

Ensuring the Protection of Women’s Rights in Armed Conflicts

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ABSTRACT

Throughout history, women have often been subjected to various forms of victimization during armed conflicts, being among the most marginalized segments of society. Regardless of age, race, ethnicity, or nationality, women have consistently suffered in both international and non-international armed conflicts (IAC and NIAC). In response to these realities, humanitarian laws have been established to safeguard civilians generally, with specific provisions aimed at protecting women during armed conflicts (ACs). Despite the existence of international regulations and measures, there remains a lack of robust assurances for the protection of women in such contexts. This study aims to illuminate the issue of women's protection during ACs by examining pertinent international standards within the framework of international law.

1. Introduction

The devastating effects of war are deemed as mass human rights violations from the modern legal standpoint as they impact all levels of society irrespective of age, gender, skin color, ethnicity or nationality. The major burden of armed

conflicts, whether internal or external, is typically borne by the women (Judith & Charlesworth, 2000). Moreover, women are relatively easy targets of gross violation during ACs. One of the central issues and topmost priority during such situations is sexual violence, dubbed as “the greatest silence in history” (Abas, 2017). International humanitarian laws (IHLs) are put in place for the purpose of protecting AC victims. In the case of women, whether civilians or combatants, IHL guarantees both general and specific protection from sexual slavery, abusive detention, forced transfers, torture, and all other types of sexual violence (Vinay Aggarwal, 2018).

This paper aims to investigate the legal frameworks of IHL in protecting women who are trapped in the middle of ACs, as well as the implementation of the said protection. Next, the paper aims to examine the impact of ACs on women in general. Finally, the paper aims to identify the extent to which the international humanitarian framework has influenced and contributed in protecting women’s rights during situations of AC so as to decrease the prevalence of violations against them.

1.1 Research Problem

Across periods in history, women have been disproportionately affected by the diverse consequences of armed conflicts. Thus, protection systems for civilians, especially women, are observed by international humanitarian law ACs (Zhianpour et al., 2015). Moreover, despite the existence of legal instruments for protecting women’s rights during ACs within the context of the international humanitarian legal framework, violations against women’s rights during ACs still transpire i.e. a phenomenon that cannot be ruled out. However, these laws are limited to the promotion of the rights of women who are victims of ACs (Ivanciu, 2016). This paper primarily aims to investigate the legal instruments that advocate women’s rights protection during situations of AC, and the provision of a legal basis by the international humanitarian law for protective women’s rights during ACs along with the employment of said protection in reducing the prevalence of violations against women during wars and conflicts.

1.2 Research Questions

1. Does the legal framework of international humanitarian law have provisions for safeguarding women's rights in the context of ACs?

2. To what extent the implementation of the principles of international humanitarian law become a major mechanism for protecting women's rights in ACs?

2. does the humanitarian legal framework have influenced and contributed to the legal role in protecting women's rights towards reducing the prevalence of violations against them during ACs?

1.3 Research Objectives

This study also seeks to fulfill the objectives below:

1.To evaluate the humanitarian legal provisions as well as supporting mechanisms within international documents and treaties regarding women's rights protection in situations of conflict.

2.To analyse if the international humanitarian law's legal mechanisms can serve as a guarantee for lessening violations of the rights of women during wars and conflicts.

1.4 Research Methods

The present study adopts a socio-legal perspective and methodology. This legal study follows a normative-judicial approach i.e. in accordance to prevailing laws and regulations as well as based on library materials or secondary materials. The legal approach was employed because it is in line with the nature of the study. It entails a review of relevant books, acts, statutes and regulations. This is in accordance with the suggestion of Aboki that legal researchers attain their knowledge via books, statutes and cases. They would then analyze their findings and draw recommendations and suggestions in the library or chambers, all of which is the primary role of legal researchers (Aboki, 2009). Meanwhile, humanity studies are conducted within the interpretivism, positivism, and

critical paradigms; all non-positivist paradigms are classified as qualitative (Ryan, 2018).

Qualitative-based studies are commonly characterized research processes whereby the findings are not quantified through statistical analysis (Anwarul Yaqin, 2007). This type of research collects data through observation, interviews, or review of documents (Taylor et al., 2015). This study employed the abovementioned research paradigms i.e. positivism, interpretivism, and critical. It also attempted to explore international texts and documents related to humanitarian laws that were established to safeguard women during situations of armed conflict.

3. Conceptual Framework

3.1 Armed Conflicts (ACs)

There are two kinds of conflicts recognized by the IHL as explained below.

International Armed Conflicts (IACs): All four Geneva Conventions (GC), in their second articles, state that the terms of this Convention would be applied. “Declared war, or any armed conflict between two or more agreed parties, whether they recognize each other or not during war” is an example of an IAC. Additionally, Protocol II of the 1949 GC’ Common Article 2 provisions as such:

“In addition to the provisions that shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.” (Nolan, 1993)

Unequivocally, this article states that if the conflict is international and involves two or more parties, then the said parties should sustain their pact to adhere to the Convention, regardless of the perception of any party that the conflict is not a state of war. Such criteria are also applicable when an aggressor occupies a

country in part or whole. In short, the GCs do not justify the mistreatment of anyone, regardless of his or her role in any type of war (Fnish, 2013).

