Sexual Violence in War Zones: Legal Responses and Global Accountability

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ABSTRACT:

Sexual violence in war zones remains one of the most egregious and persistent violations of human rights. Despite international legal developments, such as the Rome Statute of the International Criminal Court (ICC), which recognize sexual violence as a war crime, accountability remains limited and enforcement inconsistent. This paper examines the patterns of sexual violence during armed conflicts, the systemic factors that perpetuate such crimes, and the evolution of legal responses at both national and international levels. It also evaluates the effectiveness of global accountability mechanisms and highlights the role of judicial activism, advocacy networks, and survivor-centered approaches in combating impunity. The study underscores the urgent need for stronger legal frameworks, improved implementation, and coordinated global action to ensure justice for victims and the prevention of sexual violence in conflict settings.

Key Words: Sexual violence, War crimes, Armed conflict, International humanitarian law, Human rights violations

INTRODUCTION:

Sexual violence in war zones represents one of the most egregious violations of human rights, disproportionately affecting women and girls, though men and boys are also victims. Historically used as a weapon of war, sexual violence has been employed to terrorize populations, displace communities, and destroy social cohesion. Despite its devastating impact, such crimes were long neglected in legal frameworks and dismissed as inevitable consequences of armed conflict.

In recent decades, growing international awareness and advocacy have led to the recognition of sexual violence as a serious breach of international humanitarian and human rights law. Landmark instruments such as the Rome Statute of the International Criminal Court (ICC) have classified sexual violence—including rape, sexual slavery, forced prostitution, and enforced sterilization—as war crimes, crimes against humanity, and, in some contexts, acts of genocide.

Nevertheless, accountability remains limited. Many survivors face stigma, lack of access to justice, and institutional failures in both domestic and international systems. Global efforts to address sexual violence in conflict zones have made progress through legal reforms, UN resolutions (notably UNSC Resolution 1325), and increased attention to gender-sensitive justice. Yet enforcement gaps, inconsistent prosecutions, and ongoing impunity continue to undermine justice and healing for survivors.

This study explores the nature of sexual violence in armed conflict, the evolution of its legal recognition, and the mechanisms established to ensure global accountability. It further examines challenges in implementation and offers recommendations for strengthening legal responses and survivor-centered approaches in the fight against conflict-related sexual violence.

Sexual Violence in Armed Conflicts: Historical and Legal Perspective

Sexual violence has long been a recurring feature of armed conflicts, with instances dating back to the Crusades and continuing through major wars such as the World Wars, where atrocities were committed by various military forces. This violence is not bound by cultural or civilizational differences and often takes multiple forms, including rape and sexual slavery.

Initially overlooked in legal frameworks, sexual violence gradually gained recognition as a war crime and a crime against humanity. This chapter traces its historical evolution, current legal standing, and future challenges in prosecution. It highlights key developments in international criminal law, particularly under the Rome Statute of the International Criminal Court (ICC), which formally recognized sexual slavery as a war crime. The role of epistemic communities—comprising NGOs, legal experts, and women's rights advocates—in shaping international legal responses. Organizations such as the Women's Caucus for Gender Justice, Oxfam, and the International Federation of Women Lawyers played a crucial role during the Rome Conference and subsequent negotiations. Their advocacy was instrumental in securing recognition of sexual violence within international criminal law.

Through this analysis, the chapter underscores the importance of continued global efforts to ensure accountability for sexual violence in conflict zones and provides recommendations for future discourse and legal reform.

Women as Victims of Sexual Violence in Conflict

Sexual violence against women during the colonial wars of the 19th and 20th centuries remains an insufficiently explored topic, though evidence indicates it was widespread. World War II marked a turning point—not necessarily in terms of legal reform, but in heightened public awareness of wartime rape, particularly during military campaigns.

Despite ideological prohibitions against contact between "Aryans" and so-called "subhuman" populations, Nazi Germany's armed forces—including the SS, the Wehrmacht, and auxiliary units—committed countless sexual crimes during and after their invasions of the Soviet Union and Poland. Similarly, the Japanese Imperial Army was responsible for widespread sexual slavery and mass rape in countries such as Korea, China, and the Philippines. Notably, Soviet Red Army soldiers were also reported to have raped a large number of German women as their troops advanced westward. Recent studies have further revealed that rape committed by American soldiers was more common than previously acknowledged.

Additionally, racist institutions often weaponized false accusations of rape against African-American and Black African soldiers serving in the U.S. and Free French armies to maintain social control and intimidate marginalized communities, especially during the decline of white colonial supremacy.

