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Conflict Related Sexual Violence: Exploring Humanitarian Law and Sexual Violence on Women in the Boko Haram Mayhem

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Abstract

This paper examined the applicability of international humanitarian law to conflict-related sexual violence in areas of northeast Nigeria experiencing armed conflicts with Boko haram insurgents. It discussed the history of conflict-related sexual violence (CRSV), examined the legal framework for protection against sexual violence in armed conflicts, identified the challenges in prosecuting conflict related sexual violence in Nigeria, and proffered solutions towards tackling the menace of conflict related sexual violence in Nigeria. This paper revealed that in spite of International legal framework prohibiting the act of rape and other forms of sexual violence in armed conflict, this brutality persists, particularly against the girl child and women, in areas of armed conflict in Nigeria. It is found that in Nigeria, acts of conflict-related sexual violence cannot be prosecuted because the international treaties recognizing and criminalizing conflict-related sexual violence have not been domesticated into our laws and there are no domestic legislations on conflict-related sexual violence. The paper recommended that the relevant international treaties should be domesticated and our domestic laws be reviewed to criminalize conflict-related sexual violence for effective prosecution of war criminals or insurgents to act as deterrent to others.

Keywords: Conflict- related sexual violence, Humanitarian Law, Armed Conflicts, Boko-Haram Insurgency

Introduction

Sexual assault occurs frequently during armed conflict and is as old as war itself[1]. Although they can be committed against boys or men during armed conflict, the heinous crimes of rape and other sexual assault are often more perpetuated against women and girls. Sexual violence done during armed conflict includes rape, sexual exploitation, and sexual slavery among others. It is acknowledged as a war crime that should be stopped and punished. The UN Security Council has played a significant role in the last ten years by adopting resolutions that place a strong emphasis on services for the victims and responsibility for the perpetrators[2]. The International Human Rights Law (IHRL), International Humanitarian Law (IHL), and International Criminal Law (ICL) all prohibit sexual violence during armed conflict[3].

Sexual violence is a grave violation of human rights and a violation of the right to personal dignity, whether it is done in times of peace or during an armed conflict[4]. Conflict-related sexual violence against civilians violates the principles of International Humanitarian Law[5]. However, the individual culpability for such offenses under international criminal law has provided some consolation[6].

Women are more prone to sexual violence during wartime. In 2021, the United Nations reported 3,293 cases of CRSV and estimated a staggering amount of unreported cases between 32,930 and 65,860. [7] Gender –based violence remains prevalent today because little has been done to address

[1] A. Baker, Survivors of Wartime Rape Refusing to be Silenced, Time Reports <https://time.com/war-and-rape> accessed 14 August, 2023.

[2] United Nations Peacekeeping, Conflict-Related Sexual Violence, United Nations Report,2017.

[3] Gloria Gaggioli, Sexual Violence in Armed Conflicts: A Violation of International Humanitarian Law and Human Rights Law, International Review of the Red Cross (2014)96(894) 503.

[4] (n2).

[5] (n3)

[6] ibid

[7] Sarah Morgan,' The Burden Women Bear: Israel- Hamas War Sheds Light on Conflict-Related Sexual Violence Experienced by Israeli and Palestinian Women' (2023) Georgetown Security Studies Review

the social factors and environmental conditions that allow sexual crimes to happen. Nigeria has also experienced conflict –related sexual violence during armed conflicts. The most recent example is traceable to the sexual violence committed during the Boko Haram insurgency. The Boko Haram Islamic sect; an organized non-state armed group in Nigeria's North-Eastern region, has posed a challenge to the Nigerian government for more than ten years[8]. This insurgency is classified as a non-international armed conflict happening within the territory of Nigeria[9]. Between 2009 and 2020, the gang terrorized the local areas, committed a number of heinous crimes that terrified the populace and led to both military and civilian losses. A UN report revealed that women and girls were more likely to experience sexual assault due to the insurgency.[10]

In April 2014, 276 schoolgirls were abducted from a government secondary school in Chibok, Borno State[11]. Also, in 2018, Boko Haram gunmen invaded Dapchi, Yobe community and abducted female students of Government Girls Science and Technical College, Dapchi[12] They were tortured, raped, and married off to their captors. Additionally, women in the villages, and those living in Internally displaced people (IDP) camps were raped, assaulted, exploited, and wounded. When they were unable to support their families, people, especially girls and women, in the camps were sexually exploited.

Research has shown that there has been an increase in recent years in reports of sexual violence perpetrated by armed groups, security forces and other conflict actors in Nigeria.[13] Despite the fact that some of these Boko Haram insurgents were charged with crimes, none of them has been prosecuted for sexual violence committed during hostilities due to the laws' incapacity to cover such cases. In International law, States are obligated to investigate, charge, and punish those who commit sexual violence during armed conflict in order to prevent future offenders. The history of conflict-related sexual violence will be examined in this article,

[8] S. Brechenmacher, Stabilizing Northeast Nigeria After Boko Haram, Carnegie Endowment for International Peace, 2019

[9] Ekwueme, A Critical Evaluation of the Nature of Boko Haram Armed Conflict in Nigeria: An International Criminal Law Perspective, (2016) AFJCLJI.

