 3, p. 11.

47 *Ibid.*, p. 59.

impunity, the system produces a bias against suspects.⁴⁸ The American Bar Association (ABA) is one of the biggest international actors working in this sector in the eastern DRC. The ABA's Rule of Law Initiative (ROLI) provides the lawyers for the victim but does not directly provide the lawyer for the accused, as providing both would be seen as creating a conflict of interest.⁴⁹ The group advocates for the accused to have competent representation, though in practice, ensuring a capable defence team is difficult. Charles-Guy Mackongo, head of mission for ABA ROLI in Goma, has said: "The unfortunate reality in the DRC is that the national public defender's system that should have been implemented by bar associations with the state funds has collapse[d]. Thus representation for the accused and for prisoners is not guaranteed."⁵⁰

It has been further suggested that this dominant discourse about wartime rape may incite armed actors to use sexual violence (as a threat or in practice) as a bargaining tool.⁵¹ The vicious rationale is that to suggest or prove one has the military capability to perpetrate mass sexual violence is to assert one's relevancy as an armed actor. In a setting like the DRC, where several dozen factions of armed groups operate, distinguishing oneself as notorious and a particular threat increases the likelihood of being included at a negotiating table and, once there, the weight of one's demands. Columbia University scholar Séverine Autesserre has posited that elevating the notoriety of rape over other crimes may encourage less powerful armed groups to see it as a tactic. "During my research I heard concern about seeing more sexual violence because armed groups are threatening or using sexual violence as a way to be noticed, to show that they have spoiler potential and should be taken seriously."⁵²

Broadening and deepening the framing of the problem of sexual violence

The need for large amounts of funding to support people who have survived sexual violence is irrefutable. The criticism lies in the almost exclusive focus of the programmes on the attendant results of the violence, which may be cynically inflated, while ignoring the dynamics underlying it. In particular, a key fact obscured by the emphasis on "rape as a weapon of war" in the DRC is that civilians make up a large segment of the perpetrators. A study released in 2011 by the *American Journal of Public Health* put the percentage of women in the provinces of North and South Kivu in the eastern conflict zone who reported intimate partner sexual violence at 19–20%, using data from 2007. More recently, HEAL Africa reported on a distressing trend: "Civilians have become the main

48 *Ibid.*, p. 60.

49 Charles-Guy Mackongo, interview by email, 22 January 2013.

50 *Ibid.*

51 Séverine Autesserre, above note 3, p. 16.

52 Séverine Autesserre, interview by phone, 24 October 2014.

perpetrators of sexual violence”, a 2012 hospital report stated, noting that more than half of the patients treated at the facility that year were violated by civilians.⁵³

The Guardian’s coverage of the HEAL Africa report also provides an example of how some media present statistics in a way that perpetuates a pre-determined narrative about the DRC, of rebels and soldiers systematically or opportunistically raping civilians – even when the information from which the news story draws does not fit the picture. *The Guardian* reported:

The number of women and children raped in the Democratic Republic of the Congo has risen dramatically because of a surge in rebel militia activity, according to a local health organisation report. Heal Africa, which runs a hospital for rape victims in the eastern city of Goma, said it had registered 2,517 cases in the first half of this year.⁵⁴

In fact, the HEAL Africa report linked to in the news article mentions the M23 rebellion just once and focuses instead on the role of civilians as the primary perpetrators of sexual violence.

“As long as you don’t take into account the civilian side of sexual violence, our interventions will only focus on part of the problem”, said the former adviser at MONUSCO, whose portfolio focused on sexual violence. “In the DRC you don’t see many organizations that are even open to having any new debate on sexual violence. You see that many organizations mainly exist because there is funding and they will adapt their activities to whatever they can get funds for.” She said that high-ranking UN officials privately acknowledged the complex causes of sexual violence in the DRC but had been reticent to expand the focus of programmes or even highlight the civilian nature of violence in reports, arguing that the issue stirred up political sensitivities.⁵⁵

An underlying challenge plaguing efforts to combat sexual violence, or virtually any other humanitarian need, is that resources – even for a relatively well-funded issue such as ending wartime rape – are limited, creating a practical imperative to define who a project will serve. As the authors of the *Human Security Report 2012*, which focused on mainstream narratives about sexual violence and war, wrote:

Peacekeepers lack the resources to tackle conflict-related sexual violence effectively, let alone the more pervasive problem of wartime domestic sexual violence. And ... because domestic sexual violence is a persistent and endemic problem, it is difficult to characterize it as an emergency issue requiring humanitarian assistance.⁵⁶

53 “North Kivu, Sexual Violence Targets Children”, HEAL Africa Press Dossier, 2012, available at: www.healafrika.org/wp-content/uploads/2012/09/sexual-violence-targets-children-2012.pdf.

54 “Congo Rape Numbers Rise Dramatically”, *The Guardian*, 19 October 2012, available at: www.theguardian.com/world/2012/oct/19/congo-rape-number-rise-rebels.

55 Former MONUSCO adviser on sexual violence, interview by phone, 18 December 2012.

56 *Human Security Report 2012*, above note 3, p. 52.

