

Sexual Violence in Armed Conflict in Nigeria: International Law and Domestic Law at the Crossroads

Abstract

This study examines sexual violence in armed conflict, using the Boko-Haram insurgency as a case study. It explores the extent of protection accorded to victims of the conflict and the accountability of perpetrators under Nigerian law. It examines the State's complicity in consistently allowing civilians to be targets of sexual violence while members of the Boko-Haram armed group who perpetrated such offenses continue to enjoy almost complete immunity. This study also investigates the legal hurdles hampering bringing perpetrators of sexual violence in armed conflict to justice and has provided solutions to the absence of legal protection for victims of sexual violence in armed conflict and the dearth of accountability for its perpetrators. It argues that the current legislation in place in Nigeria to combat sexual violence is grossly inadequate. not just for peacetime but in armed conflict, and the non-domestication of international treaties, particularly the Four Geneva Conventions and its Additional Protocols, has contributed to the near-complete impunity of perpetrators of sexual violence in armed conflict.

Keywords: armed conflict, Boko-Haram insurgency, perpetrators, sexual violence, victims

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I Introduction

Over the years, the Boko-Haram group, which has been associated with sexual violence in Nigeria, continues to be prevalent with the exact numbers of women and children (including boys) abducted and sexually violated being unknown.¹ Although shrouded in silence, with its perpetrators enjoying almost complete impunity, women and young girls in areas occupied by members of the Boko-Haram group located in Northern Nigeria have encountered pervasive assaults on their dignity and human rights as women. These assaults have been horrific, consistent, brutal and prejudiced, with individuals justifying their actions by blaming them on ethnicity and religious differences.² Amnesty International³ reported the kidnap, sexual enslavement and forced marriages of several women and young girls in around 2000 by representatives of the Boko-Haram group in a space of 12 months. This report further stated⁴ that members of the group should be arrested and prosecuted for diverse patterns of sexual violence, ranging from rape to enforced prostitution, enforced marriages, sexual slavery and trafficking. In 2018, 110 schoolgirls in Dapchi were abducted. Several of them lost their lives, but Leah Sharibu, one of its captives, who was fourteen at the time of abduction, was held prisoner for her refusal to renounce her faith.⁵ Some reports claim that she had been killed,⁶ other reports claimed that she was married off⁷ to a member of the armed group and had reportedly given birth to a boy.⁸

Tom Batchelor, painted a gory picture of a young survivor, who stated that she was raped 15 times a day while she was in the custody of the Boko-Haram group before her escape.⁹ Another picture was painted of a young mother of four, Asabe Aliyu, who was rescued from the Sambisa forest, stated while vomiting blood, that members of the Boko-Haram

¹ Theresa U Akpoghema, Ufuoma V Awhefeada, 'Challenges in Prosecuting Sexual Violence in Armed Conflict under Nigerian Law' (2020) 11 Beijing Law Review 262. <https://doi.org/10.4236/blr.2020.111018>

² Lashawn Jefferson, 'In War as in Peace: Sexual Violence and Women's Status' <<https://www.refworld.org/pdfid/402bac094.pdf>> accessed 23 June 2022.

³ Amnesty International, 'Nigeria: Abducted Women and Girls Forced to Join Boko Haram Attacks' (Amnesty.org, 14 April 2015) <<https://www.amnesty.org/en/latest/news/2015/04/nigeria-abducted-women-and-girls-forced-to-join-boko-haram-attacks/>> accessed 23 June 2022.

⁴ Ibid.

⁵ Amnesty International (n 3).

⁶ Sahara Reporters, 'Nigerians React to Claim Leah Sharibu Is Dead, Presidency Keeps Mum' (Sahara Reporters, 25 July 2019) <<https://saharareporters.com/2019/07/25/nigerians-react-claim-leah-sharibu-dead-presidency-keeps-mum>> accessed 23 June 2022.

⁷ Goodness Adaoyichie, 'Leah Sharibu "Accepts" Islam, Gives Birth to Baby Boy for Boko Haram Commander' (Pulse Nigeria, 25 January 2020) <<https://www.pulse.ng/news/local/leah-sharibu-converted-to-islam-gives-birth-to-baby-boy-for-boko-haram-commander/nhtke26>> accessed 23 June 2022.

⁸ Ibid.

⁹ Tom Batchelor, 'Rape and Sex Slavery: Life as a Girl under Boko Haram Exposed a Year on from Mass Kidnap' (Express.co.uk, 14 April 2015) <<https://www.express.co.uk/news/world/570401/Boko-Haram-exposed-year-mass-kidnap>> accessed 23 June 2022.

group took turns in raping her daily after which she became pregnant and was forced into marriage with a member of the group.¹⁰

Although several Nigerian legislations have prohibited this violence against women and young girls, the state's failure to prosecute perpetrators encourages this violence to continue. Several organisations and academics have given alarming figures showing the statistics of the sexual violence that has occurred in the Boko-Haram armed conflict but it is alarming to emphasise that these figures are only cosmetic compared to the actual amount of sexual violence that has taken place, and what is also alarming is the government's appalling records of prosecuting perpetrators of sexual violence in Nigeria.¹¹ Nobody has been arrested or tried for this grievous crime against women and humanity. Rather, amnesty has been given to perpetrators of this crime, stating that they are repentant members of the group and, because of their repentance, they have been rehabilitated back into society.¹² It is important to note that international humanitarian law (IHL) does not prohibit participation in armed conflict; however, when genocide, a war crime or/and a crime against humanity have occurred, the law stipulates that perpetrators be indicted and must account for their crimes.

II Statement of Research Problem

Since time immemorial sexual violence has been consistently used as a technique of warfare; this does not differ in Nigeria as, since the inception of the Boko-Haram group, its members have consistently used it as a means of terrifying and subduing civilians in the northeast. Although the international community has been paying growing attention to this crime, two essential features have persisted. First, sexual violence has been consistently used by representatives of the Boko-Haram group on civilians, specifically, women and young girls. Second, the State's complicitous role in allowing civilians to be consistent targets of sexual violence while members of the Boko-Haram armed group, who have perpetrated sexual violence, continue to enjoy almost complete immunity. There has been no accountability as not a single person from the Boko-Haram group has been indicted; instead, amnesty was given to them, and they were rehabilitated back into society by the State. But how can there be accountability, when there is no legislation to protect victims of sexual violence in armed conflict in Nigeria?

¹⁰ Afolabi Sotunde, 'Nigerian Women Captured by Boko Haram "Stoned, Starved" by Militants' (3 May 2015) ABC News <<https://www.abc.net.au/news/2015-05-04/boko-haram-captives-speak-of-ordeal-for-first-time/6441528>> accessed 23 June 2022.

¹¹ Jefferson (n 2).

¹² Godwin Isenyo, 'Ndume Faults FG's Amnesty for Repentant Boko Haram Fighters' (Punch Newspapers, 30 July 2020) <<https://punchng.com/ndume-faults-fgs-amnesty-for-repentant-boko-haram-fighters/>> accessed 23 June 2022.

III Literature Review

In ancient times, sexual violence was used as a forceful relationship against women from the opposing side, who were married off to men who were lower or inferior to the victim's husband.¹³ This dates as far back as 1945 in the Soviet Union. In 1945,¹⁴ the women who lived in Germany and the East experienced horrific acts of sexual violence against their honor and person. Experts have asserted that the consistent utilisation of sexual violence in warfare, is too widespread, too systematic and far too frequent to not be characterised as a weapon of warfare.¹⁵ Proponents of the feminist methodology, in an attempt to analyse why sexual violence is consistently committed against women, stated that the relationship between men and women has always been one of institutionalised patriarchy and hierarchy.¹⁶ The researchers opine that this is because sexual violence almost always occurs as an upshot of the male desire to exercise supremacy and dominance over women.

Zarkov stated that the patriarchal and hierarchical relationship among men and women resulted in women being characterised as being susceptible of being raped, stating further that rape itself defines femininity as violability, which makes it essential for men to rape women.¹⁷ This definition further buttresses the feminist theory, because the patriarchal and hierarchical relationship in both genders emphasises the presumed patriarchal supremacy alongside a woman's complete helplessness.¹⁸ The circumstance in which warfare occurs further accentuates that women are mostly unavoidable casualties, who are not only helpless but vulnerable, while the men are often a part of the army or an armed group.

Seifart,¹⁹ in trying to give further clarity to the issue of sexual violence in armed conflict, stated that the reason women are raped is not a result of direct enmity between men and women. However, they are the target of foundational rancor that subjugates women to men, which is further heightened in times of warfare.²⁰ What this means is that, given the way women are presented in society in comparison with men, it is easier to violate women.

