

THE CONFLICT IN SYRIA: THE FAILURE OF REDRESSING GENDER VIOLENCE IN ARMED CONFLICTS

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The paper aims to present the critical situation of women within the Syrian conflict. Women's vulnerability has determined rape to become a constant issue which accompanied war. In this article we will present the context of violence in Syria firstly analyzing the specificity of women's conditions during war. We will then take a look at the cultural context of conflicts in Syria by examining what happens to women in armed conflicts. We will conclude that armed conflicts exacerbate the global inequalities experienced by women. Thus, we will underline the intermingling existing between female discrimination and the prevalence of sexual violence in international and internal conflicts. Hence, special protection must be given to women in armed conflicts.

Keywords: *gender; gender violence; armed conflict; Syria.*

In addition to the literature in the field, this paper aims to provide new issues in order to clarify a crucial topic nowadays, namely that of the emerging forms of violence against women in armed conflicts. We chose to address this issue not only in terms of international humanitarian law, but also in relation to the prevention policy of gender violence. Therefore, structured in two dimensions, this study is mainly aimed at addressing various aspects of humanitarian and international criminal law in Syria, while highlighting the challenges and threats of vulnerable groups. Starting with a succinct presentation of the situation of women during conflicts, we must emphasize the specificity of the Syrian conflict within the wider geopolitical context.

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Victimization based on gender

The new semantics of the concept of "armed conflict" involves a combination of the legal regulations and customary law, which together acquire the power to protect those who seek help. First, we will examine the situation of women in armed conflicts. Women are vulnerable to sexual violence and abuse both at home and in shelters or refugee camps. Such violence against women occurs constantly and, although only a fraction of these cases are recorded or reported, thousands of women actually suffer. The victimization of women continued even after the emergence of humanitarian law and the conflicts in Vietnam, Algeria, Iran, Chechnya, El Salvador, Nicaragua, Sierra Leone, Palestine, Turkey, Lebanon show that all participants to the conflict were engaged in some form of the violence that has shaken these societies. Such violence crosses all cultural boundaries, but has been consistently unreported and unregistered, although these situations have led over the years to the death of countless women¹.

The situation of women in the community in which the conflict takes place has a significant contribution, especially in the areas characterized by a cultural dimension of gender violence². Violence against women is perhaps one of the clearest examples of how the discrimination of women, which exists in all societies in peacetime and during armed conflicts, is exacerbated, being favored by the strengthened patriarchal structures³. For centuries, the rape of women was considered a sign of victory, a soldier's proof of masculinity and success, as well as a compensation for his service⁴. Since the time when women were considered property, the unrestricted access to the body of a woman was considered a reward for the participation in the war. There is the widespread belief that in any conflict there will be incidents of rape, against all logic or sense of morality and that they are impossible to prevent. Subsequently, sexual violence during armed conflicts came to be seen as a crime against the honor of family and nation⁵.

¹ Dagmar Herzog (ed.), *Brutality and Desire: War and Sexuality in Europe's Twentieth Century*, Palgrave, 2009, pp. 260-269.

² Giles, Wenona Mary, and Jennifer Hyndman, *Sites of Violence: Gender and Conflict Zones*, Berkeley: University of California Press, 2004, p. 24.

³ Charlotte Lindsey-Curtet, *Women Facing War: ICRC Study On the Impact of Armed Conflict On Women*, Geneva: ICRC, 2001.

⁴ Alona Hagay-Frey and Stefanie Raker, *Sex and Gender Crimes In the New International Law: Past, Present, Future*, Leiden: Martinus Nijhoff Publishers, 2011, pp. 9-13.

⁵ *Rape As a Weapon of War: Accountability for Sexual Violence In Conflict: Hearing before the Subcommittee On Human Rights and the Law of the Committee On the Judiciary*, United States Senate, One Hundred Tenth Congress, Second Session, April 1, 2008. Washington: U.S. G.P.O., 2008.