Non-International Armed Conflicts (NIACs): According to the United Nations' definition, NIACs typically transpire between armed governmental and non-state forces, or just amongst the forces inside the boundaries of the country (Fnish, 2013). It entails conflicts between political parties whether inside or outside a nation, involving poll rigging, public protests or rallies, or non-violent demonstrations. No extreme means are employed against the opposing party, and any problems can be resolved in accordance with the general international law. The IHTL (international humanitarian treaty law) also distinguishes between NIACs within the scope of the 1949 GCs' Common Article 3 which applies to: *"Armed conflicts not of an international character occurring in the territory of one of the High Contracting Parties"* (Cullen, 2010).

The biggest IACs, on the other hand, are composed of well-trained armed militias that aim to seize control of an entire nation or a specific area. Complicating matters, most civil conflicts have supporters from outside; hence, the countries that sponsor them or their neighbors usually put an end to them. International law may be used to settle some disputes between members of the federal union or confederate states (Fnish, 2013).

3.2 Women in Armed Conflicts (WACs)

During situations of armed conflict, women typically experience torture, sexual violence, summary executions, forced transfers, arbitrary arrests, hostage-taking, threats, and intimidation, which are all IHL violations (Fnish, 2013). Their suffering is severe and harsh; if they are not killed in armed conflicts, they would be displaced regardless of their age, nationality, sexual orientations, skin color, religion, class, socio-economic status, family status, employment status, or health (Charlesworth & Chinkin, 2015). On a broader level, Karima Bennoune asserted that conflicts lead to the creation of free-fire zones where women are

subjected to discriminatory and violent actions by male soldiers (Bennoune, 2007).

Women typically face violence whether sexual-based or gender-oriented during war i.e. acts known as the weapons of war (Nebesar, 1998). Women face gender-based violence at both interpersonal and structural levels (Nwotite, 2023). Although not all violence suffered by women during ACs can be classified as gender-driven, some are the result of their gender identification (see Table 1) (Bunga, 2017). The 1994 Rwandan genocide saw over 50,000 rape cases of women, whilst in the 1990s approximately 20,000 to 50,000 Bosnian and Herzegovinian women were sexually assaulted. In the Sierra Leone conflict, almost 50,000 women were internally displaced whilst another 64,000 became assault victims of armed fighters. Consequently, the UN declared that:

“Violation of women's human rights in armed conflict constitutes a violation of the fundamental principle of human rights and humanitarian law.”

(Muhammadamin & Bryar, 2020)

Table 1: Gender-Based Violence on Women ACs

	Gender-Based Violence	
	Interpersonal	Structural
Type of Violence	Sexual violence	The restriction on the ability of detained women to breathe freely due to the prohibition on their presence in the same room as males.
	Rape	The confinement of women is restricted due to their co-location in detention camps with males.
	Slavery	Restrictions on women’s space.
	Forced Marriage	restricted access to quality healthcare for nursing or pregnant moms incarcerated. Forced pregnancy. Forced prostitution.

Source: (Bunga, 2017).

Furthermore, many cases of women-targeted violence had been recorded in numerous current and ongoing wars. The 2010 Syrian civil war, for instance, saw approximately 10,000 individuals being forced to flee their home country. At least 2.4 million out of the 8 million Syrian refugees had sought protection

elsewhere abroad, and women make up a majority of them. Cases of sexual assault, rape, sexual slavery, threats and intimidation, forced prostitution, and forced marriages involving these women have been documented in all the nations that have taken in Syrian refugees (Zhianpour et al., 2015). Another recent case entails the Iraqi war initiated by ISIS (Islamic State of Iraq and Syria). This terrorist group attacked the main town of Sinjar on the night of August 1, 2014. ISIS has committed numerous crimes and violations against the Yazidi community's women and children, mostly sexual and gender-based, which amount to international law crimes as well as genocide.

ISIS demonstrated its superiority in this war of nerves by committing sexual-based crimes. The Iraqi Ministry of Human Rights reported in January 2015 that ISIS had kidnapped approximately 5,000 Yazidi women who were then sold as sex slaves. The Ministry added that the ISIS crimes had been declared and verified to the UN Commission for Human Rights via a special session held for recognizing the Yazidi Genocide (Omer, 2018).

4. Conceptualization of Protection and Human Security

Human security can be achieved through protection, specifically via the prevention of threats surrounding individuals as a result of violent conflicts. The requirements for such protection include the establishment of institutions both locally and internationally to address the state of insecurity which works as a preventive measure to detect gaps in the protection infrastructure. In the development report produced by the United Nation's programmer in the framework of personal security, which singled out women for protection as one of the categories most vulnerable to dangers, protection is referred to as an element of human security. Human security is defined in the final report by the Commission on Human Security (CHS) as the effort to

“protect the vital core of all human lives in ways that enhance human freedoms and human fulfillment. Human security means protecting fundamental freedoms – freedoms that are the essence of life. It means protecting people from critical (severe) and pervasive (widespread) threats and situations. It means using

processes that build on people's strengths and aspirations. It means creating political, social, environmental, economic, military and cultural systems that together give people the building blocks of survival, livelihood and dignity.”(UNISDR, 2009).

Protection is also considered as one of the techniques for combatting hazards surrounding humans such as armed conflicts, and the state holds the responsibility of securing the people's national and international safety. Those under its jurisdiction are also responsible for applying protective principles, such as the prisoner under the authority of the state of which troops had apprehended him. The enemy state is responsible for the fate of those in its custody, and the duty of preserving order and public services in occupied countries must be secured as a source for protecting conflict victims in the international level.