[10] Conflict Related Sexual Violence, Report of the United Nations Secretary- General, 2019.

[11] Amnesty International, 'Nigeria: Nine Years After Chibok Girls' Abducted, Authorities Failing to Protect Children', Amnesty International Report, 2023.

[12] A. Haruna, 'How Boko Haram Attack, Kidnap of Dapchi Schoolgirls Occurred- Residents, School Staff' *Premium Times*,23 February,2018.

[13] Julius Gaiya, 'Nigeria Needs to do More to Prevent and Respond to Conflict-Related Sexual Violence, Center for Civilians in Conflict,19 June 2023.

along with the legal protections for the victims, the difficulties in prosecuting the perpetrators, and recommendations on how to address the issue in Nigeria.

Definition of Conflict Related Sexual Violence

Any sexual act or action that targets a person's sexuality, gender identity, or gender expression that is carried out, threatened, or attempted without that person's consent is considered a sexual violence[14]. Sexual harassment, sexual assault, sexual exploitation, and stalking, are instances of sexual violence. In IHL, the use of the term "conflict-related sexual violence," does not necessarily refer to sexual violence committed during armed conflict rather it refers to sexual assault that violates IHL. A UN Report considered rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, forced sterilization, forced marriage, and any other form of comparable gravity of sexual violence committed against women, men, girls, or boys that is directly or indirectly linked to a conflict as Conflict-Related Sexual Violence (CRSV).[15]Also, sexual violence that occurs in the course of armed conflict, whether it be international or domestic, is known as conflict-related sexual violence. It is a type of sexual or gender-based violence, which occurs when someone or a group of people are attacked because of their sex or gender[16]. These definitions make it apparent that not all sexual violence committed during a conflict is a breach of international humanitarian law or a war crime. IHL only applies to activities that are directly or sufficiently related to an armed conflict when there is one.[17]

When perpetrated as a component of a widespread or organized assault directed at the civilian populace, it is classified under the Statute of the International Criminal Court as both a war crime and a crime against humanity. International human rights law and international humanitarian law are both gravely violated by sexual violence during armed conflict.

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[14] Conflict- Related Sexual Violence definition, Law Insider Dictionary <https: //www. lawinsider.com/ dictionary/ conflict- related-sexual violence> accessed 27 April, 2023

[15] United Nations Peacekeeping, Conflict Related Sexual Violence Report of the United Nations Secretary General (S/2019/280) <https://peacekeeping.un.org/en/conflict-relatedsexual- violence> accessed 4 May 2023.

[16] Vanja Kovac 'Conflict- Related Sexual Violence: 5 Things You Should Know, 2019, Centre for Civilians in Conflict <https:// civilian in conflict. org/blog/ conflict- related- sexual- violence- 5 – things- you- should- know?> accessed 29 April, 2023.

[17] Gloria Gaggioli,' Sexual Violence in Armed Conflicts: A Violation of International Humanitarian Law and Human Rights Law (Cambridge University Press 2015).

History of Conflict Related Sexual Violence

Conflict-related sexual violence (CRSV) has a history that predates war itself, and efforts to stop this crime against the civilian population have failed time and time again. Incidences of CRSV can be traced to biblical records, where the children of Israel were given the guideline for taking over captive women as wives, which can be considered a tacit endorsement of CRSV[18]. Also in another account the children of Israel waged war against Jabeshgilead, and took virgins from the town whom they forced into marriage with the young men of the tribe of Benjamin[19]. Similarly, men of the tribe of Benjamin were encouraged to kidnap the daughters of Shiloh and marry them[20].

Since the middle of the nineteenth century, rape has been regarded as a major violation of the laws of war. The Lieber Code published in February 1863 to codify the law of armed combat during the American Civil War mentioned rape as illegal and criminal. Reports suggest that rape was widely practiced in China in the middle of the 20th century, although there were reports of rape in the military zone of operations in Berlin from 1937 to 1945, these were merely informational because the ICRC was unable to enter the zone to render aid to victims of such human rights violations. Although the International Committee of the Red Cross (ICRC) was established in 1863 to aid war victims and shield them from hostilities and other ills of war, it was only in 1990s that the organization started talking about the problem of sexual violence during armed war.

The purpose of sexual assault perpetrated during an armed war is to punish or degrade a specific person or group of people or satisfy the sexual desires of the perpetrators. Some combatants derive pleasure in sexual acts against civilians, sometimes including rape. A study of demobilized combatants in the Eastern Democratic Republic of Congo (DRC) in 2018 showed that some of them derived sexual pleasure in attacking others[21]. Most of the time, State and non-State armed groups, such as the armed forces, police, security agents, terrorists, traffickers, etc., employ sexual assault as a technique of war, torture, and terror.

A study by Human Rights Council reported that sexual violence in South Sudan served as a reward and entitlement for youth and men participating in the conflict.