They recommended supplementary research to understand why many war-affected countries have low or negligible levels of reported sexual violence, suggesting that the findings could reveal valuable insights to inform prevention programmes.⁵⁷ Further investigation might also examine how chronic insecurity and/or extended periods of conflict correlate with an increased prevalence of domestic sexual violence in the DRC. Understanding that link, should it exist, may open up occasions for assisting additional beneficiaries under a “humanitarian” categorization, without subjecting them to the ethical quandary of having to adhere to a rigid narrative in order to be eligible for services.

Amid the focus on responding to cases already committed and survivors already violated, little attention is paid to the root causes of sexual violence, most sensitively the undercurrents not directly linked to the DRC’s long war. Pinpointing issues of masculinity or engrained gender dynamics is fraught with challenges, as evidenced by the few international sources willing to be quoted on the record, out of both personal and professional concerns. Congolese police commissioner David Bodeli Dombi showed no such reservations. “We can’t just work with the victims and the perpetrators. We have to work with our children, to educate and sensitize”, he said, explaining that lack of education and the disempowerment of women were at the foundation of the DRC’s high rate of sexual and gender-based violence. “We’re forgetting a huge section of victims because we’re not doing much to address domestic violence”, he noted, adding that those gender relations are “the heart of the problem”.⁵⁸

To illustrate, Bodeli Dombi showed a hit Ugandan music video he had saved on a DVD. The pop song opens with a scene of three young men in a field, grazing cattle. Three young women, conservatively dressed in long skirts, come along the road laughing and talking until they are startled by the men, who chase them, splitting up, each in pursuit of a woman. One woman, played by Ugandan pop star Lady Mariam, is tackled to the ground; the scene fades as one of the men climbs on top of her. The next scene opens with Lady Mariam walking down the same road, alone this time, wearing a strapless dress and high-heeled shoes. The young man meets her and chivalrously lifts the wire fence to lead her away. She sings and dances for him. In the end they get married. “A music video like this would cause an outrage” in other parts of the world, Bodeli Dombi said. In contrast, it is a popular song and video in the eastern DRC and regularly plays on television. With these gender undercurrents as a backdrop, the commercialization of sexual violence is now “based in our extreme poverty”, Bodeli Dombi explained. The concept of lying about rape “seems impossible from an Occidental perspective”, he said, but the stigma associated with rape has faded because people understand that tapping into the resources available is a straightforward calculation when options are limited.⁵⁹

57 *Ibid.*, p. 7.

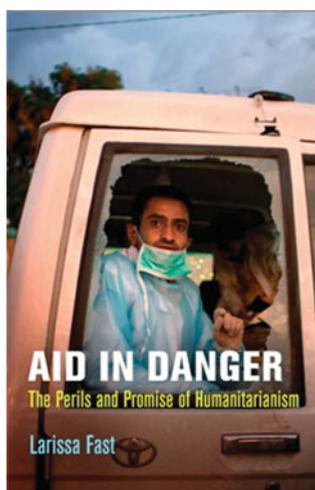
58 David Bodeli Dombi, interview, Goma, DRC, 16 June 2012.

59 *Ibid.*

Conclusion

The concentration of coverage of the DRC's conflict on the stories of survivors of sexual violence, predominantly wartime rape, has proven a powerful narrative for a range of actors, most of whom are likely well intentioned. There is value in publicizing and focusing on a particularly unjust or egregious issue in humanitarian crises, because resources are finite and attention spans are limited. The rationale, followed to its aspirational conclusion, holds that the startling, provocative story can be the entry point for further engagement that could lead to broader change. But more consideration needs to be devoted to potential adverse effects directly produced by interventions – particularly those driven by the emotional reaction, focusing on victims, and not a broader political analysis of why such disturbing atrocities occur in the first place.

BOOK REVIEW



Aid in Danger: The Perils and Promise of Humanitarianism

Larissa Fast*

Book review by Michaël Neuman, Director of Studies,
MSF-Crash.

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The number of studies on humanitarian security has increased steadily since the mid-1990s. Most of the available literature is comprised of publications written by security experts, setting the tone for a dominant discourse where an alleged deterioration in the security environment requires humanitarian organizations to professionalize their security management. Prominent among such publications are *Operational Security Management in Violent Environments*¹ and the more recent *Can You Get Sued?*, a policy paper on the legal liability of international humanitarian aid organizations towards their staff.² Studies by academics have been rare, although they too have increased in recent years.³ Using a critical approach, scholars such as Mark Duffield⁴ have appraised the security apparatus, analyzing notably the roots and consequences of the “fortified aid compound” and examining how aid workers are being encouraged to view and accept segregated living as a necessary, and even desirable, evil. And, in a study commissioned by Groupe URD, Arnaud Dandoy critically explores the social and geographical segregations stemming from the normalization of security practices in Haiti.⁵

* Published by University of Pennsylvania Press, hardcover, 2014.

