

Gender-Based Violence and Justice in Conflict and Post-Conflict Areas*

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Introduction

“War is an inherently patriarchal activity, and rape is one of the most extreme expressions of the patriarchal drive toward masculine domination over the woman. This patriarchal ideology is further enforced by the aggressive character of the war itself, that is to dominate and control another nation or people.”¹

In the past decade, the relationship between gender-based violence (GBV) and armed conflicts has received much international attention. The impact and implications of violence against women have led to numerous attempts to address accountability and impunity issues through processes that include access to justice mechanisms. Despite efforts to address issues of GBV in conflict and post-conflict areas and to raise awareness of these issues, GBV continues to be a major problem. In many conflict settings throughout the world, women continue to experience gender-targeted violence, such as rape, sexual slavery, and a host of other human rights abuses, as part of military campaigns and as a result of the breakdown of community norms which tend to accompany armed conflicts. They experience violence at the hands of government actors, non-state militaries (including rebel forces and dissidents), community members, and even,

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1. Indai Lourdes Sajor, *Our Common Grounds*, in *COMMON GROUNDS: VIOLENCE AGAINST WOMEN IN WAR AND ARMED CONFLICT SITUATIONS* 1, 3 (Indai Lourdes Sajor, ed., 1998) [hereinafter *COMMON GROUNDS*].

tragically, the peacekeeping forces that are sent to protect them and restore order. Furthermore, women remain vulnerable to violence following an armed conflict, as research indicates a strong rise in domestic violence, sex trafficking, and forced prostitution in post-conflict areas.² In addition, the needs of women who are victims of GBV are either overlooked or inadequately addressed by transitional justice mechanisms, including truth commissions, war crimes hearings, and reparation schemes. This Article aims to provide a brief overview of GBV in conflict and post-conflict settings, with a particular focus on recent international standard-setting developments and the continuing challenges of impunity and inadequate services for GBV victims.

I. Background

A. Prevalent Forms of Gender-Based Violence

“In recent times, there have emerged extensive accounts of violence against women in times of armed conflict. Systematic rape and other forms of gender based violence are increasingly used as weapons of war in armed conflicts in different regions of the world. Furthermore, the use of rape to reinforce policies of ethnic cleansing and the establishment of camps explicitly intended for sexual torture and the forcible impregnation of women are tragic developments which mark a definite escalation of violence against women in situations of armed conflicts.”³

GBV in conflict and post-conflict areas can take many forms including rape, slavery, forced impregnation/miscarriages, kidnapping/trafficking, forced nudity, and disease transmission, with rape and sexual abuse being among the most common.⁴ Rape in conflict settings is often violent and brutal, frequently involving gang-rape and rape with foreign objects such as guns and knives.⁵ In addition to rape, sexual abuse is also prevalent, particularly in the forms of forced nudity, strip searches, and other publicly humiliating and violating acts. These acts and other acts of sexual violence, such as forced impregnation or forced miscarriages, are often part of an intentional strategy of war, used to destabilize the civilian population and violate the honor of the opposing force.⁶ Abduction and slavery

2. U.N. Econ. & Soc. Council, Comm'n on Human Rights, Special Rapporteur on Violence Against Women, *Integration of the Human Rights of Women and the Gender Perspective*, ¶ 57, U.N. Doc. E/CN.4/2001/73 (Jan. 23, 2001) (prepared by Radhika Coomaraswamy) [hereinafter Report of the Special Rapporteur 2001].

3. Mary Robinson, *Message from the UN High Commissioner for Human Rights, in COMMON GROUNDS*, *supra* note 1, at 19.

4. See ELISABETH REHN & ELLEN JOHNSON SIRLEAF, WOMEN, WAR, PEACE: THE INDEPENDENT EXPERTS' ASSESSMENT ON THE IMPACT OF ARMED CONFLICT ON WOMEN AND WOMEN'S ROLE IN PEACE-BUILDING 9 (2002).

5. See THE ADVOCATES FOR HUMAN RIGHTS, A HOUSE WITH TWO ROOMS: FINAL REPORT OF THE TRUTH AND RECONCILIATION COMMISSION OF LIBERIA DIASPORA PROJECT 237-40 (2009) (recounting stories of GBV).

6. See, e.g., Prosecutor v. Sesay, Kallon & Gbao, Case No. SCSL-04-15-T, Judgment ¶ 1348-1350 (Special Court for Sierra Leone, Trial Chamber I, Mar. 2, 2009), available at <http://www.sc-sl.org/LinkClick.aspx?fileticket=D5HojR8FZS4%3d&tabid=215>

are also frequent forms of GBV in conflict areas, where civilian girls and women are kidnapped by raiding military or rebel forces and taken back to the soldiers' camp to provide both sexual and domestic services.⁷ Such actions are sometimes disguised as a marriage, despite international definitions which suggest that such 'marriages' should be regarded as crimes of enslavement.⁸ These women—sometimes referred to as “bush wives”—often suffer psychological harm and have difficulty reintegrating into society following their enslavement.⁹ Personal testimonies abound both from families who have not heard from their daughters since they were kidnapped by military forces and from girls who have lived to recount being abducted and forced to travel with the soldiers, acting as both sexual and domestic slaves either for one particular soldier or the entire unit.¹⁰ Girls are also bartered between military units, trafficked across international borders to be sold, or traded to an allied military unit.¹¹ Such kidnapping and trafficking practices occur not only at the site of conflict, but also at refugee camps, adding a new level of terror to what was intended to be a safe location.¹²

Post-conflict societies also experience practices of GBV. Indeed, rape and other forms of sexual violence have been cited as major factors in undermining post-conflict peace processes.¹³ It is relatively common for a society to experience an increase in trafficking, forced prostitution, domestic violence, and rape following a major conflict.¹⁴ Some of these issues, particularly domestic violence and trafficking, may reach higher levels after the conclusion of a conflict than were experienced by the society during the conflict. The post-conflict rise in incidents of domestic violence, for example, has led to speculation of a relationship between these forms of GBV and the availability of small arms, an increased tolerance of violence within society, and the head of households having been engaged in military violence during the conflict.¹⁵

(explaining that “savage” sexual violence was “committed with the specific intent of spreading fear amongst the civilian population as a whole,” and to “demonstrate that the male members of the civilian community were unable to protect their own wives, daughters, mothers, and sisters.”).

7. REHN & SIRLEAF, *supra* note 4, at 10.

8. See Rome Statute of the International Criminal Court art. 7(2)(c), July 17, 1998, 2178 U.N.T.S. 90 (defining enslavement as “the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children.”) [hereinafter Rome Statute].

9. See THE ADVOCATES FOR HUMAN RIGHTS, *supra* note 5, at 241.

10. See, e.g., *id.*; Nicholas D. Kristof, *The World Capital of Killing*, N.Y. TIMES, Feb. 7, 2010, at WK12.

11. See REHN & SIRLEAF, *supra* note 4, at 12–14 (collecting accounts of these practices).

12. See OCHA/IRIN, *BROKEN BODIES, BROKEN DREAMS: VIOLENCE AGAINST WOMEN EXPOSED* 186 (2005).

13. The Secretary-General, *Report of the Secretary-General Pursuant to Security Council Resolution 1820*, ¶ 8, U.N. Doc. S/2009/362 (July 15, 2009).

