

IMPUNITY AND THE CULTURE OF SILENCE: BREAKING THE BARRIERS TO JUSTICE FOR VICTIMS OF SEX CRIMES IN CONFLICT THEATRES

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Abstract: *The issue of accountability for perpetrators of sexual violence in theatres of conflict remains an elusive pursuit and unattainable objective. The lack of accountability is largely fueled by underreporting by survivors who are driven by fear of reprisal, stigma and rejection to keep silent. Other obstacles to justice include weak legal and judicial system, ignorance, cost and other extraneous factors. This work urges an end to the silence, justice for the victims and accountability for perpetrators. In doing so, victims and witnesses should be accorded protection; and the judicial process should be reformed, enhanced and made gender-sensitive. It argues further that women should have a voice in appointments and decisions on gender-based issues.*

Keywords: Impunity, Accountability, Silence, Justice, Prosecution, International Crimes

Research Area: Gender and Equality

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1. INTRODUCTION

From historical wars to contemporary armed conflicts women and girls have been sexually preyed upon by the protagonists (Gaggioli, 2004:504). The problem is usually grave and uncontrollable because of the perceived breakdown of law and order associated with conflicts. The UN Parliamentary Hearing in 2008 observed that “Wartime sexual violence has been one of history’s greatest silences” (United Nations, 2008). During the Second World War, thousands of women and girls were forced to deliver sexual services to Japanese soldiers (Kim and Kyung-Heon, 2015). Many were abducted by Japanese forces and imprisoned in military camps and continually raped (Women 2000, 1998). During the conflict in Bangladesh, there was mass rape of Bengali women by Pakistani soldiers (Thomas and Ralph, 1994). When Iraq invaded Kuwait in 1990, sexual violence was a frequent occurrence (Women 2000, 1998). Women and girls took the brunt of the civil conflict that occasioned the breakup of the former Yugoslavia. Sexual slavery and other sex-related crimes and impunity of great magnitude, similar to what obtained in the Second World War, resurfaced (Brussels, 2000).

The civil wars in Africa have been inundated with reports of rape and sexual abuses (Nordas, 2011). Countries affected in the past included Angola, Liberia, Sierra Leone, Sudan, and Rwanda. Others are South Sudan, Democratic Republic of the Congo, Central African Republic and Nigeria (Lord-Mallam and Sunday, 2018). Impunity reigns in most of these conflicts while state authorities and institutions appear impotent and helpless. The situation is not different in other conflict-infested parts of the world. The list of perpetrators is also expanding among them are armed groups, civilians, government security forces, high-ranking

state officials, UN peacekeepers and private military and security contractors (Gaggioli, 2014:504).

This has reignited the debate on accountability for perpetrators of sex crimes in theatres of conflict (United Nations, 2013). Most of them have evaded justice for numerous reasons. The lack of accountability has largely been attributed to the culture of silence preferred by the victims. Both in peace-time and during armed conflicts, cases of sexual abuse have been underreported or not reported at allowing to numerous factors. Thus, most victims are denied justice and are forced to endure the trauma in solitude. This work explores the obstacles to justice for victims of sex-related crimes perpetrated in theatres of war. It observes also that it is time to break the obstacles, end the silence and enthrone accountability. This is the right way to go for the thousands of victims and the expanding list of perpetrators and their collaborators.

2. CULTURE OF IMPUNITY AND CHOICE OF SILENCE

Sexual abuses in environments of armed conflict are awfully worrisome, mind-boggling and horrifying. What is more irksome, however, is the inability to hold the abusers, rapists and other perpetrators accountable for their misdeeds. These groups of miscreants carry out their nefarious activities undisturbed and unchallenged by state institutions. Victims of sexual abuse in armed conflicts are predominantly women and girls, though in rare cases men and boys are also molested. Sometimes state institutions responsible for curbing such infractions may not be blamed for inactions because the victims deliberately choose to remain silent.

