

Systematic Rape as a Weapon of War

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Systematic Rape as a Weapon of War

Abstract

The aim of this paper is to highlight critical areas of concern in International Humanitarian Law (IHL) and domestic law which have, thus far, hindered the implementation of strategic objective E.3 of the United Nations Platform for Action: “rape, including systematic rape of women in war situations...are abhorrent practices that are strongly condemned and must be stopped immediately” (Fourth World Conference on Women 1995: 2).

Although institutions, such as the International Tribunal for War Crimes in the Former Yugoslavia, have been initiated to prosecute the perpetrators of crimes against humanity, the issue of systematic rape is disparaged by the discourse of those institutions. I will highlight three areas of concern; the laxity of the language used in human rights documents relating to women in armed conflict; the limitations of jurisdiction of international and internal law; the role of women in investigations and prosecution of war criminals. I will discuss the experience of rape and abuse through reports from women and Non-Governmental Organisations such as the Human Rights Watch (HRW). I will make recommendations as to what actions can be taken by effected nations and the international community - including governments and NGOs - to bring to justice perpetrators of systematic rape.

Reference

Fourth World Conference on Women. 1995. ‘Women and Armed Conflict’, *United Nations Platform for Action*.
[<http://www.un.org/womenwatch/daw/beijing/platform/armed.htm>] Accessed May 2000.

Experience

Rape serves to drive women and their communities out of the country, to break the morale of the victim's community and as a form of interrogation. The perpetrators of these crimes are often soldiers, paramilitary groups, local police and civilians (Niarchos 1998: 656). There have also been reports of rape committed by UN Peacekeepers during armed conflict. Rape camps also fulfill an horrific part of military strategy where women are continually subjected to terrorism.

Investigators have established three ways in which the experience of war rape affects women.

First, one of the major documented strategic functions that rape serves is genocide or ethnic cleansing.

- Genocidal rape is used to genetically annihilate ethnic groups and destroy their cultural traditions and rituals.
- In rape camps, women have reported being repeatedly raped and periodically examined by gynaecologists. If found to be pregnant, the women are held captive until an abortion is not possible and the pregnancy must be carried to term.
- The birth of war-rape children corrodes the victimised population through demoralisation, dispersion and population growth.
- However, the HRW (1995: 3) found that forced pregnancy was used to further humiliate the victims by taunting them and compelling them to carry the pregnancy to term.

Second, rape has been used to undermine cultural traditions such as important coming of age rituals for young girls.

- HRW (2001: 1) reported that during the 1997 coup in Sierra Leone, the Armed Forces Revolutionary Council (AFRC: rebel faction of the Sierra Leone Army) in several communities forced fathers to watch as their daughters were raped during this sacred ritual. There are also reports of boys as young as 11 raping middle aged women.

Third, “even if no pregnancy results, knowledge of the rape has been sufficient for many men in patriarchal societies to ostracise wives, mothers, and daughters”. Most importantly, and often forgotten, the experience of rape causes severe emotional trauma and deprives women of their personal dignity and privacy from family. Testimonies of rape victims from Kosovo as presented by HRW (2000: 2), highlight that rape was used by enemy forces to terrorise and displace the victim’s communities, to demoralise ethnic groups as well as provide enjoyment for soldiers.

International Law

Geneva Conventions and Protocols dating from 1949 articulate the need for the protection of women in armed conflict. The prohibition of rape as a crime against women is also clearly expressed in Article 76 of Additional Protocol 1. However, the act of rape is left off the list of ‘grave breaches’ and the terms ‘systematic rape’ and ‘war rape’ are not specifically used (HRW 1999: 1).

In the Beijing Platform for Action (FWCW 1995: 2), systematic rape of women in war is described as an “abhorrent practice” that is “strongly condemned and must be stopped immediately”. The document stipulates, “perpetrators of such crimes must be punished”. In 1996 the General Assembly (1996: 2) adopted a resolution specifically regarding rape during conflict, stating that it:

- Strongly condemns the abhorrent practice of rape
- Expresses its outrage that the deliberate and systematic practice of rape has been used as a weapon of war and an instrument of ethnic cleansing
- Reaffirms that rape in the conduct of armed conflict constitutes a war crime, and, under some circumstances, a crime against humanity
- Reaffirms that all persons who perpetrate or authorise crimes against humanity or other violations of IHL are individually responsible and should be held accountable

Problems facing the implementation of institutional mechanisms included the structure and use of IHL discourse, including language and difficulties in collecting evidence against alleged war criminals.

- Rape is still to be defined under IHL as a specific act of violence against women.
- Perpetrators of war-rape now being indicted for rape when it pertains genocide and ethnic cleansing. The Human Rights Watch (1999: 2) states that “although statutory definitions of war crimes do not explicitly specify rape or other sexual assaults, they are typically understood to be acts of torture and inhuman treatment”. They continue by stating that because in this context war-rape constitutes genocide, it is punishable as a crime against humanity. Perpetrators can, therefore, be tried for violating IHL and committing a ‘grave breach’ as listed in Article 147 of the Geneva Protocol.
- Yet rape also occurs as a non-genocidal act during armed conflict, as outlined earlier in this paper. Forced impregnation is therefore “presented as a worse crime than rape itself” and is pivotal in inspiring action from international organisations rather than the impact of rape on individual women.
- Significant progress can be made towards prosecuting war-rapists if war crime definitions are expanded to “include sexual violence committed against women”. Yet, even the outcomes document of the 2000 Beijing Plus Five Conference special session, rape during armed conflict has been omitted from six of the seven paragraphs that dealt with women and armed conflict and rape as a weapon of war was discussed in only paragraph 13.
- There is also a sense of discouragement when women report to have been raped by members protected by the government, such as the military¹. States are reluctant to give evidence which may incriminate one of their own, and the limitations of IHL mean that the Tribunal cannot force the government to release evidence or even when to release it
- It is “no wonder many women have an attitude of "what's the use?" and refuse to come forward to testify”.

¹ Cogan (2000: 409) demonstrated in his account of the Blaskic case tried at the Hague.

Recommendations

- IHL discourse must be altered to emphasise the seriousness of rape during armed conflict. It is important to use the term “systematic rape” in a war context because it highlights the planned and deliberate attack on civilian women. The jurisdiction of IHL must be expanded or developed to enable it to successfully prosecute the perpetrators of war-rape, including members of the police and military. The powers of investigative bodies must include the power of prosecutors to obtain evidence from any party involved in the crime itself and the conflict it occurred in. The internal government must be willing to support the tribunal in investigations and trials.
- Following the implementation of ITPWC in Rwanda and the success of International Tribunal for the Prosecution of War Crimes in the Former Yugoslavia in indicting Slobodan Milosevic, a permanent tribunal must be established.
- It has been demonstrated that the presence of women in influential positions has already made a great impact on the international community. International bodies such as the UN have been forced to give greater attention to the suffering of women during civil war. Hence, it is imperative that more women be present in governmental positions as they may be more willing to adhere to IHL in areas concentrated on women. Victims may hold more hope that their case will be taken seriously if women are involved, therefore, it is also important that more women be present on tribunals as judges and prosecutors, especially when dealing with war-rape.
- Finally, it is imperative that affected nations gain the support of foreign governments and NGOs to effectively conduct investigations into reports of rape, to prosecute war criminals and to establish development and rehabilitation strategies for victims and their communities.

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