14. See Report of the Special Rapporteur 2001, *supra* note 2, ¶ 57.

15. *Id.*; see, e.g., International Center for Transitional Justice, *Gender and Transitional Justice in Africa: Progress and Prospects* (2008), <http://www.ictj.org/static/Gender/0810>

B. Causes and Consequences of Gender-Based Violence

“Throughout history, we have seen that violence against women is an integral aspect of militarization and war. . . . Rape and other forms of sexual violence are used as instruments of violence and terror—as torture, punishment, intimidation, coercion, humiliation, and degradation. Nonetheless, it is only recently that the international human rights community has begun to recognize rape as violence rather than as an assault on honour or a crime against morality.”¹⁶ Thus, although rape is one of the most widely used types of violation against women and girls, it remains the least condemned war crime.¹⁷

For much of modern history, GBV during armed conflict and in post-conflict settings was simply thought of as an unfortunate but unavoidable part of war. It was widely held that GBV during conflicts resulted from the pent-up sexual energy of the soldiers, and that the acts were primarily random incidents of frustration and violence caused by individuals.¹⁸ Recently, however, new views have been submitted as explanations for the high prevalence of GBV during armed conflict. One view suggests that sexual assault is intentionally used during armed conflict as a tool of war, contributing to the intentional destabilization, humiliation, and degradation of a population.¹⁹ GBV is an attack on the individual security of a person, not just on their virtue or honor, and such acts can create an atmosphere of fear and submission within a population. Under this explanation, GBV in conflict settings has been referred to as part of a “campaign of terror,”²⁰ and it has been emphasized that the patterns of GBV in conflict areas are not simply the random choices of individuals as was previously claimed. Along these lines, GBV during conflict is also an assertion of power by the perpetrators, and it is used as a method of reprisal by

21_TJG_Workshop_summary.pdf (concluding that “[t]he apparent rise in post-conflict domestic violence may result from a number of interrelated processes, but it is increasingly acknowledged that [transitional justice] has a potential role in creating mechanisms to ensure that violence does not simply move to the home. . . .”); see also The Secretary-General, *supra* note 13, ¶ 8 (“Although further study is warranted to establish the causal connections between conflict and post-conflict sexual violence, all countries that are transitioning to peace from conflicts in which sexual violence was a defining feature indicate that rape and other forms of sexual violence are rife and major factors undermining early recovery and peacebuilding.”).

16. Radhika Coomaraswamy, *Message from the UN Special Rapporteur on Violence Against Women, in COMMON GROUNDS*, *supra* note 1, at 24–25.

17. *But see* U.N. Econ. & Soc. Council, Sub-Comm’n on the Prev. of Discrimination and Prot. of Minorities, *Contemporary Forms of Slavery: Systematic Rape, Sexual Slavery and Slavery-like Practices During Armed Conflict* ¶ 110, U.N. Doc. E/CN.4/Sub.2/1998/13 (June 22, 1998) (prepared by Gay J. McDougall) (noting that although rape as a war crime has historically been downplayed, “a new attitude is evolving with respect to the prosecution of sexual violence committed during armed conflict as serious international crimes.”).

18. See Report of the Special Rapporteur 2001, *supra* note 2, ¶ 23 (explaining how the ICTY chose to prosecute rape as a crime against humanity “[i]nstead of falling back on the often heard claim that rape is a random or arbitrary act perpetrated by soldiers in search of an outlet for sexual energy . . .”).

19. See S.C. Res. 1820, pmbl., U.N. Doc. S/RES/1820 (June 19, 2008).

20. See Prosecutor v. Tadic, Case No. IT-94-1-I, Indictment, ¶ 4 (May 7, 1994).

indirectly attacking the opposing military force, particularly if the opposing military force feels a duty to protect the citizens being attacked.²¹ As a military tool to gather information and determine loyalties, many women are often accused of sympathizing with the opposing force. In these situations, GBV is often used as an act of torture, as armies know such violence produces both psychological as well as physical harm, further destabilizing the local population and mentally traumatizing civilians.²² Furthermore, after claiming a village or new territory, military units often view women's bodies as "spoils of war" and see rape as a standard practice of war earned by the victorious army.²³

Militarization and the lack of societal networks and structures have also been cited as sources of GBV in conflict areas.²⁴ Advocates of this view point out that areas of conflict generally have an increased tolerance of violence in their societies, and that the demobilization of frustrated and aggressive soldiers combined with the wide-spread availability of small weapons leads to more attacks on vulnerable members of society, including women and girls.²⁵ Numerous reports have also shown that internally displaced people (IDPs) and refugees fleeing a conflict area, especially women and children, are more vulnerable to violence, both by members of armed forces and by civilian populations.²⁶ The large number of IDPs that result from severe conflicts can therefore be linked with increased incidences of GBV in conflict areas.

A more basic explanation of the prevalence of GBV in armed conflicts, however, is that conflict simply heightens violence that was already occurring. According to this view, GBV in armed conflicts should be seen as a continuation of the violence experienced during peacetime, but made more extreme by the general increase of violence levels in society.²⁷ This view has been advocated by Elisabeth Rehn and Ellen Johnson Sirleaf who argue, "[t]he extreme violence that women suffer during conflict does not arise solely out of the conditions of war; it is directly related to the violence that

21. See The Secretary-General, *supra* note 13, ¶ 16.

22. See Gen. Assembly, Human Rights Council, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Study on the Phenomena of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in the World, including an Assessment of Conditions of Detention*, ¶¶ 34-36, U.N. Doc. A/HRC/7/3 (Jan. 15, 2008) (*prepared by* Manfred Nowak).

23. U.N. Econ. & Soc. Council, Comm'n on Human Rights, Sub-Comm'n on the Promotion and Prot. of Human Rights, *Contemporary Forms of Slavery: Systematic Rape, Sexual Slavery and Slavery-like Practices During Armed Conflict* ¶ 20, U.N. Doc. E/CN.4/Sub.2/2000/21 (June 6, 2000) (*prepared by* Gay J. McDougall).

24. See, e.g., Report of the Special Rapporteur 2001, *supra* note 2, ¶ 57; see also REHN & SIRLEAF, *supra* note 4, at 11.

25. Report of the Special Rapporteur 2001, *supra* note 2, ¶ 57.

26. E.g., U.N. Econ. & Soc. Council, Comm'n on Human Rights, Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, U.N. Doc. E/CN.4/1998/54 (Jan. 26, 1998) (*prepared by* Radhika Coomaraswamy) [hereinafter Report of the Special Rapporteur 1998]; see also HUMAN RIGHTS WATCH, "WELCOME TO KENYA": POLICE ABUSE OF SOMALI REFUGEES (2010); OCHA/IRIN, *supra* note 12, at 185-89.

27. See REHN & SIRLEAF, *supra* note 4, at 10.

exists in women's lives during peacetime."²⁸ U.N. Deputy Secretary-General Asha-Rose Migiro has also affirmed this view, saying, "[i]f a culture of violence and discrimination against women and girls exists prior to conflict, it will be exacerbated during conflict."²⁹ Sexual violence in conflict settings has also been noted as prolonging conflicts by creating an attack/counterattack cycle, fueling insecurity, and leading to civilian displacement.³⁰ Increased levels of impunity during times of conflict also contribute to a rise in sexual violence, as perpetrators, who know that they are unlikely to be caught or punished, become more bold and brutal in their acts of violence against women.