An unacceptable situation of impunity has been observed regarding the violence women and girls are subjected to during armed conflicts (Gaggioli, 2015). Impunity has been described as “the term used to refer to the impossibility, *de jure* or *de facto*, of bringing the perpetrators of violations to account – whether in criminal, civil, administrative or disciplinary proceedings – since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if convicted, sentenced to appropriate penalties and to make reparations to their victims.”(Salmon, 2006:331). Living free from violence is a human right. Too often, no one is held accountable for these crimes. It is therefore crucial that efforts be stepped up towards ending impunity and ensuring justice for victims of such crimes. Prominence must be given to fighting impunity for rape and sexual violence and this can be done through meticulous and methodical investigation and prosecution of such crimes, using national or international justice system. An important barrier to justice is underreporting. The reasons often proffered are obvious: shame, fear of rejection by their husbands, families and communities, the threat of divorce, the impossibility of marrying and the economic and social dependence of women on men in many communities.

3. BRINGING PERPETRATORS TO JUSTICE

In recent conflicts perpetrators of rape and sexual assault were tried before competent tribunals, starting with International Criminal Tribunal for the former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR). Perpetrators or their leaders were also arraigned at the Special Court for Sierra Leone (SCSL). Most edifying and informative, with

respect to ending impunity, was the indictment and subsequent trial of Mr. Charles Taylor who was at the time a serving Head of State of Liberia. He stood trial on 11 counts of war crimes, crimes against humanity, and serious violations of international law, among which were charges of rape and sexual violence. He was convicted and sentenced to 50 years in jail to be served in UK prison (BBC, 2015).

The number of prosecutions is still very low. In most conflict situations, the perpetrators of sexual violence are not brought to justice. Just 2 percent of perpetrators of some 14,200 rape cases registered in South Kivu, DRC, between 2005 and 2007 were called to account. Only 3 percent included convictions for sexual violence of 10000 genocide-related trials heard by Rwandan courts. Prosecuting sexual crimes is important because it curbs impunity and contributes to the reduction of these offences (Mansfield, 2009:368).

It is appropriate to state that there can be no peace in situations of armed conflict if impunity is allowed to reign. It is only by punishing those who bear the greatest responsibility for the most heinous crimes that the victims of such crimes will be assured that they too can sleep under the cover of justice. A close and critical examination of the majority of cases shows that “there is a total impunity of violence against women and girls during and after armed conflicts” (Sita, 2008).

Perpetrators of rape and sexual violence often go unpunished for their crimes committed during the war (Amnesty International, 2017). Few women seek justice against their abusers. Testifying against alleged perpetrators in the post-conflict period, even when adequate judicial systems exist, is often very difficult for survivors. This is due largely to the social stigma attached to women who speak out against their abusers.

4. FACTORS THAT CONTRIBUTE TO IMPUNITY

Several factors have been identified as contributing to impunity for sexual violence in armed conflict. These consist of a multitude of sociological, institutional, financial and legal factors that hinder the prosecution of sexual offenders. In a study conducted by the UN Mission (MONUSCO, 2014) in D.R. Congo, it was observed that cases of sexual violence were at no time investigated or taken to court. Victims did not report for fear of vengeance, castigation, stigma and being disowned by their communities.

4.1 Lack of Knowledge of State Laws and Remedies

The CEDAW Committee has generally expressed concern that women’s access to justice is limited, “in particular because of women’s lack of information on their rights, lack of legal aid, the insufficient understanding of the Convention by the judiciary, and the lengthy legal processes which are not understood by women” (International Federation of Human Rights, 2007). Sexual violence in the Democratic Republic of the Congo (DRC) presents a special problem owing to its monumental proportion. In a study conducted in the DRC by Mansfield (2009), it was discovered that most victims of rape and sexual violence lack knowledge of the working of the judicial system and state law. Most of them are illiterates and reside in rural areas. This lack of knowledge of the law is a problem because it means that

women do not know their legal right and do not know what the law regards as wrong. This means, according to the Congolese Minister of Justice, that ignorance by the population of the laws and more so the individual right and freedoms prevents people from accessing justice (Mansfield, 2009:385). In Burundi, Women, especially in rural areas, often do not know how to initiate legal proceedings.

4.2 Low Position of Women in Society

In the Congo, one of the hindrances preventing women from initiating prosecutions is gender disparity. Congolese women have very little autonomous power. The law itself is the first problem to prosecution. Under the Congolese family code, before a married woman can initiate a legal action, she must obtain permission from her husband (Mansfield, 2009:386).