¹³ Patricia LN Donat and John D'Emilio, 'A Feminist Redefinition of Rape and Sexual Assault: Historical Foundations and Change' (1992) 48 *Journal of Social Issues* 9. <https://doi.org/10.1111/j.1540-4560.1992.tb01154.x>

¹⁴ Jeffrey Burds, 'Sexual Violence in Europe in World War II, 1939–1945' (2009) 37 *Politics & Society* 35. <https://doi.org/10.1177/1059601108329751>

¹⁵ Inger Skjelsbæk, 'Sexual Violence and War: Mapping out a Complex Relationship' (2001) 7 *European Journal of International Relations* 211. <https://doi.org/10.1177/1354066101007002003>

¹⁶ *Ibid.*

¹⁷ Sabina Mihelj, *Review: Dubravka Žarkov, the Body of War: Media, Ethnicity, and Gender in the Break-up of Yugoslavia* (Duke University Press 2007, Durham, NC and London) 296; (2008) 23 (3) *European Journal of Communication* 379. <https://doi.org/10.1177/02673231080230030507>

¹⁸ Akachi Odoemene, 'The Nigerian Armed Forces and Sexual Violence in Ogoniland of the Niger Delta Nigeria, 1990–1999' (2011) 38 *Armed Forces & Society* 225. <https://doi.org/10.1177/0095327X11418319>

¹⁹ Jeffrey K Olick and Alexandra Stiglmeier, 'Mass Rape: The War against Women in Bosnia-Herzegovina' (1995) 24 *Contemporary Sociology* 332. <https://doi.org/10.2307/2076482>

²⁰ *Ibid.*

Giddens²¹ further noted that sexual violence goes beyond physical assault; it plunges deep into the victim's integrity and dignity. Giddens's analysis of sexual violence is not far-fetched, as sexual violence is an act of hostility committed to demean, dominate, objectify and shame the victim. A clear example of this degradation and humiliation was given in 2007 by Amnesty International.²² In one of its publications when it quoted a victim who painted a gory picture of her ordeal in the hands of perpetrators of this violent crime. She stated that:

The men were three in number, I still feel hurt, my 12 years-old daughter was raped with my sister. Another woman with a four-month-old pregnancy was raped and she lost the pregnancy. The men who did all these were military men and everyone who was in the community saw them; they raped openly, they were without care and because I feared them, I did not inform the police.²³

Several reasons have been advanced as to why sexual violence is used in warfare. Brownmiller, in his article,²⁴ succinctly provided the following reasons:

Firstly, sexual violence encourages ethnic cleansing as it is usually used by armed combatants as an incentive for fleeing. Secondly, sexual violence destabilizes the enemy combatant as was seen in the state of Rwanda, Liberia, and even in the Nigeria/Biafra war where women were specifically selected to be targets of sexual violence by their sexuality and ethnicity.²⁵ Thirdly, sexual violence is used as a symbol of division in society, this division eventually leads to the control of the territory.²⁶ Fourthly, sexual violence is used because armed combatants are aware of the traumatic and psychological damage it causes to warring Parties.

Hence, to intimidate and punish communities or states,²⁷ armed combatants resort to extensive and organised sexual violence on women as a way of not just sending messages to enemy combatants but to threaten and terrorise indigenous communities,²⁸ which in turn provides psychological benefit to its perpetrators.

²¹ Neloufer de Mel, 'Book Review: Signifying Bodies: Narrating Gender, Ethnicity, Agency and Victimhood in Armed Conflict' (2010) 17 *European Journal of Women's Studies* 161. <https://doi.org/10.1177/1350506809359553>

²² Amnesty International, 'Nigeria: Rape – the Silent Weapon' (Amnesty International) <<https://www.amnesty.org/en/documents/afr44/020/2006/en/>> accessed 23 June 2022. See also Caroline Okumdi Muoghalu, 'Rape and Women's Sexual Health in Nigeria: The Stark Realities of Being Female in a Patriarchal World' (2012) 19 (1) *The African Anthropologist* 33–41.

²³ Ibid.

²⁴ Susan Brownmiller, *Against Our Will: Men, Women and Rape* (Penguin Books 1991). See also, Daniela De Vito, 'Rape as Genocide: The Group/Individual Schism' (2007) 9 *Human Rights Review* 361. <https://doi.org/10.1007/s12142-007-0054-y>

²⁵ Ibid.

²⁶ Ibid. See also Ifeyinwa Maureen Ogonna-Nwaogu, 'Civil Wars in Africa: A Gender Perspective of the Cost on Women' (2008) 16 *Journal of Social Sciences* 251. <https://doi.org/10.1080/09718923.2008.11892626>

²⁷ Ibid. See also Susan A. Bartels and others, 'Sexual Violence Trends between 2004 and 2008 in South Kivu, Democratic Republic of Congo' (2011) 26 *Prehospital and Disaster Medicine* 408. <https://doi.org/10.1017/S1049023X12000179>

²⁸ Ogonna-Nwaogu (n 26) 251.

IV The Extent of Protection Given to Victims of Sexual Violence in Non-international Armed Conflict

The Four Geneva Conventions (GCs)²⁹ and their Additional Protocols (APs)³⁰ provide for diverse types of crimes in non-international and international armed conflict. It is however pertinent, since the focus of this paper concerns non-international armed conflict (NIAC), to state that the common Article 3 to the Four GCs³¹ and AP II³² to the Four GCs provide applicable principles to NIAC.

Article 3 Common to the First,³³ Second,³⁴ Third,³⁵ and Fourth GCs³⁶ provides an explicit prohibition of violating the personal dignity of a human person, specifically inhuman and degrading treatment. To emphasise the position of the GCs on the challenge of sexual violence in armed conflict, it states specifically that ‘Attacks upon the dignity of a human person, specifically, demeaning and derogatory treatment are prohibited’³⁷.

Additional Protocol II³⁸ to the Four GC provides that brutality against life, health, and physical or mental well-being, specifically demeaning and derogatory treatment such as rape, slavery, or any sort of assault, are prohibited. It also³⁹ lists several prohibitions, which include attacks on the dignity of a person, rape, and other forms of assault on a person.

Although Article 4 of the AP II⁴⁰ is an offshoot of Article 3 Common to the Four GCs, state parties have not accepted it as customary international law.⁴¹ However, Article 1 of the Statute of the SCSL⁴² stated explicitly that the court is conferred with authority to investigate, try and sentence those who are most culpable for the infringement of the domestic laws of Sierra Leone and the IHL. Moreover, Article 7(1)(g) of the Rome Statute⁴³

²⁹ Four Geneva Conventions 1949. Herein after would be referred to as GCs See also Article 3 Common to the Four Geneva Conventions 1949.

³⁰ Additional Protocol I and Additional Protocol II 1977.

³¹ Article 3 Common to the Four Geneva Conventions 1949.

³² Additional Protocol I and Additional Protocol II 1977.

³³ Article 3 Common to the First Geneva Conventions 1949.

³⁴ Article 3 Common to the Second Geneva Conventions 1949.

³⁵ Article 3 Common to the Third Geneva Conventions 1949.

³⁶ Article 3 Common to the Four Geneva Conventions 1949.

³⁷ Article 3 Common to the Four Geneva Conventions 1949.

³⁸ Additional Protocol II to the Four Geneva Conventions 1977.

³⁹ Ibid. This was also stated in the *Prosecutor v Dusko Tadic*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, Case No. IT-94-AR72, para 92, (‘Tadic Jurisdiction Decision’). The Appeals Chamber held that protections of common Article 3 apply through Article 3 of the ICTY Statute to persons taking no active part in hostilities.

⁴⁰ Ibid.

⁴¹ Patricia Sellers, ‘The Prosecution of Sexual Violence in Conflict: The Importance of Human Rights as Means of Interpretation’ <https://www2.ohchr.org/english/issues/women/docs/Paper_Prosecution_of_Sexual_Violence.pdf> accessed 24 June 2022.

⁴² Statute of the Special Court for Sierra Leone 2002, hereinafter referred to as SCSL.

⁴³ Statute of the International Criminal Court (Rome Statute) 2002.

stated that sexual violence of all forms, if perpetrated as part of an extensive or organised outrage on civilians, amounts to an offence against humanity. Finally, the Rome Statute, in Article 8(2)(b)(xxi), (xxii), 8(2)(c)(ii) and 8(2)(e)(vi),⁴⁴ provides that all types of sexual violence, rape and outrages upon the dignity of a human person are tantamount to a war crime.

