

War-related sexual violence: Its dimensions and proposals for response

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Sexual violence (SV) is a threat to human security in both in times of war and peace. As the majority of victims in current armed conflicts are civilians, SV has also become a general security threat in many conflict areas. In June 2008, United Nations Security Council Resolution 1820 qualified SV as a “war tactic” with the hope that this definition will support in increasing awareness against SV and in prosecuting the military offenders. Despite important advancement in international law since the 1990s in the prosecution of wartime rape and despite increased attention placed on the issue, as a war crime rape still remains overshadowed by other atrocities and systematically disregards the victims. The emphasis of the international community has been on prosecuting and punishing the perpetrators SV, while the victim’s needs and rights have been pushed aside. Presenting SV as a gender matter or as a cultural phenomenon may not be the most useful point of view. Pragmatic actions against SV should still be taken. Even though this study is analysing sexual violence globally, a specific priority is given to the case of Democratic Republic of Congo (DRC) where the author made a field trip in July 2009.

1 Introduction

Recent decades have provided documented evidence of SV and mass-scale rape in war zones around the globe: in Asia, Africa as well as in South-Eastern Europe. Since there are no more clear war zones and home fronts in contemporary conflicts, wars take place in the middle of the civilian populations. There is reason to believe that the general increase of sexual atrocities in recent armed conflicts is real and not a bias due to increased monitoring. The nature of war has changed, as have the means of waging war.

The Yugoslav wars of 1991–1995 marked a turning point; sexual atrocities became publicised and put pressure on United Nations to respond. As a result, remarkable changes have taken place and SV is now well defined as a specific war crime in international legislation. Many betterments and juridical innovations have been carried out successfully so that today the international law fits the problem of war-time rapes. Obstacles for prosecuting perpetrators and those commanding their inferiors to rape have been removed, the definition of rape has been broadened and the burden of proof for the victim has been reduced.

In the level of discourse practiced by the international community there is no space to perceive SV as a consequence that unfortunately, or inevitably, occurs in armed conflicts. The United Nations addresses SV specifically in two Security Council Resolutions: the UNSCR 1325 on Women, Peace and Security and the UNSCR 1820, the latter which is dedicated specifically against SV. Also, the International Committee of the Red Cross (ICRC) and numerous international and national Non-Governmental Organisations (NGO) have formulated policies and programmes against SV.

When rape is viewed as a war weapon, it begs the comparison to prohibited weapons like napalm and brings hope that SV could be banned and outlawed alike. There is also a tendency to parcel development, eradication of poverty and equality with SV in armed conflicts and expectations that if the status of women could be promoted SV would vanish.

Despite heightened global awareness, the measures against war-related SV still remain only on paper, posters and bites on computer screens. Although international law

currently gives enough means to prosecute and to punish rapists, in practice there is a lack of implementation of these laws and the impunity that accompanies waves of SV suggests that there is a lack of political will to act concretely. There is also a lack of practical knowhow regarding methods to stop and to prevent outbreaks of SV.

Strengthening Rule of Law (RoL) and carrying out Security Sector Reforms (SSR) are necessary steps in order to eradicate SV. However, this is largely a question of resources. In a post-conflict situation the administration required to deal with gender catastrophes has inevitably been disrupted and generally there is lack of judges, tribunals and prisons. Awareness about the existence of SV is not enough; awareness should be converted to compiling databases, constructing buildings, and training medical staff to care for the victims of rape. Areas where waves of SV have taken place can also be difficult to access because of guerrilla fights and poor roads.

During times of peace, rape is a crime that is understood to be a primarily psychological trauma; however this undermines the violent nature of the crime and disregards the physical harm. It is not generally known that rapes that take place during war can be extremely violent and can have permanent effects on the victim's health. Physical injuries and consequences of rape can be as invalidising and as devastating as damage caused by firearms.¹ Yet raped women are not classified as war victims, unlike wounded soldiers with their wives and families.

1 Wakabi 2008.

2 Sexual violence and international law

The most abundant topic of the literature on SV since 1990s pertains to its juridical aspects. However, this new emphasis on juridical developments does not mean that rape has not been outlawed in armed battles before by other moral codes. Violence is usually banned by customary laws, and forced sex is understood to be a form of violence.²

2.1 Historical review

In Europe, the earliest written documents condemning war and peacetime rape dates back to the 1600s. The 1863 US Army Regulations (so-called Lieber Code) listed rape as a war crime. Still, until the end of the Second World War, SV remained a matter that did not require intervention by the international community.³

After the Second World War, the allied forces agreed to create an international tribunal to prosecute the Nazis for war crimes; the tribunals took place at the city of Nuremberg in 1945 and 1946. The prosecuted, whether military or members of organisations, were accused as having an individual responsibility for committing crimes that were divided to three types: crimes against peace, war crimes and crimes against humanity.⁴

Rape was recognized as a crime against humanity by following the previous international customary laws regulating wars, but there was still a gap in the qualification of SV. The negligence of rape may also have resulted from the Nuremberg Trials focus being on the mass destruction of human life. Moreover, SV that took place during deportations and in concentration camps seemed to be considered a milder form of violence when it was contrasted against mass murders.

In the Tokyo Trials for Japanese war crimes in 1946 and 1948, rape crimes were expressly prosecuted, but even then mostly in conjunction to other crimes. The Tokyo Tribunal (also known as IMFT, International Military Tribunal) nonetheless succeeded in including rape as a violation in the list of other recognized crimes such as, mass murder and torture, and broke thus silence on SV. Still, only a part was investigated: for decades thereafter, the abuse of 200 000 women as comfort women by the Japanese government was ignored and denied by Japan. Also, the victims of rape in Nanking (principally Chinese women) in 1938 did not testify to being raped. Therefore, it has been widely stated in literature that in practice the Nuremberg and the Tokyo Tribunals failed to adequately prosecute sex crimes.

The Geneva Conventions of 1949 were the instruments that established protection against rape for woman in a modern and universal way. The core of International Humanitarian Law (IHL) that regulates the relations between the state and the public spheres was comprised in the Conventions. In addition, there were 50 specific provisions about non-discrimination that provided special protection to women. Yet on the list of grave breaches there was no explicit reference to gender based violence. They remained, once again, as crimes that were subject to domestic jurisdiction. Rape was not specifically mentioned in the Geneva Conventions of 1949, but a common article 3 (1) (c) prohibited outrages upon "personal dignity".⁵

Rape and sexual assault became clearly outlawed in only by the amendment protocols of the Geneva Conventions in 1977. Article 27 protects women against "any attack on their honor, in particular against rape enforced prostitution or any other form of indecent assault". The additional protocols of the Geneva Conventions Security in 1977 prohibit rape as grouped under the definition of "any attack on their honor" and speaks about women's "dignity as women".

The emphasis on dignity, honour and dignity as women has later been criticized as offensive from the victim's point of view, since their use implies that a raped woman becomes dishonoured and her dignity as a human being would be

2 Islamic law also stipulates that that a state of war does not make an exempt for the prohibition of rape; rape is also outlawed in the Old Testament (Deuteronomy 22:28): "If a man happens to meet a virgin who is not pledged to be married and rapes her and they are discovered, he shall pay the girl's father fifty shekels of silver. He must marry the girl, for he has violated her. He can never divorce her as long as he lives."

3 Talmar 2008, 11.

4 Ibid, 23.

5 Talmar 2008, 15.

determined by her sexuality. Another central problem has been the definition of rape. Defining rape judicially is about, 1) the technicality of the act, 2) the use of force by the perpetrator and 3) the lack of consent of the victim.

In the 1990s, two international tribunals were established to prosecute for war crimes that had taken place in conflicts that were still not settled. As there was no internationally agreed definition of rape, both needed to define independently the crime of rape for their statutes. The classical rape trials had emphasised woman's consent to a penile invasion, but now they were about the technicality of the act, about whether a superior could be responsible for the rapes by his subordinates and about coercion of a third person to rape.⁶

The first one to be founded was International Criminal Tribunal for the former Yugoslavia (ICTY) in the Hague, the Netherlands, for the war crimes in former Yugoslavia. During the Yugoslavian wars, the systematic use of rape and forced pregnancies in Bosnia by the Bosnian Serbs against Croats and Muslims put pressure on the UN to react. In February 1993, the Security Council decided to establish a tribunal that was mandated to prosecute persons who were responsible for serious violations of international humanitarian law in the territory of former Yugoslavia since 1991.