4.1 International Legal Framework to Protect Women During ACs

Wars and conflicts in the world have killed many innocent people. Children and women are the most susceptible to abuse during an armed conflict; almost every legal doctrine and international headline had been focusing on the issue of women's rights (Jabrawi & Khalil, 2008). It is a fact that the obligation of law is to regulate human conduct and to protect them especially in the most sensitive circumstances of war. At this stage, there is a need to emphasize the prevalence of many laws and regulations that call for the protection of women's rights to be established as an internationally-recognized legal framework. This mainly focuses on the discussion about the limit and possibility of these laws and regulations and their role in reducing the prevalence of women's rights violations. While the suffering of women during IACs and NIACs had posed serious harm, it also received great attention that was translated into numerous international laws via protocols and conventions at the global level. The various international legal regimes such as the IHL (International Humanitarian Law), the ICL (International Criminal Law), the IHRL (International Human Rights Law), and the UNSC (United Nations Security Council) possess distinct advantages and

assets with regard to safeguarding the rights of women throughout Acs (O'Rourke, 2020). In summary, the IHL works directly with belligerent actors to protect women's rights during ACs. The ICL provides the possibility of individual accountability for women's right violations during ACs. Meanwhile, the IHRL fights for ensuring the state's accountability in eliminating women's rights violations during ACs (de Koningh, 2023). Finally, the UNSC concentrates on protecting women's rights during ACs via enforcement activities. These United Nations Security Council resolutions play a crucial role in addressing and mitigating the impact of sexual violence during armed conflicts. For instant RES1888 (2009) stands out for its focus on strengthening efforts to end sexual violence in conflict zones, emphasizing the need for accountability and justice. RES 1960 (2010) complements this by establishing monitoring mechanisms specifically tailored to address sexual violence during conflicts, enabling better reporting and response mechanisms. (Jansson, M., & Eduards, M. 2016). Moreover, RES 2493 (2019) underscores the importance of implementing all resolutions related to women, peace, and security, highlighting a comprehensive approach to protecting the rights and well-being of women and children in conflict-affected areas. These resolutions collectively contribute to a framework that aims to prevent, address, and ultimately end sexual violence in armed conflicts, promoting a safer and more just world for vulnerable populations. Despite these circumstances, a significant global initiative was the adoption of UN Security Council Resolution 1325, which focuses on the women, peace, and security, this aspect will be elaborated upon in the subsequent section (Kreft, A. K. 2017).

Overall, these comparative advantages must be understood and leveraged to increase women's rights during situations of AC under international law (O'Rourke, 2020).

4.2 Women's Rights Protection in IHL

Women's rights protection was occasionally mentioned in some of the earliest laws related to ACs. For instance, the Lieber Code Article 44 punishes individuals

who rape the residents of the enemy nation. Women-targeted sexual crimes have never been considered a serious matter until today. There were rampant occurrences of sexual violence during the World War II, but Nuremberg never identified rape as a crime of war. Rape accusations were included in indictments prior to the IMTFE (International Military Tribunal for the Far East), and several individuals were punished for failing to guarantee the adherence to law among their subordinates.

Pertaining to the GCs and Protocols, An exhaustive collection of 43 articles has been dedicated to the subject of safeguarding the rights of women and the repercussions of AC (Gardam, 1998). All the articles, however, treat women as social beings rather than as individuals, deeming them as weak and in need of special attention. Nineteen of the articles are intended for the protection of children. Violations against a woman's honor is termed as sexual violence. As defined in the IHL, the honor of women is primarily based on specific sexual characteristics which males consider significant, most notably women's virginity and modesty (Buchowska, 2016). Additionally, the general provisions in each of the four GCs establish a regime of special protection for women during situations of ACs (Judith & Charlesworth, 2000). These provisions address women in general, regardless of their individual conditions or circumstances, using expressions such as "regard", "special respect", and "consideration due to women on account to their sex".

4.3 Sexual Violence Incriminatory Norms ACs

All four 1949 GCs and the 1977 Additional Protocols tackle the occurrences of rape and sexual violence during ACs in an implicit and express manner. The international laws designate all types of sexual violence including rape as crimes of war, humanity crimes, and a practice of torture under the international criminal court (ICC) statute. According to the ruling of Rwanda's criminal court

in the “Akayesu” case,¹ sexual violence refers to “any act of sexual characteristic done against a person in a forced circumstance and manner” (Bonab, 2009). Sexual violence does not only refer to a sexual attack on a person’s physical integrity, but also behaviors which exclude sexual intercourse or even the tiniest physical contact. Furthermore, international law has generally disregarded crimes of sexual violence. The 1899 Hague Conventions and the 1907 Respecting the Laws and Customs of War on Land make significant references to sexual violence under the IHL; however, sexual violence is not mentioned in the context of war crimes (Nwotite, 2023). Nonetheless, Article 46 of The 1907 Hague Convention provides for conflict-related protection for women by stating: “Family honor and rights, the lives of persons ... must be respected.”(Hague Convention (IV), 1977) Moreover, Odio in the GCs’ and Additional Protocols stated that only Article 27 of the Fourth Convention provides protection on women against rape and enforced prostitution out of the 429 provisions (Odio B, 2004).

Sexual violence bans are mentioned in several references. There is only one mention of sexual violence prohibition in each of the two Additional Protocols. It must be mentioned here that sexual violence indictment is relatively new. In fact, sexual violence is prohibited by the four GCs and their Additional Protocols. According to Article 27 of the Fourth Geneva Convention and Protocol I Article 76 and Protocol II Article 4, women are protected against honor attacks including enforced prostitution and rape as well as all forms of indecent acts (Godoy, 2016).