V Sexual Violence under Nigerian Domestic Law

Sexual violence in armed conflict is not explicitly addressed in Nigerian domestic law.⁴⁵ However, it is generally provided in several other domestic laws of the state. The foremost is Section 33 of the 1999 Constitution,⁴⁶ which provides that every person in Nigeria has a right to demand their human dignity to be respected and shall not be subjected to any form of torture or demeaning treatment. Moreover, Section 357 of the Criminal Code⁴⁷ provides the conditions for it to be said that sexual violence occurred. It provides that it takes place when a person has illicit intercourse with a woman or a girl devoid of her permission, by utilising force, intimidation, or by impersonation.

Furthermore, Section 282 of the Penal Code Act⁴⁸ provides that a man is said to have committed rape when it involves sexual intercourse with a woman without her permission. When done with her permission, this permission was given out of intimidation of death or grievous bodily harm, by impersonating her husband, or with or without her permission when she is fourteen years and below. Section 283 of the Penal Code Act provides explicitly that the punishment for rape is life imprisonment.⁴⁹

Section 137 of the Criminal Law of Lagos State⁵⁰ makes provision for sexual assault of a child. It stipulates that an individual who engages in sensual relations with a child commits a crime, and is likely to be imprisoned for life if convicted. Section 260 of the Criminal Law of Lagos State also provides for the offence of rape. The Criminal Law of Lagos State, like other States, stated explicitly that a person who commits the offence of rape is likely to be imprisoned for life if convicted.

Section 1(1) of the Violence Against Persons Prohibition (VAPP) Act,⁵¹ makes provision for the definition of rape by stipulating explicitly that one is guilty of the act of rape when he or she deliberately penetrates the mouth, anus, or vagina of a person who does not permit willingly to being penetrated. Section 1(2) of the VAPP Act⁵² explicitly provides that a person

⁴⁴ Ibid.

⁴⁵ Akpoghome, Awhefeada (n 1) 262.

⁴⁶ The Constitution of the Federal Republic of Nigeria 1999.

⁴⁷ The Criminal Code Act 2004.

⁴⁸ The Penal Code Act 1960.

⁴⁹ Ibid.

⁵⁰ The Criminal Law of Lagos State 2015.

⁵¹ Violence Against Persons Prohibition Act 2015.

⁵² Ibid.

found guilty of the offence of rape is likely to be imprisoned for life and, in scenarios where the perpetrator is a minor, he is likely to be sentenced to a maximum of fourteen years in prison.

The Child Rights Act makes provision for the offence of rape and its punishment in Section 31,⁵³ by stipulating explicitly that it is prohibited to have sex with a minor who is below the age of eighteen years, and when anyone is found guilty of having sexual intercourse with a minor then he is liable to be imprisoned for life upon conviction. This is an interesting provision, especially subsection 3(b), as it is trite law that anybody below the age of eighteen is a child, and a child by definition cannot give consent. The Child Rights Act further stated that it does not matter whether the offender thought or believed that the victim was eighteen.

Section 258(1) of the Penal Code Law of Kaduna State,⁵⁴ expressly states that a person who is convicted of the offence of the rape of a child who is under the age of fourteen years shall be sentenced to surgical castration and death. It further provides that where the perpetrator is a female adult, she shall be punished with bilateral salpingectomy and death. Also, Section 258(4), provides that, where the victim is above the age of fourteen years, the perpetrator shall be punished with surgical castration and life in prison.⁵⁵

Also, regarding the above provisions, the Penal Code (Amendment) Law, 2020 makes provision for situations where the perpetrator is a child. Section 258(5) states that, in such an instance, an appropriate punishment will be given.⁵⁶ This means that when the convicted person is a child, the punishment of castration and death will not apply but the Court will refer to the Children and Young Person's Law, and appropriate punishment will be provided. Furthermore, Section 258(6) of the Kaduna State Penal Code Law provides that, where the victim is a child, the convict shall be put on the Register of sex offenders.⁵⁷

This means that, aside from surgical castration and death earlier listed as the punishment for rape, the name of any person convicted shall be added to the Register of sex offenders. From the above, it can be deduced that Nigeria has no law that explicitly prohibits sexual violence in armed conflict, although, per the provisions of Section 33 of the 1999 Constitution, sexual violence can be referred to or interpreted as an attack on the dignity of human persons and an inhumane and degrading treatment punishable under section 33 of the 1999 Constitution.

It is pertinent to note that several courts have been established to try and sentence persons who commit the offence of sexual violence in non-international armed conflict,⁵⁸

⁵³ Child Rights Act 2003.

⁵⁴ Kaduna Penal Code Law 2017.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

⁵⁸ Sellers (n 41).

ranging from the international criminal tribunal for the former Yugoslavia,⁵⁹ the international criminal tribunal for Rwanda,⁶⁰ the special court for Sierra Leone,⁶¹ the war crime chamber of the state court for Bosnia and Herzegovina,⁶² the extraordinary court chamber for Cambodia (ECCC),⁶³ and most recently the international criminal court (ICC).⁶⁴

VI Accountability under Nigerian Domestic Law

Nigeria is a state party to several international treaties.⁶⁵ However, Nigeria's non-domestication of international treaties has made it almost impossible for those who have committed sexual violence in armed conflict to be held accountable.⁶⁶ Although Nigerian's criminal and penal codes and several other laws prohibit the offence of sexual violence, none of them recognises rape in armed conflict and none can until the treaties that explicitly stipulate sexual violence and rape in armed conflict as a crime against humanity, genocide, and a war crime are domesticated.

Section 34 of the 1999 Constitution provides for the rights of citizens not to be subjected to inhuman and degrading treatment.⁶⁷ Section 12 of the 1999 Constitution also provides explicitly that any treaty that the National Assembly has not domesticated shall not be enforced or implemented except to the extent to which any such treaty has been enacted into law by the National Assembly.⁶⁸

Nigeria has ratified the four Geneva Conventions, the Additional Protocols to the Four Geneva Conventions, the Rome Statute, the Conventions on the Elimination of all Forms

⁵⁹ United Nations, 'International Criminal Tribunal for the Former Yugoslavia – United Nations International Criminal Tribunal for the Former Yugoslavia' (www.icty.org, 2017) <<https://www.icty.org/>> accessed 24 June 2022.

⁶⁰ ICTR, 'The ICTR in Brief | United Nations International Criminal Tribunal for Rwanda' (unictr.irmct.org) <<https://unictr.irmct.org/en/tribunal#:~:text=The%20ICTR%20is%20the%20first>> accessed 24 June 2022.

⁶¹ Residual Special Court for Sierra Leone, 'The Special Court for Sierra Leone, the Residual Special Court for Sierra Leone' (www.rscsl.org) <<http://www.rscsl.org/>> accessed 24 June 2022.

⁶² International Center for Transitional Justice, 'The War Crimes Chamber in Bosnia and Herzegovina: From Hybrid to Domestic Court (2008)' <<https://www.ictj.org/sites/default/files/ICTJ-FormerYugoslavia-Domestic-Court-2008-English.pdf>> accessed 24 June 2022.

⁶³ Extraordinary Chambers in the Courts of Cambodia, 'Extraordinary Chambers in the Courts of Cambodia (ECCC)' (www.eccc.gov.kh) <<https://www.eccc.gov.kh/en/node/39457>> accessed 24 June 2022.

⁶⁴ International Criminal Court, 'About the Court' (International Criminal Court) <<https://www.icc-cpi.int/about/the-court>> accessed 24 June 2022.

⁶⁵ CE Okeke and MI Anushiem, 'Implementation of Treaties in Nigeria: Issues, Challenges and the Way Forward' (2018) 9 Nnamdi Azikiwe University Journal of International Law and Jurisprudence 216 <<https://www.ajol.info/index.php/naujilj/article/view/168850>> accessed 24 June 2022.

⁶⁶ Ogadinma Enwereazu, 'International Humanitarian Law and the Protection of Women in Nigeria' <https://doi.org/10.13140/RG.2.2.13456.97281/2>

⁶⁷ The Constitution of the Federal Republic of Nigeria 1999.