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[18] The Bible KJV, Deuteronomy 21:10-14.

[19] Judges 21: 10- 14, The Bible KJV

[20] Judges 21: 21- 23, The Bible KJV

[21] E.J Wood, 'Rape as a Practice of War: Toward a Typology of Political Science' (2018) Politics and Society., SAGE Publications.

It noted that it serves as a means of building ethnic solidarity to mete out retribution against perceived enemies.[22] Parties who are engaged in non-international armed conflict utilize CRSV to intimidate civilian populations they consider to be supporters of their adversaries.

CRSV is common in places experiencing conflicts such as Ethiopia, Afghanistan, Syria, Ukraine and others. In Ethiopia, the Mukwege Foundation, an International Human Rights Organisation collaborated with the Centre for Human Rights, Gender and Migration at Washington University in St. Louis to carry out an independent research on sexual violence committed in the context of Northern Ethiopia conflict.[23] The foundation, in its report stated that since the outbreak of the conflict, there have been numerous atrocities committed against the civilians including sexual violence against women and girls. The conflicts in northern, Ethiopia, Benishangul Gumuz, Oromia, and SNNP regions significantly increased GBV (Gender-based Violence) risks, especially for women and girls. Additionally, the upsurge of the Tigray conflict, led to an increase of people in need of GBV services from 3.5Million in 2021 to 6.7Million in 2023 across the affected regions.[24] In Afghanistan, the takeover by the Taliban on 15 August 2021 led to mass displacement, heightened humanitarian needs and limited civic space. In spite of the declarations and assurances made by the Taliban de facto authorities, there were still reports indicating that women and girls were the targets of systematic and widespread gender-based violence and conflict related sexual violence.[25]

Although, there may not be accurate data on conflict related sexual violence in Afghanistan, The United Nations Assistance Mission in Afghanistan verified five incidents of conflict-related sexual violence affecting both girls and boys in 2021. In June 2021, the Afghanistan Independent Human Rights Commission documented concerns about conflict-related sexual violence in areas under the control of the Taliban. Under the Taliban Government, there were reports of women and girls being sold into slavery and or forced into marriage by the Taliban

[22] United Nations Human Rights Council, Conflict-Related Sexual Violence Against Women and Girls in South Sudan-Conference Room Paper of the Commission on Human Rights in Sudan(A/HRC/49/CRP.4), UN Document, 21 March,2022.

[23]Ranit Mishori and others, Conflict-related Sexual Violence Continues in Tigray, Ethiopia (2023)402(10407) The Lancet p.1023-1025.

[24] United Nations Population Fund(UNFPA), Gender –Based Violence Area of Responsibility

[25] UN, Conflict-Related Sexual Violence, Report of the Secretary-General to the UN Security Council, S/2022/272, OF 29 March 2022.

Forces. A number of women human rights defenders, journalists and other professional women have been targeted with violence ranging from kidnapping to assassination.[26]

In Syria, the tenth annual report on violations against females in Syria issued by the Syrian Network for Human Rights(SNHR) stated that Syrian regime has used sexual violence against women as an effective tool of torture, or as a form of punishment and to spread fear and intimidation among female detainees.[27] It noted further that Syrian regime forces committed at least 8,013 incidents of sexual violence, including approximately 879 incidents that occurred inside detention centers and at least 443 cases of sexual violence against girls under the age of 18.[28]

In South Sudan, widespread rape and sexual violence in armed conflict can be attributed to the patriarchal nature of the society, reflected in the inferior status accorded women by the state and its institutions, which provide a platform for such violations. The incidents of rape and sexual violence documented by the Commission on Human Rights in Sudan indicate that adolescents and underage girls and young women below thirty are usually the targets of the armed men. The perpetrators of sexual attacks include armed men, uniformed and non-uniformed, who have been identified as part of regular or of non-state armed forces. Incidents of rape and sexual violence usually take place in the presence of family members. Rape perpetrated by groups of armed men against women and girls are usually the most reported and documented conflict-related incidents of sexual violence in South Sudan.[29]

Also, in Iraq, conflict –related sexual violence is widespread and the most recent example is traceable to the Islamic State conflict, where thousands of women were subjected to sexual slavery.[30] The atrocities of sexual violence perpetrated in Iraq, mainly by the self-declared Islamic State in Iraq and the Levant (ISIL) from 2014 are yet to be addressed.[31]

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[26] Ibid.

[27] SNHR, international Day for the Elimination of Violence Against Women: Tenth Annual Report on Violations against Females in Syria Mostly at the Hands of the Syrian Regime, SNH Report,25 November2021.

[28] Ibid.

[29] Ibid.

[30] Reforming Legal Responses to Conflict-Related Sexual Violence in Iraq and Kurdistan Region, LSE Middle East Center Blog, 2018.

