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Sexual Violence as a Weapon of War and the role of International Committee of the Red Cross (ICRC) in Preventing such Crime

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ABSTRACT

Throughout the history of war, conflicting parties, militaries, rebel groups, terrorist organizations, and even sometimes races to show their dominance have used rape as a tool to terrorize, punish and destroy populations. Under International Law, such sexual violence has been characterized as war crimes that are cheaper yet more effective than bullets. And the victims of such crimes are mostly civilians and mostly the vulnerable group of society, the women. The consequence of rape and using other forms of sexual violence as a means of war goes far beyond individual sufferings. It destroys entire communities, family ties, spread diseases like HIV and its effect remains for generations to come. The United Nations have pledged to treat sexual violence as the war crime that it is and not as collateral damage of war the International Committee of the Red Cross (ICRC) is stepping up in its efforts to prevent sexual violence as a means of war and also physically and emotionally helping the victims.

This paper deals with the sexual war crimes starting from the time of the Second World War, providing details of the rape of Jewish women in the hands of the Nazi military and the comfort women controlled by the Japanese military. Followed by cases of other wartime sexual crimes in Bosnia and in parts of South Africa including the Democratic Republic of Congo, which is infamous as the rape capital of the world. The paper concludes with the international recognition of sexual violence, violation of women's human rights, and the role of the United Nations and ICRC in preventing such heinous war crimes.

Keywords: Rape, Sexual violence, War crime, Women, United Nations, Human Rights.

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I. INTRODUCTION

Sexual violence has been a weapon of humiliation, dominance, and war since the birth of civilization and as a by-product of adaptive traits² that have turned out to be destructive and as a visible strategy of warfare and humiliation. In the contemporary world, it is a crime being perpetrated against women in every country of the world. Today South Africa stands as the country with the highest number of rapes per year (about 5, 00,000) and also developed countries like United Kingdom (about 85,000 per year). The definition of rape for rape, committed during war does not fall under the traditional definition of ‘rape includes the lack of consent in a sexual activity’ definition. The United Nations defined rape committed in war as mostly to create a sense of domination, terrorize the population, destroy communities, and in some cases to change the genetic and ethnic structure of the next generation³. The prevalence of sexual violence as a weapon in armed conflicts has led scholars to systematically formulate and study the strategic use of sexual violence and how it becomes a visible part of the military and armed groups to achieve political and military objectives. Sexual violence in a war zone targets mainly the women of the society the most vulnerable group who are meant for protection in scenarios like this. It is a strategy and a weapon cheaper than bullets and other ammunitions yet affects the most socially, economically, culturally and at the same time, it has a long-lasting effect on the targeted population. The use of sexual violence in armed conflict has also served as a price for underpaid soldiers and also for terrorizing the whole community by showing its dominance. Sometimes the rape committed is also to infect women with HIV and other diseases and use it as a tool of genocide or to make the women incapable of bearing children. A 2013 UN report gave some close estimates as to the number of rapes that occurred in the high-risk conflict zones. Rwanda (1994) about 100,000 to 250,000 women was raped in a time period of three months genocide, Sierra Leone (1991-2002) about 60,000 women were raped during the civil war, Democratic Republic of Congo (DRC) (since 1998) has at least 200,000 victims, in Liberia (1989-2003) more than 40,000 women have been victims of sexual violence⁴. In certain cases, ethnic wars turn into genocidal wars and rape and another form of sexual abuse becomes a central technique in the act of genocide like in the case of Rwanda, former

² Randy Thornhill, *A Natural History of Rape: Biological Bases of Sexual Coercion*, MIT Press publication, (2000).

³ ‘Stop rape now-UN Action Against Sexual Violence’, 11TH Consolidated Annual Progress Report and Final Report on Activities Implemented under the UN ACTION AGAINST SEXUAL VIOLENCE IN CONFLICT. (April 16, 2021) <https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2020/06/1592492905.pdf>

⁴ “Where is sexual violence happening in conflict zones?”, BBC News 10th June 2014 (Accesses April 14 2021) <https://www.bbc.com/news/newsbeat-27779468>

Yugoslavia⁵ or in Guatemala⁶.

Rape over all these years has been used as a means to humiliate and show dominancy not only to the women but also to the whole community. Sexual abuse and rape leave long-term scars, a psychological, physical, and emotional trauma that serves as a daily reminder of the brutality and destructions of the war. In the high-risk conflict zones rape has been repeatedly used as a weapon of war and destroyed human rights over the years and no strict action has been taken against them simply believing it to be collateral damage of war.

II. THE HOLOCAUST- SEXUAL HUMILIATION OF JEWISH WOMEN, AND JAPANESE FORCED PROSTITUTION DURING THE SECOND WORLD WAR

The kind of sexual violence women faced during the Second World War indeed proved that sexual violence against women was not just a by-product of war, but the war itself, to show dominance and power. During the Holocaust women in a different part of the world faced sexual abuse and rape. Be it the Jewish women and girls in Europe or the ‘comfort women’ who were forced into prostitution, brutally beat and raped, and held prisoners throughout Asia under the control of the Japanese military. Or those by the Russian red army raping German women, or the American soldiers. Both the genders in the Holocaust faced humiliation, death, starvation. But, as Raul Hilberg, a historian who studied the Holocaust with great passion mentioned in his book⁷, “*The road to annihilation was marked by events that specifically affected men as men and women as women*”. Only women were faced with problems of pregnancy, abortion, taking care of the newborns, gynecological problems, and extreme sexual abuses and rape. Though sometimes Jewish men were also victims of sexual abuse majority of the rape victims and survivors were women⁸. In this paper, we shall focus on both the condition of Jewish women and Asian women.