The effects of GBV in conflict and post-conflict areas are numerous and severe. Sexually transmitted diseases are a lasting consequence of GBV and are a major health concern for women in conflict areas. Along with viewing disease as a consequence of GBV, it should be noted that the transmission of disease can also be used as an intentionally perpetrated form of violence. Men who are aware that they are carriers of disease, especially HIV/AIDS, may be encouraged to rape local women in areas which are suspected to support their opposition in an effort to exterminate the local population.³¹ In addition to HIV/AIDS, many women also contract gonorrhea and other STDs with daily symptoms such as painful urination, sores, and rashes which require medical treatment. Such medical treatment is often urgently required in order to prevent infection in open wounds caused by the violence and to attempt to prevent the transmission of disease.

In addition to sexually transmitted diseases, GBV has many other serious effects and consequences which impact both the individual and her community. Physical harms such as injury to reproductive organs, traumatic fistulas, and infertility often accompany brutal or repeated rapes.³² Attempts at abortion following an unwanted pregnancy from rape may also have severe medical complications, and women who are pregnant at the time of the attack frequently miscarry.³³ In addition to these physical effects, GBV also has serious psychological consequences, including depression, anxiety, post-traumatic stress disorder, shock, memory loss, and sexual dysfunction.³⁴ Rape trauma syndrome, a syndrome used to describe emotional responses to sexual assault including hopelessness, loss of control, anger, guilt, and phobias, is common, although the root

28. *Id.*

29. U.N. Deputy Secretary-General Asha-Rose Migiro, Remarks at the Women's International Forum in New York, U.N. Doc. DSG/SM/440-WOM/1711 (Feb. 20, 2009), available at <http://www.un.org/News/Press/docs/2009/dsgsm440.doc.htm>.

30. The Secretary-General, *supra* note 13, ¶ 7.

31. See REHN & SIRLEAF, *supra* note 4, at 52 (documenting a strategy of war during the Rwandan genocide in which HIV positive Hutu men were encouraged to rape Tutsi women in order to infect them).

32. OCHA/IRIN, *supra* note 12, at 190.

33. *Id.*

34. Amnesty Int'l, *Côte d'Ivoire: Targeting Women: The Forgotten Victims of the Conflict*, AI Index AFR 31/001/2007, Mar. 15, 2007, available at <http://www.amnestyusa.org/document.php?id=ENGAFR310012007&lang=e>.

cause of such symptoms³⁵ may often go undiagnosed and untreated. Suicide, behavior disorders, and eating disorders have also been frequently reported.³⁶ Fear of additional sexual violence may also keep women from going about their normal activities, such as attending school, engaging in the market, or participating in politics. This is true both for conflict areas and post-conflict areas, as women remain exceptionally vulnerable to sexual violence even in societies that are engaging in post-conflict transitional justice mechanisms.³⁷

Women also often experience reintegration difficulties and social stigma related to their abuse. In many societies it may be difficult for a girl who has been raped to find a partner for marriage, and some women are divorced by their husbands as a result of GBV. One study, for example, has reported that over 25% of married rape victims in Liberia were divorced by their husbands following their rape, while 15% of rapes resulted in an unwanted pregnancy.³⁸ Indeed, unwanted pregnancies from rape may lead to further stigmatization by the community, as well as economic and emotional consequences for mothers who are unable to support their children.

Another consequence facing victims of GBV in conflict areas involves the process of justice and reparations. GBV is sometimes viewed primarily as a violation of the male's (husband, father, etc.) property rights, not as a violation of the woman's human rights. This perspective can have a substantial impact on the justice and reparations process.³⁹ For example, if the husband is monetarily compensated for his wife's rape, a society may consider that appropriate reparations have been made without ever acknowledging the woman's right to criminal justice or participation in the truth commission process. Cultural views on the role of women within a family unit may also have a negative impact on women's access to reparations. In many African countries, for example, a lack of acknowledgment of women as heads of households has led to discrimination in resource allocation and inheritance laws.⁴⁰ This lack of acknowledgment is particularly significant in post-conflict societies because of an increase in the percentage of female-led households due to the death of males in the conflict.⁴¹ Discrimination also occurs in awarding monetary reparations for wrongful death actions, as some countries determine the amount of the reparations based on income earned by the person who was killed. Many women in conflict areas make substantial contributions to their household,

35. See The Advocates for Human Rights, *Health Consequences of Sexual Assault*, http://www.stopvaw.org/Health_Consequences_of_Sexual_Assault.html (last visited Aug. 26, 2010).

36. THE ADVOCATES FOR HUMAN RIGHTS, *supra* note 5, at 249.

37. See International Center for Transitional Justice, *supra* note 15.

38. THE ADVOCATES FOR HUMAN RIGHTS, *supra* note 5, at 248.

39. GENDER RESEARCH AND ADVOCACY PROJECT, LEGAL ASSISTANCE CENTRE, WITHDRAWN: WHY COMPLAINANTS WITHDRAW RAPE CASES IN NAMIBIA ii-iii (2009).

40. See, e.g., Patricia Kameri-Mbote, *Gender Dimensions of Law, Colonialism and Inheritance in East Africa: Kenyan Women's Experiences*, 35 VERFASSUNG UND RECHT IN UBERSEE 373, 394-398 (2002), available at <http://www.ielrc.org/content/a0205.pdf>.

41. Julie Guillerot, *Linking Gender and Reparations in Peru: A Failed Opportunity*, in WHAT HAPPENED TO THE WOMEN? 136, 182 n. 38 (Ruth Rubio-Marín ed., 2006).

but do not have outside employment. Families who have lost a female member of their household, therefore, often receive grossly inadequate compensation for their loss. For example, in Northern Ireland the reparations made by the government for the military-caused conflict death of a mother of six children totaled £84,⁴² whereas the compensation given to a family for the death of a working father sometimes totaled up to £100,000.⁴³ The Consultative Group on the Past for Northern Ireland nearly unanimously agreed that basing family compensation on lost wages in this way led to inadequate payments and did not appropriately acknowledge the loss felt by a family over the death of a female or non-working member.⁴⁴ Transitional justice mechanisms can also be skewed towards the male perspective; often overlooking the specific needs of female victims.

II. Codification and Standard-Setting Developments

“Violations of the human rights of women in situations of armed conflict are violations of the fundamental principles of international human rights and humanitarian law. All violations of this kind, including in particular murder, systematic rape, sexual slavery, and forced pregnancy, require a particularly effective response.”⁴⁵

While some gender-based violations in conflict settings have been defined and codified in military codes and treaties since the 19th century, it is only in the past few decades that these crimes have begun to be recognized as war crimes or crimes against humanity rather than as random acts of violence perpetrated by individuals. The early attempts at addressing GBV during conflict settings were hindered by a focus on gender-based crimes as being against family honor or morality, which led to widespread under-reporting. In 1863, for example, the Lieber Code expressly proscribed rape and provided general protection to women in conflict,⁴⁶ yet crimes of sexual violence under international humanitarian law continued to be primarily conceived as attacks against the woman’s and family’s

42. The Pat Finucane Centre For Human Rights and Social Change, *Kathleen Thompson - Family Win Judicial Review/Judge Slams Murder Investigation*, <http://www.patfinucanecentre.org> (follow “Individual Cases” hyperlink; then follow “Kathleen Thompson” hyperlink) (last visited Aug. 26, 2010).