The second one was the International Criminal Tribunal for Rwanda (ICTR) that was founded to investigate the genocide in 1993 and 1994.⁷ In the same way as for ICTY, the Security Council voted for creating a tribunal that finally was decided to take place in the city of Arusha in Tanzania.

Both trials came to approximately similar conclusions about the definition of rape. The most outstanding cases in this regard were the Akayesu case about crimes originally committed in Rwanda and the Furundzija case for war crimes in Bosnia. Both cases were the impetus for innovations in defining and prosecuting rape as a war crime.

Jean-Paul Akayesu⁸ was the mayor of the Taba commune in Rwanda from April 1993 until June 1994. The commune became a theatre for mass murders and rapes. First of all, the case of Akayesu resulted in abolishing the prerequisite to prove lacking consent the rape takes place during a conflict. This came to be the "Rule 96" of international law. It states that during a conflict situation consent shall not be allowed as a defence.

Secondly, the Trial Chamber did not go into a physical description of rape as argued by the prosecution, but chose to consider rape as "a form of aggression". The central elements of rape "cannot be captured by a mechanical description of objects and body parts". Hence, from the Akayesu case on, insertion of any object into bodily sexual orifices may also constitute a rape.

The third precedent set was that a commander can be found responsible for rapes committed under his leadership.

Jean-Paul Akayesu was not accused of carrying out rapes himself, but for ordering and encouraging to rape as a superior. Finally, the fourth innovation which was related to the alleged ethnic persecution, was that "rape and SV (...) 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 a part, a particular group, targeted as such."

As for the juridical innovations of ICTY, Anto Furundzija was a local commander of a special police unit of the Croatian Defence Council (HVO) 1991. His case was the first one to prosecute a military leader for rape which was committed by his subordinates during a situation of interrogation, (and not in a situation in the course of armed conflict). It also established a first case where a single occurrence of rape that occurs in conjunction of a war was regarded a war crime.⁹

Although Anto Furundzija did not himself physically perpetrate the violence, the Chamber sentenced him guilty for torture and outrages upon personal dignity. His case thus expanded the definition of rape in international law from the mere physical and mechanical definition that was employed by the Akayesu judgment.

The ICTY also established a connection between forced pregnancy and genocide and there were several other juridical innovations made in order to identify the practice of SV. It is no longer regarded as a by product or collateral damage of military conflicts.

2.2 Achievements of international law

The most important betterments of international law since the 1990s can be summed as follows: Rape and SV are separately and distinctively defined under international law, so that they can by no means be regarded as a by product of another issue. The consent as defence is eliminated in any case where coercion is shown and prohibited evidence of the victim's prior sexual conduct, "Rule 96", and even a single victim of rape can give rise to a conviction for war crimes.

The law on SV has been made symmetrical which means that it is acknowledged that both females and males can be victims of SV. Rape has thus become a gender neutral concept and special concern has been taken with the vocabulary. According to law rape is now about the "invading" the body, and not about "penetration". One can be convicted of rape and SV without being the physical perpetrator and superiors can be held criminally responsible for rapes committed under their supervision.

6 Lavolette 1998.

7 SV has also been processed in Cambodia War Crimes Tribunal since 2006.

8 Cases of Akayesu and Furundzija cited by Talmar 2008.

9 Anto Furundzija subjected a civilian woman of Bosnian Muslim origin to an interrogation at the headquarters in May 1993. The woman was questioned nude in front of soldiers with one of them threatening her with mutilation if she did not tell the truth. The woman was forced by another soldier to perform sexual acts with yet another victim, who was a Bosnian man. Anto Furundzija was present and did nothing to stop SV.

All in all, rape and SV were successfully prosecuted as war crimes in ICTY and ICTR war tribunals, and there has been a remarkable change in the way sexual crimes are treated in international legislation. It is still noteworthy, that even though rape and SV were explicitly incorporated under allegations for crimes against humanity and war crimes, none of the initial indictments by the courts included sexual crimes. In the ICTY and in the ICTR, the amendments about sexual crimes only occurred in the middle of the trials. The ICTY and the ICTR were also set up without any mechanism of compensation for the victims. Moreover, the trend to link rape to other crimes, such as genocide is sometimes dubious since the proof for attempted genocide is more difficult to attain than a proof for a rape.¹⁰

2.3 Why does international law fail to function?

Although the recognition of seriousness of SV has grown immensely in international law, there are still reports of SV in many conflict zones. Why has the evolution of international law been failed to be transformed into practice? There are several feasible explanations.

First, the outbreaks of SV tell nothing about the effectiveness of international legislation. International law is barely a tool to prevent SV. Any laws are responses in retrospect to crimes that have already taken place, and in retrospect the affected people usually say that they never imagined that their home area would one day become a theatre of sexual atrocities.

Second, contemporary wars tend to be internal conflicts that involve ethnic and religious elements. In many countries military leaders which are representing states and consequently have the power to ratify or not to ratify international conventions, are replaced by warlords, drug lords and ever-splitting troops in which there is often no clear chain of command. At the bottom of the chain of command in the brigades, the assaulters can be extremely poor, not educated and illiterate and thus out of reach of information about international law. Military leaders, on the contrary, can be well educated, sometimes despite of a misleading guerrilla-imago.

In that regard, the international law has actually intervened successfully by bringing at least an important part of these warlords to Tribunals (ICTY, ICTPR, International Criminal Court ICC). International law functions, but there are sometimes too unrealistic expectations about its efficacy.

Third, the timing of international intervention to a conflict brings in aspects and well-grounded accusations of partiality. Today's international war crimes tribunals, unlike their predecessors at Nuremberg and Tokyo, are founded on the principle of even-handed justice for all victims of serious violations of international humanitarian law. An important difference to the past examples of Nuremberg and Tokyo tribunals were ex post tribunals in that they were

established after the acute violent situation and military victory. What has arisen in recent years as a second type of international tribunal, a kind of an ex ante tribunal, which is established before the international security problem has been resolved.¹¹

Still, the crimes of criminals can be effectively investigated only when the surrounding conflict has calmed down to a level in which all the parties of the conflict can be impartially judged and witnesses can give their testimony without fear.¹² As for the creation of the ICC and its mandate to intervene in conflicts, The Rome Statute¹³ was created upon an assumption that governments would be reluctant to surrender their criminals to the ICC. This indeed has been the case with ex Chadian president Hissene Habre and the Sudanese president al-Bashir, the latter being accused of being responsible for thousands of rapes of women and girls among other atrocities. The DRC has proven to be a counter example. At the creation of the ICC, the drafters did not even contemplate including cases where a state would voluntarily refer its war criminals to the ICC, let alone that a state would invite the future court to investigate and prosecute crimes that occurred in its territory.¹⁴

This nonetheless has proved to be the policy that DRC has adopted with some of its warlords¹⁵ accused of rapes of civilians in conjunction with other war crimes. In such cases, the ICC prosecutes military superiors that can be held responsible for rapes. At the same time, the international community is addressing a part of a war that is still very much alive and in which the assignor party is claimed to have been involved in some capacity at some stage. In that case, international law does not function in the way it was supposed to.

Fourth, the persons involved in cases of SV tend to remain silent. There is reluctance from the sides of the perpetrators, the victims and the witnesses to address the matter during or after the conflict. SV attacks the unspoken moral values about purity, fidelity, motherhood and fatherhood.