4.3 Shame or Guilt

Another factor which has been described as a major stumbling block to prosecution is shame or guilt (Gaggioli, 2014:504). In an interview conducted by Mansfield (2009:387) in the DRC, he noted as follows:

The issue of shame is a serious obstacle to prosecution and should by no means be underestimated. In analysing the interviews, shame was the second-most common response to the question as to the main obstacles to prosecution, and was common amongst all the groups interviewed. As a result of shame, victims prefer to act as though nothing had happened.

Victims are thus dissuaded from prosecuting offenders. An interviewee stated that “if you follow custom, you will hide the rape... custom says that you did it by will, not by force. It’s infidelity according to custom” (Mansfield, 2009:387).

4.5 Religion

Religion may be an obstacle to the criminal prosecution of rape and sexual violence as was demonstrated in the DRC. Most Congolese rape victims believe that faith in God is incompatible with criminal prosecution, because the latter is at cross purposes with forgiveness. A victim of rape said in respect of prosecution that “God is the only one who can judge people according to their deeds;” (Mansfield, 2009:389) and that prosecution is sometimes equated with revenge, which only belongs to God.

4.6 An Inescapable Part of Armed Conflict

There is also the implicit acceptance of rape and other kinds of sexual violence as an inescapable or inevitable part of armed conflict. The UN Parliamentary Hearing once observed that the practice has for long been “dismissed as the random acts of renegade soldiers...steeped in a self-serving myth of inevitability” (United Nations, 2008). Thus, such despicable acts of violence are regarded as an integral, inherent and indispensable ingredient of armed conflicts and therefore normal and acceptable (Archibong, 2019).

4.7 Identifying and Arresting the Perpetrator

Majority of rapes in D.R. Congo are committed by various armed groups. Arresting and prosecuting members of armed groups present a special difficulty (MONUSCO, 2014). Most of them “come from the bush and retreat there following the rape and the theft of the victim’s property. For this type of rape, victims most often cannot identify the perpetrators, and generally can only describe what language they spoke or what armed group they came from. Consequently, many women do not know who to persecute.” (Mansfield, 2009:390). In addition, it is difficult to bring a perpetrator who is a member of a rebel group before a tribunal, because the often lives in the bush in the territory which his group controls.

4.8 Lack of Sufficient Evidence

Gathering evidence to successfully prosecute rape and sexual violence case is very important. This is however difficult and is often a major barrier to justice. While a medical report would be required to assist the judge, often there is no evidence beyond the testimony of the victim ((Mansfield, 2009:396). Some women are afraid to go to the hospital so that act would not be known in order to save the honour of the family. The problem is compounded by the fact that there are few certified doctors in the DR Congo (Mansfield, 2009:396).

4.9 Lack of An Effective Justice System

Lack of an effective justice system may constitute a barrier to prosecution of perpetrators. In Burundi, failures in the justice system have given rise to an atmosphere where victims of rape are not willing or able to strive for criminal proceedings. According to Haro (2018) “Only a small percentage of sex-related incidents are reported, so the actual number is likely much higher.” In the DRC, the justice system suffers from the following set-backs (Human Rights Watch, 2005):

- deficiencies in the law;
- unwillingness of military and other officials to treat sexual violence as a serious offence;
- lack of protection for the victims and witnesses;
- insufficient attention to the needs of the victims;
- logistical and financial impediments;
- dilapidated and fractured state of the judicial system; and
- overwhelming task of delivering justice for the many crimes committed during the conflict.

4.10 Health Concerns

The majority do not even have access to psychosocial and medical assistance (Amnesty International, 2007). Without healthcare, victims are unwilling to pursue the difficult and uncertain effort to get justice, especially those who contracted HIV and fistula. The rationale is given as follows: “Given the experiences of rape victims, the preoccupation with health concerns is reasonable and widespread, and distracts from a focus on the prosecution.

Prosecutions cannot restore the health of the victims, and it is clear that there is a lack of faith in the utility of criminal prosecutions” (Mansfield, 2009:384).