[31] Bojan Gavrilovic et al., A Criminal Tribunal and a Wide-Ranging Reparation Programme is Necessary for the Victims of Sexual Violence and Torture in Iraq, National Library of Medicine

The issue of conflict-related sexual violence has become emphasized as a result of the recent conflict between Russia and Ukraine. Russia had earlier used conflict-related sexual violence as a weapon of war since its invasion of Ukraine in 2014. The scale of war-related sexual violence heightened after the full- scale invasion in February 2022. From February 2022 to 31 January 2023, Office of the High Commissioner for Human Rights documented 133 cases of CRSV in Ukraine, comprising of 85 men, 45 women and 3 girls.[32] Majority of the incidents took place on the territory occupied by the Russian Federation. 109 of the cases are traceable to Russian armed forces or Russian law enforcement and prison officials. [33]

More recently, in the Israel- Hamas war which started on 7 October,2023 the Hamas members kidnapped, raped, and sexually assaulted Israeli women during its attack on Israeli communities.[34] Also, Israeli soldiers sexually assaulted Palestinian women in Israeli prisons during the First Intifada (uprising) to elicit information and discourage resistance efforts. Furthermore, Palestinian women experienced sexual assault at Israeli checkpoints and were subjected to sexual humiliation during Israeli Defence Forces(IDF) –led raids. In July 2023, it was reported by Israeli newspaper, Haaretz that Israeli soldiers stripped and humiliated Palestinian women during a raid.[35]

People who are internally displaced, migrants, detainees, people with disabilities, etc. are some of the populations particularly susceptible to sexual assault during times of crisis. Sexual assault causes emotional and bodily harm, HIV infection, stigmatization, and disapproval from families and communities, unintended pregnancies, and in rare cases, death.

The Geneva Conventions of 1929 provided protection for female prisoners of war during the Second World War. Since, there was no established structure for the protection of civilians at the time, the ICRC was powerless to support rape victims during the conflict[36]. Despite allegations of widespread rape on all sides of the battle during World War II, the two Courts (Tokyo and Nuremberg) did not classify sexual assault as a crime[37]. Instead of focusing on the violence of the act itself, the

[32] OHCHR, Report on the Human Rights Situation in Ukraine (1 August 2022-31 January 2023), Report, 24 March 2023.
[33] ibid
[34] (n7)
[35] ibid
[36] ibid.
[37] Valezar Ukay Elshani, Legal Framework of Conflict Related Sexual Violence; the Kosovo Case, Dissertation of University of Prishtina, "Hasan Prishina".

aftermath of rape was highlighted. Rape and other sexual violence were minimized by military and political leaders as private crimes. It was not until 1992 that rape gained much attention in the former Yugoslavia[38] when there was widespread rape of women and the UN Security Council concluded that Bosnia and Herzegovina, had huge, organized, and systematic detention and rape of women, especially Muslim women. Sexual assault was thereafter recognized as an international crime that needed to be dealt with on a global scale.

Rape was first declared a crime against humanity by the International Criminal Tribunal for the former Yugoslavia (ICTY).[39] Similarly, the International Criminal Tribunal for Rwanda (ICTR)[40] and the International Criminal Court (ICC) classified rape as a crime of genocide and a crime against humanity along with other crimes like torture, extermination, and other forms of sexual violence of equal severity when committed during an armed conflict and directed against a civilian population in a widespread, systematic attack. By obtaining the first rape conviction, the ICTY and ICTR played a significant and crucial role in creating precedents for the prosecution of sexual crimes related to armed conflict. Sexual assault offenders are finally held accountable thanks to the Rome Statute's creation of the ICC.[41]

Although it is challenging to estimate the frequency of such cases, there has been an increase in awareness and documenting of CRSV during armed conflict since the 1990s. This amply illustrates how challenging it is to collect reliable CRSV data in circumstances of armed conflict. International organizations, national governments, and international women's organizations are a few of the sources that have reported on and documented sexual violence in circumstances of armed conflict. Prior to 1993, neither the international sexual crime nor the violation of the criterion of sexual violence under the Geneva Conventions received recognition[42].

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[38] ibid.

[39] St Germain, Toria, and Susan Dewey, eds Conflict- related Sexual Violence: International Law and local responses (Sterling, Va: Kumarian Press 2012) 55- 57.

[40] ICTR became the first international court to convict an accused person of a crime of genocide. In Akayesu's Judgement; the court defined the words rape and sexual violence.

[41] Jean- Pierre Bembo Gombo in the Central Africa Republic <https:// casebook.Icrc.org/ case-study/ international- criminal- court – trial- Judgement- case –prosecutor- v –jean – pierie – bembo- gombo.

[42] International Criminal Tribunal for Rwanda (1994) included rape as a war crime and a crime against humanity.

History of Conflict Related Sexual Violence in Nigeria

The history of civil war in Nigeria between 1967-1970 is indelible in the memories of so many Nigerians because of the various atrocities that were perpetrated against the civilian population, which included rape. During the civil war, sexual aggressions were perpetrated by the Biafra and the Nigerian armies against the civilian population. Many girls and women were impregnated and left traumatized by the incidents.[43] Situations of armed conflict in Nigeria generate conditions of rape and mental torture coupled with the aftermath of physical trauma grappled with by the victims.