Directing attacks on civilians tends to shock us, no matter the context, causing inter-cultural normative assumptions and questioning their identity. In each of those conflicts, we deal with the implications of gender inequality on human behavior, superimposed on certain socio-political structures in confrontation. Women are subjected to the mistreatment by all parties to the armed conflict, the "allied" forces, the "enemy", from civilians to military personnel. Theories on the victimization of women in armed conflicts suggest that they are more exposed to violence and to the risk of becoming victims of armed conflicts, following the suspension of the state of social order. Among these theories, we notice the theory of the exposure to violence which states that the exposure to situations of risk increases the risk of victimization. In cases of rebellion / insurrection, the acts of violence are caused by the lack of obedience to the legal and moral norms. The differentiation made by the society between men and women, on aggression and violence, remains important, especially in traditional societies. Thus, the transformations in humanitarian law are also due to the current increase in the number of people who are left outside the protected categories. The degree and extent of brutality in modern atrocities is incompatible with domestic violence in peacetime, but both operate on similar principles. In the case of internal armed conflicts, people face discriminatory violence caused to individuals who are outside the category of belligerent.

We do not have to ignore that, during the assertion of atypical, asymmetric wars, rape and sexual slavery were used as tools of conquest and were part of the national struggle and ethnic cleansing that accompanied these battles. In both wars, atrocious sexual crimes were committed as part of the official policy of war. In 1993, as a result of these horrible crimes, feminists have engaged in international humanitarian law, in order to combat these heinous crimes. They have also sought to use the murders as a platform to change the law by a feminist perspective. These wars led to the establishment of two international criminal tribunals – one for the former Yugoslavia (International Criminal Tribunal for the former Yugoslavia), and one for Rwanda (International Criminal Tribunal for Rwanda), who judged sexual crimes against women. These Courts have made great progress in the treatment of sexual crimes during the war, in international law. Sexual crimes were not considered crimes; instead were treated as independent international crimes. However, in the end, neither the International Criminal Tribunal for the former Yugoslavia nor the International Criminal Tribunal for Rwanda has provided significant legal instruments that would enable progress.

Recognizing that rape harms the dignity of the victim, the Court held that rape is a form of torture⁶, and recognized that physical contact is necessary in order to prove a sexual assault. The Court pointed out that, although rape is traditionally defined under state law as a “non-consensual sexual act”, this definition is too restrictive. The Court held that: *as torture, rape is used for various purposes such as intimidation, degradation, humiliation, discrimination, punishment, control or destruction of a person. Often, in practice, rape is used as weapon of war*⁷⁸. In Yugoslavia⁹, it was concluded that the systematic attack on Muslim women was one that endangered the very existence of the Muslim community, and rape was clearly a state policy that required support, resources, as was the case of the so-called rape camps, schools turned into torture chambers for women¹⁰. So it could be concluded that the armed forces have sought to achieve ethnic cleansing by the fact that they raped, left pregnant, but also kept pregnant women in order to ensure the birth of children¹¹. This was intended in order to achieve ethnic cleansing: men were killed on the battlefield; women gave birth to Bosniak and Croat children¹². The systematic rape in the evidence presented may qualify as *genocide* as in T.P.I. Rwanda case, where Jean Paul Akayesu¹³ was the first head of state indicted for rape in Rwanda. T.P.I. was called to interpret the 1948 Convention¹⁴ on the Prevention of Genocide finding that: the accused had all the “mens rea” to commit genocide, and showed this criminal intent for the systematic rape of Tutsi women... in order to destroy their spirit, their

⁶ We recall here the arguments of the International Criminal Tribunal for the former Yugoslavia (ICTY) for the Celebici case, where rape was considered a form of torture, because it involved the challenge of a severe prolonged suffering that can be observed both physically and psychologically.

⁷ *Human Rights Watch, Federal Republic of Yugoslavia: Kosovo Rape as a Weapon of Ethnic Cleansing*, New York, New York: Human Rights Watch, 2000.

⁸ Celebici trial judgement <http://www.un.org/icty>

⁹ International Criminal Tribunal for the Former Yugoslavia, Prosecutor v. Radovan Karadzic: Judgment, April 28, 2000.