4.11 Amicable Settlement

Most times, victims are pressurized by families and community leaders to settle amicably (MONUSCO, 2014). In the DR Congo, the parties may opt for settlement out of court where the perpetrator of rape or sexual violence is a civilian. The people prefer to make arrangements for amicable settlement according to custom as a substitute for legal proceedings (Mansfield, 2009:390). The family of the victim and that of the perpetrator negotiate and arrive at the terms of the so-called settlement. Payment is made to the victim’s family in the form of a goat, some fish or a case of beer (Mansfield, 2009:391). In this regard, Mansfield (2009:391) has noted that:

The preference for amicable arrangements is not surprising, since customary or tribal law is the second basis of Congolese law. In practice, various customary laws regulate the lives of the majority of Congolese, particularly those who live in rural areas. Customary laws regulated personal status, including marriage, divorce, land tenure and inheritance. Amicable settlements are often seen as being a more conciliatory approach to the problem, since the matter is dealt with between the two families.

This type of arrangement bypasses the criminal justice system. The idea of giving a goat for rape cannot adequately remedy the crime committed.

4.12 Cost and Distance

The cost has been identified as one of the barriers to prosecution in the DR Congo. Factors responsible for prohibitive cost include a low level of income, the expense of filing complaint, printing cost, expenses for bailiffs, cost of obtaining doctor’s certificate, and lawyer’s fees and running cost of the case (Mansfield, 2009:391). These are beyond the means of many rape victims. “The end result of these costs is that justice is made inaccessible to the most destitute, who make up the majority of the population” (Mansfield, 2009:391).

Closely associated with the cost is the issue of distance (Gaggioli, 2004:504). In eastern DR Congo, victims of sexual violence desirous of prosecuting their cases must travel very far from where they live to where the tribunals are located. There are few tribunals. Many of them are too poor to be able to afford the cost (Mansfield, 2009:391).

4.13 Fear of Reprisal

Threats of retaliation against victims and those who divulge sexual assaults remains a huge problem (Amnesty International,). Most of these violations are not reported due to fear (Gaggioli, 2014:504). The fear of reprisals and of the judicial process remains a serious impediment to the successful prosecution of perpetrators. Women are generally reluctant to come forward and admit to being raped (Haeri and Puechguirbal, 2010:116). The women are therefore left alone to manage the consequences (Amnesty International, 2007). “It is

problematic that there is no protection mechanism for victims and witnesses,” and given the fact that there is a wide acknowledgement of the existence of such threats (Mansfield, 2009:395). In Rwanda, the women’s rights organization Haguruka, maintains that “women have little interest in bringing such cases as testifying even behind closed doors is traumatic and increases the chances that community members will find out about the rape.” (Amnesty International, 2004)

4.14 Fear of the Court and Judicial Process

In addition to fear of reprisals, victims in DRC are afraid of the judicial process itself. According to Mansfield, (2009:396):

The judicial process is intimidating and frightening for a victim. For example, the Goma Military Tribunal itself is an intimidating place. On the ground are a big tent, (the court room), a large army truck, and a building which houses the judges and the prosecutor’s offices. This is the place to which a woman must come if she wishes to initiate criminal proceedings.

Victims consider the whole process very frightening given that most of them are poor and uneducated. “To appear and speak before a panel of judges about something as shameful as rape requires an enormous amount of courage.” (Mansfield, 2009: 396).

4.15 Protracted Judicial Proceedings

The absence of an appropriate legal mechanism for the prosecution of perpetrators of these crimes could frustrate the course of justice. In Rwanda, for most of the victims of sexual violence, justice has been long-drawn-out, time-consuming and protracted. A decade after the genocide, “the women’s rights organization Haguruka, in an interview with Amnesty International in March 2004, estimated that significantly less than one hundred women have seen rape cases from 1994 through the ordinary courts” (Amnesty International, 2004). In the DRC, very few judgments have been given out of the number of complaints presented to the tribunals in the eastern region. To the victim, the small number of successful prosecutions from sexual violence cases is discouraging. To the accused, it may be prejudicial to him including incarceration in prison. Several reasons based primarily on lack of resources account for these delays (Mansfield, 2009:399).