As stated previously, numerous IHL initiatives have been implemented to protect women from sexual offences committed during ACs. The prosecution of sexual violence, on the other hand, is a relatively recent development that is prohibited by the Additional Protocols and the four Geneva Conventions. As stated in the 27th article of the Fourth Geneva Convention, women are

¹ For more information see : <https://casebook.icrc.org/case-study/ictr-prosecutor-v-jean-paul-akayesu>

protected from all forms of honor-related violence, including prostitution and rape. Additionally, they are protected from all indecent acts. The first provision on rape is stated in Article 27 (2) of the Fourth Geneva Convention: *“Women shall be especially protected against any attack on their honor, in particular against rape, enforced prostitution, or any form of indecent assault.”*(Geneva Conventions, 1949b)

Despite the Article’s acknowledgment regarding the condemnation of rape during ACs, there is no acknowledgment regarding the gravity and scope of the practice as it is not within the IHL’s serious breaches system (the system obliges states to identify and reprimand individuals who breach certain provisions laid out in the Conventions). Like many other rulings associated with women, Article 27 (2) has also been subjected to criticism as it fails to demonstrate the gravity of sexual violence acts by classifying rape as merely an attack on the women’s honor (Gardam, 1997). Aside from the protections provided by these provisions, which are thus far undoubtedly valuable, none of them had stated that the challenges women face during ACs are unique i.e. beyond their maternal roles and status as sex victims. Furthermore, Article 12 of the 1949 GCs (I) establishes the rule of gender equality. However, it also states that: *“Women should be treated with all necessary regard according to their sex.”*(Geneva Conventions, 1949b). Similarly, Geneva Convention III on the Treatment of Prisoners of War protects women’s rights and ensures equal treatment between men and women. Article 14 of the 1949 Geneva Convention III states: *“Women should be treated with respect for their sex.”* (Geneva Conventions, 1949a).

It also establishes maternity protection in Article 14, Article 16, Article 23, Article 38, Article 50, and Article 76. Although the Geneva Conventions had significantly shifted the legal position of women caught in ACs, their rights remain protected under the notions of “respect for women”, “honor”, and “family rights” where they are deemed merely as mothers and caregivers (Gekker, 2014; Muhammadamin & Bryar, 2020). The treaties consider women-targeted violence as a social dishonor as opposed to a violation against their dignity as human beings (Buchowska, 2016).

4.4 Women, Peace and Security, United Nation Security Council Resolution 1325

Resolution 1325 of the United Nations Security Council, focusing on "women, peace, and security," was established in 2000 with the purpose of acknowledging and reinforcing women's involvement in peacebuilding efforts. The resolution seeks to revamp the approach of states in implementing peace and security measures in conflict-ridden and post-conflict societies. The genocide in Rwanda in 1994 served as a catalyst for the international community, including the United Nations, to recognize the gender-specific aspects of conflicts and the systematic use of rape as a weapon. Drawing from the experiences in Rwanda and the former Yugoslavia, Resolution 1325 was adopted, formally placing "women, peace, and security" on the global agenda. This adoption marked a significant milestone as it pledged to integrate women into conflict prevention and resolution, peacebuilding activities, and the integration of gender perspectives into the historically male-dominated security sector. (Kreft, A. K. 2017).

The atrocities committed against women during the ISIS war are a clear example of severe violations of women's rights. It's widely recognized that the actions of ISIS, including their crimes against women, amount to international crimes. For example, ISIS had tortured and murdered Yazidi women, forced them to convert to Islam, sexually assaulted, enslaved, and forcibly transported them, used children as human shields in skirmishes, and persecuted groups based on religion and ethnicity (Hamadamin, R. O., Abdullah, N. A., & Md Nor, M. Z. 2022).

One of the efforts by Iraqi authorities is the Iraqi National Action Plan (INAP) through which it implements the United Nations Security Council Resolution 1325 on Women, Peace and Security (WPS) in 2014-2018, which is a significant step towards enabling women's participation and protection in the processes of conflict resolution and peace-building in Iraq, especially after the ISIS war. The plan centered around six key pillars: participation, protection and prevention, promotion, social and economic empowerment, legislation and law

enforcement, and resource mobilization. The INAP prioritizes commitments to promoting women's political involvement, improving gender equality in legal frameworks, and removing legislation that discriminates against women. In terms of post-conflict involvement, it pledges to ensure women's participation in reconciliation committees and that peacebuilding processes are sustainable and proportional, especially with Yazidi women survivors post-ISIS. It also pledges to protect women from gender-based violence and provide abuse victims with the resources they need to recover and reintegrate into society during and after ACs (Swaine, A. 2018).

While this is a significant step towards establishing gender equality, women's rights in ACs, and long-term peace, there are several shortcomings. Firstly, sexual slavery is not recognized as a separate crime by the INAP, let alone as a priority issue. As a result, the INAP leaves out specific provisions on sexual slavery for the many Yazidi survivors who were victims of the atrocity committed by ISIS in Iraq. Also, the INAP fails to fully address survivors' immediate needs, such as permanent shelter and the need for post-conflict reparations and justice. Furthermore, INAP does not have well-defined timelines, comprehensive implementation, and control mechanisms, or clearly allocated budgets; key informants across Iraq echoed this. Many program objectives are not achieved or partially achieved, mainly due to the lack of a clear framework for monitoring and evaluation. For example, the lack of data collection and field assessments makes it difficult to measure the economic and social empowerment of displaced women conducted through INAP activities (Parry, J., & Aymerich, O. 2019). Another legal shortcoming is the estimated budget determined for this national plan. According to a UN Women study, the draught INAP includes an estimated budget for implementation. However, the budget was excluded from the draught approved by the Government, and no funds have been given for its implementation through the national budget. Despite creating history with its NAP, the Iraqi authority again failed in this step forward in establishing women's peace and security. Iraq needs a NAP that is inclusively designed and

implemented and a gender-responsive budget and monitoring and evaluation framework to completely and successfully implement the WPS resolutions. The INAP's operations must address the different needs and priorities of survivors of conflict-related sexual slavery in all of their activities. Finally, activities should focus on concrete measures that lead to protection, non-repetition, prevention, justice, alleviation, or recovery assistance for survivors of ISIS-related sexual violations (peacebuilders, 2020).

