

INTERNATIONAL HUMANITARIAN LAW AND CIVILIAN PROTECTION WITH SPECIAL REFERENCE TO THE NEEDS OF THE WOMEN IN THE ARMED CONFLICTS

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ABSTRACT

The experience of women in the armed conflict is multifaceted, it means separation, loss of relatives, physical and economic insecurity, an increased risk of sexual violence, wounding, detention, deprivation and even death. In all conflicts, women suffer in ways specific to women. Yet they should not be seen as a homogenous group, different women will have different needs, vulnerabilities and coping mechanism. Women in armed conflict are not passive and not necessarily “victims”. Around the world, women become members of the regular armed forces, armed groups or their support services. Moreover, women are engaged as politicians, leaders of NGOs and active campaigners for peace. Essentially, the effect of war on women is not only determined by the character and the stage of the conflict, but also by the particular role of each woman caught up in it. Certainly, it is significant to recognize the general needs of the women, but it is also vital to respond to women’s specific needs-be they combatants, persons deprived of their freedom, refugees, internally displaced persons (IDPs), mothers and/or members of the civilian population. This paper focuses on the needs of the women in the armed conflicts. The main objective of this research paper is to focus on issue of Gender inequality during the armed conflicts. The researcher’s main emphasis is on needs and the rights of the women in the conflict areas. This paper also focuses on the efforts of the UN and ICRC to protect the rights of the female victims of war. The study is based on the secondary data collected from books, journals, articles and websites. The focus of the paper is to study, analyse and understand the needs of the women in the conflict areas and the efforts to protect the rights of the woman by the international organizations.

INTRODUCTION

In recent years, much attention has been devoted by international organizations, non-governmental organizations (NGO’s), academics and Central Government to the plight, needs and rights of women affected by armed conflict. For example, the International Committee of the Red Cross (ICRC) published women facing war (2001), a study on the impact of armed conflicts on women. The United Nations Security

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Council adopted Security Council Resolution 1325 on “Women, Place and Security” (2000) which resulted in the production of a number of studies on this theme, by the division for the advancement of women (2002) and UNIFEM (2002).

Such studies have done much to raise awareness of the way women are affected by armed conflict and now states and organizations have responded to their plight. Recommendations to now to ensure the most appropriate response to the needs of women have also ensured. However, for such work to be truly effective, it needs to be adopted for those who operate in situations in armed conflict. This paper will give an overview of the relevant legal framework affording protection to women in situations of armed conflicts, namely international humanitarian law (IHL), and human rights laws. The aim of this paper to outline the extensive and specific protections to which women affected by armed conflicts are entitled.

The International Humanitarian Law (IHL), as the name indicates, is not simply a law which shows concerns to humanitarian considerations, though its real object is not fully reflected in its title. Humanitarian law is the law of armed conflict¹. This law is concerned with the humanitarian considerations to be shown by the enemy countries during war time. Thus the occurrence of a war is a pre-supposition for the international humanitarian law to exist. The United Nations actually came into existence to prevent that a third world war. Thus the United Nations charter speaks about a world free from war. Human rights documents also are for the idea of a world without wars. But, if for any reason, a war breaks out, the International Humanitarian Law’s concern would be to avoid miseries, which are not desirable. That is, it aims at to minimize the evil effects of a war. It sounds very fascinating because, it is only when a country or countries violate the international norms, especially the International Human Rights (IHR) law and its aspirations, a war can take place. It is to these forces that do not want to see that the laws are respected, that the IHL introduces new norms. There is no guarantee that IHL will be respected by those who do not care much for the other international norms.

However, International Humanitarian Law has its own significance. Even during the period of war as described in the great epics like the Ramayana and Mahabharat, there were rules relating to war, which were to be observed by the warriors. They were, for example, no war before sunrise and after sunset, no wounded person should be attacked, no person without a weapon should be attacked, the fighters should have the same weapons with them etc. But though these rules were observed to a great extent, the major victories would come were through violations of these rules. Mighty warriors like Karan, Dhuryodhana, Dronacharya, Bhishma and Abhimanyu were killed violating these rules.