The difference between the German rapes of Jewish women and those by the Russian red army was that the Russian red army (red beast) was known for raping, causing violence, and making its way through Germany and can be considered as revenge but the Nazi’s were

⁵ Viktoria Nicolaisen, The systematic use of sexual violence in genocide — understanding why women are being targeted using the cases of Rwanda and the former Yugoslavia, May 29, 2019 (Accessed April 14, 2021, 7:45 PM) <http://uu.diva-portal.org/smash/get/diva2:1359249/FULLTEXT01.pdf>

⁶ Michele L. Leiby, Wartime Sexual Violence in Guatemala and Peru, Vol. 53, No. 2 (Jun., 2009), p. 445-468, (Accessed April 14, 2021, 8:00PM). <http://www.jstor.org/stable/27735104>

⁷ Raul Hilberg, *Perpetrators, Victims, Bystanders: The Jewish Catastrophe (1933–1945)* London: Harper Press, (1993).

⁸ Nicole Ephgrave, “On women’s bodies: Experiences of Dehumanization during the Holocaust,” *Journal of Women’s History*, vol. 28(2) (2016). <https://muse.jhu.edu/article/620902>

raping Jewish women from its homeland⁹. Over the years the truth about rape that occurred in war has been excluded and hidden mostly because of how Germany's role in the Holocaust is remembered today and most of it is from the male memory of events¹⁰. Now to discuss why German soldiers committed rape during the war, there is a pre-eminent explanation that rape was motivated to exert power and dominance over Jewish women and ultimately the whole community. Instead of being a by-product of the war, rape became the strongest weapon of the war and became more about avenging the motherland¹¹.

Sexual assaults and rape during the Second World War were almost occurring in every possible place. Streets, prisons, Jewish homes, in hundreds of ghettos and camps (concentration camps). The majority of victims were women of all ages and the perpetrators were German and their allies (Romanian, Italian, Hungarian, and sometimes fellow Jewish inmates). There have been cases where Jewish women were forced to serve as sex slaves or prostitutes for German officials, these women ended up in Nazi brothels enduring horrific trauma¹². Nazi or Jewish officials raided the homes and hiding places of the Jews, not only robbed and looted the homes but also raped the women in front of their families before the men and women were separated from their families and dragged to concentration camps or ghettos (small sections of towns segregated to confine Jews) where women were further raped. Myrna Goldenberg in her paper has very vividly written about various memoirs of women who lived to tell their tales of the Holocaust¹³. Lives of women after they reached the concentration camps were dehumanizing and void of all human rights. Girls and women who were not immediately chosen for death underwent humiliating body searches, stripping naked in front of officers and male prisoners, painful body shaves, and sexual humiliation, there were instances of SS¹⁴ soldiers, officers of every rank pushing their fingers into the private

⁹ Nicola Henry, "The Fixation on wartime rape: Feminist critique and International Criminal law", Sage journals, *Social and Legal Studies*, Vol 23(1) (2014). <https://doi.org/10.1177%2F0964663913499061>

¹⁰ Hillary Collier Sy-Quia and Susanne Baackmann, "Conquering Women: Women and War in the German Cultural Imagination", (2000). https://escholarship.org/content/qt36q6n0wc/qt36q6n0wc_noSplash_92d2d2ecc0b0e975eb0b74e623d1cbd4.pdf?t=leys6h

¹¹ 1 William I. Hitchcock, "The Bitter Road to Freedom: A New History of the Liberation of Europe", New York: Free Press, (2008). [https://scienzepolitiche.unical.it/bacheca/archivio/materiale/2467/Materiale%20didattico%20per%20corso%20magistrale%20Storia%20Integrazione%20Europea/William%20I.%20Hitchcock-The%20bitter%20road%20to%20freedom_%20a%20new%20history%20of%20the%20liberation%20of%20Europe-Free%20Press%20\(2008\).pdf](https://scienzepolitiche.unical.it/bacheca/archivio/materiale/2467/Materiale%20didattico%20per%20corso%20magistrale%20Storia%20Integrazione%20Europea/William%20I.%20Hitchcock-The%20bitter%20road%20to%20freedom_%20a%20new%20history%20of%20the%20liberation%20of%20Europe-Free%20Press%20(2008).pdf)

¹² Monika J. Flaschka, "Race, Rape and Gender in Nazi-Occupied Territories", (2009). https://www.google.com/url?q=https://etd.ohiolink.edu/apexprod/rws_etd/send_file/send%3Faccession%3Dkent1258726022%26disposition%3Dattachment&sa=U&ved=2ahUKEwjazYTOOr4rAhVMeH0KHWM2CUMQFjACegQICRAB&usq=AOvVaw2yDjdIXL_y227khaVvJ11p

¹³ Myrna Goldenberg, "Lessons Learned from Gentle Heroism: Women's Holocaust Narratives." *The Annals of the American Academy of Political and Social Science* vol. 548, pp. 78–93, (1996) (Accessed April 20, 2021, 08:21PM) <http://www.jstor.org/stable/1048544>

¹⁴ The Schutzstaffel was a major paramilitary organization under Adolf Hitler and the Nazi Party in Nazi Germany, and later throughout German-occupied Europe during World War II.

parts of women¹⁵. Myrna Goldenberg also mentioned how pregnant women were subject to acts of sadism, they were beaten with clubs, boots, dragged around by the hair, let dogs tear them apart and after the women collapsed they were thrown alive in a crematory¹⁶.

Rape was clearly used to demonstrate domination and control and sex was used as a trophy of conquest¹⁷. Many women were raped multiple times while they were held for forced prostitution by the military. The question of who was going to stop such a massacre remained unanswered. Discussing the various factors that provoked sexual violent behavior in men, it can be stressed that political and ideological factors contributed to the accrual of such rape and sexual violence during the holocaust. Women were raped because it was believed that under political choice they deserved it for the achievement of political dominance, which also brings to the point that Jewish women were raped not just because they were Jewish women but because they were women and misogyny remained a constant reason for gender-based violence which increased during the wartime¹⁸.