The title and first page of *Aid in Danger: The Perils and Promise of Humanitarianism* could give the reader reason to believe that author Larissa Fast is a firm advocate of the “normalization” discourse examined by Duffield and Dandoy, and of its consequences. But this is not the case, as Fast’s opening arguments – “Aid is in danger”, “Humanitarianism in crisis” or that “dangers to aid workers have increased” – are preliminary unfortunate statements in an otherwise very welcome book. A scholar and a former aid worker herself, Fast is one of the most prolific academics on the subject. In her book, she brings elements of criticism to the dominant discourse on the security of aid workers and attempts to synthesize the terms of the debate on humanitarian security. Her main intention is to challenge what she dubs “humanitarian exceptionalism” – the mythical image of humanitarians – whereby aid workers should be protected at all times and in all places by virtue of the uniqueness of their function and moral standing. Pivotal to Fast’s argument is the view that the “internal vulnerabilities” of aid organizations and their workers, such as individual behaviour or organizational lapses, are decisive but unacknowledged factors in the security incidents that affect them. A failure to adequately conceptualize these factors inhibits a more in-depth, theoretical understanding of the causes and dynamics of violence.

Comprising six chapters – and somewhat repetitive at times – the book provides an analysis of several significant events that have occurred in the area of aid security, a criticism of the dominant narrative on the security of aid workers, an examination of the multiple causes behind the violence committed against aid workers, a historical review and a description of the professionalization and consequences of humanitarian aid security management. It concludes with an appeal to reinstate “humanity” at the core of security management.

History and statistics

Fast attempts “to debunk the myths of the inviolability of aid workers and the recent genesis of targeted attacks”.⁶ Arguing that aid workers have long been targeted, she makes a short detour through history in which she recalls “early stories of security

1 Overseas Development Institute (ODI) Humanitarian Practice Network, *Operational Security Management in Violent Environments*, 2nd ed., London, December 2010 (1st ed. 2000).

2 Edward Kemp and Maarten Merkelbach, *Can You Get Sued? Legal Liability of International Humanitarian Aid Workers Towards Their Staff*, Security Management Initiative, Geneva, November 2011.

3 See, for instance, Larissa Fast, “Characteristics, Context, and Risk: NGO Insecurity in Conflict Zones”, *Disasters*, Vol. 31, No. 2, 2007, pp. 130–154; Jean S. Renouf, “Understanding How the Identity of International Aid Agencies and Their Approaches to Security Are Mutually Shaped”, PhD thesis, London School of Economics and Political Science, 2011; Elise Leclerc-Gagné, “The Construction of the Humanitarian Worker as Inviolable Actor”, PhD thesis, University of British Columbia, 2014.

4 Mark Duffield, “Risk Management and the Fortified Aid Compound: Everyday Life in Post-Interventionary Society”, *Journal of Intervention and Statebuilding*, Vol. 4, No. 4, 2010, pp. 453–474.

5 Arnaud Dandoy, *Insécurité et aide humanitaire en Haïti: l'impossible dialogue? Décrypter les enjeux des politiques sécuritaires des organisations humanitaires dans l'Aire métropolitaine de Port-au-Prince*, Groupe URD, Port-au-Prince, September 2013.

6 *Aid in Danger*, p. 12.

incidents”;⁷ from the seventy-eight members of the Japanese Red Cross who died during the Russo-Japanese war in 1904–1905 to the Yemeni ICRC guards murdered during an attack on a clinic in 1968 and the two Save the Children staff members killed by a road mine in Biafra during the same year.

Fast shows that while often used to instil the notion that violence against aid workers is increasing, security incident databases have numerous limitations, making interpretation hazardous at best. First, what is most often concluded is that the number of incidents, and therefore casualties, is rising, while neglecting to take into account that the number of aid workers is also growing. This issue of proportions is decidedly thorny. Moreover, Fast adds, where it can be surmised that there is indeed an increase in relative terms in the number of incidents, this is largely due to the over-representation of particularly dangerous countries such as Afghanistan, Somalia and Pakistan. Fast also shares her doubts regarding the reliability of the reporting, as it largely relies on media sources and self-reports by organizations. Finally, she points to the difficulties posed by definition – both in terms of what constitutes a “security incident” and what constitutes an “aid worker” – to assert that the notion that insecurity affecting humanitarian workers is on the increase is really very flimsy. To quote the author, “statistics are more important for what they obscure rather than for what they illuminate”.⁸

The “politicization” discourse and the under-exposure of internal vulnerabilities

Core to the dominant discourse on insecurity is the view that “politicization” has contributed substantially to violence against aid workers. In particular, the so-called blurring of lines between, on the one hand, political and military stakeholders and, on the other, humanitarian organizations is said to cause confusion in the minds of would-be attackers who are apparently unable to differentiate between those whose humanitarian work is driven solely by “humanitarian principles” and everyone else.⁹ Fast disputes this basic assumption – the idea that it is “the context of aid, its politicisation and the corresponding loss of impartiality, neutrality and independence that results in the targeting of aid workers”.¹⁰ Referring to Laura Hammond¹¹, she argues further

7 *Ibid.*, p. 67.

8 *Ibid.*, p. 81.