43. See Eamon Phoenix, *RUC Files Outline Events After Abduction of Niedermayer*, IRISH TIMES, Dec. 30, 2009, available at <http://www.irishtimes.com/newspaper/ireland/2009/1230/1224261407154.html> (detailing compensation award of £100,000 for the death of a working father).

44. REPORT OF THE CONSULTATIVE GROUP ON THE PAST IN NORTHERN IRELAND 91 (presented to the Secretary of State for Northern Ireland on June 22, 2007), available at <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmniaf/171/17106.htm>.

45. World Conference on Human Rights, June 14–25, 1993, *Vienna Declaration and Programme of Action*, ¶ 38, U.N. Doc. A/CONF.157/23, II (July 12, 1993).

46. Francis Lieber, Instructions for Government of Armies of the United States in the Field art. 44 (Gov’t Printing Office 1898) (1863) (initially published as U.S. War Dep’t, General Orders No. 100 (Apr. 24, 1863)), available at http://avalon.law.yale.edu/19th_century/lieber.asp.

honor and rights,⁴⁷ as opposed to attacks on the woman's physical integrity. Commenting on the problematic references in international law that link sexual violence to notions of morality and honor, as opposed to crimes of violence, the first Special Rapporteur on Violence against Women stated the following:

By using the honour paradigm, linked as it is to concepts of chastity, purity and virginity, stereotypical concepts of femininity have been formally enshrined in humanitarian law. . . . When rape is perceived as a crime against honour or morality, shame commonly ensues for the victim, who is often viewed by the community as "dirty" or "spoiled". Consequently, many women will neither report nor discuss the violence that has been perpetrated against them.⁴⁸

Current international standards addressing GBV in conflict and post-conflict areas draw upon a wide array of provisions contained in a variety of human rights instruments that provide safeguards for women and girls, including protection from sexual violence as torture and as a result of gender-based discrimination. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted in 1979, is the most extensive international instrument dealing with the rights of women. Although violence against women is not specifically addressed in the Convention, except in relation to trafficking and prostitution, many of the clauses, including the anti-discrimination clause, protect women from violence. Relevant provisions in the Convention with regard to sexual violence include:

- Article 2 noting the commitment of State Parties to pursue a policy of eliminating discrimination against women and to adopt legislative and other measures prohibiting all discrimination against women;
- Article 5(a) calling on State Parties to take all appropriate measures "to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;" and
- Article 6 calling on State Parties to "take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women."⁴⁹

With the adoption of General Recommendation 19 by the CEDAW Committee in 1992, the definition of discrimination against women set out in Article 1 of the Convention includes "gender-based violence, that is, violence that is directed against a woman because she is a woman or that

47. As illustrated by Article 46 of the 1907 Hague regulations prohibiting rape as a violation of "[f]amily honour and rights." Convention Respecting the Laws and Customs of War on Land art. 46, Oct. 18, 1907, 36 Stat 2277, 1 Bevans 631.

48. Report of the Special Rapporteur 1998, *supra* note 26, ¶ 1(4).

49. Convention on the Elimination of All Forms of Discrimination Against Women arts. 2,5-6, Dec. 18, 1979, 1249 U.N.T.S. 13, 19 I.L.M. 33 (entered into force Sept. 3, 1981).

affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.⁵⁰ Of note in General Recommendation 19 is the reference to the special risk of violence faced by categories of women, including women living in contexts of war, armed conflicts, and occupied territories.⁵¹

The 1994 UN Declaration on the Elimination of Violence against Women (DEVAW) also recognized women in conflict settings as an especially vulnerable group, and it encompassed GBV in its definition of violence against women provided in Article 2. The Declaration defines violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life,”⁵² which should be understood as including “[p]hysical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.”⁵³

The 1995 Beijing Platform of Action included women and armed conflict among its twelve critical areas of concern, and specified forms of sexual violence against women that violated the human rights of women in situations of armed conflict, in particular murder, systematic rape, sexual slavery and forced pregnancy.⁵⁴ The Platform called upon States to:

(. . .) (c) Urge the identification and condemnation of the systematic practice of rape and other forms of inhuman and degrading treatment of women as a deliberate instrument of war and ethnic cleansing and take steps to ensure that full assistance is provided to the victims of such abuse for their physical and mental rehabilitation;

(d) Reaffirm that rape in the conduct of armed conflict constitutes a war crime and under certain circumstances it constitutes a crime against humanity and an act of genocide as defined in the Convention on the Prevention and Punishment of the Crimes of Genocide; take all measures required for the protection of women and children from such acts and strengthen mechanisms to investigate and punish all those responsible and bring the perpetrators to justice;

(e) Uphold and reinforce standards set out in international humanitarian law and international human rights instruments to prevent all acts of violence against women in situations of armed and other conflicts; undertake a full investigation of all acts of violence against women committed during war, including rape, in particular systematic rape, forced prostitution and other forms of indecent assault and sexual slavery; prosecute all criminals responsible for war crimes against women and provide full redress to women

50. U.N. Comm. on the Elimination of Discrimination Against Women, *General Recommendation 19: Violence Against Women*, ¶ 6, U.N. Doc. A/47/38 (Jan. 29, 1992).

51. *Id.* ¶ 16.

52. Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, art. 1, U.N. Doc. A/48/49 (Dec. 20, 1993).

53. *Id.* art. 2.

54. The Fourth World Conference on Women, Beijing, Sept. 4-15, 1995, *Report of the Fourth World Conference on Women*, ¶ 114, U.N. Doc. A/CONF.177/20/Rev.1 (Sept. 15, 1995).

victims; . . .⁵⁵

Building on the international standards developed by these conventions and declarations, more recent definitions of rape in international instruments have attempted not only to erase the family honor subtext, which was present in earlier instruments addressing GBV in conflict, but they have also been expanded to include forms of GBV, such as rape with a foreign object, that were outside of traditional conceptions. Following the lead of international institutions, several international courts including the International Criminal Tribunal for the Former Yugoslavia (ICTY),⁵⁶ the International Criminal Tribunal for Rwanda (ICTR),⁵⁷ the Special Court for Sierra Leone (SCSL),⁵⁸ the International Criminal Court (ICC),⁵⁹ and the Extraordinary Court Chambers in Cambodia (ECCC)⁶⁰ began to rework the traditional definitions and treatment of gender-based crimes. In the statutes of both the ICTY and the ICTR, the tribunals were given authority to prosecute crimes of GBV.⁶¹ In the case of *Prosecutor v. Jean-Paul Akayesu*, the ICTR broadly defined rape as “physical invasion of a sexual nature, committed on a person under circumstances which are coercive.”⁶² It was important for the court in *Akayesu* that rape be defined in this way, so as to include rape with an object and/or the use of bodily orifices not intrinsically sexual. The court noted that “rape is a form of aggression and that the central elements of the crime of rape cannot be captured in a mechanical description of objects and body parts.”⁶³ This broad definition of rape has allowed more women to seek justice through the courts by taking into account the reality that many women have experienced sexual assaults that were so brutal that they were beyond the traditional definition of rape.