⁶⁸ Ibid.

of Discrimination against Women, 1979 (CEDAW), the Protocol to the African Charter on Human and the Peoples' Rights on the Rights of Women in Africa, 2003 (the Maputo Protocol)⁶⁹ but the country is yet to domesticate any of them, which means that, until the Four Geneva Conventions, Article 3 Common to the Four Geneva Conventions, the two Additional Protocols, the Rome Statute and other relevant international treaties are domesticated, Nigerian courts are unable to indict persons who have allegedly committed rape in armed conflict.⁷⁰ This means that no individual can be held accountable for crimes of sexual violence in armed conflict in Nigeria.⁷¹

In Nigeria, specifically in the northeast, there has been a consistent increase in the announcement of rape in non-international armed conflict. A total of 664 cases were stated to have been reported in 2016⁷² and 997 cases in the year 2017.⁷³ These cases have been said to include rape, sexual violence, sexual slavery and enforced marriages by members of the Boko-Haram armed group.⁷⁴ Other reports have explicitly said that their activities include the dehumanisation of women and young girls, destruction of their communities, and warfare against their physical, emotional and sexual independence and rights.⁷⁵

As grievous as these alleged crimes are against women, young girls and the civilian population at large, the President of Nigeria, Muhammadu Buhari, plans to grant amnesty to individuals who have committed the offence of rape and sexual violence in the Boko-Haram armed conflict in Nigeria.⁷⁶ not even a single person in the armed group has been prosecuted by the Government of Nigeria.⁷⁷ It is trite that the Four Geneva Conventions provides for amnesty for mere participation in armed conflict, but they succinctly excluded amnesty for crimes against humanity, war crimes and genocide.⁷⁸

The Rome Statute in Article 54 stipulates that it is the state's principal duty to question and indict people who have committed grievous contraventions of international

⁶⁹ Human Rights Watch, 'Nigeria's Legal Obligations' (Hrw.org, 2013) <https://features.hrw.org/features/HRW_2014_report/Those_Terrible_Weeks_in_Their_Camp/chapter-5.html> accessed 24 June 2022.

⁷⁰ Akpoghome, Awhefeada (n 1) 262.

⁷¹ Ibid.

⁷² United Nations Peacekeeping, 'Conflict-Related Sexual Violence' (United Nations Peacekeeping, 2017) <<https://peacekeeping.un.org/en/conflict-related-sexual-violence>> accessed 24 June 2022.

⁷³ John Campbell, 'Boko Haram's Violence against Women and Girls Demands Justice' (Council on Foreign Relations, 2018) <<https://www.cfr.org/blog/boko-harams-violence-against-women-and-girls-demands-justice>> accessed 24 June 2022.

⁷⁴ United Nations Peacekeeping, 'Conflict-Related Sexual Violence' (United Nations Peacekeeping, 2017) <<https://peacekeeping.un.org/en/conflict-related-sexual-violence>> accessed 24 June 2022.

⁷⁵ Amnesty International, 'Nigeria: Boko Haram Brutality against Women and Girls Needs Urgent Response – New Research' (www.amnesty.org) <<https://www.amnesty.org/en/latest/news/2021/03/nigeria-boko-haram-brutality-against-women-and-girls-needs-urgent-response-new-research/>> accessed 24 June 2022.

⁷⁶ Saheed Owonikoko, 'Amnesty for Boko Haram Members' (2020) 49 (4) African Journals Online.

⁷⁷ Akpoghome, Awhefeada (n 1) 262.

⁷⁸ International Committee of the Red Cross, 'Amnesties and IHL: Purpose and Scope' (International Committee of the Red Cross 5 September 2017) <<https://www.icrc.org/en/document/amnesties-and-ihl-purpose-and-scope>> accessed 24 June 2022.

humanitarian law, regardless of whether these contraventions were by its nationals or committed on its territory.⁷⁹ It further provides in Articles 1 and 17 that the court is obliged to begin an indictment regarding grievous contraventions of international humanitarian law when the state refuses to do so or is handicapped.⁸⁰

Several persons have argued that individuals who committed offences of sexual violence and rape in armed conflict have not been indicted because Nigeria lacks specialised courts and organisations to investigate, institute legal proceedings, and convict perpetrators of sexual violence in armed conflict.⁸¹ They posit that, for grievous violations of IHL to be tried in Nigeria, prosecutors, judges and every organisation involved in the trial must be well-versed in this law.⁸² Specifically, for the offence of sexual violence and rape in armed conflict, the prosecutor is obliged not only to prove that the alleged sexual violence happened but that the sexual violence was perpetrated on a specific group of people to destroy the group in order to bring a charge or charges concerning genocide⁸³ and/or in a manner that can be said to be systematic and widespread for a charge or charges related to crimes against humanity,⁸⁴ and or in an armed conflict for a charge or charges related to war crimes.⁸⁵ All these scholars have said that Nigeria currently lacks the facilities and personnel it needs.⁸⁶

VII Complexities in Prosecuting Sexual Violence in Armed Conflict in Nigeria's Domestic Law

1 Non-ratification of International Treaties on Sexual Violence in Armed Conflict

Treaties do not automatically bind Nigeria when signed by it, as Nigeria assumes a dualist position, which inevitably means that international treaties, although acceded to, cannot be domesticated nor applied in Nigeria unless endorsed by the National Assembly and this has greatly affected the complementarity that comes with the ratification of treaties in Nigeria.⁸⁷ Thus, although Nigeria is a state party to several international treaties, including the Four

⁷⁹ The Statute of the International Criminal Court 2002.

⁸⁰ Ibid.

⁸¹ Akpoghome, Awhefeada (n 1) 262.

⁸² Ibid.

⁸³ Robin May Schott, 'War Rape, Natalty and Genocide' (2011) 13 *Journal of Genocide Research* 5. <https://doi.org/10.1080/14623528.2011.559111>

⁸⁴ Mark Ellis, 'Breaking the Silence: Rape as an International Crime' (2007) 38 *Case Western Reserve Journal of International Law* 225.

⁸⁵ Richard Goldstone, 'Prosecuting Rape as a War Crime' (2002) 34 *Case Western Reserve Journal of International Law* 277.

⁸⁶ Akpoghome, Awhefeada (n 1) 262.

⁸⁷ Okeke and Anushiem, 'Implementation of Treaties in Nigeria: Issues, Challenges and the Way Forward' (2018) 9 (2) *Nnamdi Azike University of International Law*.

GCs, APs to the Four GCs, Rome Statute and several international treaties,⁸⁸ it is legally impossible for Nigeria to prosecute the offence of sexual violence perpetrated in armed conflict. Moreover, regardless of the provisions of sexual violence in various domestic laws of the state, these laws only provide for the offence of sexual violence in peacetime and not in warfare. Their ambits cannot be expanded to include sexual violence in warfare per the provisions of Section 12 of the 1999 Constitution, which explicitly stipulates that no treaty can be applicable in Nigeria except if they have been ratified by the National Assembly.⁸⁹

Aside from the inability of the domestic laws to be expanded to include sexual violence in warfare per the provisions of Section 12 of the 1999 Constitution, the provisions of the domestic laws in Nigeria are only applicable in peace times and, for perpetrators of sexual violence in armed conflict to be tried under the current domestic laws of the state, these laws will need to be amended to accommodate charges related to genocide, war crimes and crimes against humanity. Further, the complexity of sexual violence in armed makes it legally impossible for the domestic laws of the state to prosecute perpetrators, as the threshold for indictment is way higher than prosecution in peacetime.⁹⁰

2 Deficiency of the Various Existing Laws on Sexual Violence

Nigeria has enacted several laws on sexual violence,⁹¹ ranging from the Criminal Code to the Violence Against Persons Prohibition Act. All are deficient in that, aside from the fact that they are applicable in peacetime only, they are not only compatible with modern reality on matters of sexual violence⁹² but are also deficient in securing indictments for sexual violence in armed conflict in the following areas:

a) Constitutional requirements

The constitutional requirements to prove sexual violence in peacetime are that the prosecutor is only required to prove that the offence transpired and that the offender intended to perpetrate the act. However, for sexual violence in armed conflict, the prosecutor must not only show that the perpetrator(s) perpetrated the act but must also successfully connect the

⁸⁸ Akpoghome, Awhefeada (n 1) 262.

⁸⁹ The Constitution of the Federal Republic of Nigeria 1999.

⁹⁰ Kim Seelinger, Helene Silverberg and Robin Mejia, 'The Investigation and Prosecution of Sexual Violence Sexual Violence & Accountability Project Working Paper Series' <<https://www.usip.org/sites/default/files/missing-peace/seelinger-the-investigation.pdf>> accessed 24 June 2022.

⁹¹ The Criminal Code Act 1990, The Penal Code Act 1960, Criminal Law of Lagos State 2011, Violence Against Persons Prohibition Act 2015, Child Rights Act 2003.