The Boko Haram insurgency in northeast, Nigeria is another non-international armed conflict in Nigeria. Boko Haram, an Islamic sectarian movement founded in 2002 in northeastern Nigeria started its revolt against the government in 2009. Since 2009, the group has carried out large-scale acts of violence. Boko Haram fighters had systematically targeted women and girls and committed horrific acts of sexual and gender –based violence, including sexual slavery, rape, forced marriage. Women and girls were often attacked by insurgents during raids at night wherein they took turns to rape their victims.[44]

Between February and March 2021, Amnesty International took bold steps to interview some of the people in the cluster of villages in the Northern Borno State, where the people affirmed that they had been consistently attacked since 2019[45].

The UN Secretary- General's report on conflict-related sexual violence documented 601 incidents of sexual violence in 2021, affecting 326 girls and 275 women. Of these reported cases, 80 percent constituted rape and 5 percent were sexual slavery.[46] The 2023 Annual Report by the UN Secretary -General estimated that nearly two-thirds of women in the North-eastern part of Nigeria have experienced one or more forms of sexual and gender-based violence.[47]Apart from the convictions of two-level associates who were involved in the kidnapping of the Chibok school girls in 2014 under the Terrorism Prevention Amendment Act 2013,

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[43] A.D Ikuomola, The Nigerian Civil War of 1967 and the Stigmatisation of Children Born of Rape Victims in Edo State in R. Branche and F. Virgili (eds) Rape in Wartime, Genders and Sexualities in History (Palgrave Macmillan 2012)

[44] Amnesty International,' Nigeria: Boko Haram Brutality against Women and Girls Needs Response' Amnesty International Report, 24 March,2021.

[45] ibid.

[46] (n13)

[47] UNODC, Promoting Accountability for Sexual and Gender Based Violence in Nigeria: International Day for the Elimination of Violence Against Women, UNODC'S Report 2024<https://www.unodc.org>accessed 4 january,2024.

no single conviction has been secured for the acts of rape, forced marriages and sexual violence committed by the Boko Haram insurgents against the civilian population[48].

Legal Framework for Protection against Sexual Violence in Armed Conflicts.
International Legal Framework

The treaties prohibiting the act of sexual violence and other situations of violence can be categorized under different branches of international law. While International Human Rights Law (IHRL) and International Customary Law prohibit the act of sexual violence at all times, the International Humanitarian Law (IHL) strongly prohibits sexual violence in all armed conflicts.

I. International Humanitarian Law

(a) Article 3 common to the Geneva Conventions: This is applicable to conflicts not of an international character.
(b) Convention(III) Relative to the Treatment of Prisoners of War, Geneva, 12 August 1949.
(c) Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Geneva Convention, 12 August 1949
(d) Protocol Additional to the Geneva Convention of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflict (Protocol1), 8 June 1977.
(e) Protocol Additional to the Geneva Convention of 12 August 1949 and Relating to the Protection of Victims of Non- International Armed Conflict (Protocol II), 8 June 1977.

II.. International Human Rights Law

(a) International Covenant on Civil and Political Rights, 16 December 1966.
(b) Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).
(c) Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1951.

[48] United Nations Office on Drugs and Crime, UNODC, the Nigerian Government and European Union Partner in Supporting Female Criminal Justice Professionals in the Fight against Sexual and Gender Based Violence by Terrorist Groups, United Nations Office on Drugs and Crime Report, 8 March 2021.

III. International Criminal Law

(a) Statute of the International Criminal Tribunal for the Former Yugoslavia, 1993.
(b) Statute of the International Tribunal for Rwanda, 1994.
(c) Rome Statute of the International Criminal Court, 2002.

IV. Customary Law

(a) ICRC, Customary International Law Database[49]

The International Community has developed normative frameworks for gender equality and anti-discrimination during the past few decades. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), approved by the United Nations General Assembly in 1979, is the most significant or particular Convention pertaining to the rights of women. Although the term sexual violence was not specifically mentioned in this Convention, the CEDAW Committee, an implementation body, has made it plain that violence against women is a violation of human rights and a violation of women's rights[50]. Sexual assault against women is viewed as a serious type of gender discrimination that is strictly forbidden by international law. The campaign to abolish violence against women, including sexual and gender-based violence in armed conflict, has proven that CEDAW is a pertinent treaty. For the protection of women and girls against violence, there are also a few regional human rights instruments.

Regional Framework for the Prevention of Sexual Violence Related to Conflict

(i) 2003 Protocol to the African Charter on Human and People's Rights on the Human Rights of Women (Maputo Protocol).

Apart from Maputo Protocol that is applicable to Nigeria being an African Country. Other relevant regional treaties include; The 1994 Inter- American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belem do Para) and The Council of Europe Convention on

[49] International Legal Framework Affording Protection Against Sexual Violence in Armed Conflicts and Other Situations of Violence, Academic Workshop on Sexual Violence.
[50] "Using the International and regional legal framework to stop all forms of violence against women and girls' United Nations Human Rights Office of the High Commissioner, 8 March 202<https:// www, ohcr.org> accessed 30 April, 2023.