55. *Id.* ¶ 145.

56. See Statute of the International Criminal Tribunal for the Former Yugoslavia, S.C. Res. 827, art. 5(g), U.N. Doc. S/RES/827 (May 25, 1993) (listing rape as a crime against humanity) [hereinafter ICTY Statute].

57. See Statute of the International Criminal Tribunal for Rwanda, S.C. Res. 955, arts. 3(g), 4, 4(e), U.N. Doc. S/RES/955 (Nov. 8, 1994) (listing rape as a crime against humanity in Article 3(g) and listing rape, enforced prostitution and indecent assault of any kind as a serious violation of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977 in Article 4(e)) [hereinafter ICTR Statute].

58. See Statute of the Special Court for Sierra Leone arts. 2(g), 3(e), Jan. 16, 2002, 2178 U.N.T.S. 137 (listing rape, sexual slavery, enforced prostitution, forced pregnancy, and any other form of sexual violence as a crime against humanity in Article 2(g), and listing outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution, and any form of indecent assault as serious violations of article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977 in Article 3(e)).

59. See Rome Statute, *supra* note 8, art. 7(2)(c).

60. See Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea art. 9, Royal Decree No. NS/RKM/1004/006 (Oct. 27, 2004) (listing crimes against humanity, as defined in the 1998 Rome Statute; see Rome Statute, *supra* note 8).

61. ICTY Statute, *supra* note 56, arts. 4–6; ICTR Statute, *supra* note 57, arts. 2–4.

62. Case No. ICTR-96-4-T, Judgment, ¶ 598 (Sept. 2, 1998).

63. *Id.* ¶¶ 596–97.

International courts have also viewed rape as a form of torture, as the ICTR in *Akayesu* stated:

Like torture, rape is used for such purposes as intimidation, degradation, humiliation, discrimination, punishment, control or destruction of a person. Like torture, rape is a violation of personal dignity, and rape in fact constitutes torture when it is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.⁶⁴

Although rape as a form of torture has been acknowledged for many years by entities such as the Special Rapporteur on Torture,⁶⁵ the central role of the State in Article 1 of the Convention against Torture, which restricts the definition of torture to acts “when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity,”⁶⁶ has been used to exclude violence against women, which is often outside direct State control, from the scope of protection of the Convention Against Torture. Thus, precedents regarding rape as torture, as held by courts such as the ICTR, are significant in providing a new avenue for remedy and protection for rape victims, which had not been consistently available under other international instruments.

Another recent expansion in the international definition of rape involves situations where rape was committed on a large-scale during a conflict. In these situations, courts have been willing to view rape during conflict as a crime of genocide, a war crime, or a crime against humanity. Rape has been interpreted by the International Criminal Court (ICC) as constituting genocide when “committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group,”⁶⁷ a crime against humanity “when committed as part of a widespread or systematic attack

64. *Id.* ¶ 597.

65. Former Special Rapporteur on Torture, Professor Kooijmans, noted that “[s]ince it was clear that rape or other forms of sexual assault against women in detention were a particularly ignominious violation of the inherent dignity and the right to physical integrity of the human being, they accordingly constituted an act of torture” U.N. Econ. & Soc. Council, Comm’n on Human Rights, Special Rapporteur on Torture, *Question of the Human Rights of All Persons Subjected to Any Form of Detention or Imprisonment, in Particular: Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 16, U.N. Doc E/CN.4/1995/34 (Jan. 12, 1995) (quoting Professor Kooijmans).

66. United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 1, Dec. 10, 1984, 1465 U.N.T.S. 85.

67. See Rome Statute, *supra* note 8, art. 6 (defining genocide). In the Warrant of Arrest for Sudanese President Omar Hassan Ahmad Al Bashir, the ICC added counts of genocide, noting that part of the plan of attack on Darfur was subjecting “thousands of civilian women, belonging primarily to [the Fur, Masalit and Zaghawa] groups, to acts of rape” *Prosecutor v. Omar Hassan Ahmad Al Bashir*, Case No. ICC-02/05-01/09, Warrant of Arrest, 6 (Mar. 4, 2009), available at <http://www.icc-cpi.int/iccdocs/doc/doc639078.pdf>. The Chief Prosecutor for the ICC in the Al Bashir case commented regarding the genocide charges, “[t]he most efficient method to commit genocide today in front of our eyes is gang rapes, rapes against girls and rapes against 70-year-old women. Babies born as a result have been called Janjawid babies and this has led to an explosion of infanticide. Al-Bashir is executing this genocide without gas chambers, without bullets and without machetes.” Rob Crilly and David Charter, Sudanese Presi-

directed against any civilian population, with knowledge of the attack,”⁶⁸ and a war crime “when committed as part of a plan or policy or as part of a large-scale commission of such crimes.”⁶⁹

The sustained attention to violence against women in armed conflict has resulted in noteworthy resolutions by the United Nations Security Council. In 2000, Security Council Resolution 1325 on Women, Peace and Security reaffirmed the Beijing Report’s commitments and specified the human rights law to be extended to women during armed conflict and in the immediate aftermath of armed conflict. Resolution 1325 recognized “the need to implement fully international humanitarian and human rights law that protects the rights of women and girls during and after conflicts,”⁷⁰ called on “all parties to armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse,”⁷¹ and emphasized “the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, and war crimes including those relating to sexual and other violence against women and girls”⁷² The Resolution also called for increased representation of women at all decision-making levels in national, regional, and international institutions; mechanisms for the prevention, management, and resolution of conflict; and expansion of the roles and contributions of women in United Nations field operations.⁷³

In June 2008 the Security Council unanimously passed the groundbreaking Resolution 1820, which gave specific recognition to the fact that sexual violence represents a threat to security. The resolution noted that “women and girls are particularly targeted by the use of sexual violence, including as a tactic of war to humiliate, dominate, instil fear in, disperse and/or forcibly relocate civilian members of a community or ethnic group;”⁷⁴ and stressed that that such violence “can significantly exacerbate situations of armed conflict and may impede the restoration of international peace and security”⁷⁵ The Council demanded that:

[A]ll parties to armed conflict immediately take appropriate measures to protect civilians, including women and girls, from all forms of sexual violence, which could include, inter alia, enforcing appropriate military disciplinary measures and upholding the principle of command responsibility,

dent, Omar al-Bashir, Charged with Genocide, *THE TIMES* (LONDON), July 15, 2008, available at <http://www.timesonline.co.uk/tol/news/world/africa/article4330605.ece>.

68. Rome Statute, *supra* note 8, art. 7(1). See also *id.* art. 7(1)(g) (explicitly listing rape and other gender-based crimes as a crime against humanity).

69. *Id.* art. 8(2)(b)(xxii) (listing “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” as war crimes).

70. S.C. Res. 1325, pmb. U.N. Doc. S/RES/1325 (Oct. 31, 2000).

71. *Id.* ¶ 10.

72. *Id.* ¶ 11.

73. *Id.* ¶¶ 1-2, 4.