⁹² Michael Joseph, Toluwani Bamigboje, 'RAPE under the Nigerian Laws and the Need For Amendment' (Legalpedia, The Complete Lawyer – Research Productivity, Health, 20 August 2020) <<https://legalpediaonline.com/rape-under-the-nigerian-laws/>> accessed 24 June 2022.

act to the specific scenario.⁹³ For example, for sexual violence charged as genocide, he must show that the act was perpetrated against a particular ethnicity or group,⁹⁴ while, for sexual violence charged as a crime against humanity, the prosecutor must prove that the act was perpetrated as part of a systematic or widespread attack targeted at civilians, coupled with the presence of malice aforethought, which is that the perpetrators had an insight of the attack,⁹⁵ and for sexual violence charged as a war crime, the prosecutor must show that the sexual violence occurred amidst an armed conflict.⁹⁶

b) Nature of criminal responsibility

For the trial of an offence of sexual violence in peacetime, the defendant is normally the person who perpetrated the sexual act. However, for sexual violence in armed conflict, the defendant does not necessarily have to be the actual perpetrator of the offence, as, according to the concept of command responsibility, it suffices where a superior is held responsible for crimes of sexual violence perpetrated by his subordinates⁹⁷ in circumstances where he knew or must have had reasons to know that those who were under him were perpetrating or had the intention to perpetrate acts of sexual violence and he did nothing about it, or that his subordinates were perpetrating such crimes and he did not ensure that logical and adequate measures which were within his powers were taken in order to prevent their commission, or he failed to punish the perpetrators if the acts of sexual violence had already been committed.⁹⁸ Here, the prosecutor must not only show that the act of sexual violence was present in armed conflict but has to connect the acts to the commander via the concept of command responsibility or via aiding and abetting.⁹⁹ In the Boko-Haram conflict, it has been very difficult for the state to justify not identifying the perpetrators of sexual violence, prosecuting them and providing justice for victims of sexual violence in armed conflict.

⁹³ Seelinger, Silverberg, Mejia (n 90).

⁹⁴ Shayna Rogers, 'Article: Sexual Violence or Rape as a Constituent Act Of Genocide: Lessons from the Ad Hoc Tribunals and a Prescription For The International Criminal Court' (2016) <<https://archive.law.upenn.edu/live/files/5926-articlepdf>> accessed 24 June 2022.

⁹⁵ Ibid. See also Sellers (n 41).

⁹⁶ Ibid.

⁹⁷ International Committee of the Red Cross, 'Customary IHL – Practice Relating to Rule 152. Command Responsibility for Orders to Commit War Crimes' (ihl-databases.icrc.org) <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule152> accessed 24 June 2022.

⁹⁸ Ibid.

⁹⁹ Nicole LaViolette, 'Commanding Rape: Sexual Violence, Command Responsibility, and the Prosecution of Superiors by the International Criminal Tribunals for the Former Yugoslavia and Rwanda' (1999) 36 Canadian Yearbook of international Law/Annuaire canadien de droit international 93. <https://doi.org/10.1017/S0069005800006895>

c) The societal importance of sexual violence

Though every act of sexual violence causes immense injury, not just to the victim but her family. Sexual violence in armed conflict causes more damage on a higher and larger scale, in that it inflicts immense harm on not just the victim and her family but society at large. This is given the notion that sexual violence in armed conflict is usually perpetrated on a large scale, either on a particular group or in a systematic and widespread manner or during a period of armed conflict¹⁰⁰ which, as a result of the scale with which this action is taken, leaves an almost everlasting scar on society, which may affect the stability of the nation in the long run.

These differences in the legal requirements of command responsibility and societal importance create a huge difference between prosecuting sexual violence under armed conflict and in peacetime. The various existing laws are only applicable in peacetime and even these laws are unfit for purpose.¹⁰¹ The Constitution, for example, prohibits torture, inhuman and degrading treatment in Section 34,¹⁰² but did not define the activities constituting this inhuman and degrading treatment, leaving room for inference. In applying the provisions of the criminal code, it has been a matter of practice that forensic evidence must be corroborated with the victim's verbal testimony to prove that the offence of rape has been committed.¹⁰³ This is a significant obstacle in the jurisprudence of criminal law. A lucid example of this obstacle is the threat commonly issued to minors by perpetrators of sexual violence on their silence or death and it is only discovered when their parents or guardians discover a change in behavior or a decline in the minor's educational performance. It is normally presumed that victims of child sexual abuse find it difficult to communicate or report, mostly because of the incapacity to understand that their experience was abusive or because the experience made them feel powerless and/or voiceless.¹⁰⁴ Here, corroboration from the minor will be impracticable considering the circumstance of the scenario, which is why the court held in *Iko v State*¹⁰⁵ that, although it has been consistently said that it is unsafe to convict on the basis of uncorroborated evidence, where the court finds that the victim's evidence is true, it can convict an accused person.

This paper submits that the issue of corroboration has been a major hurdle in the indictment of perpetrators of sexual violence, as seen in a plethora of cases. A vivid example

¹⁰⁰ Colette Harris, 'Book Review: Leatherman, Janie L. 2011: Sexual Violence and Armed Conflict' (2012) 12 Progress in Development Studies 357. <https://doi.org/10.1177/146499341201200408>

¹⁰¹ Joseph, Bamigboje (n 92). See also Theresa Uzoamaka Akpoghome, 'Analysis of the Domestic Legal Framework on Sexual Violence in Nigeria' (2016) 4 Journal of Law and Criminal Justice.

¹⁰² The Constitution of the Federal Republic of Nigeria 1999.

¹⁰³ Ibid.

¹⁰⁴ Stephanie Block and Linda Williams, 'The Prosecution of Child Sexual Abuse: A Partnership to Improve Outcomes' (2019) <<https://www.ojp.gov/pdffiles1/nij/grants/252768.pdf>> accessed 24 June 2022.

¹⁰⁵ (2001) FWLR (Pt. 68) 1161 or (2001) 14 NWLR (Pt. 732) 221.

is the case of *Sambo v State*¹⁰⁶ where the court held that, for a successful indictment of the perpetrator, the prosecution must ensure that the evidence gathered from the victim is corroborated, and this corroboration must be compelling, cogent and unambiguous to prove without a doubt that the accused perpetrated the offence. This position should be completely eschewed, as there is no explicit provision of corroboration for rape as a requirement of the law and considering the impunity with which sexual violence is being perpetrated in Nigeria.

The VAPP Act is an improvement on earlier legislation made by the National Assembly, in that it expanded its ambit to include sexual violence against men and boys.¹⁰⁷ Though this is a laudable achievement, as the preexisting laws on sexual violence in Nigeria were greatly gender-biased with the entire focus being on females, this law is only applicable to nineteen states, as it has not been adopted by other states in Nigeria.¹⁰⁸ This implies that sexual violence perpetrated in armed conflict cannot be indicted by the state. Hence, although the Rome Statute explicitly stipulates that the state has major responsibility for indicting perpetrators of grievous contraventions of the IHL,¹⁰⁹ Nigeria as a state is incapable of prosecuting such cases as the members of the Boko-Haram armed group, for sexual violence against women and young girls in Nigeria.

The Child Rights Act defines a child as any person who is under the age of eighteen. It explicitly states that it is an offence to have any sort of sexual intercourse with a child, with the consequence being life imprisonment.¹¹⁰ It further states that the actual age of a child being unknown or that the child had given consent cannot be a defense for the offence of sexual violence. Interestingly, the Act also states in Sections 21-23 that it is prohibited to be engaged or married to persons below 18 years.¹¹¹ However, many states in Nigeria actively tolerate child marriage, (as the mean age for first marriage has been placed at 17 years, and in Kebbi state it was placed at over 11 years), mostly as a result of some states' refusal to enact the Child's Right Act, with culture and religion as their justification.¹¹²

¹⁰⁶ (1993) 6 NWLR (Pt. 300) 399.

¹⁰⁷ Violence Against Persons Prohibition Act 2015.

¹⁰⁸ Women's Aid Collective, 'Violence Against Persons Prohibition Act 2015' in <https://www.law.utoronto.ca/utfl_file/count/documents/reprohealth/ls_088vapp_act_2015_nigeria_synopsis.pdf> accessed 24 June 2022.

¹⁰⁹ Rome Statute of the International Criminal Court (1998), preamble; see also Rules 157 and 158 of Customary International Humanitarian Law. See also, Marco Sassòli, 'State Responsibility for Violations of International Humanitarian Law' (2002) 84 *Revue Internationale de la Croix-Rouge/International Review of the Red Cross* 401.