Preventing and Combating Violence against Women and Domestic Violence 2011 (Istanbul Convention)[51].

Domestic Laws/ National Legislations on Conflict Related Sexual Violence

Conflict-related sexual violence (CRSV) has not been expressly recognized by Nigerian law as a separate offence.[52] Due to the absence of defined CRSV regulations in the nation, Nigeria faces difficulties in implementing its obligations under international law to investigate and punish war crimes and crimes against humanity. The domestic laws of Nigeria do not recognize some forms of sexual abuse, such as forced marriages and sexual slavery. Rape and sexual harassment are recognized types of sexual violence in Nigeria, and they are both prohibited by the Criminal Code, Penal Code, and Violence Against Persons Prohibition Act[53]. These rules only apply in times of peace, not in times of armed war. The Criminal Law of Lagos State includes laws for child sexual assault, rape offenses, and rape convictions.[54] In all, there is no domestic legislation that specifically addresses conflict-related sexual violence.

Conflict Related Sexual Violence in North-East Nigeria: The Boko Haram Mayhem.

The menace of Boko Haram attacks has engulfed Nigeria's North- Eastern region. The attacks, which now appear to have abated somewhat, peaked between 2009 and 2020. The struggle between the Nigerian government and the Islamist terrorist group located in the northeast of the country is known as the "Boko Haram insurgency" or " Boko Haram mayhem." The Boko Haram insurgency, impacted residents of three Nigeria's northeastern states: Adamawa, Borno, and Yobe as well as others living nearby. The insurgency qualified as an armed conflict with a domestic character. The Boko Haram fighters actively participated in conflict-related sexual violence, among other things, by kidnapping, raping, and subjecting

[51] ibid

[52] UNODC and Partners Support Workshops to Prosecute War Crimes and Sexual Violence in Conflict, United Nations Office on Drugs and Crime (UNODC).

[53] ibid.

[54]Jessica Oga and Yinka Olomojobi,' Sexual Violence in Armed Conflict in Nigeria: International Law and Domestic Law at the Crossroads (2022) (2) ELTELJ 61at 67 <https:// www. researchgate.net/ publication/ 3682920244-elj- 2022-2- sexual- violence-in-armed-conflict> accessed 1 May 2023.

women and girls to forced marriage, forced pregnancy, and other sexually violent actions.

For instance, the Boko Haram gang kidnapped 276 primarily Christian female students between the ages of 16 and 18 in April 2014 from the Government Girls Secondary School in Chibok, Borno state.[55] Additionally, in February 2018, 110 schoolgirls between the ages of 11 and 19 were abducted from the Government Girls Science and Technology College (GGSTC), Dapchi in the Bursari Local Government area of Yobe State by the terrorist organization, Boko Haram. While some of these girls were fortunate enough to escape from captivity, others were not as fortunate, some of them were used as sex slaves by the Boko Haram leaders, who beat, tormented, malnourished, and impregnated them. Five of the 110 Dapchi females abducted did not make it through the experience, and one, a Christian who refused to be converted, is still being held captive[56]. Many of these female prisoners were regularly raped by the Boko Haram fighters, who also forced many of them into marriage.

During their operations in the North Eastern region of Nigeria, Boko Haram insurgents specifically targeted women and girls, according to Amnesty International, a human rights non-governmental organization.[57] Abduction, forced conversion to Islam, forced labor, forced marriage, rape, and other sexual crimes committed by Boko Haram against women and girls have caused panic in the North Eastern communities and added to the group's infamy both locally and internationally.

Article 3 of the four Geneva Conventions, recognized as the fundamental principle of humanity applicable in all types of conflict, prohibits sexual assault in non-international armed conflicts like the mayhem brought on by Boko Haram in Nigeria by explicitly defining aggression to life and person. It is supplemented by Additional Protocol II (AP II) of 1977, which, when applicable, prohibits rape, humiliating and degrading treatment, and any sort of indecent assault on anybody who is a civilian or has ceased to participate in hostilities (hors de combat).[58] The

[55] Nigeria: Nine Years After Chibok Girls Abducted, Authorities Failing to Protect Children, Amnesty International, 14 April, 2023< https://www.amnesty.org> accessed 2 May,2023.
[56] Nigeria Dapchi Abductions: School Girls Finally Home, BBC News, 25 March, 2018.
[57] Nigeria: Boko Haram Brutality Against Women and Girls Needs Urgent Response- New Research, Amnesty international press release, 24 March, 2021.
[58]AP II, Art 4(2)(e)

first article of IHL that specifically forbids rape without making a distinction between men and women is Additional Protocol II of 1977.[59]

It is the only treaty that is completely focused on non-international armed conflict. It is noteworthy that neither AP II of 1977 nor Common Article 3 of the Geneva Conventions provides for the criminalization or prosecution of violations of the International Humanitarian Law (IHL) governing non-international armed situations.[60] However in The Prosecutor v. Dusko Tadic, serious violation of common article 3 constitute war crimes.[61]

When perpetrated during a non-international armed conflict, rape and other types of sexual assault constitute major violations of Common Article 3 and are therefore crimes against humanity. Many national case laws presently recognize that rape and other types of sexual assault constitute war crimes when they are committed in circumstances of armed conflict, whether they are international or not, designating them as a component of customary law.[62] Additionally, they may constitute crimes against humanity and genocide. Rape and other sexual assaults are against international human rights law and international humanitarian law.