4.15 Corruption and Enforcement of the Judgment

Another barrier to prosecution in the DRC is corruption. Mansfield states that it takes two forms: first, litigants must pay courts officials merely for the court to hear a case. Second, corruption also influences court decisions. The problem which has been described as pandemic deters prospective litigants (Mansfield, 2009:401). The problem affects both the victim and the accused person.

A setback also occurs in the area of enforcement of the judgment. Even where convictions have been secured, the convicts are sometimes released or escape due to the dilapidated state of the prison. Sometimes convicted soldiers are released from prison with the

assistance of their colleagues (Mansfield, 2009:402). In relation to the payment of damages to victims, as may be ordered by the court, such monetary award is rarely, if ever, enforced. “This impunity greatly discourages prospective litigants from prosecuting offenders.” (Mansfield, 2009:402).

4.16 Flaws in National Prosecutorial Systems

Most of the reports are not investigated meticulously and as such do not go to trial. In some instances, the punishments are not served so as to act as a deterrent to others. MONUSCO (2012) observed that in DRC convicts found ways of escaping from prison, without serving their full sentences. This is usually attributed to poor prison security conditions in the country. This problem is not peculiar to DRC. States need to improve their prison and security apparatus. The prosecution is further hampered by lack of financial, operational and human capacity and cases of corruption within the judiciary (MONUSCO, 2014).

Another serious obstacle to grapple with is the involvement of highly placed officials in sexual abuses (Amnesty International, 2012:5). Such cases are not investigated or prosecuted and are swept under the carpet (MONUSCO, 2014). In Nigeria, some ladies who were arrested in clubs in Abuja for prostitution alleged that they were raped by policemen attached to Utako, Life Camp and Gwarimpa police stations while in custody (Olowolagba, 2019). Even though the police authorities said the matter would be investigated, so far nobody has been charged (Adebowale, 2019). There is the general atmosphere of nonchalance towards violence against women.

4.17 Amnesty Laws

Certain municipal laws give pardon to perpetrators of sexual violence as part of the peace-making and reconciliation process. An amnesty is an official act which bars criminal prosecution of a class of persons for a particular set of actions or events (Olson, 2006:283). It may be total or partial; it may also be official through, for example, the passing of a law, or *de facto*, where a state simply fails to prosecute. Sometimes parties to a conflict ask for amnesty for crimes committed during the conflict as a condition for signing a peace agreement. The proponents of conflict-related amnesty argue that prosecution would be destabilizing and may prolong the conflict. They “believe that for the sake of moving forward those issues (i.e. violations of the law) should be left in the past, because it is best not to provoke the dragon on the patio.” (Olson 2008:284). They maintain that without amnesty hostilities would not come to an end or that trials would be politically charged, thus destabilizing the fragile peace process. As Cassese (2013:312-313) has noted:

...the rationale behind amnesty is that in the aftermath of periods of turmoil and deep rift, such as those following armed conflict, civil strife or revolution, it is best to heal social wounds by forgetting past misdeeds, hence by obliterating all the criminal offences that may have been perpetrated by any side. It is believed that in this way one may more expeditiously bring about cessation of hatred and animosity, thereby attaining national reconciliation...

The opponents of amnesty, on the other hand, argue that “neither a society nor a country can move forward and heal through impunity; thus, crimes must be prosecuted.” (Olson, 2008:284). The position, however, with regards to serious violations of international law is that certain crimes must always be prosecuted, and failure to try them preserves a tradition of impunity. Criminal punishment in this regard is necessary to act as a deterrent and reinforce the rule of law.

Some States have granted amnesties for war crimes. In Sierra Leone, the Lome Peace Accord required the government to “grant absolute and free pardon and reprieve to all combatants, and collaborators” (Article IX, Lome Peace Accord, 7th July, 1999). This total amnesty was criticized as unacceptable. The UN never recognized it. The Statute of the Special Court for Sierra Leone (Article 10) barred amnesty for international crimes. The validity of the amnesty was tested before the Special Court by the accused persons. They challenged the jurisdiction of the Court to try them, insisting that the government of Sierra Leone was obliged to respect the amnesty. The Court ruled that the amnesty was invalid and that the defendants could be tried for international crimes (*Prosecutor v. Morris Kallon*, SCSL – 2004- 15- AR72(E); *Prosecutor v Allieu Kondewo*, SCSL – 2004 – 16 – AR72).