Fifth, international law does not yet target the consequences of SV. The consequences that are experienced by the victims and their communities are the true problems of SV: this includes masses of rejected women, health problems, and paralysed daily economy. Children conceived out of SV are rejected and they can be deprived of having a name. Reproductive rights are not integrated to international legislation on SV.¹⁶ Forced

11 Arsanjani & Reisman 2008.

12 In that regard already the ICTR in Rwanda has been severely criticized for not having failed to indict a single soldier of the Rwandan Patriotic Force for killing or assaulting civilians, which risks to cause the Tribunal to be dismissed as victor's justice.

13 <http://www.icc-cpi.int/NR/rdonlyres/EA9AEFF7>.

14 Arsanjani & Reisman 2008, 329; Quévivet 2005.

15 Thomas Lubanga and Jean-Pierre Bemba for example.

16 According to WHO definition: "Reproductive rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to

10 Stern & Fouchard 2008.

pregnancy is a war crime in international law¹⁷ and can even be defined as a form of genocide, but a woman's right to decide to keep or abort the pregnancy depends on national legislation concerning pregnancy. In countries, where abortion is often illegal or access to a legal abortion highly restricted, deaths from abortion are hundreds of times higher than in countries where abortion is legal.¹⁸

Finally, SV often takes place in the so-called failed or collapsed states, where the national judicial system has collapsed or is completely unavailable. According to some estimates, in the DRC there are 1250 positions for judges unfilled and about 80 percent of people lack access to any kind of legal system.¹⁹

have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. They also include the right of all to make decisions concerning reproduction free of discrimination, coercion and violence."

17 IHL 7(2). "Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy.

18 According to WHO report in 2004, 68 000 women die per year due to unsafe abortions.

19 Peter Sampson in *Crafting Human Security* 2008, 49.

3 Gender-based approach and its limits

At first glance, rape is always a gender matter in times of peace as well as during wars. A gender-based approach to SV argues that armed conflict polarizes differences and inequalities that already existed before the conflict. An armed conflict would only exacerbate a traditional setting, one in which men are the aggressors and women are regarded as the supporters of their husbands, fathers and sons. Traditionally in Western laws there has also been a general expectation that women should be protected as mothers or pregnant women. During the Second World War, the international laws stemming from the Hague Conventions contained provisions about protecting family honour.

Assaulting women and young girls in a conflict setting can also be perceived as a phenomenon that logically goes along with the general trend of contemporary armed conflicts in which civilians account for the majority of victims: women and girls most often fit to the civilian category. Nevertheless, SV that occurs in a war setting does not always fit into the stereotypical conceptions of gender violence. Men and boys can also be sexually assaulted. Moreover, women also serve as soldiers and it is not exceptional to say that women in positions of power have also condoned rape as a war tactic.

The UNSCR 1325 written in 2000 and UNSCR 1820 from 2008 both focus on women; women as particularly vulnerable targets of war and on women as potential subjects of peacebuilding by empowerment. The combination of the two viewpoints is likely to draw attention elsewhere from the fact that raped women are victims of war, just as wounded men are victims of war. There is no shortcut from healing to empowerment.

The emphasis of the gender aspect inevitably renders the aspect of violence to a secondary position. As noted above, rape was not primarily seen as violence and torture in the history of legislation, but as dishonouring a woman and her family. Hence the gender-based approach is careful not to victimise women but to empower them, this is paradoxically close to a traditional understanding of rape as a matter of honour because it bypasses the stage of being a victim of violence. If a male soldier is shot in bladder and rectum during war and he loses continence, it is clear

that his primary need is to have a surgical intervention. His empowerment and reintegration into society is a question that will be addressed once he has healed from the wound. His right to a compensation as a war invalid is recognized, although in practice there may be no financial resources. When a woman is wounded in the same way by rape, there is a bias to understand the damage in first as psychological, social and cultural.

Despite the growing awareness about SV in armed conflicts, there has been a general failure of governments to implement a policy of health care for raped women that works. Unlike in war surgery, there are no governmental hospitals specialised in treatment of SV nor are there centralised registers of specialists who have the practical know how to treat injuries caused by rape.

A gender perspective stressing empowerment can also be an excuse to stagnate the actions against SV into a level where the women victims are gathered to women's centres, nursed by women nurses and put next to a sewing machine for training by a woman teacher and grouped to form women's cooperatives. They can have access to consult woman lawyers on their case, but in the absence of mechanisms of compensation, the victim herself will gain nothing by starting a juridical process against her assaulter. In practice a gender perspective can really be used to suppress a woman's rights to choose, as an individual, the medical aid she receives and rehabilitation measures that concern her, whether she wants to carry a pregnancy to full term or whether she has the right to abort, and what kind of vocational training would fit her and what she likes.

In short, the gender perspective can easily be understood as we know what is best for women. After all, it is not so surprising that the associations go to children, home, sewing machines, and the like. In sum, there is a risk that the claimed gender perspective marginalises SV to a specific domain of a gender affair or women's affair that does not integrate with the general attempts to strengthen RoL.

4 Magnitude of war-related sexual violence

SV in armed conflicts is an issue which has become documented numerically only recently. During the Second World War, the Japanese government placed approximately 200 000 comfort women in military brothels. In the Tokyo Trials approximately 20 000 women were estimated to be raped in Nanking. Otherwise gender related violations were neither specifically monitored nor enumerated.

Estimations about the numbers of victims of SV since the 1990s suggest an increase in frequency but remain often very irregular by method of collecting, and sometimes carelessly presented. In literature, the most often presented estimate concerning Bosnia and Herzegovina is from 20 000 to 50 000, the margin of error being in tens of thousands. In Rwandan genocide in 1994, the number of rape victims is usually reported as 500 000 victims, without amplitude.

In Eastern Congo (DRC) the United Nations Population Fund (UNFPA) has conducted data collecting in several posts around the country for more than four years: there was altogether 17 000 reported cases per year. The rape cases were reported both to the police and doctors. Information was collected by survey methods, but the stations around the country were far too dispersed.²⁰

SV is monitored in incoherent manners in different conflict areas, and sometimes the figures may be overestimated or boosted for fund raising. Estimates on “percentages of women being raped” are particularly problematic because they are incorrectly based; being raped cannot be compared to being contaminated by a virus. The estimates also lack accuracy about age and the geographical limits of collection. For instance, according to Physicians for Human Rights, in Sierra Leone “fifty percent” of the women and girls have been subjected to rape, torture or sexual slavery in civil wars from the beginning of the 1990s.²¹ However, as for medical data based on incidences, in Sierra Leone a medical research group published in a study in 2002 according to which 94 of 991 of respondents and 396 of 5001 female household members in Sierra Leone reported war-related

sexual assaults. In percentages this would only be 9 % and 8 % respectively.²²

All in all, there are remarkable inconsistencies on scaling the cases or frequencies of SV in different conflict areas and these differences cause a problem of credibility. Careless estimations can add the risk of fuelling the actual political conflicts because they can be interpreted as propaganda against the accused perpetrators. The inaccuracy in allegations about rape is one reason why rape has not been taken seriously as a war crime. At this point, there has not been much effort between researchers or data collectors to find explanations for very different estimations on the field. For these reasons there is an urgent need for better data.

20 UNFPA 2008.

21 Estimation of Physicians for Human Rights 2002.

22 Amowitz & al. 2002.

5 Cultural dimension of sexual violence

Rape always takes place in context. The present day rape waves during war that are known by the public have occurred in Africa and in South-East Asia. Is the occurrence of war-related rape waves determined by the surrounding culture and its traditions?

In Western countries where surveys have been conducted on SV during times of peace, a general finding is that the perpetrators of SV are in most cases men who are known to the woman. In conflict situations, the perpetrators of SV are more likely strangers to victims. In that sense it already becomes problematic to talk about rape cultures, as the parties of the war can be originally from different cultures.