74. S.C. Res. 1820, *supra* note 19, pmb.

75. *Id.* ¶ 1.

training troops on the categorical prohibition of all forms of sexual violence against civilians, debunking myths that fuel sexual violence, vetting armed and security forces to take into account past actions of rape and other forms of sexual violence, and evacuation of women and children under imminent threat of sexual violence to safety⁷⁶

Importantly, the Council noted that “rape and other forms of sexual violence can constitute a war crime, a crime against humanity, or a constitutive act with respect to genocide” and stressed “the need for the exclusion of sexual violence crimes from amnesty provisions in the context of conflict resolution processes,” while also emphasizing “the importance of ending impunity for such acts as part of a comprehensive approach to seeking sustainable peace, justice, truth, and national reconciliation.”⁷⁷

Security Council Resolution 1820 requested a follow-up report from the Secretary General, and this report was published in July 2009. The Security General’s report included updates from current and past conflict zones, including Sudan, the Democratic Republic of the Congo, Sierra Leone, and the work of the ICTR and ICTY. Three factors were identified as contributing to and exacerbating sexual violence, namely “inadequate measures to: (a) prevent sexual violence and protect civilians; (b) combat impunity for sexual violence; and (c) address continuing discrimination against women and girls, in law and practice.”⁷⁸ Limited victim access to assistance and remedies were also noted.⁷⁹ Among his recommendations, the Security General called for:

- Demonstrated commitment and political willingness from civilian and military leaders, including clear and forceful messages on the prohibition and certain punishment of sexual violence and thorough investigation of all reports of sexual violence committed by civilians or military personnel;⁸⁰
- Action to address inequalities and discrimination against women prior to a conflict, affirming that cultures where violence and discrimination already exist will likely see that violence heighten during conflict;⁸¹
- Increased domestic capacity to hold all perpetrators accountable for sexual crimes and strengthened domestic laws, procedures, and justice systems to provide victims a right to remedy (with several citations to legal systems that are currently lacking in this area);⁸²
- Use of civilian courts, not military courts, to try military sexual offenders;⁸³
- Recognition that amnesties for war crimes, including sexual crimes, may be inconsistent with the States’ obligations under international law;⁸⁴

76. *Id.* ¶ 3.

77. *Id.* ¶ 4.

78. The Secretary-General, *supra* note 13, ¶ 17.

79. *Id.*

80. *Id.* ¶ 18.

81. *Id.* ¶ 19.

82. *Id.* ¶ 22.

83. *Id.* ¶ 26.

84. *Id.* ¶ 28.

and

- Increased access for victims to remedies (compensation, rehabilitation, satisfaction) and other assistance, including medical treatment and psychosocial services.⁸⁵

In September 2009, reaffirming its commitment to the full implementation of the previous resolutions, the Security Council adopted Resolution 1888,⁸⁶ which calls for the following:

- The appointment of a Special Representative to provide leadership, strengthen existing UN coordination mechanisms, and advocate ending sexual violence against women with governments, including military and judicial representatives and with parties to armed conflicts;⁸⁷
- The creation of a team of experts, including specialists in areas such as the rule of law, judicial systems, criminal investigation, and security sector reform to assist governments and peacekeeping forces in coping with sexual violence in armed conflict, enhancing national capacity and strengthening rule of law and state authority to prevent impunity;⁸⁸
- The appointment of women's protection advisors in peacekeeping missions;⁸⁹
- The provision of data and information about the prevalence of sexual violence in reports made by peacekeeping missions to the Security Council;⁹⁰ and
- An annual reporting on the progress made on implementing Resolution 1820 and this new resolution.⁹¹

Also of relevance is Security Council Resolution 1674 on the Protection of Civilians in Armed Conflict, condemning, in the strongest terms, all acts of violence committed against civilians in situations of armed conflict in violation of applicable international obligations, including gender-based and sexual violence.⁹² Security Council Resolution 1882 on Children in Armed Conflict also condemns the high incidence and levels of brutality of rape and other forms of sexual violence committed against children in the context of and associated with armed conflict, including the use or commissioning of rape and other forms of sexual violence, in some situations, as a tactic of war.⁹³

85. *Id.* ¶ 29.

86. S.C. Res. 1888, U.N. Doc. S/RES/1888 (Sept. 30, 2009).

87. *Id.* ¶ 4.

88. *Id.* ¶ 8.

89. *Id.* ¶ 12.

90. *Id.* ¶ 24.

91. *Id.* ¶ 27; *see also* S.C. Res. 1960, U.N. Doc. S/RES/1960 (Dec. 16, 2010) (requesting the Secretary-General to commence publishing a list with detailed information on parties to armed conflict that are credibly suspected of committing or being responsible for patterns of rape and other forms of sexual violence in situations of armed conflict)

92. S.C. Res. 1674, U.N. Doc. S/RES/1674 (Apr. 28, 2006).

93. S.C. Res. 1882, U.N. Doc. S/RES/1882 (Aug. 4, 2009).

III. Continuing Challenges

“When war crimes are committed against women and children in similar ways as they are to men, they are universally recognized as atrocities and have been punished as such A problem arises however when war crimes and genocidal atrocities are committed against women and girls in gender-specific ways. Hundreds of thousands of women, this century alone, have been raped in wars The ‘universal soldier’ it seems, always has, and to this day, does, rape with impunity.”⁹⁴

Despite the progress in setting standards, it is argued that very little has changed in the lives of most women, as both state and non-state actors continue to commit acts of GBV with impunity. In the Democratic Republic of Congo (DRC), for example, GBV remains unchecked despite new national legislation and interventions by the United Nations. The prevalence of GBV in the DRC has reached such alarming levels that Major-General Patrick Cammaert, former commander of UN peacekeeping forces in the Eastern Congo, commented, “[i]t has probably become more dangerous to be a woman than a soldier in armed conflict.”⁹⁵ GBV in the DRC has been consistently brought to the attention of the UN and other international bodies. For example, the 2001 Report of the Special Rapporteur on Violence Against Women, which focused on violence against women in armed conflicts, listed the DRC as a case study therein. The report describes severe violence against women from 1998–2000 and notes that all of the armed forces had committed serious abuses against women.⁹⁶ In the years following, reports continue to emerge from the DRC of especially brutal sexual violence, including rape with objects, such as guns and bayonets, and the infliction of intentional injuries, such as the cutting off of breasts.⁹⁷ In addition, Congolese women have also reported rapes committed by peacekeeping members of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUC).⁹⁸

In July 2006, the DRC passed new national legislation which criminalizes rape in the DRC. Law No. 06/018 provided a modification and supplementation to the existing criminal code on matters related to sexual

94. Ariane Brunet & Stephanie Rousseau, *Acknowledging Violations, Struggling against Impunity: Women’s Rights, Human Rights*, in COMMON GROUNDS, *supra* note 1, at 33.

95. Press Release, U.N. Human Rights, Office of the High Commissioner for Human Rights (OHCHR), *Rape: Weapon of War*, <http://www.ohchr.org/en/newsevents/pages/rapeweaponwar.aspx> (last visited Sept. 24, 2010).

96. Report of the Special Rapporteur 2001, *supra* note 2, ¶¶ 76–78.

97. Council of Europe Parliamentary Assembly, Report of the Comm. on Equal Opportunities for Women and Men, *Sexual Violence Against Women in Armed Conflict*, ¶ C.7, Doc. 11916 (2009).