¹¹⁰ The Child's Right Act 2003.

¹¹¹ *Ibid.*

¹¹² UNICEF Office of Research – Innocenti, 'Early Marriage: Child Spouses' (UNICEF-IRC2019) <<https://www.unicef-irc.org/publications/291-early-marriage-child-spouses.html>> accessed 24 June 2022. See also, Tim S Braimah, 'Child Marriage: The Danger within Part 1 Section 61 of the 1999 Constitution and Its Barrier to Legally Protect Children against Child Marriage in Nigeria' [2013] SSRN Electronic Journal.

3 The Inability of Victims to Access and Trust the Nigeria Legal System

The inability of victims to access the courts in Nigeria naturally undermines the trust citizens have in the courts.¹¹³ Many times, victims seem lackadaisical about reporting to the police, as doing so poses several difficulties, including bribery and corruption; in scenarios where a person refuses or is unable to bribe the police, their case automatically becomes more difficult and time-consuming, which leads and has led so many victims to abandon their claim. Many times, especially in a developing country such as Nigeria, the procedures for prosecuting sexual violence are often prejudicial to its victims, subjecting them to additional embarrassment and victimisation.¹¹⁴ This also applies to the court processes, which are so tedious and time-consuming that victims and others concerned have resorted to resolving their disputes through means outside the Nigerian legal system.

The mindset of citizens regarding the standard of the Nigerian justice system and the independence of the judiciary has also greatly affected the trust many have in the Nigerian legal system, as strong insinuations continue to indicate that the appointment and dismissal of judicial officers are greatly influenced by the executive, politicians and political godfathers who are in highly placed positions.¹¹⁵ This influence has resulted in an immense volume of political tension in the Nigerian justice system and has greatly affected the overall perception of citizens on the quantum of fairness and impartiality in the judicial system. This is not far from the scourging effect of corruption, which has eaten deeply into the state of Nigeria and greatly undermined the integrity of the judiciary.¹¹⁶ Hence, it is perceived that the courts are not accessible and turning to them would be a waste of time, since those who are highly placed will leverage their connections to get a judgment, or better still the law, in their favour. Further, the absence of an independent judiciary has also been strongly connected to corruption, which has strongly aggravated the absence of trust in the Nigerian legal system, as its presence has affected not just those who refuse or are incapable of giving out bribes but even those who have compensated court officials, as they openly admit they do not trust the legal system in place to protect them and defend their civil and human rights otherwise.¹¹⁷

In summary, victims do not utilise the Nigerian legal system because they are aware that it cannot provide accountability, which is coupled with the syndromes of stigmatisation and shame that victims of sexual violence in armed conflict have to bear.¹¹⁸ This stigmatisation

¹¹³ Akpoghome, Awhefeada (n 1) 262.

¹¹⁴ Ibid.

¹¹⁵ UNICEF, 'Assessment of The Integrity and Capacity of the Justice System in Three Nigerian States – Technical Assessment Report' (2006) <https://www.unodc.org/documents/corruption/Publications/2006/Assessment_of_the_Integrity_and_Capacity_of_the_Justice_System_in_Three_Nigerian_States_TA_Report.pdf> accessed 24 June 2022.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ Akpoghome, Awhefeada (n 1) 262.

is tripled if the victim gets pregnant or gives birth to her violator's child as she will most likely not only be stigmatised but be denied financial and economic power. The antecedents of the Nigerian Police Force do not make it any better, as its officers are known to be not only gender-biased but corrupt, leaving justice to the highest bidder, who most times is not the victim. In addition, the inability of the police to accumulate and conserve corroborative evidence of sexual violence, coupled with the excessive fees charged by legal practitioners, makes it extremely difficult for victims of sexual violence, not only in armed conflict situations to even try to seek justice for the offence perpetrated against them.¹¹⁹

4 Lack of Specialised Courts and Trained Officials for Sexual Violence in Armed Conflict in Nigeria

The Rome Statute obliges the state jurisdiction to try every form of sexual violence.¹²⁰ Many countries have, by their national legislations, domesticated their obligations under the Rome Statute (such as Kenya, which in 2008 enacted its International Crimes Act, conferring the Kenyan court's jurisdiction over crimes of genocide, war crimes and crimes against humanity perpetrated in Kenya enabling it to try sexual violence and its related offences, as in international parlance, in Kenya).¹²¹

In Nigeria, several laws have been enacted to reflect what is obtainable globally, such as the Violence Against Persons Prohibition Act, 2015 which included males and females as capable of being raped and sexually violated.¹²² However, these laws have not been amended to accommodate and acknowledge war crimes, crimes against humanity and genocide.¹²³ Several African states, such as Congo, Namibia, South Africa, Lesotho and Burundi, have also amended their legislation to show contemporary definitions of sexual violence. However, prosecuting this offence goes beyond enacting penal laws on sexual violence, as it requires specific specialised skills in the domestic court that officials of the court do not currently have.¹²⁴ To prosecute this offence, the court and various agencies must be well grounded in international law and IHL and the procedures for securing a guilty verdict. A vivid example is the offence of sexual violence in armed conflict, where the prosecutor is obliged to prove that the perpetrators committed the act against a specific group with the intent to destroy it,¹²⁵ namely the Rwandan genocide, and/or in a widespread or systematic

¹¹⁹ Seelinger, Silverberg, Mejia (n 90). See also, World Health Organization, 'Violence against Women' (www.who.int) <<https://www.who.int/health-topics/violence-against-women>> accessed 24 June 2022.

¹²⁰ The Statute of the International Criminal Court 2002.

¹²¹ The International Crimes Act 2008.

¹²² Violence Against Persons Prohibition Act 2015.

¹²³ Akpoghome, Awhefeada (n 1) 262.

¹²⁴ Ibid.

¹²⁵ International Criminal Tribunal for Rwanda, 'ICTR, the Prosecutor v. Jean-Paul Akayesu – How Does Law Protect in War? – Online Casebook' (casebook.icrc.org) <<https://casebook.icrc.org/case-study/ictr-prosecutor-v-jean-paul-akayesu>> accessed 24 June 2022.

manner, for a charge concerning crimes against humanity¹²⁶ and/or in an armed conflict, for a charge regarding a war crime. Many times prosecutors, as a result of a lack of specialised skills and training, are unable to articulate effectively and present an efficient strategy in ensuring that perpetrators are effectively linked to the elements of the crimes committed to secure a conviction. All of these require intense and systematic investigation, which Nigeria is at this time unable to do until the required facilities, officials, training and infrastructure are all put in place.

5 Reluctance and Failure of Victims of Sexual Violence in Armed Conflict to Report the Offence

Stigmatisation, shame syndrome, and the fear of being blamed, not believed or otherwise maltreatment is the order of the day for victims of sexual violence in armed conflict.¹²⁷ The fear of stigmatisation and the shame associated with being sexually violated and raped is often bigger than the act itself, as many times these victims face desertion and non-acceptance from not just their families, but spouses and even society.¹²⁸ Those who give birth to children from this sexual violence become ostracized, while women become unmarriageable, as sexual violence is considered as stripping a woman of her honor. This honor is strongly tied to her family's name and reporting is synonymous with opening a book of remembrance, which many victims would very much like to forget, so is an enormous hurdle in prosecuting the offense of sexual violence in armed conflict in Nigeria. In May 2012, at the trial of Bemba Gombo, a victim recounted her experience under an alias with the Movement for the Liberation of Congo (MLC).¹²⁹ She stated that she was treated like an animal, as a result of which she was unable to live normally. She further stated that she was a woman with dignity, the dignity which she had lost because of the sexual violence and inhuman treatment she underwent from the armed soldiers of the MLC, as she had been

¹²⁶ Ibid.

¹²⁷ Evelynne Josse, "They Came with Two Guns": The Consequences of Sexual Violence for the Mental Health of Women in Armed Conflicts' (2010) 92 *International Review of the Red Cross* 177 <<https://www.cambridge.org/core/journals/international-review-of-the-red-cross/article/they-came-with-two-guns-the-consequences-of-sexual-violence-for-the-mental-health-of-women-in-armed-conflicts/F20F8409129E5DA2CAEF92A5FFC2D45A>> accessed 24 June 2022. See also, Amnesty International, 'Philippines: Fear, Shame and Impunity: Rape and Sexual Abuse of Women in Custody' (Amnesty International, 2001) <<https://www.amnesty.org/en/documents/asa35/001/2001/en/>> accessed 24 June 2022.