In wars women become vulnerable to rape in occupied territories, when fleeing from conflict areas, and in refugee camps. In displacement, the perpetrators are soldiers, demobilized soldiers or policemen, and they can even be persons who were supposed to aid and protect civilians. From that point of view, SV in armed conflicts does not emerge from local culture, but from a violent confrontation of different groups of different cultural origins.²³

Mass rapes have taken place in near history, the Second World War included, and are geographically scattered: Germany, Japan, South-Eastern Europe (former Yugoslavia), Chechnya, Indonesia and Central Africa. Yet, SV in armed conflicts is associated to prevailing cultural traditions and it is expected that violence against women would be inextricably linked with women's participation to decision making. SV would thus be both a cause and consequence of women's low status. Women would only represent reproducers of culture and religion without being subjects. Systematic neglect of the other parent's kinship is a clear marker of linearity in favour of the noticed party.

For instance, in Bosnia, the mass rapes were sometimes interpreted as emerging from a prevalent patrilineal culture and the general importance of religion in the Balkans. Victims were most often Bosniaks and the perpetrators were non-Muslims. SV was not always limited only to rape, but also forced pregnancies. According to several interpretations,

the aim was to force women make children of another religion. The children were therefore converted to another religion and the culture or religion of the woman was totally disregarded.²⁴

Arguments about women's low status have also been mentioned in regards to Central Africa as one explanation for the current waves of SV. According to popular explanations, women in Africa would be regarded only as property of men, and it is sometimes stated that African populations in general would have very strict controls over female sexuality. In fact, regions affected by war-related rape in Rwanda and Eastern Congo touch the so-called matrilinear belt where women have more liberties than in Northern and in Southern Africa. These liberties concern freedom to divorce, to enhance oneself economically and liberty of movement. It has been common and acceptable for a woman to travel alone and to have her own independent commercial activities. This does not equate for sexual freedom, but the fact that women's sphere of movement has not been as restricted to the homestead like in Northern Africa has its practical implications. Even if women's position is rendered powerless by the war, the argument about the low status of women in Central Africa does not make sense in comparison to the status of women in many other cultural areas.

In the Northern part of the African continent, in the Darfur area of Sudan, the war has been engendered and SV is used war tactic,²⁵ but the family structures are predominantly patrilinear. Although, if patrilinearity²⁶ is cited as an enabling background for SV, it should equally be noticed that patrilineal structures have also been regarded as more restrictive in what comes to sexual freedom, and women's freedom of movement. Thus, in Darfurian culture the threshold to use sexual assault (rape) as a war weapon would be higher since women's sexuality in general is more regulated. Still, systematic rapes have been reported. The dynamics of SV as war weapon in Darfur is still different

23 Héritier 1996.

24 Nahoum-Grappe 1996.

25 Prunier 2005; 2009.

26 Patrilinearity is often mixed with patriarchy, which implies that father, or the grandfather has the primary authority of the household.

from Central Africa. In Darfur, rapes are revenged by counter-rapes of women of the enemy, whereas in Eastern DRC rapes are more opportunistic. SV is said to have gone “beyond the conflict”, which means that random rapes by militias and armed groups would have become an end of the terror itself.²⁷

In Indonesia there have been several reported waves of SV in conflicts on different islands since the 1990s. Indonesian traditional family structures have been marked by important matrilineal predominance despite the scattered geography of the archipelago. In practice, this can be seen in a relatively high level of economic independence that many women enjoy. Women often take care of the family's economic issues and operate their own small-scale business. As such, a matrilineal cultural tradition does not guarantee absence of gender misbalance at the disadvantage of women or absence of women's submission, but it does give a woman rights to her children and property.²⁸

It might be that cultures where women have greater autonomy and more independence, they are especially vulnerable and defenceless when rape is used as a war weapon in an armed conflict. In the DRC one popular explanation model²⁹ compares the risk of death to risk of rape. During war, a couple must decide who performs a task (tend to cattle or to collect water or firewood) with the threat of an armed assault, the risk for a man is to be killed and the risk for a woman is that she will be raped. In comparison it seems that it is better for a woman to be raped than for a man to be killed and thereby the woman is chosen to be exposed to the threat. Furthermore, when a woman is raped in the DRC, a consequence is that she is rejected by the community, often with her children in accordance with matrilineal logic. Traditionally, the society tolerates that women can be rejected, and the assumption is that women can survive alone and make their own livelihood somehow. In a war context this is not possible, and the multitude of stigmatised and rejected women is a particular social disaster, or a gender disaster.

In conclusion, it is possible to find counter arguments to the stereotypical blaming of patriarchy for rape waves. As well it could be claimed that patriarchy protects women more, as opposed to matrilineal cultures that expose women to sexual assaults by providing them a greater freedom of movement and because men (husbands and brothers) have less interest for sanctions and reprisals. In areas where men are traditionally not tasked with the duty of protecting women, women are easier targets for physical assault in a war context.

In practice it is difficult to contest correlations by empirical data between cultural complexity and sexual freedom. As such, there is no reason to claim that in a war situation, a patriarchy or a patrilinear culture are prone to SV than others.

27 See e.g. Amnesty International 2008.

28 McAmis 2002.

29 Told by a local NGO worker in Bukavu in June 2009.

Table 1: Beyond assumptions on culture: risk of sexual violence and woman's freedom
(Risk factor for SV +
Protective factor against SV –)

1) Matrilineal family structure tradition, Central Africa, Indonesia	Risk of SV + / –	2) Patrilineal family structure tradition, Bosnia, Darfur	Risk of SV + / –
Women enjoy greater independence (from men)	–	Women have less independence dependence on men	–
More permissive sex attitudes	+	More restrictive sex attitudes	+

Yet the cultural aspect in rape waves can never be denied because a specific form of cruelty³⁰ is always related to a particular logic of beliefs that is common between the perpetrator and the victim: both share the conception and symbolism about violence, about humiliation and about shame. For instance, in forced pregnancies in Bosnia there was a symbolic message to convert Bosnian women's children into Christians. In Central Africa, the use of wooden instruments in rape symbolizes infertility.

If SV in wars could be explained by local cultures, it should also be asked whether it would have been possible to predict and hence prevent SV beforehand. Explanations referring to a rape-prone culture tend only be pronounced afterwards. For instance, was it foreseeable in the former Yugoslavia in the 1990s? In any case, knowledge about the prevailing culture can nonetheless help in anticipating consequences about mass raping. In Eastern DRC, for instance, the manner in which victims of SV are rejected on a mass scale can be explained by the incapacity of the culture to cope with massive stigmatisation, whereas in the patrilineal belt, rapes are more likely to be revenged.

30 Nahoum-Grappe 1996, 287.

6 Risk environments for sexual violence

6.1 Rape patterns

Instead of rape-prone cultures, it is also possible to talk about environments where the risk of rape becomes high. The advantage is that environment is more concrete to describe and easier to document than culture. In practice there is an overlapping which can be called as rape pattern.

In so-called classic rape cases, the act of rape is supposed to be an isolated case. The description of the context may refer to the state of drunkenness in a party. Rape in particular is associated to a scenario of forced sex between two individuals, in which the surrounding conditions do not determine the criminality of the act. The critical element in defining rape is the woman's consent. If the victim's means to defend herself were absent, even the classic rape which takes place in time of peace, can also be defined as institutional SV. Marital rape can be regarded sociologically as institutional SV, regardless of whether it is criminalised in the national law.³¹ Nevertheless, generally speaking, rapes are perceived as occasional and random cases during times of peace.