During the Cold War and decolonization struggles, sexual violence continued but was largely ignored, underreported, and rarely prosecuted. In the post-Cold War era, civil and international conflicts have seen the persistence of sexual crimes. A notable recent example is the 2022 Russian invasion of Ukraine, where widespread sexual violence against Ukrainian women has been documented by NGOs, journalists, and Ukrainian authorities.

Sexual violence has also become a defining characteristic of modern genocides. In the Armenian Genocide, rape, sexual slavery, and forced marriages were used to break resistance and support the Ottoman goal of establishing a homogenous pan-Turkish state. Similarly, rape was used as a tool of ethnic cleansing in Rwanda and the former Yugoslavia in the 1990s.

In the 2000s, non-state armed groups such as Boko Haram and Al Shabab in sub-Saharan Africa—affiliated with the Islamic State (ISIL)—abducted thousands of women and girls in Nigeria and Mozambique, subjecting them to repeated sexual abuse, trafficking, and forced marriages. A particularly egregious example was the 2014 ISIL attack on the Yazidi community in northern Iraq. The United Nations Investigative Team (UNITAD) later classified this atrocity as genocide, noting that around 7,000 women were kidnapped, with thousands still missing as of 2022.

Women as Perpetrators of War Crimes

While women are often seen as victims in wartime, history also reveals instances where women have played active roles as perpetrators of war crimes. The most extensive research on this lesser-known aspect has been conducted in the context of Nazi Germany. Approximately 500,000 German women served in various roles under Nazi rule, particularly in Eastern Europe. Many of these women were employed as nurses or held lower-level administrative positions—roles that enabled them to participate in the identification and selection of Jews for execution or deportation. Some were directly involved in the killing of individuals with physical or mental disabilities.

Around 10,000 women served as auxiliaries to the SS, and approximately 3,500 acted as guards in concentration camps. However, between 1945 and 1949, only a small fraction of these women were prosecuted by Allied courts. Out of all those involved, just 21 were executed, and none were indicted by the International Military Tribunal (IMT) at Nuremberg. Only two women were prosecuted in the 12 subsequent Nuremberg trials.

Several reasons contribute to the limited number of prosecutions. Primarily, most of these women did not occupy roles as soldiers, auxiliary police, senior bureaucrats, or high-ranking officials within the Nazi hierarchy. As a result, they were not viewed as directly responsible for crimes such as genocide or crimes against humanity. The IMT concluded that lower-level administrative staff in concentration camps posed no threat to post-war stability and thus were excluded from major trials.

Moreover, entrenched gender norms played a significant role. At the time, the belief that women were inherently incapable of committing war crimes influenced many male prosecutors and investigators. This gender bias allowed many female defendants to avoid prosecution by presenting themselves in stereotypically feminine and non-threatening ways—an approach that continued to influence war crime trials involving women for decades. these barriers, some women did rise to significant

positions and actively participated in the regime's atrocities, even as societal expectations largely confined them to domestic roles.

Only two women have been prosecuted for war crimes by international courts since World War II. The first was **Biljana Plavšić**, a high-ranking official in the Armed Forces of Republika Srpska during the Bosnian War. The second was **Pauline Nyiramasuhuko**, who served as a minister in Rwanda's Hutu-led government during the 1994 genocide.

Sexual Crimes and the Law of War

Sexual violence has been a persistent element of warfare throughout history. While medieval and early modern European codes often prohibited rape by soldiers, these rules were frequently ignored—especially during sieges or wars against perceived outsiders. Thinkers like Alberico Gentili insisted on prohibiting such acts, but enforcement remained inconsistent. Despite its long history, rape was not initially included in key international legal instruments. It was mentioned in the 1863 Lieber Code but omitted from the 1899 and 1907 Hague Conventions and the Nuremberg and Tokyo Tribunal Charters. However, legal frameworks such as the **Martens Clause** and the Geneva Conventions of 1949 began recognizing sexual violence as a violation of humanitarian principles. Article 27 of the Geneva Convention specifically mentions protections for women against rape and forced prostitution.

A major turning point came in the 1990s with the creation of international tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR). These bodies prosecuted sexual violence as a war crime and crime against humanity. Notably, the **1998 Akayesu case** in Rwanda marked the first conviction where sexual violence was classified as an instrument of genocide.

These legal advancements culminated in the **Rome Statute of the International Criminal Court (ICC)**, which explicitly includes rape and other forms of sexual violence as crimes against humanity under Article 7.