The unfortunate stories of comfort women remained in silence and their agony unknown, until the 1980s and 1990s when with great strength and courage elderly women spoke about their experiences and the social movement that began in South Korea, Japan, and elsewhere during the 1990s, that the comfort women survivors started being represented as sex slaves and victims of wartime Japan. Comfort women were forced into prostitution by originally being promised jobs like cooking, laundry, and nursing for the Japanese army. It has been estimated that any number around 50,000 to 200,000 were forced into this sexual slavery whereas the exact numbers are still unknown and debatable¹⁹. Beginning in 1932, the first comfort station was established apparently by Yasuji Okamura ²⁰(the Vice President of staff of the Shanghai expeditionary force at that time). He is said to be the brain for the concept of comfort women and comfort stations^{21 22}. During 1937, comfort stations increased rapidly

¹⁵ Leib Langfuss, "The Horrors of Murder", *The Scrolls of Auschwitz*, p.209, (1985) (Accessed April 20,2021,08.07PM)

<https://www.google.com/url?q=https://www.yutorah.org/download.cfm%3FmaterialID%3D538265&sa=U&ved=2ahUKEwipiPvThI3wAhVZyGjGHY4LBx4QFjAAegQICRAB&usg=AOvVaw16nAeUK87T4ox6RttJGKVV>

¹⁶ Myrna Goldenberg, "Lessons Learned from Gentle Heroism: Women's Holocaust Narratives." *The Annals of the American Academy of Political and Social Science* vol. 548, p. 86 (1996) (Accessed April 20,2021,08.24PM) <http://www.jstor.org/stable/1048544>

¹⁷ Mary Louise Roberts, *What Soldiers Do: Sex and the American GI in World War II* Chicago: University of Chicago Press Journals, (2013) <https://www.journals.uchicago.edu/doi/10.1086/681182>

¹⁸ Nicola Henry, "Theorizing wartime rape", *Sage Journals*, Vol. 30(1), (2015) <https://doi.org/10.1177%2F0891243215608780>

¹⁹The "Comfort Women" Issue and the Asian Women's Fund, Asian Women's Fund,(2004), (Accessed April 22, 2021, 11.45 AM) <https://www.awf.or.jp/pdf/0170.pdf>

²⁰ Yasuji Okamura was a general of the Imperial Japanese Army, and commander-in-chief of the China Expeditionary Army from November 1944 to the end of World War II.

²¹ 'The Comfort Women Issue and the Asian Women's Fund', Who were the Comfort Women?-The

after the Sino-Japanese war broke out²³. Later during the war comfort stations or state-sanctioned operated brothels existed in Japan, Philippines, China, Hong Kong, Indonesia, Thailand, and elsewhere and by the early years of World War II, there were comfort women and comfort stations nearly everywhere there were Japanese troops, the women were detained and forced to work in these brothels next to military barracks and were victims of multiple rape, tortures, and physical abuse²⁴.

The Japanese military justified the existence of such comfort stations by claiming that the women willingly prostitutes and the comfort stations were privately managed with very little involvement from the Japanese government²⁵, whereas the truth was far more brutal and dehumanizing. The comfort women were abducted, kidnapped, lied and brought to the comfort stations which were of no resemblance to a commercial brothel. These comfort women were deprived of minimum human rights, raped repeatedly and many of them died in captivity, either from disease, battlefield injuries, or beating and sexual abuses. And, those that survived bore both physical and psychological scars for life²⁶. By the late 1930s, Nagasaki had a large number of prostitutes, if seen in modern times it can be very well termed as a red light district. Among them were few Japanese women and the maximum was Korean women forced into prostitution. The ethnicities of the women working or forced to work in their comfort stations worsened following the invasion of Nanking. In late 1937 Japanese forces invaded Nanking which was then booming with a huge population with thousands of refugees all fleeing to take shelter from Japanese soldiers. Over the next six weeks, as many as 250,000 and 300,000 people including women and child were mercilessly killed and tortured. Women of all ages were not only raped but also forced to be raped at gunpoint by their family members²⁷. The Japanese government refused to acknowledge the extent of such atrocity and the damage done in Nanking during the war.

Establishment of Comfort Stations, Digital museum (Accessed April 22, 2021, 11.58 AM) <https://www.awf.or.jp/e1/facts-01.html>

²² Though he claimed to be initiator of the comfort women project in 'Okamura Yasuji taisho shiryo I: senjo kaisohen, Tokyo, 1970, pp. 302-303', He was found not guilty of any war crimes by the Shanghai War Crimes Tribunal after the war.

²³ "supra 3"

²⁴ Jone Johnson Lewis, "History of the Comfort Women of World War II", ThoughtCo. (Accessed April 23, 2021, 12.17 PM) <https://www.thoughtco.com/world-war-ii-comfort-women-3530682>

²⁵ Mark E Caprio, "The Comfort Women: Sexual Violence and Postcolonial Memory in Korea and Japan" *The Journal of Japanese Studies*, Vol. 38, No. 1, pp. 163-167 (2012) (Accessed April 23, 2021, 01.36 PM) <https://www.jstor.org/stable/41337606>

²⁶ David Boling, "Mass Rape, Enforced Prostitution, and the Japanese Imperial Army: Japan Eschews International Legal Responsibility?," *Columbia journal of transnational law*. Vol. 32, issue 3 (1995).

²⁷ Iris Chang, "The Rape of Nanking: The Forgotten Holocaust of World War II", Basic books publisher, (2012).