¹⁰ The judges wrote that sexual violence “strikes at the very core of human dignity and physical integrity.” The trial chamber noted that the discrimination element of the crime of torture is satisfied when such violence is committed against a woman because she is a woman (i.e., not merely because of her ethnicity International Criminal Tribunal for the Former Yugoslavia, Prosecutor v. Delalic: Judgment (Nov. 16, 1999), IT-96-21-T.

¹¹ Darfur Sudan, *Rape as a weapon of war: sexual violence and its consequences*.

¹² Pipe Kennedy and Stanley Penney, “Rape in War: Lessons of the Balkan Conflict in the 1990’s.” International Journal of Human Rights. Vol. 3, 4., 2000.

¹³ Prosecutor vs Jean Paul Akayetsu ICT Rwanda indicted for genocide, crimes against humanity, grave breaches of article 3 common to the Geneva conventions.

¹⁴ Article II of the *Convention for the incrimination of genocide*.

desire to live and to procreate¹⁵. The Court found that sexual violence is a crime against humanity or violation of art. 3 common to the Geneva Conventions and the Additional Protocol II; but, according to their magnitude, it may qualify as genocide; the Rome Statute criminalizes rape in art. 8, paragraph 2, letter 2, Section XXII, as a war crime; in art. 7, paragraph 1, letter g - for crimes against humanity, and forced pregnancy, although ambiguously defined in art. 7, paragraph 2, letter f, is seen as a form of genocide if the intention is to change the ethnic composition of a group¹⁶. The sentence pronounced in Akayesu case helped significantly to improve the potential of bringing criminals to justice for sexual crimes under the superior's liability even if it is not military. It was also the first time when an international court sentenced rape not because it is a crime of violence against women and a manifestation of male dominance, but because it is an attack on a community defined only by the racial composition, religion, national or ethnic origin. While entire communities suffer from the effects of armed conflicts and terrorism, women and girls are particularly affected because of their status in society and their sex¹⁷. The parties to the conflict often rape women, sometimes using systematic rape as a tactics of war and terrorism¹⁸.

Authors such as Alona Hagay-Frey, Wenona Giles and Jennifer Hyndman state that, in armed conflicts, women's identity is sexualized¹⁹. They become victims of the physical dimension of their identity, as shown in the conduct of those who are resorting to such violence. Viewed as an object that can be conquered and possessed, a woman's body is representative for reclaiming a dichotomous relationship: possessed object and possessing subject. Beyond the effect of widespread terror within the civilian population, sexual acts can affect the way in which there is recognized men's inability to

¹⁵ *TPIR 2001 The Trial Chamber* held that rape, which it defined as "a physical invasion of a sexual nature committed on a person under circumstances which are coercive", and sexual assault constitute acts of genocide insofar as they were committed with the intent to destroy, in whole or in part, a targeted group, as such. It found that sexual assault formed an integral part of the process of destroying the Tutsi ethnic group and that the rape was systematic and had been perpetrated against Tutsi women only, manifesting the specific intent required for those acts to constitute genocide

¹⁶ Cherif M. Bassiouni and Marcia McCormick, *Sexual Violence: An Invisible Weapon of War In the Former Yugoslavia*, Chicago: International Human Rights Law Institute, DePaul University, 1996.

¹⁷ *Idem*.

¹⁸ Assad's thugs are raping and impregnating women in Syria. 2012. Telegraph.co.uk, Apr 25, 2012, accessed on April 22, 2013.

¹⁹ Alona Hagay-Frey and Stefanie Raker, *Sex and Gender Crimes In the New International Law: Past, Present, Future*, Leiden: Martinus Nijhoff Publishers, 2011, pp. 15-19.

protect their family and the community is affected in its security function²⁰. Sexual violence can lead to the exclusion of women from the home community and, beyond the caused injury we deal with an injury to the community and to the social relations specific to extended families. Rape by the soldiers of the invading army destroyed any illusion still owned by the members of the defeated party. The raped woman's body has become a symbolic battleground, as it was trampled during the march of the victorious troops. The show played on the stage of the woman's body was a message sent between people - a convincing proof of the victory of one party and the defeat of the other party. Beyond the Chinese proverb "hang one enemy to warn a hundred", the state of insecurity generated by social conflicts caused the reluctance to join rebel groups for a belligerent camp. For the other party, when crimes are committed by rebels, we deal with the denial of social order, creating chaos as a normative basis to gain power. Everything that can be linked to the old regime is impure and must be punished, rape being seen as a weapon that does not require the involvement of resources or choosing a weaker victim who cannot fight²¹. By involving power relations, dependency is created, trying to punish what is regarded as a departure from the norm.