Public awareness played a crucial role in this progress. Victims' testimonies, the efforts of female judges, extensive NGO advocacy, and global media coverage helped elevate sexual violence in war to the forefront of international concern. Initiatives like the **Women's International War Crimes Tribunal** in Tokyo and recognitions such as the **2018 Nobel Peace Prize** awarded to **Nadia Murad** and **Dr. Denis Mukwege** further emphasized the global commitment to addressing this issue.

Sexual Slavery: Legal Evolution

Sexual slavery became formally recognized as a war crime and crime against humanity only in 1998, with its explicit inclusion in the **Rome Statute of the International Criminal Court**. It qualifies as a war crime when linked to armed conflict and as a crime against humanity when part of a systematic attack on civilians.

During the **Preparatory Commission (PrepCom)** discussions, national delegations—especially the **United States**—played a key role in shaping the legal definition. The U.S. proposal in 1994 emphasized two major elements: (1) the act must involve coercing victims into sexual acts, and (2)

there must be a deprivation of liberty, such as detention. However, concerns were raised that these conditions set too high a bar for prosecution and failed to account for non-commercial forms of sexual slavery.

Further criticism arose over linking sexual slavery strictly to sale or purchase, as this could exclude cases involving **force, coercion, or deception**. As a result, many aspects of the U.S. proposal were not adopted, leading to a more inclusive and practical legal understanding of sexual slavery in international law.

Sexual Slavery and Forced Marriage

In response to earlier limitations in defining sexual slavery, **Hungary, Costa Rica, and Switzerland** submitted a revised proposal under Article 8(2)(b) of the **Rome Statute**. This draft explicitly recognized sexual slavery as a war crime and redefined it as the **"treatment of a person as chattel"**, including acts such as rape and other sexual violence. This version avoided problematic terms like "attack" and "sale or purchase" used in the earlier U.S. proposal. However, some states criticized the word *"chattel"* for its historical ties to commercial slavery and its inadequacy in describing modern forms of enslavement. Consequently, it was not included in the final version of the **Elements of Crimes**.

Another controversial suggestion came from a group of **Arab States**, including Iraq, Lebanon, and Saudi Arabia. They proposed that acts associated with ownership **exclude marital obligations between a man and a woman**. This implied that marriage could not constitute sexual slavery. The proposal faced strong opposition, especially from women's rights groups like the **Women's Caucus for Gender Justice (WCGJ)**, and was eventually withdrawn during informal discussions.

Forced Marriage as a War Crime

In recent years, **forced marriage** has gained recognition as a serious human rights violation in both conflict and peacetime contexts. Used as a means of control and subjugation, it often involves **sexual slavery, repeated rape**, and long-term harm to women's health, freedom, and social identity. Cases from **Sierra Leone** show how militant groups used forced marriage to instill fear, recruit child soldiers, and carry out ethnic cleansing.

International courts have begun prosecuting such acts, and women escaping forced marriages have been granted **refugee or asylum status** in several countries, marking progress in legal and humanitarian responses.

Early Recognition of Sexual Violence as a War Crime

Historically, the risks and abuses faced by women during armed conflicts have been well documented. As noted by Kelly Askin, women were historically viewed as property under male control and were often treated as part of the spoils of war—similar to livestock or other possessions. During the Middle Ages, rape and enslavement of women were even used as incentives to encourage soldiers to conquer cities. Despite the widespread occurrence of sexual violence in warfare, perpetrators often escaped accountability due to systemic impunity. It wasn't until the **1990s** that international humanitarian

law began to seriously address, define, and prosecute these crimes. Customary norms prohibiting sexual violence in war began to emerge between the **14th and 16th centuries** and were later enshrined in legal instruments like **U.S. military law, the Hague Conventions, and the Geneva Conventions**. Following World War II, prosecutors included rape in the indictments against **German and Japanese war criminals**. Before the establishment of the **International Criminal Tribunals for Rwanda (ICTR)** and **Yugoslavia (ICTY)**, legal actions were already underway for gender-based crimes such as **rape, enslavement, and sexual assault**. A landmark moment came in **2001** with the **ICTY's conviction of Dragoljub Kunarac**, the first conviction based solely on sexual violence. Today, sexual violence in armed conflict is firmly recognized as a **crime against humanity**, a **violation of the laws and customs of war**, and a **grave breach of the Geneva Conventions**.

Customary Prohibitions Against Rape in Warfare

Legal prohibitions on rape during war can be traced back to at least the 14th century. The **Lieber Code (1863)** in the United States explicitly listed rape by soldiers as a grave war crime, punishable by death. Similarly, the **Hague Convention of 1907**, though not directly referencing rape, implied protection of "family honour and rights" under Article 46, suggesting an implicit prohibition.