9 For a sample of a very rich literature making these arguments, see for instance Care International, *A New Year’s Resolution to Keep: Secure a Lasting Peace in Afghanistan*, London, 13 January 2003; Nellie Bristol, “Military Incursions into Aid Work Anger Humanitarian Groups”, *Lancet*, Vol. 267, No. 9508, 4 February 2006, pp. 384–386; or the more recent Stella Dawson, “Aid Workers in Conflict Zones No Longer Immune, Now Targeted”, Thomson Reuters Foundation, 20 November 2014, available at: www.trust.org/item/20141120045856-v6h6d (all internet references were accessed in November 2014).

10 L. Fast, above note 6, p. 99.

11 Laura Hammond, “The Power of Holding Hostage and the Myth of Protective Principles”, in Michael Barnett and Thomas G. Weiss (eds), *Humanitarianism in Question: Politics, Power, Ethics*, Cornell University Press, Ithaca, NY, 2008, pp. 172–195.

that the “blurred lines” argument underestimates the intelligence of belligerents and civilians, since it assumes they are too ignorant or naive to know the difference.¹² While recognizing that, if put in its proper place, the politicization of humanitarian assistance could be a problem, Fast insists that “these axiomatic discourses, rooted in central debates of humanitarianism, compose the primary explanations for the violence aid workers face. ... Unfortunately they neglect other contributing factors and the constellation of dimensions as an interrelated whole.”¹³

She calls the reader’s attention to two events – the bombing of the UN headquarters in Baghdad in August 2003 and the killing of seventeen Sri Lankan Tamil ACF staff members in Muttur in August 2006 – and to a series of short stories inspired by real incidents to show how internal vulnerabilities and the actions of individuals and organizations are factors in the occurrence of security incidents. In the first case, Fast asserts that the UN failed to address key vulnerabilities that might have prevented the attack,¹⁴ while in the second, she points to ACF’s “questionable security-management decisions”,¹⁵ thereby placing external causes within a larger web of causations. Consequently, Fast calls for an exploration of “the analytical framework that unmasks the role of individuals and institutions in order to understand the causes of violence”,¹⁶ an exploration which is often neglected to the benefit of a discourse on “politicization” that tends to exceptionalize aid workers. Conversely, Fast argues, aid workers typically are “ordinary people”¹⁷ and “the ‘self-generated’ risks – risks and vulnerabilities that occur as a result of the behaviour and actions of individuals – are integral to the realities of aid work and security management”.¹⁸ In no case can those mistakes justify an attack, provided they do not amount to direct participation in hostilities. They do, however, need to be examined when one intends to understand the circumstances under which attacks occur.

Professionalization

As the debate on the security of aid workers has become progressively tainted by a “discourse of fear”,¹⁹ Fast describes how the management of humanitarian security has gone on to become a business opportunity for professionals working in risk prevention and management. This was notably the case in the 1990s after the genocide of the Tutsis in Rwanda and in the aftermath of the killings of six ICRC delegates in Chechnya in 1996, which resulted in more attention being paid to

12 *Aid in Danger*, p. 103.

13 *Ibid.*, p. 11.

14 *Ibid.*, p. 20.

15 *Ibid.*, p. 30.

16 *Ibid.*, p. 129.

17 *Ibid.*, p. 136.

18 *Ibid.*, p. 145.

19 After David L. Altheide, *Creating Fear: News and the Construction of Crisis*, Aldine de Gruyter, Hawthorne, 2002.

the dangers of humanitarian work. It was against this background that guidelines and manuals began to be published, standardized policies and procedures emerged and a market for security professionals was established. Of course, as Fast explains, this shift did not occur in isolation and was integral to the general trend among humanitarian agencies for standardization and professionalization implemented over the previous twenty years. However, she goes on to lament:

As aid agencies have grown and matured, they have moved closer to professionalisation and career paths and away from volunteerism and charity. This translates also to the sought-after skill sets, which now emphasise technical expertise over relationally proficient skills, such as empathy.²⁰

Discussion

A well-informed challenge to the dominant security narrative, Larissa Fast's *Aid in Danger* provides an opportunity to open up a discussion on the three aforementioned aspects: history and statistics, the discourse on politicization and its impact on the humanitarian security discourse, and lastly, the professionalization of the humanitarian sector. The book makes a useful contribution to the debate on the security of the humanitarian worker, a debate that is all too often tainted by general and decontextualized explanations delivered by security experts intent on convincing us of their own utility.

How did the humanitarian exceptionalism discourse come to gain so much influence? A quick look at the evolution of the debate on security shows that it was in the mid-1990s that concerns about the insecurity of aid workers first appeared as a topic for institutional discussion. This was a time when most humanitarian workers were confronted with massive violence against civilians – to which they were not immune either. All that is required is to recall the wars in Somalia, West Africa, Chechnya, the African Great Lakes and the former Yugoslavia to understand how legitimate this growing concern was at that time. The seminal *Operation Security Management in Violent Environments* was published in 2000, while the ICRC and ECHO held their first workshop and seminar on humanitarian security in 1997 and 1998 respectively. A couple of years later, the advent of statistics on security was to have significant consequences on the shaping of humanitarian security. Yet, together with Fast, most researchers and practitioners – Koenraad van Brabant²¹ and Arnaud Dandoy²², to name but two – who have taken the time to conduct a proper analysis of humanitarian security statistics have highlighted the limitations of the data. Indeed, when

20 *Aid in Danger*, p. 163.