The difference between peace and war is however not clear cut especially in contemporary internal war contexts. A military environment in itself can increase the risk of rape even during times of peace; women risk being harassed or raped in mixed armies. Another specific environment that seems to create an atmosphere where SV is likely to occur more frequently is context of sports: professional sports and sports clubs, football teams having leisure time or similar contexts.³² It is hardly a coincidence that both environments, army and sports, are much based on discipline, physical power and competition. Also, pornography in the form of the commercialised sex industry can banalize and normalize SV.³³

Although in real life there are such border line environments, the context surrounding rape – namely war situation – was founded as the critical factor when rape finally

became recognized as a war crime by the international law. SV was still not the in itself the initial subject of concern, but it became a specific topic later within the general need that arose to re-determine war crimes in the post-Cold War era. In 1992, the UNSC sent a Commission of Experts to investigate grave breaches and violations of International Humanitarian Law that were taking place in the Yugoslav wars. The areas of field investigations were classified in three categories: 1) mass killings and destruction of property, 2) treatment of prisoners and detainees, and 3) systematic sexual assault and ethnic cleansing.³⁴

As for the sexual assault and ethnic cleansing, in 1994 the Final report of the UNSC Commission discovered five patterns of rape cases:³⁵

- 1) Individuals or small groups committing sexual assault in conjunction with looting and intimidation of the target group.
- 2) Individuals or small groups committing sexual assault in conjunction with fighting in an area, often including the rape of women in public.
- 3) Individuals or groups sexually assaulting people in detention because they have access to the people. Reports frequently refer to gang rape, while beatings and torture accompany most of the reported rapes.
- 4) Individuals or groups committing sexual assaults on women for the purpose of terrorising and humiliating them often as part of "ethnic cleansing". Survivors of some camps report that they believe they were detained for the purpose of rape.
- 5) Detention of women in hotels and similar facilities for the sole purpose of sexually entertaining the soldiers. These women are reportedly more often killed than exchanged.

31 Adams 2005.

32 Messner 2005.

33 Dines 2004.

34 Talmar 2008, 30–32.

35 Ibid.

6.2 Why rape?

SV can be classified by its context, the following question that arises is whether there is anything general that could be stated about the assaulter's motives to rape. In classic rapes that are committed during times of peace, the rapist's motives are understood to be one-time-only, unique and opportunistic, even if the same person commits several rapes. In SV that takes place in armed conflicts, the assaulters' motives are understood to be less – if at all – determined by sexual desire. A war-time rape is about expressing power and domination under a collective strategy to govern by fear and terror. To what extent this motive is personal and individualistic in a war situation, and how individual desire is replaced by a collective motive or by chain of command is unclear. Whether rape is always an efficient strategic weapon for attaining those ends that were initially meant and planned is also questionable.

For as long as it is about describing how rape in war functions as a social phenomenon, there are three major discourses for explanations. They may occur mixed even in the same context, but they go as follows:

- 1) Oftentimes it is stated that war creates social eruption that in turn provides opportunities to rape. War-related SV results from the multiplication of opportunities to take advantage of women who are rendered vulnerable. Rape waves would result from a multiplication of opportunistic incidences. Each soldier can use the war situation as an opportunity. This one could be described as a normative assumption.
- 2) Another commonly expressed argument goes that women are raped because men find pride and enjoyment in establishing power over the women of the enemy. One kind of a feminist viewpoint is that in a war situation women's bodies become symbolic battlefields. Forced sex would not be opportunistic, but a manifestation of men's common interest to dominate women. This motive could be conscious, half-conscious or unconscious, but still it is there. Mass-scale SV against women would thus be an exacerbation of SV that already occurs during times of social stability. This could be described as a feminist assumption.
- 3) A third way of reasoning is a derived from the second, and refers to development. In developing countries women face a double risk of discrimination: they are vulnerable because of the surrounding poverty, and as women they do not enjoy the same rights as men. Gender balance that has become distorted by war, lack of any resources and the lack of RoL would make women more vulnerable to SV. This way of reasoning could be described as a developmentalist assumption.

The last assumption mentioned, the developmentalist assumption, is the one that is used most often by the international community and the UN. It does not take a direct stand to the ultimate motives of SV, but claims rather that poverty and lack of legislation catalyse SV. From this a question of legality can be raised that if in times of peace rape is not a clearly illegal act that is prosecuted as other crimes would, what can be expected during times of war? In that sense it is important to promote the RoL at all times, but in practice, without an acute crisis there is no ground for an international intervention against sexual violence.

6.3 Sexual violence by context

When rape is described as a war weapon, the underlying assumption is that the rapist represents the enemy. Nevertheless, raping can continue in a post-conflict phase by civilians. There is scattered information, but after wars marital and incestuous rapes also tend to become more common, as does domestic violence.

The DRC is an example of internal displacement as a risk factor for SV. The DRC has a huge problem of internal displacement, nearly one million people have been driven from their homes in the provinces of North and South Kivu where SV has been said to be the "worst in the world". This suggests that the mix of any military being close to women who stay in socially disrupted conditions contributes enormously to the likelihood of rape. The importance of the context-factor has been increasingly recognised since the beginnings of the 1990s. As an example of one of the most successful descriptive classifications is a recent Wilton Park conference summary that distinguishes SV in three categories in the following way:³⁶

- 1) Widespread and systematic, where it is deployed as a method by armed groups;
- 2) Widespread and opportunistic, where armed groups and ordinary civilians exploit conflict and chaos to attack women;
- 3) Isolated and random, where SV is a domestic and criminal matter that is unrelated to political strategy or to international peace and security.

The advantage of this kind of an approach is that it leaves aside all assumptions about gender relations, level of development or culture. It leaves out any speculations about the ultimately unknown motives of SV, and it can thus be agreed by a wide public. The inherent problem of the developmentalist assumption is that it combines development, poverty and gender perspective and is that it is apologetic by claiming ultimately that men rape because they are men, or because there is underdevelopment and poverty.

7 Social consequences of sexual violence

Threat of SV creates an obstacle to women's and girls' participation in public life. If one woman is raped, others become influenced by fear. Still, there is a general difficulty to accept that SV may happen to any woman, and women who experience SV are given no credence when they report being assaulted. Rape is not considered as a crime for as long as it can be portrayed like having sex without force. In times of peace, a woman's sexual conduct before the act is examined and pondered in detail.

Although the consent element has been abolished in the international law, and although it is not difficult to agree with a commonsense understanding that during war conditions there is no talk about woman's consent, the basic presumption is that rape is somehow a woman's own fault is difficult to abolish completely. Being raped remains a stigma. Moreover, the absence of compensation, even in symbolic form, to raped women (while still punishing the perpetrators) conveys a message that damage made to women is not worth of indemnifying.

As the war context in itself increases the vulnerability of women and civilians in general to be sexually assaulted, conflicts bring a certain oversexualisation of the environment in which sex becomes increasingly sold or exchanged for food or accommodation. There is a saying that goes, in a war situation "violence becomes sexy and sex becomes violence".

In societies where women's networks are based on kinship, a typical consequence for a woman who is raped is that she becomes rejected by her husband and ostracised from her community. It is difficult to get (re)married if rape is known. The rejection of raped women and especially those women who are injured has clearly been documented by individual cases in several medical studies.

When being raped means there is a threat of total rejection for women, it also means that the sphere of their daily tasks becomes narrowed. Going to school equals a threat to be raped, as well as going to water points to bring water, and there is no cultural mechanism for local men to protect women during times of threat. By these kinds of chain reactions, rape waves can paralyse entire villages, towns and regions. Over the course of time, a generation

of women may thus have gaps in their basic education. As such, gender relations that have become dysfunctional by generalised SV can take generations to become balanced again.

In the DRC the most concerned Kivu provinces have suffered not only from large-scale SV, but also the rejection of SV victims has become a mass phenomenon. The hospitals of Panzi in South Kivu and Heal Africa in North Kivu, together with many NGOs that organise vocational training, have become islets of rejected women. The endemic SV that has continued since the beginning of the 1990s has pushed women and girls to the margins of society. It is likely that SV has already had demographic implications on the household level by an increase of single mothers. Unfortunately, unlike in the case of Kinshasa, such research has not yet been done in Eastern Congo.³⁷

In this regard, one branch of the Human Rights-oriented approach calls for symbolic reparations. This means that in the absence of possibilities to compensate the damage done to certain groups and individuals that were falsely prosecuted; the state should express a public apology for its mistreatment of citizens and acknowledge its failure to protect them. If this policy is ever implemented, a public apology can play a large role in the later stage of peacebuilding³⁸

In practice, in the DRC many NGOs organise activities that train rejected women to artisanal professions in order to have a livelihood that can help them to sustain themselves economically. There should however be more variation in training; it is striking that most of the vocational training aimed for women are for artisanal and agricultural professions.

37 On Kinshasa see de Herdt 2004.

38 Apology and forgiveness are central values in Christianity, whereas outside its sphere apology from authority can be interpreted as losing one's face, or as a provocation.