5. The IHL Protection Scope for Women During ACs

5.1 Protection of Women from Rape and Other Sexual Violence

There are various contexts in which women-targeted violence occur. Following the attacks, certain offenders may persist, but others may follow on occasion (Muhammadamin & Bryar, 2020). Also, rape is the most prominent example of sexual violence against women for decades during situations of conflict. It is now regarded as a war crime, humanity crime, and torture under specific conditions (Zhianpour et al., 2015). An important development in IHL concerning the abuse of women during wartime occurred in the 20th century (Khak, 2009). The IHL has long prohibited rape and sexual violence, albeit tacitly and conservatively. The 1863 Lieber Code had banned “*all wanton violence committed against persons in the invaded country . . . [including] all rape . . . of such inhabitants*”² and deemed it as illegal and punishable by death. The Code also stated that “unarmed people were to be spared in person, property, and honour”³ and that “persons of dwellers, especially women and the holiness of marital relations’ ought to be protected”.⁴ Regardless, rape did not have a clear definition in international law until 1998 (Priddy, 2013b) when the International Criminal

²<https://ihldatabases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=B1CE1E21A4237EE6C12563CD00514C6C>

³<https://ihldatabases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=3770B0D0CDEF5382C12563CD00514AEC>

⁴<https://ihldatabases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=0E37B70A8E2B1483C12563CD00514BFA>

Tribunal for Rwanda (ICTR) defined it as *“a physical invasion of a sexual nature, committed under circumstances which are coercive”*.⁵ Sexual violence and rape, according to the ICTR, may constitute genocide if they are committed with the intent to exterminate entire or partial groups of a particular nationality, ethnicity, race or religion. As a genocide tool, sexual violence can be committed via the birth prevention of a specific group through rape whereby women are *“deliberately impregnated by a man of another group, with the intent to have her give birth to a child who will consequently not belong to its mother’s group”*, entailing sex separation, enforced sterilization, or sexual mutilation.⁶

Here again, we mention the 1949 Geneva Conventions as a significant standard for humanitarian intervention to protect human rights, specifically the rights of women during the situations of AC, and the first treaties in modern history to *“achieve universal acceptance”*⁷ based on the Lieber Law and primarily codified customary law. While rape and sexual violence are explicitly addressed in the Fourth 1949 Geneva Convention, this reference is limited to women and is constructed using language that is dated and potentially discriminatory (Gardam, 1997). Article 27 states: *“Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault”*(Geneva Conventions, 1949b).

Therefore, rape, forced prostitution, and other indecent assaults are placed inside a protective framework rather than explicitly prohibited. Furthermore, the protections provided identify these offences as assaults on women’s *“honour”* rather than physical and violent crimes. Despite the absence of an official mention to protect women from rape in the 1949 Geneva Convention IV, males are unquestionably protected from rape under Common Article 3 which

⁵ ICTR, Prosecutor v. Akayesu, Judgment (Trial Chamber) (Case No. 96-4-T), 2 September 1998, }597.

⁶ Genocide Convention, Art. II(d); Prosecutor v. Akayesu, Judgment (Trial Chamber), 2 September 1998, }508.

⁷ ICRC, ‘A milestone for international humanitarian law’, Press release, 22 September 2006. <https://www.icrc.org/en/doc/resources/documents/statement/geneva-conventions-statement-220906.htm>

forbids “at any time and in any place whatsoever . . . outrages upon personal dignity, in particular humiliating and degrading treatment” (Buchowska, 2016; Geneva Conventions, 1949b). Article 27 of the 1977 Additional Protocol I states: “Women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault”.⁸ Despite the fact that Additional Protocol I, which oversees the IAC, does not utilise the language of honour, it treats women as individuals deserving of “special respect” and protection. As with Article 27 of the 1949 Geneva Convention IV, rape and other types of sexual assaults remain protected, rather than prohibited (Priddy, 2013a). Moreover, the customary international law for IACs and NIACs states that all acts of rape and sexual violence are illegal as demonstrated in Rule 93 of the ICRC research. The restriction enshrined in Rule 93 is gender agnostic i.e. it is applicable to both women and men alike (de Koningh, 2023).

It can be contended that the 1949 GCs and the 1977 Additional Protocols do not clearly encompass sexual assault and rape as grave transgressions, so excluding them from the classification of war crimes. Instead, the 1949 Geneva Convention IV, Articles 146 and 147 deem them as acts of “willfully causing great suffering or serious bodily injury to body or health”.⁹ Human rights groups have urged for the correction of this issue, which was prompted by the crimes that took place during the Bosnia Herzegovina conflict in the 1990s, the ICRC issued an assistant memorandum in 1992 to make clear that the system of gross abuse was “obvious”. It includes rape and all other forms of assault on the dignity of women (International Committee of the Red Cross (ICRC), 1993).