World War II and Early Tribunals

After WWII, the **Nuremberg Charter** did not categorize rape explicitly as a war crime or crime against humanity. However, the **Tokyo Tribunal** took a step forward by applying the doctrine of **command responsibility**, holding leaders accountable for failing to prevent sexual violence by their subordinates.

Geneva Conventions and Legal Progress

The **Fourth Geneva Convention (1949)** and **Additional Protocols I & II** advanced protections for women, prohibiting **rape, forced prostitution, and indecent assault** during armed conflicts. These conventions laid the groundwork for later international legal enforcement against sexual violence in war.

Sexual Violence and the Indian Context

At a **UN Security Council open debate in July 2023**, 70 countries, including India, emphasized the need for full implementation of resolutions addressing **conflict-related sexual violence**. India's representative, **Ruchira Kamboj**, urged stronger accountability mechanisms and victim-centered approaches, while also highlighting the necessity for **UN support** in strengthening national legal systems.

Sexual Violence in Conflict Zones within India

In regions like **Kashmir**, **Northeast India**, and **Naxal-affected areas**, allegations of sexual violence by state and non-state actors persist. Scholars like **Seema Kazi** and **Anuradha M. Chenoy** have documented how militarization has heightened women's vulnerability. Reports cite numerous cases of **rape, disappearance, and intimidation**, with few prosecutions. Activist groups such as **Women Against Sexual Violence and State Repression (WSS)** have highlighted the exploitation of women

in regions affected by insurgency and counter-insurgency operations. In **Nagaland**, organizations like the **Naga Mothers' Association (NMA)** have advocated for women's rights, challenged **AFSPA**, and called attention to abuses by armed forces. A tragic emblematic incident occurred in **Manipur (2004)**, when a young woman was found raped and murdered, sparking a powerful nude protest by Manipuri mothers. Despite a **committee (Jeevan Reddy)** recommending the repeal of AFSPA in 2006, the law remains in force.

Conclusion

Sexual violence in war zones remains one of the most egregious and persistent violations of human rights, disproportionately affecting women and girls. Historically regarded as an inevitable consequence or even a strategy of war, such crimes were long overlooked by international legal systems. However, significant progress has been made in recognizing sexual violence as a war crime, a crime against humanity, and an instrument of genocide, particularly through the efforts of international tribunals such as the ICTY, ICTR, and the International Criminal Court (ICC).Despite these advancements, challenges remain in achieving full accountability and justice for survivors. Gaps in legal enforcement, underreporting, limited victim protection, and prevailing gender biases continue to hinder effective prosecution and redress. National legal systems often fall short in aligning with international standards, and survivor support is inconsistent and under-resourced.

Global accountability requires a multipronged approach—strengthening international legal mechanisms, supporting survivor-centered justice, ensuring political will, and enhancing the role of civil society and women-led organizations. As the landscape of armed conflict evolves, it is essential to continue refining legal definitions, closing impunity gaps, and amplifying survivor voices. Only then can the promise of justice and dignity for victims of sexual violence in war become a sustained and enforceable reality. It is now clear that violations of women's rights during armed conflict are neither incidental nor permissible. Rather, they constitute crimes against humanity, violations of the laws and customs of war, and grave breaches of the Geneva Conventions. Similarly, in peacetime, such violations are also prohibited under international law. This is evident in the practices of several Western states, which have granted asylum to women fleeing severe forms of gender-based violence.

As progress in prosecuting gender-based violence aligns closely with developments in granting asylum for such crimes, the efforts of SCSL Prosecutor David Crane to define forced marriage as a crime against humanity may significantly influence global jurisprudence on gender-based asylum claims.

The U.S. government, which had challenged the landmark Gao decision, should consider Crane's legal stance as a strong precedent supporting the distinction between arranged marriage and forced marriage. In the Gao case, the applicant faced arrest threats by local authorities after refusing to marry a man she had been sold to. This illustrates how forced marriage functions as a form of abuse that is often overlooked by governments.

Western states must not only formulate clear policies but also maintain consistency in handling gender-based refugee claims. Refugee women fleeing such violence are often at a severe disadvantage upon arrival in host countries, facing poverty, language barriers, and trauma—both physical and

psychological. These conditions often prevent them from carefully planning their escape or gathering necessary documentation.

Therefore, a more uniform and consistent approach—mirroring the standards set by international criminal tribunals—is crucial to ensure adequate protection and justice for women survivors of gender-based violence.

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