III. CONTEMPORARY CASES OF WARTIME RAPE

(A) Bosnia and Herzegovina

Almost two decades have passed since the war ended in Bosnia and Herzegovina, but the scars that the war has left made permanent marks in history. Rape and sexual abuses during the Bosnian war were used as a means of mass systematic violence amounting to genocidal rape²⁸. Rape during this period was committed by men from Bosnian Serb forces of the army of the Republika Srpska²⁹ and the victims were Bosnian Muslim women. Rape was used as a tactic of war and as a part of ethnic cleansing. An estimation of 10,000 to 50,000 was made to make an official report on the number of women that were raped during the war^{30 31}. The International Criminal Tribunal for the former Yugoslavia (ICTY) for the first time Bosnian war where mass rape and sexual enslavement was recognized as a crime against humanity³² on an international level and prosecuted by an international tribunal³³. UNHCR has claimed around 12,000 rapes³⁴ whereas the European Union estimates a total of 20,000 women and the Bosnian military claims 50,000 rape cases. The report given by the United Nations commission identified only 1,600 cases of sexual violence³⁵. The difficulties in researching and confirming the accurate number of cases or somewhere close to the accurate number become impossible because of the death of innumerable victims and those that survived are reluctant to come up and talk about their experiences for the fear of suffering social stigma and others feel degraded and ashamed³⁶. Serbs were known for setting up concentration camps where rape, sexual assaults, torture were regular incidents. Some of the concentration

²⁸ Jennifer Leaning, Susan Bartels, Hani Mowaf, "Sexual Violence during War and Forced Migration" *Sexual Violence during War and Forced Migration* pp 173-199 (2009) (Accessed April 26 2021, 09.15PM) https://link.springer.com/chapter/10.1007/978-90-481-2825-9_9

²⁹ Republika Srpska is one of the two entities of Bosnia and Herzegovina, the other being the Federation of Bosnia and Herzegovina.

³⁰ Daria Sito-Sucic, "'Invisible' Bosnians born of wartime rape use art to find their voice", REUTERS, (2015), (Accessed April 26 2021, 09.27 PM) <https://www.reuters.com/article/us-bosnia-war-play/invisible-bosnians-born-of-wartime-rape-use-art-to-find-their-voice-idUSKBN1WU1SC>

³¹ Denic Džidić and Denis Dzidic, "'20,000 Women Sexually Assaulted' During Bosnian War", <https://balkaninsight.com/2015/09/29/bosnian-rape-victims-still-waiting-for-justice-09-28-2015/>

³² Lynda E. Boose, "Crossing the River Drina: Bosnian Rape Camps, Turkish Impalement, and Serb Cultural Memory." *Signs*, vol. 28, no. 1, 2002, pp. 73. JSTOR, (Accessed April 27, 2021, 5.32PM) www.jstor.org/stable/10.1086/340921

³³ Alexander Mikaberidze, Editor. *Behind Barbed Wire: An Encyclopedia of Concentration and Prisoner-of-War Camps*. ABC-CLIO, p. 39, 2018. *ABC-CLIO*, <https://publisher.abc-clio.com/9781440857621/60>

³⁴ Steven L. Burg; Paul S. Shoup (4 March 2015). *Ethnic Conflict and International Intervention: Crisis in Bosnia-Herzegovina, 1990-93: Crisis in Bosnia-Herzegovina, 1990-93*. Taylor & Francis. pp. 222-. ISBN 978-1-317-47101-1

³⁵ Alexandra Stiglmeier, "The Rapes in Bosnia-Herzegovina", *Remembering Srebrenica*, (2017) (Accessed April 27, 2021, 6.36 PM) <https://www.srebrenica.org.uk/what-happened/the-rapes-in-bosnia-herzegovina-alexandra-stiglmeier/>

³⁶ Amnesty International January 1993, "BOSNIA-HERZEGOVINA Rape and sexual abuse by armed forces", AI Index: EUR 63/01/93, p2, (Accessed April 27, 2021, 6.36PM) <https://www.amnesty.org/download/Document/s/188000/eur630011993en.pdf>.

camps were Keraterm camp, Omarska³⁷, Villina Vlas³⁸, Tronopoljc camp, Uzamnica, Villina Vlas. There are horrendous oral narrations from survivors which showed the amount of inhuman torture exerted by the Bosnian Serb soldiers, police officers, and the camp guards³⁹. Reports indicated that sexual abuse against women has been widespread in the conflict in Bosnia-Herzegovina, and all sides have committed rape and sexual abuse, but the Muslim women have been the chief victims but however lack of proper evidence have made it difficult to get the whole picture of the atrocities faced by women during the war. The rape happened for all reason, i.e., on account of their nationality, personal revenge, or sometimes just as gender-based violence.

Amnesty International in 1993 provided a report where they have presented oral testimonies of some survivors; the age mention thereof victims which ranged from 15 to 40 years proved that women of no age were safe during the war. And the rapes included not only a single victim at a time but as many as 1000 women, children, and old people were taken away at once by Serbian forces for being confined and raped⁴⁰. Other than the concentration camps women were also held in other places like hotels, police stations, fire stations, or just in their own homes when villages and towns were raided. The systematic use of rape and sexual violence in war during the Bosnia-Herzegovina conflict becomes limelight issued for the first time and was recognized as an inhuman crime both in an international and domestic realm. Some oral testimonies given by victims of these crimes have given voice not just to these victims but to an extent of bringing the crime itself to be witnessed as a war crime and not as a by-product of war. In the early 1990's rape as a war strategy became publicized in media⁴¹ and the United Nations established ICTTY ad calls were made for legal actions to be taken over the possibility of genocide and ethnic cleansing that occurred during the Bosnian war. Judges from the ICTY looked into the matter and ruled that rape had indeed been used by the Bosnian Serb armed forces as an instrument of war and some officials were sentenced to

³⁷ Ed Vulliamy, "Bosnia's victims 20 years on: survivors of a nightmare with no reckoning, *The Guardian*, (2012) (Accessed April 27, 2021, 7.07PM) <https://www.theguardian.com/world/2012/apr/08/bosnia-camps-ed-vulliamy>

³⁸ Vilina Vlas is a hotel and former rape camp. It served as one of the main detention facilities where Bosniak civilian prisoners were beaten, tortured and murdered and the women raped by Serbs during the Višegrad massacres in the Bosnian War of the 1990s.