8 Physical consequences of sexual violence

During times of peace, physical injuries resulting from rapes are in most cases limited to tearing and bruises.³⁹ In rapes, there is always risk of sexually transmitted infections as well as unwanted pregnancies. Permanent gynaecological harm is rare. Physical traumas of rape tend to be much more severe and common during wars. The injuries may be due to gang rape, detention for sexual slavery, or intruding objects to orifices of the victim. Rape also provokes miscarriages and untimely deliveries. The eventual unwanted pregnancies in their turn lead to abortions and risks of complications. Risks increase immensely in amateur abortions.⁴⁰

The causal relations in between SV, poverty and development are undeniably clear when it comes to physical consequences of rape. In the DRC one of the most difficult consequences of rape is fistula, which is a passageway between two organs or vessels.⁴¹ They result in incontinence of urine and/or faeces. Fistulas are also caused by prolonged child birth. These obstetric fistulas could be prevented by caesarean section. Therefore, the occurrence of fistulas reflects the state of maternal health. Furthermore, the occurrence of obstetric fistulas is also an indicator of development and woman's status in general because they occur more likely at young age and short time spacing between deliveries. When fistula is a result of SV, it is called a traumatic fistula. Fistulas can finally also be caused unintentionally by health care workers. In that case they are classified as iatrogenic fistulas.⁴² The World

Health Organization (WHO) estimates that approximately two million women have and an untreated fistula and approximately 100 000 women develop fistula each year. Nowadays, fistula is most prevalent in sub-Saharan Africa and Asia.

In Eastern Congo, where obstetric fistulas and sexual assaults are both common, women may experience both events by coincidence.⁴³ A woman also has a high risk of getting an iatrogenic fistula during the treatment of trauma, during curettage or miscarriage because the health care workers can be unprofessional and hospital technology is of poor quality. In practice, many fistulas that are reported to have been caused by SV are in fact of obstetric or iatrogenic origin. Nonetheless, both iatrogenic and obstetric fistulas are indirectly related to SV because had the woman not been raped, she would not have had a miscarriage, abortion or an untimely delivery. Therefore, it has been suggested by experts of gynaecological fistulas that all fistulas that relate to SV should be classified as traumatic fistulas.⁴⁴

In developed countries, a rape trauma is understood as a psychological one. It is not widely dispersed information that in war rapes, at least in Central Africa, corrective gynaecological surgery is often needed and those operations require surgeons with a lot of experience and sufficiently equipped hospitals. Furthermore, the post-operative phase of fistula repair operations requires specialised care, it has a high degree of complications and the problem of fistulas may still reoccur during the patient's next delivery. Fistulas are complex and unique as any soft tissue trauma. There is still misinformation about the ease and the standard price (\$300 USD) of surgical repair operations even in an UN-funded web-page⁴⁵. Likewise, there are exaggerated figures about the number of repair operations carried out in private hospitals in the DRC.

In many countries, access to a safe abortion is impossible or restricted and illegal abortions are frequent, especially in Africa. The Maputo Plan of Action contains

39 Loue & Sajatovich 2007.

40 Onsrud & al. 2008.

41 Ahuka Ona & al. 2008; Taback 2008; A fistula may occur between vagina or rectum, which is called a recto-vaginal fistula, or between vagina and bladder which is called a recto-vaginal fistula.

42 The occurrence of iatrogenic fistulas is in direct relation to all other fistulas. As fistulas cause incontinence and an inability to have children, women who get fistulas risk to become abandoned by their husbands and ostracised by their communities. In Europe and in developed countries in general, fistulas are nowadays rare because they have been eradicated by access to caesarean section. It also means that there is not much specialisation to surgery of traumatic gynaecological fistulas.

43 Onsrud & al. 2008.

44 Ibid.

45 <http://www.endfistula.org/donate.htm>.

recommendations to guarantee safe abortion, but it is still not ratified by all countries and it has been attacked by a conservative lobby working against it.⁴⁶

Finally, as for immediate response to rape, there is need for an immediate post-exposure prophylaxis (PEP), a special kit (called Kit-PEP) which is meant for emergency response and has been invented to protect individuals exposed to rape, unwanted pregnancy, HIV and sexually transmitted infections. The medication should be taken within 72 hours of exposure, and the treatment should be followed and controlled within the following months.

9 UNSCR 1820 and its criticism

SV had never been the initial and independent issue for international concern until the UNSC voted for a resolution specifically against SV on June 19, 2008. It was declared to reaffirm Resolution 1325 from the year 2000 and to be a supporting element for its full implementation. It urges the UN to impose sanctions on violators and requests the Secretary General to create a list of measures for minimising the risk of SV and to formulate guidelines for peacekeepers to protect women.

The Resolution presents arguments that are confirmations or reformulations of previous arguments already implicit in UNSCR 1325. The aim of UNSCR 1820 is to specifically target SV by recognising a direct relationship between the widespread and/or systematic use of SV as an instrument of conflict and the maintenance of international peace. UNSCR 1820 compels the international community to regard SV as a self standing security issue that is linked with durable peace, to exclude SV from amnesty proportions, and to make SV prevention and punishment “an obligation and not an aspiration”. It also calls for prevention of SV through effective military or police tactics and by efforts to end impunity. Beyond the UNSCR 1820, there are also hopes that it could help as a juridical tool against SV within process of disarmament, demobilization, repatriation, reintegration, and resettlement (DDRRR), in making higher ranking commanders responsible for ending rapes by his inferiors and therefore, ending rapes would be stated as a condition before any compensation would be given to his capitulating troops.

The reception of UNSCR 1820 has not been without criticism. There was no real innovation in it; Resolution 1325 had already taken SV into account and present international law already provides means to intervene SV. In that sense, there was no need for a new resolution. One particular but important point, 1820 even risks to take a step backwards by stating that SV can constitute a war crime. This formulation dilutes the stand of international law that rape committed by a war setting is a war crime. Furthermore, “war tactic” does not fit a post-conflict setting, which is very common to high incidences of rape and where the rapists are civilians. It is impossible to put the blame on a chain of command in

absence of a military context. Finally, the scope was almost solely in relation to Africa: the DRC and Darfur. This in turn can be viewed as a strategy to focus on demonising wars in Africa instead of tackling the international connections in those conflicts. The Resolution came through during the US presidency of the Council. One year before, a similar resolution to define rape as a “weapon of war” had failed to pass because of opposition of China, Russia and South Africa.

Redefining rape as a war weapon by UNSCR 1820 will hopefully call for more attention and give support in prosecuting rape in a military superior-subordinate relationship. In certain cases it can also help in putting pressure on warlords in peace negotiations that they order cessation of raping as cessation of use of other arms. Nevertheless, resorting to metaphors that associate rape to something other than a rape – war weapon, strategy, genocide, epidemics, metasthesis, unfortunate by-product of a military conflict, gender disaster – is not in itself a solution. Rather, renaming rape again and again is symptomatic of problems to consider it as a war crime that needs no extra justification.

10 Conclusion

For ages, rape in armed conflicts has been considered as something that has “always” taken place alongside the battle. Alternatively, the issue has been passed and silenced as something “too horrible to imagine”. In recent wars and armed conflicts that are intra state and take place in the close proximity of civilians, SV in conflicts has increased yet again. Another difference is the role of the media; news service has developed and SV is more likely to come into the public discourse through the media. Thanks to international concern and the rapid development of international law, acts of violence against women are considered as legal crimes.

SV has been used as a systematic war weapon with rational aims to govern populations by terror, but SV also represents one of the most irrational sides of human behaviour. War conditions seem to fuel the emergence of environments where cultural rules that regulate sexual behaviour vanish, and the context becomes a risk for SV. Still, no environment can generate behaviour that has no biological basis. Therefore understanding the emergence mechanisms of massive SV in wars would require involvement of the biologic sciences and neurosciences. Little is known about how it is physiologically possible to perform rape by order of a third person. What are the roles of desire, satisfaction, inhibition and guiltiness in that scenario?