5.2 Protection for Pregnant Women or Maternity Cases

This category of women is afforded specific protection during IACs. Moreover, various provisions are put in place to protect pregnant women, mothers of

⁸ Protocol Additional to the GC of 12 August 1949, and relating to the Protection of Victims of IAC (Protocol I), 8 June 1977. <https://ihl-databases.icrc.org/ihl/INTRO/470>.

⁹ 1949 Geneva Convention IV, Arts. 146 and 147.

children aged 7 below, and other maternity cases. Throughout the customary laws, Additional Protocol I of the GCs in Article 8 states that: *“Maternity cases and pregnant women, who refrain from any act of hostility, shall enjoy the same general protection as that accorded to the sick and wounded”* (International Committee of the Red Cross, 1977).

Moreover, the Fourth Convention already underlies the assimilation of pregnant women and maternity cases as that of the wounded and sick: *“The wounded and sick, as well as the infirm and expectant mothers, shall be the object of particular protection and respect”* (Article 16). Additionally: *“The parties to the conflict shall endeavor to conclude local agreements for removal from besieged or encircled areas of wounded, sick, infirm, and aged persons, children and maternity cases...”* (Article 17) (Geneva Conventions, 1949b).

These groups of women are treated with the same protection and respect given to those who are injured, ill, and old. They are given special consideration in various aspects including medical care, food, physical safety, and repatriation (Laing, 2003). These groups have been purposely added to the category of injured and sick people to underline their unique needs. Without referring to the specific rules for the protection of women as a whole including those that fall under the definition of vulnerable groups, this entire set of provisions can be taken to mean that pregnancy and family unity are harbored under the Geneva Conventions and the Additional Protocols (Ivanciu, 2016).

The first Additional Protocol provisions that all war participants must do all they can to avoid imposing the death penalty upon women who are pregnant and with young children involved in armed conflict-related crimes. As stated in Additional Protocol I Article 76(3), such women may not be imposed the death penalty for such crimes (Bassiouni, 1976). Article 6(4) of Additional Protocol II also prevents the death sentence from being applied to the aforementioned group of women. Military manuals also state the same guidelines (International Committee of the Red Cross, 1977). The International Covenant on Civil and Political Rights and the American Convention on Human Rights both prohibit the imposition of death penalties on pregnant women (Fnish, 2013).

5.3 Protection of Women against Discrimination

There are unique provisions each Articles (9 & 57) of the First Additional Protocol as well as Articles (2 & 4) of the Second Additional Protocol and the Fourth GC which address discrimination. The core of IHL is to ensure the protection of all civilians regardless of their gender or any other form of discrimination. Furthermore, the law suggests for compassionate treatment to all people devoid of any gender-based prejudice (Fnish, 2013).

5.4 Women and Justice in International Criminal Court

The ICC marks a major step forward in addressing the complex subject of prosecuting women-targeted crimes during ACs (Buchowska, 2016). However, a challenge emerges for international criminal tribunals due to the non-existence of a clear delineation for the term sexual violence. The tribunals hence developed their respective demarcations for the term in each case based on their jurisprudence in this regard. The crime of rape, which is typically grouped under the broad category of sexual violence by treaty law, has its own definition under case law, Case in point, the crime of rape, typically categorized under the broader umbrella of sexual violence, is addressed by various treaty laws. Some of the key treaty laws that address sexual violence, including rape in Geneva Conventions (1949), these conventions include provisions related to the protection of civilians, including protection against sexual violence, during armed conflicts. Also, Rome Statute of the International Criminal Court (1998) defines sexual violence, including rape, as crimes against humanity and war crimes, providing a legal framework for prosecuting such offenses. On the other hand, CEDAW addresses gender-based violence, including rape, as a form of discrimination against women, emphasizing the need for legal measures to prevent and address such violence (Priddy, 2013). Yet, as mentioned earlier, UN Security Council Resolutions, resolutions such as RES1888 (2009) and RES 1960 (2010) specifically address sexual violence, including rape, during armed conflicts, calling for accountability and measures to end such crimes. (Nwotite, 2023).

These treaty laws, along with other international legal instruments and conventions, collectively work to combat sexual violence, including the crime of rape, and provide a legal basis for prosecuting perpetrators and protecting victims' rights. (Aleshkina, 2016).

On the other hand, adoption of the ICC standards represents an unquestionable improvement in the capacity to prosecute a wider variety of crimes based on gender and sexual orientation. The Rome Statute adopted on 17 July 1998 and the establishment of the ICC which has jurisdiction upon war crimes, humanity crimes, and genocide are regarded as a watershed moment in the prosecution of these crimes. This was the turning point when sexual violence was initially identified as a crime against humanity or crime of war in a more clear and concise manner (Ivanciu, 2016). Apart from rape and forced prostitution, the international criminal law via the Rome Statute also mentions several other war and humanity crimes such as sexual slavery, forced pregnancy, and forced sterilization (Altunjan, 2021). Furthermore, the Rome Statute of the ICC is a watershed event in the effort to end discriminatory and insufficient punishment for sexual violence offences under international law. To gain military or political triumph, armed groups have historically used sexual assault as a war weapon to terrify enemies and destroy community life (Jurasz, 2016). The ICC legislative framework encompasses a number of regulations that are designed to ensure the effective prosecution and investigation of crimes that are sexual in nature and gender-based, while also safeguarding the rights of victims and witnesses (Mouthaan, 2011).