³⁹ Inger SKJELSBÆK, "Victim and Survivor: Narrated Social Identities of Women Who Experienced Rape During the War in Bosnia-Herzegovina", *Feminism & Psychology* © 2006 SAGE (London, Thousand Oaks and New Delhi) <http://fap.sagepub.com>, Vol. 16(4): 373–403; 0959-3535, Accessed April 27, 2021, 7.07PM) <https://www.usip.org/sites/default/files/missing-peace/Inger-Skjelsbaek.pdf>

⁴⁰ *Supra* 35, p.10-20

⁴¹ R. Charli Carpenter, "Forgetting Children Born of War-Setting the Human Rights Agenda in Bosnia and Beyond", Columbia University Press, ISBN 9780231522304, (2010).

imprisonment accordingly for the crime of rape, torture, and enslaving women^{42 43 44}.

(B) Democratic Republic of Congo

The first and second conflict in the Democratic Republic of Congo (DRC)⁴⁵ left with so much destruction that survivors even today are scared of the trauma they faced. During the war, all armed parties have been part of genocidal rape, the main purpose was providing dominance and destruction of communities and families, Human Rights Watch (HRW) very well described it as ‘a war within a war’⁴⁶. Both the war was a complex regional and political conflict which began in 1996 spread such atrocities and violence that it has come to hold the heinous distinction of ‘Heart of darkness and the ‘Rape capital of the world’⁴⁷. The violence, torture, and sexual abuse continued throughout the war, and in 2002, a peace agreement was signed, however, the violence and rape continued and a second peace agreement was drafted and signed in 2008 by 22 armed conflicts. Even after that organizations such as HRW reported that sexual assault continued even after the agreement was signed⁴⁸. The United Nations reported women were not safe anywhere in DRC; they were being raped while carrying out chores, abducted from the road while fetching water or going to the market, or while working on farms⁴⁹. Girls from the age of five to eighty have been sexually mutilated, raped, and humiliated sometimes by being raped in front of their families. There have been reports of infants aged one and two years being raped, such inhuman and barbarous were the condition⁵⁰.

In 2009 it was estimated that there were at least 1100 rapes per month, and, 72% of survivors

⁴² Reuters Staff, “Bosnia court jails ex-Serb army commander for 18 years”, Reuters, (2010), (Accessed April 29, 2021, 9.00AM) <https://www.reuters.com/article/latestCrisis/idUSL3709343>

⁴³ “Bosnia’s ‘Monster of Grbavica’ gets 45 years”, AljaZEERA, (2013) (Accessed April 29, 2021, 9.00AM) <https://www.aljazeera.com/news/2013/3/29/bosnias-monster-of-grbavica-gets-45-years>

⁴⁴ “Bosnia jails Serb Veselin Vlahovic for war crimes”, BBC NEWS, (2013) (Accessed April 29, 2021, 9.38 AM) <https://www.bbc.com/news/world-europe-21974471>

⁴⁵ The First Congo War: 1996–1997, The Second Congo War: August 1998, little more than a year after the First Congo War, and involved some of the same issues. The war officially ended in July 2003.

⁴⁶ Joanne Csete, Juliane Kippenberg, “The War Within The War Sexual Violence Against Women and Girls in Eastern Congo”, Human Rights Watch, (2002) ISBN 1-56432-276-9 (Accessed May 1, 2021, 9.58 AM) <https://www.hrw.org/legacy/reports/2002/drc/Congo0602.pdf>

⁴⁷ “UN official calls DR Congo 'rape capital of the world'”, BBC News, (2010) (Accessed May 1, 2021, 10.20AM) <http://news.bbc.co.uk/2/hi/africa/8650112.stm>

⁴⁸ Sophocles Kitharidis, “Rape as a weapon of war: Combating sexual violence and impunity in the Democratic Republic of the Congo, and the way forward”, *African Human Rights Law Journal* 449-472 (2015) (Accessed May 1, 2021, 11.18AM) <http://dx.doi.org/10.17159/1996-2096/2015/v15n2a11>

⁴⁹ “Progress and obstacles in the fight against impunity for sexual violence in the Democratic Republic of the Congo” MONUSCO ,OHCHR (2014) (Accessed May 1, 2021, 10.20AM) <https://reliefweb.int/report/democratic-republic-congo/progress-and-obstacles-fight-against-impunity-sexual-violence>.

⁵⁰ Susan A Bartels, Hani Mowafi, Jennifer Leaning, “Sexual Violence during War and Forced Migration”, *Women, Migration, and Conflict* (pp.173-199), (1970) (Accessed May 3, 2021, 11.57PM.) 10.1007/978-90-481-2825-9_9

claimed that they were inhumanly tortured during their assaults⁵¹. The United Nations has estimated that by 2008 up to 200,000 females has been the victim of sexual violence during and after the war⁵². "Rape as a weapon of war in the DRC", a study done by Carl Brown has mentioned the reasons why such atrocities of sexual violence occurred in DRC. The most obvious reason was the war that destroyed the whole of the country and changed the political and social scenario forever, other than that poverty; patriarchy was also two very important reasons to bring upon such sexual violence on women⁵³. The physical and psychological effects of sexual violence are unimaginable and remain with the victim for their entire life. HRW mentioned that rape was used as a weapon to 'punish' civilians of a particular ethnic group or even those who supported the enemy. HRW also reported about the exceptional brutality faced by women, with razor blades, knives being used to mutilate their private parts. Victims who have survived have reported major health issues as a result of the rape and sexual violence⁵⁴. Psychological trauma included nightmares, insomnia, and lived in fear and felt ashamed of their assaults. UN stated that DRC has become the center for the use of rape as a weapon, with a study suggesting that 48 women are raped every hour⁵⁵. In 2013, a mass trial of the armed forces of the Democratic Republic of Congo began, where soldiers accused of raping as many as 102 women and 33 girls were put to trial, but the judgment turned out to be a disappointment with only two convicted⁵⁶.