This shows very clearly that any rule that is to be observed during the war will be observed mostly in breach. Then the question arises would have been the situation worsen in the absence of international humanitarian law? If the answer is in affirmative, then the implication is that the international humanitarian law serves some purposes only and is nothing but the extension of human rights law during the wartime. In other words, international human rights law protects some human rights even during the wartime. Then the

relationship between human rights law and the international humanitarian law is that, they are one and the same, but they operate during two different situations women.

The development in the last 50 years of the principles that comprise human rights law has had a major impact on international humanitarian law and indeed on international law generally². In more recent years, the movement for recognition of the equal rights of women has been exerting its own influence on human rights law to some effect³. In 1979, for example, the international community adopted the convention on the elimination of all forms of discrimination against women (CEDAW), to which 155 states are now party. Consideration is currently being given to the adoption of an optional protocol that will allow for individual and group complaints to be brought before the CEDAW Committee. Governmental and non-government of organizations have increasingly focused on women's human rights. As a result, a wide range of studies, reports and recommendations on various aspects of the issue is available. The topic of women is thus firmly established on international human rights agenda.

So much human suffering in today's world occurs. However, in situations of armed conflict, where to a large extent human rights are in abeyance, leaving individuals to rely solely on the protection offered by international humanitarian law⁴ and women are major victims in these situation⁵. There is now evidence, moreover, that women experience conflict in a different way to men⁶, a phenomenon that is confirmed by those working in the field. This distinctive experience, although its effects differ widely across cultures depending upon the role of women in each society is related to the particular vulnerability of this group when armed conflict break out. War exacerbates the inequalities that exist in different forms and to varying degrees in are societies, and women make up 70 percent of the world's population living in poverty⁷. They are moreover generally disadvantages in terms of education and are considerably less mobile because of their traditional role in caring for others⁸. Perhaps most significantly, women are generally excluded from access to power structures and participation in descion – making with regard to armed conflict. They are therefore unable to draw attention to the particular difficulties they experience in conflict situations and, moreover, are powerless to recommend any preventive action.

Problems faced by women in armed conflicts:

Armed conflict has erupted or escalated in many corners of the world. The number of people in need of international assistance has tripled over the past decade, and 80 percent of these are affected by armed conflict⁹. Recent Research indicate a 28 percent increase in the death toll from wars in 2014¹⁰, and a steady increase in conflict-related violence since 2007¹¹. Last year saw one of highest numbers of refugees and internally displaced persons (IDPS) ever recorded, the highest number recorded since 1995, and the largest annual increase since 1990¹². This means that on average, every single day of 2014, 42,500 people were forced to leave their homes, not knowing when or whether they could return¹³. The average duration of displacement is now over 17 years.

For women and girls, the impacts of war compounded by pre-existing gender inequalities and discriminations. Most strikingly, all forms of violence against women and girls increase during armed conflict. This violence may be more visible now, both to policy makers and the general public, but it has not abated, for example, in June 2015, the prosecutor of the International Criminal Court (ICC) reported to the security council that her office had received the largest number of allegation of sexual violence by armed militia in Darfur to date, after 20 such updates to the Council over the years. Most of the victims were alleged to have been gang-raped by militias while tending their farms or collecting firewood and water, a depressing familiar pattern to that detected and brought to the world's attention by NGO's more than 10 years ago¹⁴. In that very same week the UN mission in South Sudan reported that at least 172 women and girls had been abducted by armed actors in unity state and that an additional 79 has been subjected to sexual violence. Witnesses described women being dragged out of their dwellings and gang-raped in front of their infant children or burned alive inside their houses after being raped¹⁵. The 2015 annual report of the secretary-general on conflict-related sexual violence highlighted harrowing accounts of rape, sexual slavery, forced prostitution, forced pregnancies, enforced sterilization and other forms of sexual violence of comparable gravity in 19 different countries¹⁶.