Articles 7 and 8 under the Rome Statute carry the ICC's legal framework for punishing sexual and gender-based crimes against women. Each of the said Articles tackles war and humanity crimes. According to the Rome Statute, Article 7(1)(g) of the ICC, *“any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: [...] rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity”* (Arsanjani, 1999; International Criminal Court, 2011). These actions are classified as offences against humanity. Allegations of rape have

been lodged against suspects hailing from the Central African Republic, the Democratic Republic of the Congo, Darfur, and Uganda (Buchowska, 2016). The Rome Statute has made a significant contribution to the process of criminalizing sexual violence, and it is worth noting the concept's widening in light of the fact that these actions were formerly regarded as simple indecent assaults (Ambos, 2012). Moreover, under Article 8(2)(b)(xxii), in both internal and international armed conflicts, the Rome Statute recognizes sexual violence as a war crime specifically rape, sexual slavery, and forced prostitution: *“Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization or any other form of sexual violence also constituting a grave breach of the Geneva Conventions”*.

In the initial ruling of the Katanga case, the Court found that the presented evidences of rape and sexual slavery were insufficient for determining whether there is awareness on the part of the suspect that his subordinates had committed rape and sexual slavery (Sácouto & Cleary, 2009). As such, the verdict of 21st March 2016 for the case of Jean-Pierre Bemba Gombo is quite relevant. Bemba Gombo was found guilty in the Central African Republic for committing three counts of war crimes and two counts of humanity crimes, all entailing the act of rape.¹⁰ Moreover, the ICC found that Bemba Gombo holds accountability for his subordinates' actions as he did not prevent the crimes from taking place and did not give any punishment to the perpetrators. This move was undoubtedly a landmark decision, being the first time the ICC managed to convict the defendant for war and humanity crimes (Buchowska, 2016).

There is a decreasing gap between the expectations and reality of sexual crime prosecutions at the ICC level. The idea of removing the exemption for sexual assaults due to conflict situations has long been regarded as unrealistic, primarily because of the ICC's limited jurisdiction and resources, as well as its dependence upon state cooperation. Consequently, the expectation is that the ICC could only help in the battle against sexual assault caused by conflict in a more realistic

¹⁰ Case Information Sheet, Retrieved from <https://www.icc-cpi.int/iccdocs/PIDS/publications/BembaEng.pdf>

light. This can be accomplished by building and combining a gender-oriented legal framework and jurisprudence to act as a domestic jurisdictions model and reference point for international criminal laws (Altunjan, 2021).

6. Conclusion and Discussion

Women's rights are now gaining the attention it deserves within international humanitarian law after being sidelined for so many years. A legal framework has been established within the IHL for safeguarding women's human rights during ACs. This provision is also contained within the 1949 Geneva Convention and the additional protocols which outline fundamental rights that cannot be curtailed under any circumstances, including ACs (Bennoune, 2007). Moreover, it also aims to answer whether the international humanitarian legal framework – via its legal role – has influenced and contributed to women's rights protection to reduce violations against them during ACs. Despite all that, however, it seems that women's rights during situations of armed conflict are simultaneously being protected and violated. Despite the various existing legal support, both domestic and international-level violence against women is decreasing and increasing simultaneously. The former UN Secretary-General, Ban Ki, stated that the phenomenon still "continues" globally. By emphasizing the term "continue", it is implied that in spite of the "significant progress" made by various nations in "changing laws, policies, functions, and approaches" towards combating women-targeted violence, this "systematic and prevalent human rights abuse" is still persisting globally. As a result, the most vulnerable groups of civilians suffer the most from the situations of AC.

A review of the existing legal framework reveals that IHL provides the needed theoretical tools for protecting women against AC-related violence. Nevertheless, when used in the field, these mechanisms are confronted with numerous problems. Employees of the UN or the ICRC, for example, should be authorized to assist populations afflicted by AC such as protecting women's rights during ACs. Besides that, the eradication of gender-based violence and the support of women should be continued by international and regional activities

with the objective of empowering and developing related international laws. To begin with, the attainment of national security is only possible by safeguarding the people's security. It must be noted that domestic and international level human security can only be safeguarded if the security of women is guaranteed. This should not be viewed from the fact that women are central in ensuring social sustainability, but from the standpoint that women are human beings with human rights.

6.1 Findings

1. Based on the above analysis, it can be concluded that women are typical victims of gender-related violence, both as individuals and as a group. Their rights are deemed as violated, for instance, when they are raped or coerced into marriage, or when they are confined in a detention facility.
2. A legal framework has been developed by the IHL for protecting women caught in ACs. The 1949 Geneva Convention and the Additional Protocols state that fundamental rights are not restricted in any conditions, especially ACs.
3. The protection afforded to women under the rules of IHL somehow seem to be still in the developmental stage in terms of framework and substance. Despite the increased attention on women's rights and its minor impact on humanitarian law, there has been no widespread recognition that the human rights of women need a specific place in IHL.
4. The protection of women during ACs was limited only to forced pregnancy and sexual violence and did not cover all possible types of direct or indirect violence. Violence directed against women goes beyond the sexual sphere and also affects both the physical and psychological dimensions.

5. Despite legal improvements in the preservation of women's rights during ACs, their situation has deteriorated considerably. Indeed, the prevalence of violence against women has increased. Concurrently, the methods and objectives for which it is executed have also declined substantially. The most fundamental difference in the use of sexual violence in contemporary armed conflicts is that it is no longer an unavoidable byproduct of war, but is deliberately employed as a weapon of war. The conclusion is that the combined efforts of many international players are largely ineffectual, as wars and armed conflicts remain the purest and most heinous kinds of unlawfulness in the 21st century.