(C) Genocide of Guatemala

The colonial legacy of Guatemala has been violent long before the civil war. The genocide and violence against women started when the Spanish conquered Guatemala in the 16th Century. Spanish soldiers raped and committed Genocide on women, men, and children, the rule that lasted for over 500 years⁵⁷ left the country crippled, and long after the freedom of the country the violent history and the root that was created was to bring more inhumanity

⁵¹ Denis Mukengere Mukwege · Cathy Nangini, "Rape with Extreme Violence: The New Pathology in South Kivu, Democratic Republic of Congo", *PLoS Med*, (2009) (Accessed May 5, 2021, 12.17 PM.) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2791171/>

⁵² Paula Drumond, "Invisible Males: The Congolese Genocide". In Adam Jones *New Directions in Genocide Research*. Routledge (2011) ISBN 978-0415495974

⁵³ Carly Brown, "Rape as a weapon of war in the Democratic Republic of the Congo", *SOCS* 461, 462, California Polytechnic State University (2011), (Accessed May 3, 2021, 12.51PM.) <https://core.ac.uk/download/pdf/19142655.pdf>

⁵⁴ "Democratic Republic of Congo: Ending Impunity for Sexual Violence", Human Rights Watch (2014), (Accessed May 3, 2021, 1.30PM.) <https://www.hrw.org/news/2014/06/10/democratic-republic-congo-ending-impunity-sexual-violence>

⁵⁵ Jo Adetunji, "Forty-eight women raped every hour in Congo, study finds", *The Guardian*, (2011) (Accessed May 3, 2021, 1.42 PM) <https://www.theguardian.com/world/2011/may/12/48-women-raped-hour-congo>

⁵⁶ "DR Congo rape trial: Many soldiers cleared, two guilty". *BBC News*, (2014)(Accessed May 3, 2021, 1.54 PM) https://en.wikipedia.org/wiki/Rape_during_the_Congo_civil_war#Rape_as_Genocide.

⁵⁷ 500 Years, directed by Pamela Yates, (2017, Guatemala: Skylight), Documentary Film.

within the country. The country was left with a misogynistic society, cultural and economic oppression, and a divide between dirty Indians (Indios Sucios) and real Guatemaltecos (non-Indian descendants of Spanish colonizers). A racial hierarchy was created between the darker skin Mayan Indians and lighter skin, who appeared to be more European. The Mayan Indians made up 42% of the country's population and they were the most politically and economically disadvantaged population⁵⁸.

The civil war in Guatemala took place between, 1991-1996. The outcome of the alleged government-sponsored war was mass human rights violation, inhuman rape of Mayan women and girls, and genocide. The civil war resulted in the death or disappearance of more than 140,000 people. The government was responsible for the majority of the killings⁵⁹. The misogynistic and gender-based violence perpetrated against Mayan women by the Spanish established the root for using genocidal rape as a weapon for the civil war. Sexual violence and targeting indigenous women intimidated and showed dominance over communities, social organizations, destroyed families, and violence killed future generations of the Mayans and served as a powerful weapon of war. The Commission for Historical Clarification's Investigation has pointed out 93% of human rights atrocities were committed during the civil war and demonstrated that acts of civil violence were an integral part of military strategy⁶⁰. The victims were mainly women and children who were poor, indigenous, and of Mayan origin. The Proyecto Interdiocesano de Recuperación de la Memoria Histórica (REHMZ) collected reports and testimonials of 151 victims of sexual violence during the Guatemala conflict⁶¹. The Guatemalan soldiers raped women and eliminated Mayan men to establish a 'civilized' Guatemala, void of any dirty Indians. Forced impregnation was used for ethnic cleansing. Mayan women were used as reproducers to create a generation of more Guatemalan children. This was an effective tool both for ethnic cleansing and demoralizing the community. The Mayan bloodline was strategically planned to be destroyed. Soldiers not only impregnated the women but also raped and abused them to make them infertile unable to carry on her bloodline. The International Federation of Human Rights reported through

⁵⁸ Michele L. Leiby, "Wartime Sexual Violence in Guatemala and Peru." *International Studies Quarterly*, 53, p.447 (2000). (Accessed May 8, 2021, 10.39AM) http://www.micheleleiby.com/downloads/isq_wartime_sexual_violence.pdf.

⁵⁹ Rashida Manjoo, Caleigh McRaith, "Gender-Based Violence and Justice in Conflict and Post-Conflict Areas." p. 28, *Cornell International Law Journal* Vol. 44, (2011) (Accessed May 8, 2021, 10.56PAM) <https://ww3.lawschool.cornell.edu/research/ILJ/upload/Manjoo-McRaith-final.pdf>.

⁶⁰ Megan Bastick, Karin Grimm, Rahel Kunz, "Sexual Violence in Armed Conflict- Global Overview and Implications for the Security Sector", Geneva Centre for the Democratic Control of Armed Forces, p. 78, (2007) (Accessed May 8, 2021, 10.56AM) https://dcaf.ch/sites/default/files/publications/documents/sexualviolence_conflict_full.pdf.

⁶¹ *Ibid.*

victims and witness reports that many pregnant women carrying Mayan babies had their bellies slit open and many lost their babies as a result of successive rape⁶². The rapes were brutal and in many cases rapes involved using objects like guns, splinters, broken bottles, and knives in their private parts leaving them mutilated. Other than the physical abuse and mutilation of private parts, many soldiers purposely raped Mayan women to sexually transmitted diseases such as syphilis, HIV/AIDS, gonorrhea to spread the genocide and also prevent them from having children⁶³.

The widespread rape and sexual abuse during the genocide left the country crippled, even today the rate of crime against women in Guatemala remains high and there have been reports of innumerable rapes post-conflict. Even today the government of Guatemala refuses to accept the genocide that occurred the rape and mutilation of over 100,000 women and children. There have been trials where victims came up with great courage to receive justice for such inhuman behaviors, many men have been acquitted⁶⁴ ⁶⁵and in 2013, General Efraim Rios Montt was brought to trial on the charge of genocide, sexual violence, and crimes against humanity⁶⁶. But even then many women's lives without any justice given to them and bearing the shame that they faced during the conflict.