An amnesty law may have certain legitimacy if it promotes reconciliation and does not simply grant impunity to perpetrators (Salmon, 2006:331). However, a State cannot extinguish its international obligations by enacting inconsistent domestic law. In 2006, an amnesty proposal was made by the Ugandan government to the Lord’s Resistance Army notwithstanding the heinous crimes the group had committed. In an apparent contrast to the position of the Ugandan government, the ICC issued indictments and arrest warrants against leaders of the group. Perpetrators of sexual violence in armed conflict, therefore, cannot shield themselves from justice through amnesty.

5. ACCOUNTABILITY THROUGH NATIONAL JUSTICE SYSTEMS

The State retains primary responsibility for trying the perpetrators of sexual violence and other heinous crimes (United Nations, 2013). National or domestic trials have been conducted in Spain, Croatia, Bosnia and Herzegovina and Rwanda among others for war crimes and crimes against humanity. There are usually some constraints to national trials. States sometimes cannot or are unwilling to try individuals, or proceedings are unduly delayed or designed to shield certain individuals from their criminal responsibility. Other key obstacles to domestic trials, according to Human Rights Watch, include bias on the part of judges and prosecutors, inadequate cooperation from the police in the conduct of investigations, poor cooperation between the states on judicial matters and ineffective witness protection mechanisms (Human Rights Watch, 2004). Sometimes also, domestic trials are politically and emotionally charged. For instance, no national prosecutions were possible in Sierra Leone because the Lome Peace Accord provided amnesty for all offences committed before July 1994. There may have been other constraints including domestic political considerations (Teale, 2009: 75).

In most cases, the government is unwilling to investigate and prosecute its own forces for crimes allegedly committed by them during armed conflict. In Rwanda, for example, the point remains that discussion of crimes committed by the Rwandese Patriotic Army (RPA) are regarded as taboo. Such crimes have not been adequately investigated and prosecuted (Amnesty International, 2007). Despite the flaws and shortcomings associated with domestic trials, it is still possible to bring perpetrators to justice before national courts. In the DR Congo, there has been a handful of prosecutions that ended in the conviction of persons accused of crimes of sexual violence. Commanding Officer Lt. Col. Kibbi Mutware was convicted of crimes against humanity for conflict-related sexual violence by a mobile court in the village of Baraka, in the eastern region. Military Prosecutor said Kibbi must be held responsible for the rapes carried out by his troops under the Statute of Rome that sets the criteria for crimes against humanity. He was sentenced to 20 years in prison (France24, 2011).

6. COMPLEMENTARY ROLE OF INTERNATIONAL CRIMINAL JUSTICE

International criminal tribunals have been established by the UN to prosecute perpetrators of sexual violence in the former Yugoslavia, Rwanda and Sierra Leone. Very few individuals, usually those who bear the greatest responsibility, are tried by these tribunals. In Sierra Leone, the Special Court only issued 13 indictments, the numbers being kept down in part by the tight budget and limited time frame (Teale, 2009:75). The international criminal justice system should come to the rescue of the national criminal justice system, which is often weakened during conflicts, by initiating the prosecution on the basis of the information gathered by field organizations.

International tribunals, however, have their own weak points or set-backs. They will only be able to investigate a very small number of cases of people bearing the greatest responsibility for serious crimes. National courts will have to deal with the majority of the crimes committed during the conflict (Human Rights Watch, 2005). The ICTY and ICTR have been confronted with two main challenges, obtaining the evidence and having custody of the accused persons. Investigations of rape and sexual violence present special challenges in the aspect of getting the evidence.

The adoption of the Statute of the ICC in 1998 as a permanent international criminal court and the enforcement of the Statute in 2002 are without a doubt the most significant development in international criminal law (Rehman, 2010:762). The ICC does not replace the national criminal justice system, but complements it (United Nations, 2013). The ICC only gets involved in the investigation, prosecution and trial of individuals “only if the State concerned does not, cannot or is unwilling genuinely to do so” (Rehman, 2010:762). The ICC has its own challenges. Its jurisdiction is not accepted by all States.