The conflict in Syria

In terms of the violence faced by the women in Syria, it is very important for the international society to actively intervene in order to ensure the protection of civilians in danger. This form of victimization of women is a manifestation of the social role and of the impact of gender on war development. Syria has ratified the Geneva Conventions in 1953 and it is, therefore, obliged to respect the Article 3 common to the Geneva Conventions that establishes protective measures and safeguards for vulnerable groups, especially for non-combatants. Geneva Conventions expressly provide that women shall be treated with all consideration due to their sex²². The Syrian society latently presents all the features for the use of forms of violence and serious prejudice to the behavior of civilians during war. Being based on a fundamental patriarchal paradigm, it puts its seal on the precariousness of life and democratic institutions, which once overturned open the way for the return to fundamentalism, by establishing governance around the Islamic law.

²⁰ Séverin Cécile Abéga, *Les Violences Sexuelles Et L'etat Au Cameroun*, Paris: Karthala, 2007.

²¹ Alona Hagay-Frey and Stefanie Raker, *Sex and Gender Crimes In the New International Law: Past, Present, Future*, Leiden: Martinus Nijhoff Publishers, 2011.

²² Art. 12 of the *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces*.

The modest status of women within the Syrian society is reflected in the way they are treated by society, in the existence of property rights, rights of inheritance, marriage and divorce laws, in the exercise of personal rights, in order to acquire citizenship or to seek employment. Given this lack of full involvement within the society, gender differences and their biological role, it is inevitable that an armed conflict does not have an extremely harsh impact on women. There is no legislation in place to address specific issues of domestic violence in Syria; the conflicts due to the ethnic membership to Sunni or Alawi groups feed the dehumanization risk of either of the party involved in combat²³. Domestic violence has long been a taboo subject in society, but recently there is a return to the traditional values which deny the respect for women as individuals and overwhelm the one of mother or wife. Yet, domestic violence cases resolved in favor of women and penalizing the aggressor are almost nonexistent and the position of officials is one of solidarity with the aggressor.

Sexual violence, namely rape, is an offense under the Criminal Code of Syria, but the law does not recognize the concept of spousal rape. A violator will benefit from impunity if he agrees to marry the victim. In peacetime, women and girls who are victims of sexual violence and who talk about it or seek help from the police can be hit by a wall of indifference, hostility and the risk of being ostracized under the pressure to withdraw charges. In addition, women and girls who have been raped are then at the risk of violence by their own family, for bringing "shame" to the family honor²⁴. Syrian women face strong pressure to comply with prevailing social norms regarding acceptable behavior in order to ensure that the "honor" of the family is preserved.

In Syria, reports show that in 2011 the number reached 60,000 victims although the real figure is likely to be much higher, and the number is nearly of one million refugees²⁵. The number of rapes is unknown, but the Red Cross reports indicate that a number of over 4 million civilians are in need of assistance and point to the existence of a humanitarian crisis²⁶. The conflict in Syria is qualified under the humanitarian law as an internal conflict where the conflicting parties are, on the one hand, the state armies and, on the other

²³ <http://www.law.emory.edu/ifl/legal/syria.htm>

²⁴ Under the Criminal Code, perpetrators receive lower penalties for such crime or for violent crimes against women; in defense, the "honor" of the family is cited as a mitigating factor.

²⁵ New UN study puts Syria conflict casualties at many more thousands than reported. 2013. RTTNews, Jan 02, 2013, accessed on April 22, 2013.