IV. RECOGNIZING WARTIME SEXUAL VIOLENCE AS AN INTERNATIONAL CRIME VIOLATING WOMEN'S HUMAN RIGHTS

For centuries, rape and sexual violence have been considered unavoidable collateral damage of war. Despite the horrific documentation of wartime rape, it failed to be considered a grave human rights violation. After years of silence and neglect, rape during the war has now been recognized in the international community as an important global security issue. Since 1994, during the armed conflicts in Bosnia-Herzegovina and Rwanda, violence against women has been on the agenda of the United Nations Human Rights Commission⁶⁷. Since then various reports dealt with the number of issues of violence against women during the war, and

⁶² "Genocide in Guatemala: Rios Montt Guilty," International Federation for Human Rights (FIDH),(2013) (Accessed May 8, 2021, 12.38PM), <https://www.fidh.org/IMG/pdf/rapguatemala613uk2013.pdf>.

⁶³ Larissa Peltola, "Rape and Sexual Violence Used as a Weapon of War and Genocide", CMC Senior Theses 1965, (2018) (Accessed May 8, 2021, 12.50PM) https://scholarship.claremont.edu/cmc_theses/1965/

⁶⁴ Sandra Cuffe, 'Guatemala survivors of wartime sexual violence fight for justice', AljaZeera, Women's rights (2019) (Accessed May 8, 2021, 01.23PM) <https://www.aljazeera.com/news/2019/6/22/guatemala-survivors-of-wartime-sexual-violence-fight-for-justice>

⁶⁵ 'Former Guatemala military convicted for sexual violence in landmark case', DW news, Accessed May 8, 2021, 01.23PM) <https://www.dw.com/en/former-guatemala-military-convicted-for-sexual-violence-in-landmark-case/a-19078767>

⁶⁶ Supra 6.

⁶⁷ Sonja Walte, "Human rights violation against women during war and conflict", Report of a roundtable discussion parallel to the UN commission on Human Rights, WILPF (1997) (Accessed May 12, 2021, 7.57AM) https://wilpf.org/wp-content/uploads/2014/08/1997_HR_Violations_Women_War.pdf

redressal of victims has become a high priority of the International justice community. Now, perpetrating sexual violence on women and girls in situations of armed conflict (Civil or international) constitutes a grave breach of international Human rights and humanitarian law. United Nations and the International Committee of Red cross have explicitly outlawed such practices and consider it to be a breach of women's human rights. The fourth Geneva Convention⁶⁸ under Article 27 has specifically criminalized sexual violence during armed conflicts. The 1993 Vienna Convention and Programme of action mentioned murder, systematic rape, and sexual slavery during the armed conflicts result in violation of fundamental human rights⁶⁹. The United Nations Security Council in its various resolutions has taken up the matter at an international level to incorporate laws, policies, and procedures to protect women from gender-based crimes. The 2010⁷⁰ and 2013⁷¹ resolution has taken up the responsibility to list the parties suspected of wartime sexual violence and to establish monitoring, analysis, and reporting arrangements.

The problem of armed conflict and the inclusion of human rights in humanitarian law has always been a topic of debate, however, armed conflicts directed human sufferings is a result of extensive human rights violation and since the establishment of the United Nations, and armed conflict has been considered as a part of broader international human rights law framework⁷². Rape and sexual abuse not only affect physically but also leaves a long-term mental effect. If rape is considered as a violation of a women's human rights, sexual abuse committed during the war is more brutal, affects a mass number of women in the armed conflict zones making it more of an important reason to be considered as a human rights violation on an international level. Rape rises to the level of a war crime and a breach of the Geneva Conventions regardless of whether the conflict is civil in nature or it reaches far beyond internal boundaries and using rape on a mass scale as an orchestrated policy to show power and dominance designates the crime as a crime against humanity⁷³.

V. ROLE OF INTERNATIONAL COMMITTEE OF THE RED CROSS (ICRC) IN ADDRESSING SEXUAL VIOLENCE

Despite legal provisions, sexual violence and rape remain widespread during armed conflicts

⁶⁸ Fourth Geneva Convention Relative to the Protection of Civilian Persons in the time of war of 12 August 1949.

⁶⁹ Part II, Para 38 of 1993 Vienna Declaration and Programme of Action.

⁷⁰ Security Council Resolution 1960.

⁷¹ Security Council Resolution 2106.

⁷² "Sexual Violence and Armed Conflict: United Nations Response", United Nations, Women 2000 (1998) (Accessed May 12, 2021, 8.53AM) <https://www.un.org/womenwatch/daw/public/cover.pdf>.

⁷³ Rosalind Dixon, "Rape as a crime in International Humanitarian law: where to from here?", EJIL, Vol13 No.3,p.697-719 (2002) (Accessed May 12, 2021, 8.53AM) <http://ejil.org/pdfs/13/3/492.pdf>

and in other situations of violence. In conflict and post-conflict settings, sexual violence is being used as a tactical and strategic means to win the war or women are being subject to marital rapes, early or forced marriages, transactional or survival sex, and trafficking in cases of post conflict situations. For sexual violence to fall within the scope of International Humanitarian Law (IHL), it needs to take place or be associated with an armed conflict. The International Committee of the Red Cross is committed to protecting victims of international and internal armed conflict zones and has been stepping up to prevent sexual violence in armed conflicts and help the victims of post-conflict zones. ICRC has defined sexual violence as acts of sexual nature committed with force or coercion or threat against any person. The threat or force can also be against a third person, and comprises acts of rape, sexual slavery, enforced prostitution, enforced sterilization, mutilation of sexual organs, and forced pregnancy. But for all of this to fall under IHL it must occur in an armed conflict or post armed conflict zone⁷⁴, applicable for both international and non-international cases as it has been highlighted in rule 93 of the ICRC customary study on International Humanitarian Law⁷⁵.