98. In 2004, more than 75 MONUC allegations were gathered and approximately 20 cases were verified. While these agents were required to leave the DRC, it is unclear if further compensation was given or if any criminal penalties followed. World Organisation Against Torture (OMCT), Comm. on the Elimination of Discrimination against Women, *Violence Against Women in the Democratic Republic of the Congo* 37 (2006).

violence.⁹⁹ In addition to extending provisions regarding indecent assault, rape was also defined and criminalized in the DRC for the first time.¹⁰⁰ Forced prostitution, forced marriage, and the deliberate transmission of disease were also addressed.¹⁰¹ This law is in line with the DRC Constitution, which orders that “public authorities ensure the elimination of sexual violence,” and declares that crimes of sexual violence with the intention to destabilize, dislocate, or eliminate an entire people, are crimes against humanity.¹⁰² MONUC also implemented a new series of sexual violence initiatives in November 2009, including training for officers of the Congolese military (FARDC), Congolese judges, and lawyers on specialized sexual violence judicial procedures.¹⁰³

Despite this new legislation and the local and international initiatives targeted at reducing sexual violence in the DRC, violence against women in Eastern Congo continues to be a very serious problem. In the 2009 Report of the Secretary-General on Resolution 1820, the Secretary General stated that over 200,000 cases of sexual violence in the DRC had been recorded since 1996, a figure that was likely much lower than the actual total due to under-reporting.¹⁰⁴ The Secretary General also pointed to a number of both state and non-state military forces, including the Rwandan militia (FDLR), the Lord’s Resistance Army, the FARDC, the Congolese National Police (PNC), and the Rwanda Defense Forces (RDF), as continuing perpetrators of the violence.¹⁰⁵ In August 2010, the FDLR and Mai-Mai militia launched a large-scale attack on Congolese female civilians resulting in over 150 women being raped in North Kivu despite the presence of UN peacekeeping forces.¹⁰⁶ These on-going violations indicate the continuing impunity that exists, and also indicate the lack of effective protection for citizens.

Post-conflict countries have also failed to meet the ideals set out by the UN’s recent standard-setting resolutions. Continued impunity for perpetrators of gender-based crimes remains a major problem in these areas. The Human Rights Ombudsman of Guatemala described the domestic violence situation in Guatemala as “quantitatively alarming” in light of research findings, including one study in which only seventeen percent of

99. Loi n° 06/018 Modifiant et Complétant le Décret du 30 Janvier 1940 Portant, Law No. 06/018 (to be codified at Code Pénal Congolais) (Dem. Rep. Congo) (2006).

100. *Id.*

101. *Id.*

102. Constitution de la République Démocratique du Congo art. 15 (Dem. Rep. Congo 2006).

103. United Nations Organization Mission in the Democratic Republic of the Congo, Note on United Nations Activities to Prevent and Respond to Sexual Violence in DRC, Nov. 6, 2009, available at <http://monuc.unmissions.org/Portals/MONUC/Repository/UN%20activities%20to%20prevent%20and%20respond%20to%20Sexual%20Violence%20in%20the%20DRC%20061109.d66a4c0d-d552-436b-94f1-c9a7bcaba455.pdf>.

104. The Secretary-General, *supra* note 13, ¶ 12.

105. *Id.* ¶¶ 12-14.

106. *Security Council Condemns Mass Rape in DR Congo*, UN NEWS CENTRE, Aug. 26, 2010, <http://www.un.org/apps/news/story.asp?NewsID=35730&Cr=democratic&Cr1=congo>.

women reported that they had *not* been the victim of mistreatment at home.¹⁰⁷ One local legal aid center, the Institute of Public Criminal Defense, reported receiving over 13,300 cases of domestic violence in 2009 alone. The Program for Prevention and Eradication of Intrafamily Violence, a government emergency hotline, also received an average of 565 calls a day from battered women and children.¹⁰⁸ Convictions for such crimes, however, remain limited: the Public Ministry reported only 242 convictions out of over 5,000 sexual violence complaints in 2009.¹⁰⁹ Femicide levels in Guatemala are also very high, with over 650 gender-based murders occurring in Guatemala in 2005.¹¹⁰ It is estimated that at least one-third of all murders of women are the result of domestic violence,¹¹¹ while suicide levels among domestic violence victims have also risen.¹¹² The high levels of domestic violence and femicide in Guatemala are intricately linked to the country's past internal conflict, which lasted from 1960 to 1996 and during which time it is estimated that over 200,000 people disappeared or were killed. State sponsored violence played a major role in this conflict, and many civilians, including women, were subjected to torture and sexual violence, with estimates of over 50,000 female victims of violence during the conflict.¹¹³ Many of the perpetrators of these acts were not prosecuted following the conflict and remained employed by Guatemalan police and security forces.¹¹⁴ Corruption within the police forces and a general attitude of indifference towards women who are suffering abuse contributes to the lack of prosecutions in domestic violence cases. Reports of domestic violence are often dismissed as a "private matter" to be resolved at home.¹¹⁵

The general instability of Guatemala's legal sectors, along with a high level of impunity and lack of reforms following the conflict, has resulted in an atmosphere of crime and civilian insecurity. The Guatemalan government's failure to effectively address the legacy of violence during Guatemala's peace process is also thought to have contributed to the continuing levels of violence in the country.¹¹⁶ The acceptance of violence against

107. IMMIGRATION AND REFUGEE BOARD OF CANADA, *GUATEMALA: DOMESTIC VIOLENCE; RECOURSE AND SERVICES AVAILABLE TO VICTIMS (2005 -SEPTEMBER 2006)*, (2006), http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=450755&l=e.

108. U.S. DEP'T OF STATE, *2009 HUMAN RIGHTS REPORTS: GUATEMALA* (2010), available at <http://www.state.gov/g/drl/rls/hrrpt/2009/wha/136114.htm>.

109. *Id.*

110. Katharine Ruhl, Center for Gender & Refugee Studies, *Guatemala's Femicides and the Ongoing Struggle for Women's Human Rights: Update to CGRS's 2005 Report Getting Away With Murder*, 18 HASTINGS WOMEN'S L.J. 199, 205 (2007).

111. *Id.* at 201.

112. *Guatemala's Femicide Law: Progress Against Impunity?*, GUATEMALA HUM. RTS. COMM'N/USA 5 (2009), http://www.ghrc-usa.org/Publications/Femicide_Law_Progress_AgainstImpunity.pdf.

113. *Id.* at 3.

114. Ruhl, *supra* note 110, at 200-01.

115. GUATEMALA HUM. RTS. COMM'N/USA, *supra* note 112, at 4-6.

116. M. Gabriela Torres, *Imagining Social Justice amidst Guatemala's Post-Conflict Violence*, 2 STUD. IN SOC. JUST. 2 (2008), available at <http://www.phaenex.uwindsor.ca/ojs/leddy/index.php/SSJ/article/view/665/575> (noting that Guatemala did not address

women during the conflict strengthened societal acceptance of gender bias and “machista” attitudes in Guatemala.¹¹⁷ The current government’s lack of action in domestic violence and femicide cases have re-affirmed these attitudes,¹¹⁸ and thus play a major role in the continuing pervasiveness of violence against women in post-conflict Guatemala. Despite the peace process and transitional justice mechanisms, the violence experienced by women during the conflict has carried over into the post-conflict setting.