²⁶ *Rape 'significant' factor in Syria conflict: Watchdog. 2013.* Alarabiya, Jan 13, 2013, accessed April 22, 2013.

hand, the forces representing the government led by Assad. Being part of the movement started in 2011, known as People's Spring, the Syrian uprising was particularly violent and the sanctions imposed by the international society are insufficient.

In this situation, the Protocol II to the Geneva Conventions of 1977 is applied, which, in its turn, lists and prohibits any kind of conflict causing harm to the people not involved within the conflict²⁷. This includes vulnerable groups which need to be protected from the effects of conflict behavior and we specifically discuss about the treatment of children and women outside the international armed conflict, of the requirement to keep families united and to removed them from the combat areas if possible.

We are dealing here with a first application of the dilemma of humanitarian law: Syria is not a contracting party to Protocol II and, therefore, the treaty is not specifically applicable to the Syrian conflict.

However, as the International Committee of the Red Cross also informed²⁸ everyone concerned, many of the principles enshrined in Protocol II have become part of customary international law applicable to conflicts, and article 3 common to the Geneva Conventions is the cornerstone of the protection granted by the international humanitarian law during armed conflicts²⁹. Article 3 common to the Geneva Conventions prohibits any

²⁷ Art. 1 Material field of application 1. This Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions of application, shall apply to all armed conflicts which are not covered by Article 1 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol. 2. This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.

²⁸ Ennaji Moha. and Fatima Sadiqi, *Gender and Violence In the Middle East* London: Routledge, 2011.

²⁹ Article 3 common to the four Geneva Conventions of 12 August 1949 provides that: "In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

inhumanity, cruelty and inhuman treatment against persons not taking direct part in hostilities. Among the prohibited acts, we can include torture, humiliation, hostage taking, extrajudicial executions and murder. In addition, Article 3 provides for the medical care granted to those who are wounded or sick, acts that the Syrian government does not grant³⁰.

Conclusions

In recent years, the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Court (ICC) defined rape in the international arena as a crime of violence. It thus makes a distinction between honor and violence. Due to the intensive involvement of non-governmental organizations (NGOs), international criminal tribunals have begun to deal with sexual crimes and a future legislative reform is to be shaped.

Sexual violence does not have as passive subjects only those persons who are victims of the sexual act, but it also affects whole communities, by affecting the very values on which society is based. In this situation, the violation of a woman's body goes into the background, the group humiliation being the one which excels. In this respect, the international criminal law includes a problematic distinction: it operates in the public domain of the community, leaving the individual's private sphere untouched. Since the notion of community involved here is defined by its people, the distinction has generated several consequences. The victims are often excluded from the community of origin, which is a traditional, patriarchal one. Analyzing the cultural context of Syria, we conclude that, although it legally recognizes that women and men are equal, this cannot be strengthened by the everyday practice. The lack of gender equality policies makes the anomy state triggered by violence lead to insidious effects.

From events above we can see that, in Syria, the civilian population is displaced, destroyed, and rape is used as a "deliberate strategy to remove

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- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
 - (b) taking of hostages;
 - (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
 - (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

³⁰ Syria's protracted conflict: International response pathetic. 2013. People's Review, Mar 20, 2013. (accessed April 22, 2013).

civilians from their homes”³¹. Civilians were subjected (as they say) in relation to the destruction of community, social isolation, difficulty in benefiting from medical treatment, and insecurity. Thus, although 50 years have passed from the time of the Nuremberg and Tokyo trials, a time when the international law was silent and ignored the sex crimes committed in Nanking and Berlin, we can conclude that the promise of protection has been broken once more. Despite the protests organized by non-profit organizations and the evolution of the feminist movement, shocking crimes against female persons further characterize war. The violence committed in Syria must be investigated and the perpetrators must be held responsible. Moreover, political concepts such as the responsibility to protect must be axiologically refueled with the responsibility to prevent others from suffering.

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³¹ *Fear of rape driving Syria refugee crisis*, 2013, *The Daily Telegraph*, Jan 15, 2013. accessed on April 22, 2013.