21 Koenraad van Brabant, *Incident Statistics in Aid Worker Safety and Security Management: Using and Producing Them*, European Interagency Security Forum, London, March 2012.

22 Arnaud Dandoy and Marc-Antoine Pérouse de Monclos, “Humanitarian Workers in Peril? Deconstructing the Myth of the New and Growing Threat to Humanitarian Workers”, *Global Crime*, Vol. 14, No. 4, 2013, pp. 341–358.

looking back at this “*decennium horribilis*”, it is hard to fathom how the present time could ever be viewed as the worst yet for humanitarians.

These remarks are not meant to imply that nothing has changed and that there are no legitimate causes for concern. The growth in absolute numbers of security incidents does have a measurable impact on the perception of security – even if in relative terms the deterioration in humanitarian security is much less obvious. Incidents such as intrusions by armed men in hospitals, attacks on health personnel and looting do occur, for a variety of different reasons. Moreover, it is undeniable that kidnapping, while nothing new, has never appeared to be so widespread, and the interconnections between the perpetrators are indeed truly worrying. However, these specific threats apply only to a limited number of countries and, although negotiating access is certainly a challenge if not well-nigh impossible in some regions of Somalia and Syria, aid workers have never been so numerous and so active at the heart of war zones.

The statistics nonetheless conspire to trigger a discourse of fear, one that “exceptionalizes” humanitarian workers who may find themselves faced with an unprecedented level of threat. Politicization came as a neat and convenient argument to explain these new threats, despite all the limits of the statistics that Fast quite rightly emphasizes. Yet, aid agencies do not operate above and beyond politics, and there is a space for aid agencies and the authorities to negotiate and seek common ground. It is only by acknowledging the reality of the power struggles in which humanitarians find themselves entangled that they will be able to confront the truly complex situations they face. In this regard, principles help little. Indeed, when exploring the role of humanitarian “principles”, the definitions and interpretations of which are much debated,²³ it may be worth considering that deliberate, non-neutral assistance could actually keep humanitarian workers safer. For instance, based on the experience of Médecins Sans Frontières (Doctors Without Borders, MSF) in the 1980s, political embedding – be it in Angola, Eritrea or Afghanistan – might have provided more protection than working on all sides of a conflict, as went on to become the norm in the 1990s. Although having recourse to principles – of neutrality and impartiality, for instance – when attempting to dialogue with warring parties can prove useful, in general the adage “principles protect” does need to be challenged.²⁴

At this point, the reader must remember how the “politicization” argument supports the humanitarian organization’s reluctance to expose its internal vulnerabilities, even if these play a fundamental role in the occurrence of security incidents. Here the author, only too aware, enters complicated territory. But she justifies her position convincingly by claiming that the fear of putting the blame on the victim should not dispense an organization from the need to conduct a thorough review of the circumstances behind an incident.

23 Rony Brauman, “Médecins sans Frontières and the ICRC: Matters of Principle”, *International Review of the Red Cross*, Vol. 94, No. 888, December 2012, pp. 1523–1535.

24 See Michaël Neuman, “Is Medical Care Really Under Fire? A Debate on Humanitarian Security”, MSF UK Opinion and Debate, 19 November 2014, available at: www.msf.org.uk/article/opinion-and-debate-is-medical-care-really-under-fire-a-debate-on-humanitarian-security.

So, if the violence is not new, what is? It seems that if one major evolution in humanitarian security is to be singled out, it is most definitely in the way that security management has been impacted by its “professionalization”. One of the consequences of this evolution has been the patent centralization of security management to the detriment of the autonomy of field staff; another is, as Fast says, the emergence of the “fortified aid compound”. There are a range of factors to explain this professionalization and the spiralling impact of bureaucratic procedures in the realm of humanitarian security. Fast does not say enough about the push factor behind such an evolution, and further research is required to better understand how the humanitarian security sector developed.

If Fast’s central argument is that aid insecurity is often misunderstood and misrepresented, her main message is a call to restore a Solferino-inspired “relational approach”, embodied in the principle of humanity, a reference to history that leads to a seemingly paradoxical situation. While *Aid in Danger* is a constructive appraisal of “the situation is worse than before” discourse, she refers to another “Golden Age” that never really existed.²⁵ Indeed, as much as Solferino is a founding moment of contemporary humanitarianism, is it in fact that pure moment of compassion and relation that Fast refers to?²⁶ I am very doubtful that purity of intents is ever to be found, no more at Solferino than during the Biafra war – another event often invoked in support of a mythical humanitarian history. There is no doubt that, while neglecting the “relational approach” has put humanitarians behind walls, any principled-based approach must be carefully thought through because relying on the principle of humanity alone will not respond to concerns about the safety of humanitarian workers.