Challenges in Prosecuting Sexual Violence in Armed Conflict Situation in Nigeria

Since the United Nations Security Council passed resolution 1325 in 2000, the crime of sexual violence has drawn more attention. The possibility of prosecuting the crime of sexual violence has also increased with the establishment of the ICC. Despite the UN resolution, the establishment of the ICC, and other trial chambers, only a small number of sexual crime abusers have been put on trial, found guilty, and convicted.

In order to ensure accountability for sexual offences committed during armed war, national courts are essential.[63] In circumstances where a state has domesticated the Rome Statute of the ICC, the national courts will have the authority to hear and

[59] Gloria Gaggioli, 'Sexual Violence in Armed Conflicts: A violation of International Humanitarian Law and Human Rights Law' (2014) 96(894) *International Review of the Red Cross* 503- 508.
[60] ibid.
[61] ICTY, Prosecutor V Tadic Case No. IT-94-1-AR 72, Decision (Appeals Chamber), 2 October 1995, Para 71.
[62] C. Lindsey, Women Facing War Study, ICRC Geneva, 2001 pg 19
[63] K.T Seelinger,' Domestic Accountability for Sexual Violence: The Potential of Specialized Units in Kenya, Liberia, Sierra Leone, Uganda '(2014) (96) *International Review of the Red Cross* 539-564.

decide sexual assault cases that occurred during conflict in addition to cases of sexual offences committed during peacetime. The domestic or national courts are typically the court of first instance because, in accordance with the complementarity criterion in Article 17 of the Rome Statute of the ICC, the national court has the authority to examine crimes committed in armed conflict.[64]

The primary venues for the prosecution of sexual assault are the National Courts, with the ICC serving as a supplemental body. The following examples further support this:

First, a state party to the Rome Statute is in charge of looking into and prosecuting severe international crimes committed on its soil or by its citizens, in accordance with the complementarity principle of the Rome Statute. The ICC can only intervene if the nations are really unable and unwilling to do so.[65] Second, the crime scene's jurisdiction will allow for efficient questioning and prosecution. Additionally, the ICC does not have jurisdiction over numerous domestic crimes involving sexual assault, including rape, domestic abuse, sexual harassment, and trafficking. Articles 5-8 of the Rome Statute, which deal with war crimes, crimes against humanity, and genocidal crimes of aggression, define the ICC's jurisdiction. International crimes fall under the authority of the ICC under the Rome Statute.[66]

It is impossible to prosecute these crimes in Nigeria due to the non-domestication of pertinent international treaties that apply to the crime of sexual violence during armed conflict. The domestication of international treaties by the National Assembly to have legal effect in Nigeria is provided for under Section 12 of the Federal Republic of Nigeria 1999 Constitution (as amended). The Rome Statute, the Maputo Protocol to the African Charter on Human and Peoples' Rights on the Right of Women in Africa, and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) have all been ratified by Nigeria, but none have yet been domesticated.[67]

To create an enforceable legal framework, the Rome Statute must be domesticated in Nigeria. Nigeria accepted the Rome Statute in 2001 and has attempted to

[64] (n 46).

[65] 10th Preambular Paragraph, Article 1 and 17(1) Rome Statute.

[66] Iyabode Ogumiran, Conflict Related Sexual Violence in the North East Nigeria: Strengthening Legal Responses (2021) (2) *Violence Against Women and Criminal Justice in Africa* pp 171-1999.

[67] - (n)

domesticate it three times without success.[68] In order to allow foreign war criminals to be tried and sentenced under Nigerian law, the government drafted the Crimes against Humanity, Genocide, and Related Offenses Bill 2012[69]. On July 17, 2012, the government submitted the current measure to the National Assembly; however, the National Assembly did not approve it for adoption into law.[70]

The insufficiency of domestic sexual violence legislation presents another difficulty in the prosecution of sexual violence in armed conflict in Nigeria. There is currently no domestic legislation that makes sexual violence during armed conflict illegal. Both the Southern States' Criminal Code Act and the Northern States' Penal Code are only applicable during times of peace. It is imperative to review Nigeria's domestic laws to recognize conflict related sexual violence as a distinct offence under Nigerian law and also to include acts that amount to CRSV such as sexual slavery, forced marriage and forced pregnancy that fall outside the purview of the more commonly acknowledged forms of sexual violence in Nigeria such as rape and sexual harassment. This will enable the national courts to be able to punish cases of sexual assault committed both abroad and at home. The Federal Capital Territory of Abuja is the only place where the Violence Against Persons Prohibition Act (VAPPA) 2015, which provides a broader understanding of sexual violence, is applicable.[71]

Additionally, the survivors lack access to and confidence in the legal system. Some of the victims do not have easy access to the court because they reside in rural areas. Some are poor and cannot afford to hire a lawyer to represent them in court. In the same spirit, it may be very difficult to investigate and document sexual assault during armed conflict if armed players are engaged.