6. The international community has failed in fulfilling its moral and legal obligations towards protecting women, ensuring respect for the principles of international law, and activating Security Council resolutions and special agreements related to strengthening the protection of women's rights. Women are still subjected to many violations during ACs, to the extent that violence against women during ACs is used as a weapon for purposes of terror, society destabilization, and resistance breaking. Impunity has also exacerbated the situation as it encourages the continuation of violations.

6.2 Recommendations and Suggestions

1. In the first instance, there is a need to continue all international support for women and to eradicate all kinds of violations and women-targeted violence during ACs. Such action must be highlighted in all international and regional settings with the goal of empowering and developing applicable international legislations.

2. There is a need to prevent armed conflicts by addressing the underlying causes of violence, disseminating on a larger scale all international humanitarian rule, ascertaining adherence to international law

principles, activating Security Council resolutions and special agreements related to strengthening the protection of women's rights, and meeting international agreements related to security and peace, in addition to raising awareness. Members of the armies and military and security forces have human rights, along with the related international mechanisms and agreements that guarantee them.

3. Despite its importance, international cooperation is no longer sufficient. Hence, there is also a crucial need to develop and enforce internal legal structures towards eliminating acts of violence against women. Individual governments should work alongside international efforts towards increasing awareness and driving commitment via the enforcement of all the relevant internal legislatives, executives, and judicial measures for ending the acts of violence against women.
4. There is a need to conclude an integrated agreement on the matter of protecting women during ACs and against international crimes, as well as expanding the actions that constitute crimes of sexual violence via a third supporting protocol to the Geneva Conventions, apart from developing a perpetual ICC specializing in investigating women's rights violations and crimes of sexual violence, and confronting the contemporary changes in relation to ACs and the dearth of protection during such situations.
5. Absolutely, the rehabilitation system for women after armed conflicts is a critical area that deserves heightened attention from the international community. Ensuring effective and comprehensive rehabilitation programs for women who have experienced the traumas of war is not only a matter of human rights but also contributes significantly to post-conflict reconstruction and sustainable peace.

6. Finally, there is a need to involve women in international, regional, and national mechanisms to monitor the implementation of international conventions on armed conflicts and those related to the protection of civilians, particularly women. There is also the need to take all necessary steps to have independent bodies investigate and protect women who have filed complaints about violence.
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LIST OF ABBREVIATIONS

ACs	Armed Conflicts
CEDAW	Convention on the Elimination of Discrimination against Women
IACs	International Armed Conflicts
NIACs	Non-international Armed Conflicts
ICC	International Criminal Court
IHL	International Humanitarian Law
ISIS	Islamic State of Iraq and Al-Sham
WRAC	Women Rights in Armed Conflicts
CHS	commission on human security
UNSIDR	united nations office for disaster risk reduction
UNSC	United Nation Security Council
IMTFE	International Military Tribunal for The Far East
GCs	Geneva Conventions
WPS	Women, Peace and Security
INAP	Iraqi National Action Plan
ICRC	International Committee of the Red Cross
ICTY	International Criminal Tribunal of Yugoslavia

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دهسته بهرکردنی پاراستنی مافه کانی ژنان له ناوکیه چه کداریه کاند

پوخته:

به دریژیایی میژوو، ژنان له شه پ و ناوکیه چه کداریه کاند تووشی جوړه ها قوربانی بوون و له پیزی په راویژ خراوترین چینه کانی کۆمه لگا بوون. به بئ گویدانه ته من، په گه ز، یان نه ته وه، ژنان به بهرده وامی له ههردوو شه پری چه کداری نیوده ولته تی و نا نیوده ولته تیدا رووبه رووی پیشیلکردنی مافه کانیان بوونه ته وه. له وه لآمی ئەم راستیانه دا، به شیوه یه کی گشتی، چه ندین هه ولی یاسایی هه ن له چوارچیوهی یاسای نیوده ولته تی مرۆیی بو پاراستنی هاو لاتیانی مه ده نی ، که به شیک له و برگه یاساییانه ته رخا کران به ئامانجی پاراستنی ژنان له کاتی شه پره چه کداریه کاند. سه ره پای ئەم هه ولانه و بوونی رپسا و رپوشوینی نیوده ولته تی، هیشتا نه بوونی دلنیایی به هیز بو پاراستنی ژنان له م چوارچیوهی یاساییانه دا بوونی هه یه. ئەم توژیژینه وه یه ئامانجی پۆشکردنه وهی پرسی پاراستنی ژنان له کاتی ناوکیه چه کداریه کان دا به پشکنینی ستاندارده نیوده ولته تییه په یوه نیدارده کان له چوارچیوهی یاسای نیوده ولته تیدا.

ضمان حماية حقوق المرأة في النزاعات المسلحة

الملخص:

على مر التاريخ، تعرضت المرأة في كثير من الأحيان لأشكال مختلفة من الإيذاء أثناء النزاعات المسلحة، كونها من بين أكثر شرائح المجتمع تهميشاً. وبغض النظر عن العمر أو العرق أو العرق أو الجنسية، عانت المرأة باستمرار في النزاعات المسلحة الدولية وغير الدولية. واستجابة لهذه الحقائق، تم وضع القوانين الإنسانية لحماية المدنيين بشكل عام، مع أحكام محددة تهدف إلى حماية النساء أثناء النزاعات المسلحة. وعلى الرغم من وجود الأنظمة والتدابير الدولية، لا يزال هناك نقص في الضمانات القوية لحماية المرأة في مثل هذه السياقات. تهدف هذه الدراسة إلى تسليط الضوء على قضية حماية المرأة خلال الحروب الأهلية من خلال دراسة المعايير الدولية ذات الصلة في إطار القانون الدولي.