Patriarchy or other variations of male dominated culture is often taken for granted to be the impetus for rapes to be used as a weapon. However, according to the same logic, those patriarchist cultural attitudes that regard women as property of men also have an interest to protect women against SV in a war context. The problem of outbursts of SV in wars may have nothing to do with woman’s status because the interest is not to rape lower creatures. There is no clear evidence that subordinate women are easier targets to rape in wars, or vice versa, that emancipated and empowered women would be better protected from SV during armed conflicts. Therefore, there should be perhaps better adjustment in the assumptions of the UN Resolutions that link SV with the participation of women in society and development issues.

In other words, the same set of cultural attitudes that in a war context can justify the use of rape as a war weapon is also less tolerant in what comes to being attacked by raping one’s own women. The lack of individually directed compensation for the female victim in the past or in traditional societies only shows lack of individualistic thinking. As such, traditional customs in which the compensation takes form by exchanging goods between families, or where revenge is directed against the assaulter’s kin or community, or in which women are just left on their own, does not in itself prove a “low status” of either of the sexes. Development, equality and participation are vital values and aims, but SV as a problem is independent from them.

The fact that the SV worst in the world takes place in an area of Central Africa which is as an area that is not clearly patrilinear should not be overlooked, if cultural aspects are to be linked with the topic. From the point view of diplomacy in peacebuilding, there could be common grounds enough in between different actors – states, INGO’s, local authorities – to work against SV as a particular form of violence that is considered as particularly immoral. SV as a war weapon can be outlawed in the same way and for the same reasons as landmines or as chemical weapons can be prohibited because they are cruel and target civilians. It might have been a wiser strategy to go straight to the point of SV without any background theory that can be interpreted as ideological or as feminist – and therefore a provocation.

UNSCR 1325 quite explicitly urged the UN Member States, “to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict” and to “adopt a gender perspective” with regards “special needs of women and girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstruction”. Special attention to protect women in war and post-conflict is needed, but in the UNSCRs it is not stated who should protect women. Women are the subjects and women are the objects, but there is no message addressed to men in UN resolutions. Strategies to empower women can end up

piling more responsibility on women themselves when they become de facto victims in wars.

As SV has now been entitled as a “tactic of war” by UN resolution 1820, a parallel change should take place in conceptualizing the victims of rape as war victims, and not as “raped (women)”. At present in Central Africa, for instance, the victims of SV are conceptualised as a social problem. The attention that is given to victims of SV consists of making them objects of various kinds of counselling, reintegration programmes and charity. In this respect, the intervention of many NGO agendas to “empower women” – by relying on UNSCR 1325 – can also negatively interfere with rebuilding the RoL because they create an illusion that a retraining program or donating a goat for woman can replace juridical compensation.

Thus, together with impunity, the absence of compensation mechanisms for the victims gives a green light for rapes to continue. That, if anything, is a message that a woman has no status or value. She is valueless because she can be harmed without being compensated for the violence she endured by any measure of value. In today’s world, value is measured and exchanged by money. In the UN approach that has been adopted in peacebuilding and civilian crisis management, women are considered to have “special needs” in an armed conflict setting. Special needs are mentioned altogether 8 times in UNSCR 1820. Receiving monetary compensation for being a victim of violence in war, be it SV or non-SV is not a special need, but supposed to be a normal practise in RoL. The question arises whether money should be transformed to some kind of gender-money unless it could be paid for women?

In traditional societies, rapes have been sanctioned and it has a price. A price can take form as a violent revenge to the perpetrator and his community (perhaps in the form of a rape) or by reparation measures delivered to the victim’s community. These kinds of traditional customs can be seen as backward practises that violate woman’s rights as an individual, as a juridical subject and person. Nonetheless, at present, the international community is in fact acting in the same way when it passes over the whole question of compensation for the victim herself. Strengthening RoL will be left half-done for as long as the rights of the victims are not taken seriously. Perhaps it is only by imposing a price on rape and by addressing it to the victim herself or himself that the international community will finally put words into practise in the battle against SV. In practice, as many of the assaulters are indigent by the time of trial, this would require an international compensation fund for victims of SV.

Such an international fund would likely raise questions about the responsibility of the state towards its own citizen-victims. If the international community covers the reparations – under a transitional justice for instance – does it not release the state of its responsibility? The question is legitimate in terms of principles, but in practice it should be seen in contrast to the sums of money already budgeted in peacekeeping and civilian crisis management operations. EU countries are willing to pay risk and hardship allowances

to its own crisis management personnel for working in dangerous areas. The idea that risk is to be compensated by money is internalised for the EU citizens. The idea that the demobilised soldiers should get a monetary reward for turning in arms from all sources is equally widely accepted. Both examples are based on thought that ultimately it is a question of costs of peacebuilding. It is thus only a matter of perspective to include money paid to female victims also as a cost for peacebuilding.

If eradicating SV as a war weapon is to be the priority number one, it is not necessary to link other additional goals about development, gender and women’s empowerment in the strategy. The approach of international law to regard SV as an autonomous war crime should have been used as such. UNSCR 1820’s formulation to define SV as war tactic still provides an opportunity to associate victims of SV to victims of war or to wounded soldiers who are thereby entitled to compensation. In any case, important progress has already been made in identifying SV as an entity of its own and the link between war and SV has been established enough in order to create at least some constant policies against war-related sexual assaults.

11 Recommendations

It is widely accepted that SV has medical, juridical, social and psychological dimensions. In the scarcity of resources, those fields can end up in a conflict of interests. From the point of view of the victim, the first priority is always medical, and from the point of view of the local government the first priority is to restore RoL and to end impunity. In practice, all actions bring costs: financing is needed to cover surgical operations and to construct hospitals. Financing is equally needed to build penal establishments, to organise correctional treatment and to train prosecutors. It is justified to claim that restoring RoL works as prevention by creating security, and it is equally justified to claim that omitting the victims' rights is a violation of basic rights, corrupts the RoL and adds fuel to SV, which is a threat to human security.

In practice there are different actors with different mandates. Some, like the ICRC and Médecins Sans

Frontières (MSF), concentrate on direct catastrophe aid with exclusively humanitarian missions and the duration of these mandates is meant to be short. The peace missions that target changing certain structures of the society (SSR for instance) have longer mandates. Then there is a wide variety of organisations for development co-operation that are specialised in long term development projects that aim at changing the society in the long run, for example to correct gender-balance in chronic conflict areas by trying to rebalance or to change the gender roles.

In the domain of immediate peacebuilding measures in a post-conflict setting realistic expectations are needed. Table 2 below proposes some likelihoods of success in interventions of civilian crisis management:

TABLE 2: What is doable in a short term intervention?
Chances of peacebuilding vs. war-related sexual violence
(– less likelihood to success
+ more likelihood to success)

Guarantee non-repetition of outbreaks of SV	-
Provide monitoring and technological solutions for reporting cases of SV	-
Change local perceptions on SV	–
Ensure delivery and availability of post-prophylaxis kits (Pep-Kits) to villages.	+
Identify cultures that are vulnerable for SV in order to enforce monitoring and protection	-
Identifying environments that are vulnerable for SV in order to enforce monitoring and protection	+
Prevent a raped woman's exclusion from society	-
Guarantee quality of certain dispensaries that provide health care available rape	+
Empower victims of rape who suffer from physical injuries	–
Enforce capacity building of healthy women	+

Faced with the complexity of the war-related SV it is evident that no single strategy can address both its causes and effects. That is why multidisciplinary approaches are necessary. Their use depends naturally on the nature of the crisis area.