The role of ICRC is not limited to look after the physical consequences but the victims also suffer consequences that are detrimental to physical as well as mental health resulting in stress, confusion, anger, guilt, or shame. Other social consequences include discrimination, stigmatization, abandonment by family, re-victimization, or desertion of children born from rape⁷⁶. It's the responsibility of the Red Cross society to provide for counseling and other methods to prevent physical as well as such psychological traumas. ICRC seeks to systematically address the issue of sexual violence through its protection and prevention activities and be favoring a holistic and multidisciplinary approach to address the multiple needs of the victims of sexual violence. When needed ICRC may engage with partners outside International Red Cross and Red Crescent. The ICRC works with direct and strong access to primary health care and medical services to protect women from sexually transmitted diseases, treat injuries and prevent unwanted pregnancies also at the same time providing a private confidential, and a safe place for overcoming psychological and physical

⁷⁴ "10 countries in conflict are the worst place to be a child", a 2020 survey of the most conflict zones, Save the Children. (Accessed May 5, 2021, 9.42AM) <https://www.savethechildren.org/us/charity-stories/10-worst-conflict-affected-countries-to-be-a-child>

⁷⁵ The ICRC study on customary IHL published in 2005 identified 161 key rules of customary IHL and presented the State practice on which they are based, as well as related international practice. Rule 93 refers to "Rape and Other Forms of Sexual Violence" of Customary IHL, Vol.II Ch.32(Accessed May 14, 2021, 11.42 AM) http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule93

⁷⁶ Charli Carpenter, "War's Impact on Children Born of Rape and Sexual Exploitation: Physical, Economic and Psychosocial Dimensions". Chapter 1 in "Born of War: Protecting Children of Sexual Violence Survivors in Conflict Zones". Hartford: Kumarian Press, 2007.

trauma and protect the victims from further victimization and stigmatization⁷⁷. In terms of economic support, ICRC keeps in mind the capacities of the victims of sexual violence and conducts activities like cash transfer for vulnerable groups, helping women run agricultural cooperatives, helping them to provide for themselves and their children⁷⁸.

ICRC has published reports in 2019, 2020, responding to sexual violence providing operational examples of the work conducted in various conflict zones like DRC, Colombia, Mexico, etc⁷⁹. In one article published by ICRC, the barriers for victims in obtaining proper access to health care have been mentioned. The first hurdle to be crossed is to make victims aware of the need to seek urgent medical care; victims do not come forward because of fear, insecurity, and social stigma or for the lack of suitable medical facilities. The second barrier is the lack of proper health care services and long distances to travel to receive proper healthcare and insecure environment. ICRC has come a long way to recover such hurdles and strive to address both the cause and the effect of sexual violence and provide for healthcare, protection, assistance, awareness, and prevention⁸⁰.

The ICRC has produced special guidelines in the recent Covid-19 scenario, claiming that emergencies have made the victims of sexual violence more vulnerable. The ICRC made it clear that even during a pandemic the situation of victims of wartime sexual violence remains the same and the violence remains a crime, ‘Sexual violence still a crime during a pandemic.’⁸¹, and has taken up contingency planning, adapting, strengthening and establishing new activities to safeguard the victims of wartime sexual violence amidst the coronavirus situation in the humanitarian context⁸².

VI. CONCLUSION- RECOMMENDATIONS AND THE WAY FORWARD:

Sexual violence in conflict has destroyed a lot of lives and communities and will keep on doing so if unless there is any concrete step taken against such inhuman crime. Providing justice to the victims not only brings justice to the community as a whole but also the crime is

⁷⁷ “The ICRC and the Preventing Sexual Violence Initiative (PSVI)”, ICRC (2016) (Accessed May 14, 2021, 2.09PM) <https://www.icrc.org/en/document/icrc-and-preventing-sexual-violence-initiative-psvi>

⁷⁸ “Special appeal 2019, The ICRC’s response to sexual violence” ICRC, REM 2019/113 p. 14 (2019) (May 14, 2021, 2.21PM) https://www.icrc.org/sites/default/files/topic/file_plus_list/2019_specialappeal_sv_final.pdf

⁷⁹ “Special appeal 2020, The ICRC’s response to sexual violence” ICRC, REM 2020/147 p. 20-36 (2019) (Accessed May 14, 2021, 2.21PM) https://www.icrc.org/sites/default/files/wysiwyg/Activities/Sexual-violence/2020_specialappeal_sv.pdf

⁸⁰ “Q&A: sexual violence in armed conflict”, ICRC (2016) (Accessed May 14, 2021, 2.47PM) <https://www.icrc.org/en/document/sexual-violence-armed-conflict-questions-and-answers>

⁸¹ “Addressing sexual violence”, ICRC, What we do (Accessed May 14, 2021, 2.59PM) <https://www.icrc.org/en/what-we-do/sexual-violence>

⁸² “COVID-19: Inclusive programming – Ensuring assistance and protection addresses the needs of marginalized and at-risk people”, ICRC, (Accessed May 14, 2021, 2.59PM) https://www.icrc.org/sites/default/files/wysiwyg/Rhema/icrc_covid-19_inclusive_programming_coronavirus.pdf

recognized. A sense of justice may be necessary for the victims for reconciliation and for moving on. There is an urgent need for a collective and concrete plan to address such crime. The reason why rape is being used as a weapon of war should be addressed and an urgent need to focus on gender equality on a global scale. Aiding with survivors will not be enough if precautions and preventions against sexual violence do not take place. Today, Standing on the ground that rape is not an unavoidable crime of war, three main areas are to be addressed to eliminate using rape as a tool of war: One, the issues of gender equality are to be addressed, ending masochistic society will significantly reduce gender-based violence. The second important place to be addressed is an unified response from the international justice community for providing justice that the victims and women deserve, and lastly to reach out to victims, providing them physical and psychological help, provide legal attention and financial services to help them past their trauma and gain back there respect in the society.