The same persistence can be found in the perpetration of other forms of violence against women and girls. Almost two decades ago, the International Rescue Committee began supporting clandestine schools for girls in Afghanistan. Education for millions of Afghan girls stands as that country's greatest achievement in modern times. But hundreds of vicious attacks on school girls, female teachers and girls schools continue to take place every year¹⁷ while the kidnapping of 276 school girls in Chibok, Nigeria received significant media attention, less has been said of the more than 2000 women and girls abducted in Northern Nigeria since 2014, many of them used as sexual slaves, human shields and suicide bombers¹⁸. Year after year, we hear too many horrific stories of women political leaders, media personnel, women's human rights defenders and members of civil society and grass roots organizations being assaulted, threatened and killed, intimate partner violence and early, forced and child marriage have become more widespread during and after war¹⁹.

Crises exacerbate already existing discrimination against women and girls that render them less likely to have access to even the most fundamental of their rights, including the right to health care, education, food, shelter and even a nationality. Struggling to feed their families, look after the sick and educate their daughters and sons, women are the first to suffer from restrictions in movement and the closure of schools, medical facilities and markets. Girls may be fed last and be the first to go hungry in the face of food insecurity. Whether in detention or in refugee or IDP camps, women and girls suffer from inadequate sanitary conditions and supplies, especially during menstruation and lactation, as well as from a lack of sexual, reproductive and maternal health care services which can mean a death sentence for many women during childbirth or when seeking to terminate a pregnancy. Girls drop out of school and women lose access

to land and livelihoods. For many, survival sex or early marriages become the only options.

Discriminatory norms and lack of documentation impede many women and girls from claiming their human rights, including their access to property and from seeking asylum. In urban settings, where the majority of refugees and IDPs now reside, women are at risk of human trafficking by organized crime, harassment, exploitation and discrimination by landlords and employees, and arbitrary arrest, detention and refoulement by the authorities. A dearth of humanitarian services properly tailored for cities only makes matters worse. As was recently noted by the special rapporteur on violence against women, they free to escape arbitrary killings, rape, torture, in human or degrading treatment forced recruitment or starvation, but too often they encounter the same level of insecurity, violence and threats of violence, reinforced by impurity, at their destination, including camps for internally displaced persons²⁰.

Needs of the women during the Armed Conflicts

1. The Right to Life and Physical Integrity:

Since resolution 1325 was adopted and since the first programme in the mid and late 1990s that addressed sexual and gender-based violence in the humanitarian settings, much has changed²¹ public awareness of sexual and gender-based violence has increased exponentially, measured by the proliferation of media attention, social media activism, public health campaigns and social research. The attention to this issue in policy-making circles has also grown. From 2008 to 2013, the security council adopted from resolutions in five years devoted to sexual violence in conflict as a threat to international peace and security and created a dedicated post of special representative of the secretary-general on sexual violence in conflict.

Similarly focused resolutions and declarations have been adopted by the UN General Assembly, the Human Rights Council, the G8 and other forums²². In the last three years, the foreign ministers of two of the world's most powerful countries the united kingdom and the united states have launched ambitious campaigns to address sexual and gender-based violence in conflict and emergencies. A global summit in London in 2014 convened almost 2000 delegates and representatives from more than 120 countries and unprecedented scale for a meeting on this topic²³.