¹²⁸ Akpoghome, Awhefeada (n 1) 262.

¹²⁹ Wairagala Wakabi, 'Victim Tells Bemba Trial She Was Gang-Raped by Congolese Soldiers' (*International Justice Monitor* 1 May 2012) <<https://www.ijmonitor.org/2012/05/victim-tells-bemba-trial-she-was-gang-raped-by-congolese-soldiers/>> accessed 24 June 2022. See also International Committee of the Red Cross, 'International Criminal Court, Trial Judgment in the Case of the Prosecutor v. Jean-Pierre Bemba Gombo – How Does Law Protect in War? – Online Casebook' (casebook.icrc.org) <<https://casebook.icrc.org/case-study/international-criminal-court-trial-judgment-case-prosecutor-v-jean-pierre-bemba-gombo>> accessed 24 June 2022.

greatly stigmatised by members of her community, with people spitting on her and referring to her as a wife of the 'Banyamulenge' (Tutsi Congolese).¹³⁰

Thus, a woman will prefer to continue to be referred to as a preserver of her family's honor or the keeper of her family's virtue than report that she had been sexually violated, which will imply that she automatically loses her standing in society or even may become a divorcee and/or a single mum if her husband leaves her for bringing shame and disgrace on her family, and in other extreme cases, where it is an abomination to bring such disgrace to the family, she may be a casualty of honor-killing.¹³¹ This has resulted in many women accepting that sexual violence is a part of life or an obstacle which every woman must endure and accommodate as she goes through life as a woman in a patriarchal society. This is why many women will rather be silent than go through pain twice, first, from being sexually violated; second, from being stigmatised, shamed and disgraced.

It is important to note that victims who live in remote places, especially in the North East, physical access to the legal system may be more arduous than for women living in central places. If the victim lives far from a police station, hospital or a courthouse (which is almost always the case, as the North East has been ravaged by insurgency over the past years), she may have to travel to report the case to the police and/or seek medical attention, which will require money that she may not have. A vivid example is in Burundi, where the costs of reporting to the police or filing a case of sexual violence and obtaining certified medical reports from a reputable hospital were stated as very expensive. It was further alleged that the police and magistrates in Burundi frequently ordered victims to recompense those who had perpetrated acts of sexual violence against them for their costs of sustenance and internment.¹³² If she is the primary caregiver who is in charge of the daily affairs of her child(ren), it makes it more arduous for the victim to report cases of sexual violence in armed conflict.

The first special rapporteur on violence against women explicitly asserted that:

The honor model is connected to the concept of chastity, purity and virginity. Also, when sexual violence and rape are seen to be a crime against honor, the victim is often stigmatized and shamed by the community which sees them as dirt or damaged or blemished.¹³³

¹³⁰ Ibid.

¹³¹ Human Rights Watch, 'Rwanda' (Hrw.org, 2019) <<https://www.hrw.org/reports/1996/Rwanda.htm>> accessed 24 June 2022. See also, Usha Tandon and Sidharth Luthra, 'Rape: Violation of the Chastity or Dignity of Woman? A Feminist Critique of Indian Law' [2016] SSRN Electronic Journal.

¹³² United Nations, 'OHCHR | HRC | United Nations Independent Investigation on Burundi' (OHCHR) <<https://www.ohchr.org/en/hr-bodies/hrc/uniib/uniib>> accessed 24 June 2022.

¹³³ United Nations, '15 years of the United Nations Special Rapporteur on Violence against Women, Its Causes and Consequences'. <<https://www.ohchr.org/sites/default/files/Documents/Issues/Women/15YearReviewofVAWMandate.pdf>> accessed 24 June 2022. See also Sarah E Jewell, 'Conceptualising Violence against Women in the Work of the United Nations Special Rapporteur on Violence against Women' [2011] SSRN Electronic Journal.

Scholars and experts have tied this challenge to the failure of mental health support for victims of sexual violence in armed conflict in Nigeria, which has left many victims to struggle within themselves to heal and thrive.¹³⁴ Healing and thriving to many of them means hiding and pretending that the violation never occurred. When victims of sexual violence resort to hiding and pretending that the violation never occurred, this means there can be no investigation nor prosecution or accountability of perpetrators of sexual violence in armed conflict or any sense of closure for the poor victims.

6 Stockholm Syndrome by Victims of Sexual Violence in Armed Conflict

This term was first utilised in 1973 as a result of the situation with Stockholm bank employees who were held captive.¹³⁵ Here, a Swedish psychiatrist was invited by the police to help them to understand an incident that concerned the robbery of one of the biggest banks in Normalmstorg, Sweden, the Kreditbanken bank. In this case, Jan Olsson, who was an escaped convict, was largely responsible for the robbery at the bank, as he abducted bank employees and insisted that his cellmate, who was incarcerated in a nearby prison, be brought to the bank. When his cellmate was brought to the bank, they both forcefully took the captives into the vault of the bank with dynamites strapped to their bodies and nooses placed on their necks for six days. However, after the captives were released, they defended their captors, refused to testify against them and in fact, one of the captives initiated fund to help their captors in their defense, while another captive was stated to have married one of the captors.¹³⁶

The term Stockholm syndrome was reiterated about a year later in the case of Patty Hearst, who was abducted by the Symbionese Liberation Army (SLA), an armed U.S. guerilla group in 1974.¹³⁷ After her kidnapping, Patty Hearst felt sympathy for her abductors and their goals. She went further to reject her family, fiancé and the police. In April 1974, she was pictured with an assault rifle in the robbery of a bank in San Francisco with other members of the Symbionese liberation army. After a warrant was issued for her arrest, she was eventually taken into custody in September 1975. At her trial, her attorney argued that she was brainwashed, specifically citing the Stockholm syndrome incident, although the defense was unsuccessful and she was sentenced to a seven-year term in jail. She served

¹³⁴ M.R. Labe and others, 'Sexual Violence Against Women in Nigeria and Victims' Susceptibility to Psychological Distress and Sexual Dysfunction' (2021) 2 *Open Journal of Social Science and Humanities*. <https://doi.org/10.52417/ojssh.v2i1.194>

¹³⁵ Time, 'A 1973 Bank Robbery Gave the World "Stockholm Syndrome" – but There's More to the Story than That' (Time) <<https://time.com/5874808/stockholm-syndrome-history>> accessed 24 June 2022.

¹³⁶ *Ibid.*

¹³⁷ Federal Bureau of Investigation, 'Patty Hearst' (Federal Bureau of Investigation). <<https://www.fbi.gov/history/famous-cases/patty-hearst>> accessed 24 June 2022. See also, Nancy Isenberg, 'Not Anyone's Daughter: Patty Hearst and the Post-Modern Legal Subject' (2000) 52 (4) *American Quarterly* – The Johns Hopkins University Press. <https://doi.org/10.1353/aq.2000.0050>

22 months before her sentence was reduced by then-President Jimmy Carter in 1979, and in 2001 she was granted a full pardon by President Bill Clinton.¹³⁸

This experience has been referred to by scholars and experts as the Stockholm syndrome, which is construed as:

A mental procedure where an individual held in captivity develops some sort of emotional connection to his/her captor and agrees with their plans and requests.¹³⁹

This term was generally used for kidnaps and captive-taking incidents. However, the disparity in the use of power and the fallacious emotional bonds this disparity in power caused many to state that the Stockholm syndrome not only occurs in cases of kidnaps and captive-taking incidents but among others, such as victims of sexual violence, women who are victims of domestic violence, victims of incest and prisoners of war.¹⁴⁰

This emotional connection has a significant effect on the capability of the victims to report their offenders, namely continuously protecting the perpetrators long after the violence has stopped. This is given the fact that many times the victims of sexual violence tend to downplay their victimisation. This can be noted from comments made by such victims, which are usually filled with phrases of justification like ‘at least he didn’t...’, ‘it wasn’t so bad or ‘what if it was more horrible?’¹⁴¹ This was explicitly seen in the words of the following victim, who was ready to be continuously abused and then returned to the children’s home where she came from.

Patty Hearst narrated that at a stage in her life, she and her sister had to go to a home for children as a result of her mother’s illness and there was nothing she would have not done to prevent going back there, as she was being assaulted several times daily. So, although she was being abused and it was a terrible thing to have gone through, she would rather be abused than be in a children’s home.¹⁴²

Other scenarios included victims being prevented from exposing the perpetrators by sustaining the concept of isolation. These include threats of violence and/or emotional blackmail by members of their families. A vivid example is the story of a young lady:

Members of her family stated that, although her family acknowledged that her father’s sexual violation was reprehensible legally and morally, he would however be forgiven by God on

¹³⁸ Ibid.