The failure of protective and deterrence measures to safeguard aid workers often results in more, rather than less, tough security measures. The tendency is to erect and reinforce the walls, rather than reflect on why they are there. Doubts and controversies about the consequences of normalizing aid security confirm the urgent need for a critical analysis of the drive towards professionalization that is sweeping us along and an examination of the different options available for developing alternatives to the prevailing security model. However, I would not subscribe in full to Fast’s idea that “in these ways, the security agenda has trumped the relational ethos of humanitarianism”,²⁷ not because I support erecting walls, but rather because overly relying on a “relational approach” seems somewhat naive and underestimates the role that political negotiation can play. “Proximity” was, for a long time, MSF’s watchword for security management. As in other organizations, that concept has now been replaced by one of “acceptance”, too often perceived as being equivalent to “being nice”. It is undoubtedly critical for any humanitarian agency to reflect on its relations with all the components of the society in which it intervenes. However, while not ignoring the importance of negotiations with political players, Fast expands little on these processes. Neither

25 See Corinne Chaponnière, *Henry Dunant: La croix d’un homme*, Perrin, Paris, 2010.

26 *Aid in Danger*, pp. 37–45.

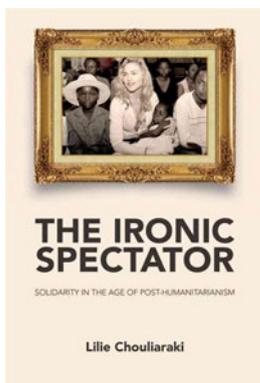
27 *Ibid.*, p. 193.

concept – proximity or acceptance – seems to capture the inherently political nature of humanitarian action or the extent to which the security of aid workers actually depends on the aid organization’s capacity to engage with all the different stakeholders in order to reach acceptable compromises. In this regard, Fast’s deconstruction of the humanitarian security discourse is convincing but her proposal to reframe the discussion based on a rather naive reading of history and principles is somewhat tenuous.

However, these paradoxes reveal the extent of the continuing debate on aid security. The Overseas Development Institute (ODI) held a book launch in London on 19 August 2014, which coincided with World Humanitarian Day (WHD). WHD was accompanied by a Twitter hashtag, “#humanitarianhero”, sanctioning the “humanitarian exceptionalism” discourse and putting the fallen humanitarian worker on a pedestal as a victim of belligerent passions and a target of groups who no longer respect either the sanctity of these workers or the humanitarian principles that are supposed to protect them. A ceremony was held at the memorial to “innocent victims” at Westminster Abbey immediately after the ODI event.²⁸ In this context, earnest consideration of Larissa Fast’s arguments is the best way to stimulate a debate that is otherwise not happening, in particular when it comes to internal vulnerabilities or the right to express a critical voice in the face of an inherently flawed dominant narrative on exceptionalism.

28 For a critical analysis of the event, see Eleanor Davey, “Memorialising Humanitarians”, *History & Humanitarianism*, 19 August 2014, available at: <http://aidhistory.wordpress.com/2014/08/19/memorialising-humanitarians/>.

BOOK REVIEW



The Ironic Spectator

Lilie Chouliaraki*

Book review by Jean-Yves Clémento, ICRC Spokesperson for Eastern Africa.

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Humanitarian organizations and media are closely intertwined. As early as 1899, Gustave Moynier, the first president of the International Committee of the Red Cross (ICRC), attributed the success of emerging humanitarian work to the new technology of his time – the telegraph – that revolutionized the speed of information. For Moynier, the telegraph allowed everyday spectators to know every detail of any event of war at the speed of light.¹

More than 100 years later, the Internet and social media have brought the speed of information to a level that Gustave Moynier could hardly have imagined. Humanitarian agencies have embraced innovation and new technologies, fine-tuning their communication strategies in order to better pass on their messages regarding the plights of those who suffer from armed conflicts or natural disasters, to convince important stakeholders and public opinion, or increasingly, to get funding. Over the last four decades, especially since the end of the Cold War, so as to attract money and the attention of the public, humanitarian organizations have developed increasingly sophisticated communication strategies using new techniques of marketing, advertising and branding, targeted appeals, and missions of Goodwill Ambassadors.

The Ironic Spectator by Lilie Chouliaraki provides a deep insight into this process of the “marketization” of communications of humanitarian agencies.

* Published by Polity Press, Cambridge, 2013. This book review was written in a personal capacity and does not necessarily reflect the views of the ICRC.

According to Chouliaraki, three factors have led to this trend. First is the collapse of the big narrative since the end of the Cold War that has led to the celebration of the neoliberal lifestyle. By this, she means the increasing importance of the self and the effort to give people the impression that they can choose and buy whatever they want rather than to find ways to change the world and to look at solutions beyond immediate consumption. Secondly, due to an increasing number of actors and competition in the humanitarian sector, humanitarian agencies appear increasingly to be resorting to aggressive marketing techniques for fundraising. Nearly every week, we find a letter in our post box or an electronic newsletter in our emails asking for funding. Finally, the emergence of new media (the Internet, social media) has encouraged self-expression. Described by Manuel Castells as “mass self-communication”,² the Internet has allowed people who were previously mere consumers of information to become producers. This has facilitated the expression of emotions, according to Castells.