11.1 Coordination and critical selection of cooperation partners working against sexual violence

In missions, one of the main problems in efforts to eradicate SV is the lack of coordination in between police departments, health services, prosecutors, eventual social integration providers, INGOs, NGOs and UN-based agencies that all have some kind of agenda to work against SV. Sometimes there is general ignorance about which organisation is undertaking various activities. As SV has become of a fashionable topic for fundraising, the agenda of many NGOs is relation for fighting against SV, but sometimes their claimed "holistic approach" proves to be a veil for non-professionalism. Therefore, in rationalising coordination on the field, a particularly critical attitude should be adopted towards the candidates for co-operation. The principle of supporting the state's ownership to its own crisis should be used as a selection principle for listing organisations that do not have explicit action plans but provide, for instance victim counselling. Another selection principle for determining trustworthy agencies is in relation to research and data collection. Any organisation should be regarded as suspect if they publish data without reporting their methods of collection and are not able to provide documentation when asked.

11.2 Collect better data and work against misinformation on sexual violence

Data on the magnitude of sexual information should be based solely on the incidences of rape cases and never on calculations and estimations derived from epidemiology. The kinds of approximations that are often published in the media about a certain percentage of women being raped do not fulfil the requirements for being considered a quantitative research method to the phenomenon of SV. They can also be regarded as degrading women of a certain country, and finally, they imply that that SV prevalence would be as banal as diabetes or the prevalence of tuberculosis. Misinformation regarding the amounts of rapes should not be tolerated as it has a negative effect on the fight against SV. Once revealed, all the information on SV loses credibility.

In collecting the incident report, cooperation between health care workers and police should be coordinated. Not that hospitals would submit identifiable information on its patients to the police – numerous misunderstandings on the field of local and international workers must be taken into account – but the difference between the statistical, anonymous data and data in which identification is essential (registers) should be clearly defined and understood.

Creating practical models for reporting the cases would be another area of capacity building that should be carried out by international actors. There are many possibilities for improvement in creating better forms for medical reports and crime reports. Translation into local languages would facilitate the administration enormously; however, sometimes the national laws on official languages can create an obstacle for this. Various technical solutions, such as satellite-based communicators could be considered instead of gathering information on paper. Another possibility to be investigated is allowing to the victim of SV to make a crime report regarding the offence at the reception of the doctor's office: either the doctors could be accorded the required juridical rights to write the crime report, or other candidates could be trained as "parajurists". Finally, this kind of knowledge management should be used for coordinating databases between medical experts and police.

11.3 Bringing together local spiritual leaders to search for a common ground

On the field in crisis areas, any multidisciplinary approach against SV requires a minimum common understanding between the local authorities and key opinion leaders about the essence of SV. The actual local authorities should be the first individuals identified and approached. Common ground can be made about identifying SV, but there may be less common ground as for to the reasons beyond SV, about who the assaulters are and about the root causes of the conflict itself. Churches and religious NGOs tend to associate the causes of SV to a breakdown of moral in which people are no more being taught about religion. In finding a common strategy, disputes may arise about whose moral values should be restored in the war-torn region.

In coordinating the many actors that work against SV there should be a conscious effort towards pluralism on the crisis area. No single actor should claim a monopoly in knowing how to eradicate SV or how to heal communities damaged by SV. Ideally, all the local religious leaders and leaders of as many NGOs as possible could formulate a common resolution against SV.

11.4 Encouraging states to ratify international agreements with regard to sexual violence

As for supporting the state authorities in incorporation of rules relating to SV, international law provides an appropriate model for reforming national laws on sexual crimes at national level. In this regard, the DRC's adoption of new laws on SV in June 2006 is an encouraging example that a failed state can carry out progressive law reforms. The DRC's law on SV has been published in modern and clearly understandable language in the form of a small booklet that is easy to distribute. Paragraphs about rape have also been translated into local lingua franca languages.

The states should also be encouraged to ratify international agreements on reproductive rights, namely

the international law treaties, and the Rome Statute on Reproductive Rights. Forceful impregnation is mentioned as a specific crime under international law, and logically, banning abortion for those who have been forcefully impregnated (at least for reasons of ethnic cleansing for example) should also be regarded as crime. However, in the international law as well as in the Rome statute, laws concerning pregnancy are left for national legislation.⁴⁷ Concerning the African continent, the Maputo Plan of Action stands for authorising medical abortion in cases of sexual assault, rape, incest and when the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus. Still, it is not ratified by all African nations. In practice, the issue is likely to cause many controversies, but a discussion about the fate of women who are forced to carry forced pregnancies to the end should be brought forward and examined.

11.5 Eliminate and/or monitor risk environments for sexual violence

It would be ideal if an early warning system could be developed for rape waves. It would, however, be too difficult to predict it from the basis of the local culture. In recent history there have been outbreaks of SV in Japan, in South-Eastern Europe as well as in Central Africa. Instead, it is possible to identify rape-risky environments.

Since it is known that the proximity of internally displaced women with any military is a combination that is likely to produce SV, anything should be made in order to prevent the creation of such an environment. There is no need to identify early warning signals of SV because an area with single women driven from their homes in proximity of soldiers should in itself be regarded as an early warning. Once a refugee area has been formed, there should be some kind of an immediate response plan that contains a sufficient reserve of kits of post-exposure prophylaxes and juridical counselling.

11.6 Initiate or support national policy in regards to the children conceived of rape

Living conditions of children who are born out of rape are likely to violate Declaration of the Rights of the Child. Any agenda against largely spread SV should thus include a plan in regards to organising adoption counselling. The role of the state in adoption services should be supported in order to strengthen the principle of National Ownership and also in order to avoid the danger of adoption services that are linked to human trafficking.

11.7 Strengthening Rule of Law by emphasising the rights of victims

Enforcement of RoL is always needed to stop SV in conflicts and in dealing with its consequences. In peace operations, as in the process of rebuilding the state, a specific message should be clear that an eventual new legislation on SV or appealing to international law in systematic rape does not justify the assumption that SV was accepted in any given war zone only until a prohibitive and punitive law was established. Otherwise, there is a risk that local population as well as traditional authorities reject juridical innovations as encroachment. Ideally, in presenting the new law or any message about punishability of here should be a bridging to previous national legislation, religious law or local moral code that used to regulate sexual behaviour.

Victim's rights should be regarded as an essential element of establishing RoL. A person who has experienced SV should be guaranteed the right to be treated as any person injured in an armed conflict. Classifying victims of war-related rapes appropriately as war victims instead of victims of SV or just "raped women" and associating them with the war-wounded could provide the critical impetus to consider victims of SV as individual subjects who are entitled to compensation. This would also require enforcing collection from the sentenced assaulters. In practice, this would necessitate establishing an international foundation by UN or EU for victims of rapes in wars.

11.8 Integrated training on sexual violence to courses on crisis management

Unlike chemical weapons or landmines, SV as a war weapon is barely a subject on which there should be special courses on peacebuilding. Information about SV should be integrated to different courses related to peacebuilding and all pre-mission training where civilians, police or military personnel are trained before going on missions abroad. A course module on SV should contain basic information on international law and the various forms of SV. In pre-mission training there should be information about local administrative practises on SV, such as the procedure with medical certificates, the local context of RoL, as well as the availability of prosecutors and prisons. Ideally it should contain information on local customary laws by a professional anthropologist.

11.9 Raising awareness

Among the first things proposed against SV in peacebuilding is "raising awareness". Yet, there is too many awareness campaigns by radio and by posters which risk trivialising SV. Portraying a certain group (women and children) as a possible target of mistreatment is dubious because it also recreates the stereotype images of victimised women. In the long run it can prolong and perpetuate misbalance in gender relations. In the media there is already hype around the topic of rape in internal battles and it is almost excessively reported as barbaric narratives.

The best straight-to-the-matter approach is to concentrate on informing the public about the law – provided that paragraphs outlawing SV do exist – and if not, about the international law and the punishability of SV. There is still a lot of misinformation about rape being a hopeless crime to be prosecuted.

In many countries, informing the general public about law reforms requires different approaches in urban and rural areas. It has been found by an NGO in the DRC that in rural areas where people are less literate, pictures and discussion events are more successful in conveying information about SV than written booklets and posters, whereas in towns pictures are no more that efficient. In organising public events on SV is appropriate to be prepared that certain issues can upset the audience and steal attention. Outlawing marital rape can be such an issue, as well as symmetry of SV, whether a woman can rape a man.⁴⁸

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