¹³⁹ Laura Lambert, ‘Stockholm Syndrome – Definition, Examples, & Facts’ *Encyclopædia Britannica* (2018) <<https://www.britannica.com/science/Stockholm-syndrome>> accessed 24 June 2022.

¹⁴⁰ Jeremiah Jeremiah, S Methuselah, ‘Applying the Stockholm Syndrome Phenomenon in Osofisan’s Morountodunto Leadership in Africa’ (2014) 19 *IOSR Journal of Humanities and Social Science* 53. <https://doi.org/10.9790/0837-19565359>

¹⁴¹ Shirley Julich, ‘Stockholm Syndrome and Child Sexual Abuse’ (2005) 14 *Journal of Child Sexual Abuse* 107. https://doi.org/10.1300/J070v14n03_06

¹⁴² Ibid.

Judgment Day. However, the consequence of her reporting to the police would be that her dad would go to jail, as a result of which she would be separated from her mother and siblings, who in turn would have no one to work, earn money and take care of her family and it was her responsibility to ensure that did not happen.¹⁴³

Also, many survivors honestly believed that their violators loved them and that their abuse was a result of the kindness that their violators had for them. Graham,¹⁴⁴ in trying to explain the Stockholm Syndrome, stated explicitly that they were a series of strategies developed by victims and these included seeing the violator as a victim whom they were only required to love more, self-blame and sympathise with. He further stated that these strategies had three major functions, which were to:

- a) Downplay the horror the victim experienced;
- b) Assist in greater bonding with the violator;
- c) Inculcate hope in the victim.

Here, the victim honestly believed, as soon as the horror perpetrated by the violator abated, that the violence was perpetrated as a result of the immense love the violator had for him/her.¹⁴⁵ This inculcated in the victim emotions of hope and the need to redefine the relationship. This was consistently demonstrated in the Boko-Haram episode in Nigeria, where persons who have been held hostage by members of the Boko-Haram group refused to assist the police and other security agencies with information to apprehend the perpetrators of these heinous crimes. Other times, the hostages return to their abductors and more frequently the hostages end up getting married to the abductors and having children for them while fully incorporating the plans of these abductors in their minds and belief systems.¹⁴⁶

7 Ignorance of the Law

Although scholars and judges have repeatedly stated that ignorance of the law is not an excuse nor a shield,¹⁴⁷ Blackstone emphasised that, in criminal matters, this is no defense.¹⁴⁸

¹⁴³ Ibid.

¹⁴⁴ Dee Graham, Edna I Rawlings and Roberta K Rigsby, *Loving to Survive: Sexual Terror, Men's Violence, and Women's Lives* (New York University Press 1994).

¹⁴⁵ UNODC, 'Handbook for the Judiciary on Effective Criminal Justice Responses to Gender-Based Violence against Women and Girls' <https://www.unodc.org/pdf/criminal_justice/HB_for_the_Judiciary_on_Effective_Criminal_Justice_Women_and_Girls_E_ebook.pdf> accessed 24 June 2022.

¹⁴⁶ Condé Nast, 'The Women Rescued from Boko Haram Who Are Returning to Their Captors' (20 December 2018) *The New Yorker* <<https://www.newyorker.com/news/dispatch/the-women-rescued-from-boko-haram-who-are-returning-to-their-captors>> accessed 24 June 2022.

¹⁴⁷ Andrew Ashworth, 'Ignorance of the Criminal Law, and Duties to Avoid It' (2011) 74 *The Modern Law Review* 1. <https://doi.org/10.1111/j.1468-2230.2010.00834.x>

¹⁴⁸ John C Hogan, 'Joseph Story on Capital Punishment' (1955) 43 *California Law Review* 76. <https://doi.org/10.2307/3477867>

In practice, many victims of sexual violence are faced with not just economic and socio-cultural barriers but educational ones too, which leave them with little or no option but to be silent, as many times the victims are even unaware that they have been abused as conquests of war, for which accountability accrues and, if they have been unaware that they have been so used then there will be no investigation, which invariably means that there will be no prosecution nor conviction. A prime example is the Violence Against Persons Prohibition Act, 2015¹⁴⁹ which is a very significant criminal legislation as, aside from the fact that it focuses on sexual violence, it created gender-neutral offences and ensures adequate protection for those who are vulnerable. However, how many Nigerians know that a man and a boy are capable of being sexually violated? How many teachers of criminal law are capable of teaching the provisions of this Act without referring back to the statute?

The United Kingdom's Sexual Violence Act, 2003¹⁵⁰ also created 71 new sections, which modernised sexual violence by establishing gender-neutral offences. However, many were still unaware of the provisions of sexual violence. A classic example was the case of Thomas,¹⁵¹ where the accused had sexual intercourse with a girl who was 17. The victim had lived with the accused since she was 11, but had moved into different accommodation when the sexual violence occurred. However, two distinct features stand in this case which are:

- a) The general age for consent is age sixteen.
- b) The concept of the family relationship, which was the basis of the offense, also includes a person who is or has been a foster parent.

However, the accused stated that, at the time of the offense, he did not know that the act was a criminal offense. The Court of Appeal acknowledged this defense and reduced his sentence from four to two and half years.¹⁵²

VIII Conclusion

Many have wondered why not one person from the Boko-Haram armed group that has been caught has been prosecuted. This article, by its examination so far, concludes that the non-domestication of international treaties, particularly the Four GCs and its APs, has contributed to the near-complete impunity of perpetrators of sexual violence in armed conflict in Nigeria. The legislation in place for sexual violence is grossly inadequate not just for peacetime but also in armed conflict. This is because sexual violence in armed conflict is tried as a crime against humanity, a war crime and/or a genocide. It should be noted that, year in and year out, members of the Boko-Haram group have consistently targeted women

¹⁴⁹ Violence Against Persons Prohibition Act 2015.

¹⁵⁰ Gov.uk, 'Sexual Offences Act 2003' (Legislation.gov.uk, 2012) <<https://www.legislation.gov.uk/ukpga/2003/42/contents>> accessed 24 June 2022.

¹⁵¹ Andrew Ashworth, 'Ignorance of the Criminal Law, and Duties to Avoid It' (2011) 74 *The Modern Law Review* 1.

¹⁵² *Ibid.*

and young girls and destroyed communities using them as spoils of warfare yet, when they surrender, the Government of Nigeria tries to reintegrate them back into society. Although IHL does not require prosecution for participation in armed conflict when crimes of this nature are committed in armed conflict, IHL stipulates that perpetrators are to be tried per the domestic law of the state. The question now is what domestic law in Nigeria is in place for investigating and prosecuting sexual violence in armed conflict as a crime against humanity, war crime and/or genocide? The answer is in the negative. While this paper agrees that the domestication of these International Laws is one of the many challenges identified in the investigation and prosecution of this crime, it argues that it is a good start to providing accountability for perpetrators and equity for victims.

IX Recommendations

As a result of the above, this research recommends the following to provide adequate protection to victims of sexual violence in armed conflict and end the near-complete impunity of its perpetrators in Nigeria.

The international treaties on sexual violence must be domesticated. This will enable the Nigerian courts to have jurisdiction over offences of sexual violence in armed conflict. Also, the several laws on sexual violence in Nigeria, which include the Criminal Code, the Penal Code, the Criminal Law of Lagos State, the Violence Against Persons Prohibition Act and the Child Rights Act need to be reviewed and amended to be applicable in wartime and not just in peacetime like it currently covers, as the nature, shape, extent and factors used to establish sexual violence in armed conflict differs from sexual violence in peacetime.

Furthermore, there must be transparency in the indictment of persons who perpetrate sexual violence in armed conflict, as this will increase the trust that victims and society in general have for the judicial system, thereby reducing the difficulty victims have in reporting this offence. In addition to the genuine independence of the judiciary, as many victims do not bother reporting their perpetrators because the judiciary has been marred by accusations of corruption and non-independence, a specialised court and agency should also be established, as sexual violence in armed conflict is an international crime and the court, judges and agency who will be responsible for investigating and prosecuting this crime must be well versed in not just IHL but international criminal law.

Consequently, workers of the Legal Aid Council should be taught IHL. This is because many times victims do not have the financial resources to access the judicial system so they turn to the legal aid council. However, without proper knowledge of IHL, it will be almost impossible for perpetrators of sexual violence to be tried for their actions. Finally, sensitisation and mental health support schemes for victims of sexual violence in armed conflict should be established to facilitate their recovery.