In her book, using examples from four realms – namely, public appeals, the use of celebrities, rock concerts and news production – Chouliaraki demonstrates clearly how the communication of aid has increasingly focused on consumerist attitudes and argues that it has fostered an “ironic” attitude among the audience. By “irony”, the author refers to “a disposition of detached knowingness, a self-conscious-suspicion vis-à-vis all claims to truth, which comes from acknowledging that there is always a disjunction between what is said and what exists” (p. 2).

The evolution of public appeals is analyzed in Chapter 3. Chouliaraki starts from the pictures of emaciated children published at the end of the 1960s during the Biafra conflict, which were used to appeal to the audience’s sense of indignation. The author then looks at the approach used in the 1990s of trying to portray a more positive representation of crises with pictures of smiling children. She ends with more recent modes of communication, sophisticated appeals that combine graphic animations with web links – for instance, the World Food Program’s “No Food Diet” campaign in 2006, which was aimed at exposing the fact that millions of people went hungry in the world despite huge amounts of food production. It compared, for instance, the regular diet of an American and an African family. Another example is the Amnesty International campaign of 2008, “The Bullet. The Execution”, which, through an animated cartoon, portrays the execution of a prisoner and calls for action. The main change over time has been a shift away from the photo-realism of the 1960s and towards campaigns that seek to establish links with the everyday reality of potential donors and to encourage the fulfilling of the self. All is encompassed in the logic of corporate branding to make them “buy a product”.

The same process is described in Chapter 4, in which the author analyzes the use of celebrities to promote a cause. Chouliaraki starts with the actress

1 Rony Brauman and René Backmann, *Les médias et l’humanitaire: éthique de l’information ou charité-spectacle*, CFPJ, Paris, 1996, pp. 15–16.

2 Manuel Castells, *Communication Power*, Oxford University Press, New York, 2009, p. 55.

Audrey Hepburn, who in the late 1980s, as a UNICEF Goodwill Ambassador, travelled to countries affected by humanitarian crises to describe what she saw based on her own experience of being a mother and a post-World War II child. Her performance is described by Chouliaraki as a “de-celebrated altruism” and a genuine witness of the problems of the world. By contrast, Angelina Jolie, also Goodwill Ambassador but for UNHCR at the beginning of the twenty-first century, is seen by Chouliaraki as an emblematic contemporary figure. While Hepburn started her role as Goodwill Ambassador after her cinema career was over, Jolie did so at her peak and used it to promote herself. Rather than that of being a witness to a situation, according to Chouliaraki, Jolie’s contribution is mainly an expression of herself and her feelings.

In Chapter 5, Chouliaraki analyzes the increasingly sophisticated use of rock concerts to promote a cause. She contrasts Live Aid, held in 1985, an event almost spontaneously organized to denounce the effect of the famine in Ethiopia, with Live 8, ten live concerts organized in 2005 to focus on the end of debts in the developing world. While the first concerts of the 1980s were aimed at alluding to a common humanity, the latter used several techniques such as online petitions and digital screens aimed not only at funding but also at raising awareness, and policy change during the G8 meeting at Gleneagles. For Chouliaraki, the two events are emblematic as they show an increasingly strategic use of rock concerts – not just as a call for saving the world, but also as a way of drawing attention to pragmatic and measurable objectives.

In Chapter 6, Chouliaraki describes the evolution in the production of news from the central role of journalists in their function as witnesses to crises (for instance, during the earthquake in Tangshan, China, in the 1970s) to the multiplication of voices that appeared through the use of live blogging after the earthquake in Haiti in 2010. The main point Chouliaraki makes is that the multiple voices give not only the opportunity to have a broader range of points of view, but also that the mix of posts from professional journalists, activists or simple citizens in a dispersed narrative structure, cloaked in layers of emotions, makes it increasingly difficult to find the truth, to establish facts from purely emotional texts. Chouliaraki convincingly argues that people have increasingly turned into spectators more interested in doing good for themselves than for others. This trend is described as “post-humanitarian” behaviour. The “spectator’s” attitude is moving from pity to irony and narcissism. By clicking on the “donate” or “like” button, one can give the impression of becoming an activist who does good and feels good rather than being a real “cosmopolitan citizen” who is interested in distant strangers and in the complexity of the world.

I see the trend of “marketization” of communications in my daily experience as a spokesperson for the ICRC. The “donate” button appeared in 2013 on the front page of the institutional website of the ICRC, and the link between communication and fundraising is becoming narrower. There is also a growing use of social media, mainly Twitter, by several heads of the institution that illustrates a growing personification of humanitarian communication. However, in an institution like the ICRC, humanitarian communication remains

very sober and focused on fostering an environment conducive to respect for people affected by conflicts, on facilitating access to them and on promoting international humanitarian law rather than on attracting money.³ Modest public appeals and key diplomatic gatherings remain more important than aggressive public appeals. In his travels, the president of the ICRC, Peter Maurer, speaks more of the humanitarian situations and contexts at issue than of himself. ICRC presidential missions have broader objectives than pure fundraising. Even if used, graphic animation remains limited.