However, in some post-conflict countries, innovative methods to curb GBV are being implemented. The Liberia Truth and Reconciliation Commission was established in 2005 and was given the mandate to “promote national peace, security, unity and reconciliation” while holding perpetrators accountable for international law and human rights violations, which occurred between 1979 and 2003.¹¹⁹ Data collected has shown a very high prevalence of GBV during the two civil wars that occurred in Liberia during this period. In one study, nearly half of the Liberian women interviewed reported being physically or sexually abused during or after the conflict, while other studies have reported an over 90% prevalence of abuse among the women surveyed.¹²⁰ These reports detail many incidences of particularly violent rape, including gang-rape or rape with a foreign object. Data collected by the International Rescue Committee showed that, out of a group of 991 Liberian women who were victims of violence, 376 had been gang-raped.¹²¹ Forced sexual acts were also used by combatants to destabilize the population and break social norms and taboos.¹²² Survivors have reported being forced to commit incest, including young men being forced to rape their mothers or sisters.¹²³ These tactics were used not only as a form of torture, but also as a method of destroying families.¹²⁴

Recognizing the need to address the specific role of violence against women in the conflict, Section 24 of the Act to Establish the Truth and Reconciliation Commission of Liberia (TRC) includes a mandate that, “[t]he TRC shall consider and be sensitive to issues of human rights violations, gender and gender based violence” and that gender considerations be taken into account throughout the process in order “not only to protect

many social justice concerns during the peace process, and finding widespread income disparity and violence).

117. RECOVERY OF HISTORICAL MEMORY PROJECT (REHMI), GUATEMALA: NEVER AGAIN! 77 (Gretta Tovar Siebentritt, trans., Orbis Books 1999) (“The public display of sexual violence against women, often by several men at once, reinforced a spirit of *machista* complicity and extolled power and authority as ‘masculine’ traits.”).

118. See GUATEMALA HUM. RTS. COMM’N/USA, *supra* note 112, at 5-6 (citing impunity, misogyny and strong gender biases, including machista attitudes, as part of the underlying factors contributing to violence against women in Guatemala).

119. An Act to Establish the Truth and Reconciliation Commission (TRC) of Liberia art. IV, § 4, May 12, 2005 (Liber.) [hereinafter TRC Act].

120. THE ADVOCATES FOR HUMAN RIGHTS, *supra* note 5, at 236.

121. *Id.* at 237.

122. *Id.*

123. *Id.* at 238.

124. *Id.* at 237-38.

[the victims'] dignity and safety but also to avoid re-traumatization."¹²⁵

In addition to the incorporation of gender perspectives into the reconciliation process, the Liberian government has also attempted to create a stronger role for women in Liberian society. In 2006, Liberia elected its first female president, and the number of women holding other political offices has increased.¹²⁶ Legislation was also passed to amend the national rape laws, offering greater protection to women by increasing the maximum sentence for convicted rapists to life in prison and expanding definitions of rape to include rape with a foreign object and gang rape.¹²⁷ The number of rape cases, however, continued to be very high, even after the passage of the new law, and therefore, in March 2008, the Liberian Government set up a new criminal court, known as Criminal Court "E," which is designed specifically to handle cases of rape and other acts of violence against women.¹²⁸ The court began hearing cases in February 2009, and advocates are hopeful that having a permanent prosecution staff dedicated to sexual violence will help secure justice more quickly and lower the prevalence of post-conflict sexual assault and rape by reducing impunity.¹²⁹ Liberia has also created a detailed national action plan towards implementing Security Council Resolution 1325 on Women, Peace and Security, which includes goals of protection, prevention, participation, empowerment, and promotion of women's rights as described in Resolutions 1325 and 1820.¹³⁰

IV. Concluding Recommendations

International standard-setting developments have succeeded in prioritizing attention towards the recognition and cessation of sexual violence in armed conflicts. However, much remains to be accomplished in terms of protection, prosecution, and prevention, as compliance, implementation, and accountability remain on-going challenges. Continued impunity and the lack of appropriate implementation mechanisms for addressing gender-based crimes also require action by both national governments and international bodies. The reality of GBV in conflict and post-conflict situations demands that the focus now shift toward the effective implementation of legal instruments that exist to combat violence against women.

125. TRC Act, *supra* note 119, art.VI, § 24.

126. See Veronika Fuest, 'This is the Time to Get in Front': *Changing Roles and Opportunities for Women in Liberia*, 107 AFR. AFF. 201, 201-203 (2008).

127. An Act to Amend the New Penal Code Chapter 14 Sections 14.70 and 14.71 and to Provide for Gang Rape (2005) (Liber.).

128. See U.N. Office for the Coordination of Humanitarian Affairs, *Liberia: Special Court for Sexual Violence Underway*, IRIN News, Mar. 21, 2008, <http://www.irinnews.org/Report.aspx?ReportId=77406>; The Secretary-General, *supra* note 13, ¶ 24.

129. See U.N. Office for the Coordination of Humanitarian Affairs, *Liberia: Rural Women Need Justice Too*, IRIN News, Mar. 4, 2009, <http://www.irinnews.org/Report.aspx?ReportId=83307>.

130. See LIBERIAN MINISTRY OF GENDER AND DEVELOPMENT, THE LIBERIA NATIONAL ACTION PLAN FOR THE IMPLEMENTATION OF UNITED NATIONS RESOLUTION 1325 (2009), http://www.un-instraw.org/data/media/documents/LNAP_1325_final.pdf.

A range of measures, both legal and non-legal, are essential to ensuring that the ideals set forth in international standard-setting instruments become a reality for women. Amongst others, measures must be taken to increase reporting of gender-based crimes, including lowering the social stigma attached to rape victims which leads women to keep silent either out of shame or fear of the police. Eliminating complicated and degrading reporting procedures and completing prompt and thorough investigations are also necessary steps, so that women will not avoid reporting due to the low possibility that any action will be taken on the case. Under-reporting combined with inefficient or corrupt judicial systems are major sources of continued impunity. Generally, measures to strengthen the judicial system and reform the security sector are essential to increasing reporting and reducing impunity. Accountability will in turn lower the number of GBV attacks. When perpetrators of gender-based war crimes are rarely held accountable, the social acceptability of GBV is normalized and reinforced.

It is important also to incorporate women into justice processes, including creating space for women leaders on advisory boards and planning committees. Post-conflict countries should consider developing gender-specific initiatives such as the ones used in Liberia, including strengthening national legislation, training judicial and law enforcement personnel, and creating special courts to counter the rise of GBV, which typically accompanies post-conflict transitions. Truth and Reconciliation Commissions should hold special women-only hearings in order to create an environment where the women feel more comfortable sharing their testimonies of GBV and participating in the reconciliation process. Funding for proper and effective programs to address the needs of women in conflict and post-conflict settings, including medical treatment, mental health services, and education about legal rights must also be increased.

These measures will help to ensure the effective implementation of recent standard-setting instruments and hopefully begin to stem the onslaught of GBV in conflict and post-conflict settings.