Lack of trained professionals and specialized tribunals for sexual offenses related to armed conflict is another significant obstacle to prosecuting those who commit sexual violence during hostilities in Nigeria. There is a need for prosecutors who are knowledgeable with international criminal law practices since sexual violence committed during an armed conflict is a global crime. In this situation, the prosecutor must be able to establish both the fact of the sexual actions and their

[68] B.C Olugbuo, 'Acceptance of International Criminal Justice in Nigeria: Legal Compliance, Myth or Reality?' <www.nurembergacademy.org>pdf.

[69]Nigeria Civil Societies calls on law makers to pass international crimes bill, coalition international criminal court, 13 August 2014.

[70] Ibid.232

[71] The Violence Against Persons (Prohibition) Act,2015, Law Pavilion

connection to a specific setting or armed conflict. The type of criminal liability for offences involving sexual violence also differs. In a domestic setting, the physical offender is held accountable; however, in cases of international crimes, the person held accountable may not be the actual offender but rather a commander who failed to take the necessary steps to stop those under his control or authority from engaging in sexual violence and for his failure to hold the offenders accountable. Through other types of legal duty, such as aiding and abetting, participation in a joint venture, or command or superior accountability, the prosecution must be able to connect him to those actions.[72] Prosecution in times of armed conflict requires different legal requirements and forms of responsibility.

Another constraint in prosecuting sexual violence in Nigeria is the unwillingness of the survivors to report or discuss the violence perpetrated against them for fear of stigmatization.[73] The Stockholm syndrome, which happens when captives form an emotional attachment with their captors, is another obstacle to prosecution. Some victims who have been kidnapped or married off to their captors or abductors have refused to go home, and others who had gone home returned to their abductors because of the relationship they share. Stigmatization, in which victims experience psychological effects of sexual assault such as despair, anxiety, shock, memory loss, etc., is another obstacle to the prosecution of sexual violence in time of conflict in Nigeria.[74]

Conclusion and recommendation

Contemporary armed conflict, whether it be international or non-international, is rife with conflict-related sexual offences. Girls and women are frequently the victims of horrific sexual violence, which invariably has long-lasting psychological repercussions like despair, shock, memory loss, post-traumatic stress disorder, etc. It is disconcerting that over the years, few convictions have been secured despite the existence of the International Criminal Court and ad hoc tribunals where these offenses are punished. In Nigeria, the Boko Haram insurgency between the government and a structured armed organization is the most significant non-

[72]P.V Sellers Individuals Liability for Collective Sexual Violence. In K. Karen (Ed), *Gender and Human Rights* (Oxford University Press 2004) 153-194.

[73]Report of the Special Rapporteur on Violence against Women, its causes and consequences, UN Economic and Social Council, Commission on Human Rights, UN DOC. E/CN.4/1997/54 (Jan. 26, 1998)) (prepared by Radhika Coomaraswamy).

[74]Amnesty International, Cote d'Ivore: Targeting women: The forgotten victims of the conflict, Al index AFR, 31/001/2007, March 15, 2007.

international armed conflict in recent times. Girls were kidnapped, tortured, sold into slavery, married off to captors, and imprisoned in sexual servitude during their attacks.

There is no record of any of these insurgents having been tried for sexual offences, although some of them have been tried for other offences. This is due to the fact that sexual offences committed during armed conflict are an international crime, and our domestic law does not allow for their prosecution. Nigeria has not yet domesticated international treaties that recognize and make rape and other sexual offenses in armed conflict, war crimes. Nigeria should domesticate these agreements and incorporate their terms into its laws so that they can serve as an enforceable legal framework for the efficient prosecution of war criminals, which will serve as a deterrence to others and rid our society of such atrocities.

It is hereby recommended that Nigeria's domestic laws on sexual violence must be reviewed and amended to recognise conflict related sexual violence as crimes to be prosecuted. International treaties relating to CRSV should be domesticated into our laws to have legal effect. The Nigerian government should ensure the victims or survivors have access to justice and compensation, where possible, so they do not lose confidence in our court system. Prosecution of cases of conflict related sexual violence should be timeous to serve as deterrent to others. The government should establish specialised courts and agencies to investigate and prosecute sexual offences of this nature and also train personnel in handling such matters.

The public should be enlightened on the severity or gravity of sexual offences in armed conflict. They should be made to know that it a breach of international law and it attracts penalty or sanctions. The war criminals should be prosecuted and convicted if found guilty to act as deterrent to others.

Counseling sessions should be provided for the victims or survivors to enable them overcome psychological trauma that could be a consequence of sexual acts. There is need to have continuous civil instructions for the citizens in times of peace. The Nigerian government should make provision for women and girls infected with sexual transmitted diseases and HIV/AIDS. Formal health services should be made available to the survivors.

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