While Chouliaraki's research gives us a good insight into the marketization trend, her book is arguably too focused on one category of humanitarian agencies: broadly speaking, Western agencies that have based their communications mainly on funding or pure public advocacy. It would be interesting to see further research on the impact of the "marketization" trend on the narratives of other humanitarian institutions, such as the ICRC, that are mainly seeking their funding from States and not from private donors, and which do not only rely on public communication to convince. It would also be worth carrying out research on non-Western organizations, for instance on faith-based aid agencies, which are becoming increasingly important players in the humanitarian field, especially in the Middle East and in some East African countries, and to see how the marketing trend influences them.

Despite the evolution described in her book, Chouliaraki remains a positive advocate for the potential of humanitarian communication to raise awareness and to make the audience genuinely cosmopolitan and engaged, as long it uses the virtues of theatre, meaning to operate "by distancing the spectator from the spectacle of the vulnerable other through the objective space of the stage (or any other framing device) whilst, at the same time, enabling proximity between the two through narrative and visual resources that invite our empathetic judgement towards the spectacle"⁴ – in other words, to keep communications at the right distance while still managing to invite spectators to have emotions and judgement, feelings of pity, indignation, fear, guilt or sympathy, and to act.

In my opinion, Chouliaraki's book shows that what is at stake is the credibility of and the trust towards humanitarian organizations. Too much marketization, reconstruction of reality and promotion of the self and emotions will inevitably lead to exaggerations in narrative, mistakes, loss of credibility and, in the end, compassion fatigue. While I do not think that the trend towards the promotion of the self, and the pursuit of feeling good, is new, the quest for individualism has maybe never been so high. The challenges for humanitarian agencies are to adapt to new communication techniques, to interact with a more active audience, and to remain credible. What is essential in humanitarian communication is to pursue an honest quest for truth and realistic moral engagement. If humanitarian organizations follow only the marketization trend,

3 See ICRC, *ICRC Prevention Policy*, Geneva, 2010, available at: www.icrc.org/eng/assets/files/publications/icrc-002-4019.pdf.

4 *The Ironic Spectator*, p. 22.

feeding consumerist culture and instant gratification, they risk losing their credibility and, more importantly, the trust both of the public seeking to help and of the parties to the conflict. *The Ironic Spectator* is a good warning that reminds us of the necessity of a solid moral engagement based on knowledge of the complexity of environments, and their historical, political and structural backgrounds. Such an understanding of contexts where aid is delivered is the bedrock of needs-based advocacy and of action beyond quick consumption and online activism.

BOOKS AND ARTICLES

New publications in humanitarian action and the law

This selection is based on the new acquisitions of the ICRC Library and Public Archives

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Air warfare

Books

Peter Adey and Mark Whitehead, *From Above: War, Violence and Verticality*, Hurst, London, 2013, 376 pp.

Program on Humanitarian Policy and Conflict Research at Harvard University, *Manual on International Law Applicable to Air and Missile Warfare*, Cambridge University Press, Cambridge, 2013, 441 pp.

Articles

Wolff Heintschel von Heinegg, “Aerial Blockades and Zones”, *Israel Yearbook on Human Rights*, Vol. 43, 2013, pp. 263–295.

Christopher J. Markham and Michael N. Schmitt, “Precision Air Warfare and the Law of Armed Conflict”, *Israel Yearbook on Human Rights*, Vol. 43, 2013, pp. 297–319.

ICRC Library and Research Services

The ICRC’s Research and Library Service is a public resource presently offering more than 25,000 books and articles, as well as 300 journals. The collection focuses on international humanitarian law, the work of the ICRC and the International Red Cross and Red Crescent Movement, the challenges of humanitarian work and issues of humanitarian concern in war, and the history and development of armed conflict. Other topics include international criminal law, human rights, weapons, detention, and refugees and displaced persons. The ICRC has acquired publications and periodicals since 1863 and holds specific collections including rare documents dating back to the foundation of the organization.

Arms

Books

ICRC, *Nuclear, Radiological, Biological and Chemical Events*, ICRC, Geneva, July 2013, 3 sections.

ICRC, *Protecting Civilians and Humanitarian Action through the Arms Trade Treaty*, 2nd ed., ICRC, Geneva, November 2013, 4 sections.

Thérèse Macabiès Delpech, *La dissuasion nucléaire au XXI^e siècle: Comment aborder une nouvelle ère de piraterie stratégique*, Odile Jacob, Paris, 2013, 301 pp.

Mark Fitzpatrick, *Overcoming Pakistan's Nuclear Dangers*, IISS Adelphi Book 443, March 2014, 171 pp.

Mélanie De Groof, *Arms Transfers to the Syrian Arab Republic: Practice and Legality*, GRIP, Brussels, 2013, 55 pp.

Sébastien Gallais, *Cadre juridique de l'emploi des drones au combat*, L'Harmattan, Paris, 2013, 192 pp.

Daniel M. Gerstein, *National Security and Arms Control in the Age of Biotechnology: The Biological and Toxin Weapons Convention*, Rowman & Littlefield, Lanham, MD, 2013, 234 pp.

Rob O'Gorman and Chris Abbott, *Remote Control War: Unmanned Combat Air Vehicles in China, India, Iran, Israel, Russia and Turkey*, Open Briefing, London, September 2013, 80 pp.

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