The ICC has jurisdiction over crimes of sexual violence which may constitute war crimes and crimes (United Nations, 2013). It, however, came under severe criticism in the first case brought against a Congolese militia leader, Thomas Lubanga, when the Prosecutor Moreno Ocampo failed to include charges of sexual slavery and rape despite the existence of

overwhelming evidence. While sentencing the accused, the tribunal frowned at the attitude of the former prosecutor in relation to the issue of sexual violence.

7. IMPUNITY VERSUS SILENCE: TIME TO BEAK THE JINX

Factors engendering the culture of silence are socio-cultural and cut across several countries in Africa. A system that blames victims for crimes committed against them is evil and unacceptable. International law prohibits all forms of sexual violence against women in situations of armed conflict. The UN Security Council adopted Resolution 1820 of 19 June, 2008 declaring an end to sexual violence as a tool of war. The General Assembly of the UN in consonance with resolution proclaimed 19 June of every year as the International Day for the Elimination of Sexual Violence in Conflict. In spite of the efforts, the fight is far from being won. Perpetrators are still on the loose in Nigeria, Iraq South Sudan, Central African Republic and many other areas bedeviled by conflict. There should be a concerted effort and renewed zeal to combat acts of impunity. There should a united approach and commitment by the international community to confront the evil.

Underreporting is the greatest obstacle to the fight against impunity. Victims of sexual violence must be willing to end the culture of silence. The national and international legal framework should be evolved to ensure protection for victims and witnesses in the course of the trial. Where survivors summon the courage to report sexual abuses, the outcome is another critical issue. Often such reports are treated with levity and disdain. In this regard, there is a need for reforms in the legal, judicial and law enforcement agencies. The UN Mission in D.R. Congo organized a sensitisation programme for Magistrates in Ituri on combating impunity for sexual violence (MONUSCO, 2012). This example can be replicated in other areas of conflict as part of international support to states.

8. APPOINTMENT OF WOMEN INTO KEY POSITIONS

The appointment of women into key prosecutorial, adjudicatory and advisory positions can serve as palliative and a significant contribution to the campaign to liquidate impunity and enthrone accountability in relation to gender-based international crimes. Women should be appointed into such positions at the national and international levels and should be present where decisions affecting them are taken. This was aptly demonstrated at the International Criminal Tribunal for the former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR) where women executed key functions in the work of the tribunals. The inclusion of women was essential to the triumph of the tribunals with respect to gender-based concerns (Grossman, 2012). As observed by Than and Shorts (2003:362) this “is far superior to the traditional minimal and invisible role of women in international organizations and bodies and in previous criminal tribunals.” Female judges in ICTY and ICTR played an important part in drawing up the rules of evidence and procedure such as Rule 96 which had a significant impact upon several major decisions (Than and Shorts, 2003:362). The appointment of Judge Claudia Hofer lends credence to this proposition.

9. ESTABLISHMENT OF SPECIAL FUNDS FOR REPARATION

Reparation funds for victims can encourage victims to come forward and lodge formal complaints. The issue of reparation to victims of sexual violence has not been addressed adequately. They hardly ever receive any such compensation from their abusers or the state. This has served as a disincentive to victims who take an enormous risk by reporting their violators and confronting them in court later (MONUSCO, 2014). Former president of Chad, Hissen Habre was ordered to pay millions of dollars compensation to victims of human right abuses under his regime from 1982 to 1990 (BBC, 2016). The Rome Statute provides for reparation to victims of international crimes (Rome Statute 1998, Article 75).

10. CONCLUSION

There is an unacceptable situation of impunity regarding the violence against women and girls during armed conflicts. In most cases, perpetrators of rape and sexual violence in armed conflict go unpunished. In order to check impunity, the process of dispensing justice should be moved forward. Victims should have free access to civil and criminal reliefs and justice must be seen to be done. Women are entitled to the right to a life devoid of violence. Justice and accountability are fundamental in defending that right. Perpetrators of sexual violence should be made to compensate their victims. Property belonging to them should be sold and paid out to victims. The compensation should be an integral part of restorative justice. Where perpetrators are unable to do so, the state should provide funds for compensation. Society must stand up against prejudices, biases, discriminations, perceptions and other factors that perpetuate violence against women.

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