At the global level, sexual violence and other gross human rights violations against women applies much more frequently in the mandates of peace keeping missions or sanctions committees, at the national level, some countries have adopted laws, action plans, zero-tolerance policies and codes of conduct and appointed special advisors. Beyond sexual violence there has also been growing attention to other forms of violence and harmful practices in humanitarian settings, such as child, early and forced marriage or the targeted killings of women in leadership or public roles, including women's human rights defenders²⁴

This attention has not only punctured the silence and neglect that has traditionally accompanied conflict-related violence against women and girls but also led to tangible changes in the response of the international community, from human rights monitoring to access to health care for survivors, transitional

justice responses and the training and patrolling of peacekeepers. In the last 15 years, international courts have produced a growing body of convictions of war criminals and robust international jurisprudence on this topic. The UN and international NGOs have increased their capacity to address the issue in emergencies²⁵. Hundreds of thousands of women and girls are now reached by one or more variety of the programmes that aim to help survivors and prevent more violence, such as emergency medical care, mental health and psychological assistance, shelters and safe houses, special police units, mobile courts, prevention and awareness programmes, post-exposure prophylaxis (PEP) and dignity kits, to name a few. Strategies include changing harmful behaviours and social norms, targeting religious and cultural leaders for sensitization on women's rights, empowering women and girls (including with livelihood programmes), finding alternative energy sources to firewood and ensuring the safety of water points, latrines and bathing spaces in or near refugee camps.

2. The Rights to health:-

A study conducted by the ICRC in 2014 documented more than 1,800 incidents involving serious acts or threats of violence affecting the delivery of health care in 2012 and 2013²⁶. In Mali, when rebels took over the north of the country, armed men systematically entered into delivery rooms and expelled pregnant women to make room for their wounded²⁷. While women and girls experience perhaps the most direct consequences from these acts, the fall out is felt by everyone. After more than 90 health-care workers in polio vaccination teams, most of them women, were assassinated in Pakistan in recent years, the number of polio cases recorded in that country. Soared to its highest in 14 years²⁸.

Women and girls suffer from malnutrition and infectious diseases brought about by the appearing living conditions and the lack of sanitation and health care, including reproductive health care, in many of the IDP and refugee settlements in which they live during and after conflict. In some of the current camps for IDPS in South Sudan, the density of people in living spaces at the beginning of the recent conflict was 13 times higher than the recommended humanitarian minimum, and there was one latrine available for 200 to 300 people²⁹. In displacement sites in the Central African Republic, a February 2014 assessment found that there was no medical assistance in 90 percent of the sites. The lack of coverage, and gaps in assistance are fairly representative. In 2001, the UN Refugee Agency (UNHCR) issued five commitments to refugee women and girls. Provision of sanitary materials to all women and girls of concern in UNHCR assistance programmes, has only been fully reached in 21 percent of all camps, with another 21 percent of sanitary needs met³⁰. And yet, in some displacement contexts, the quality of services provided inside camps is better than that available to the host community, which quickly become a source of tension.

3. The right to education:-

The experiences of Pakistani teenagers Malala Yousafzai in 2012 and of hundreds of school girls in Chibok, Nigeria, in 2014 are only two of the best known examples of how girls education comes under direct attack during conflict. Girls in Somalia have been forcibly removed from schools to become 'wives'

of Alshabad fighters. In Afghanistan, the Taliban frequently bomb girls schools, attack the students with acid, poison their water supplies and set of improvised explosive devices on the routes used by female students to attend school. Each attack has a multiplier effect on girls access to education. For example, it is estimated that in 2009, the Taliban's attack and violent and teachers resulted in 120,000 female students and 8,000 women teachers ceasing to attend schools in Swat District³¹. In Gaza, 66 percent of Schools were damaged or destroyed during the hostilities in July and August 2014³². And in majority of the armed conflicts in recent years, non-state armed groups and government forces have used schools for military purposes³³.

Strategies to cope with scarcity and insecurity and as a result of gender norms that privilege boys over girls³⁴. Refugee and asylum-seeking girls and women of all ages seeking to complete secondary or territory education encounter great difficulties in urban areas, especially if they cannot afford the fees or if schools in the host community are already overstretched. Women and girls who return from captivity, particularly if they were forced into marriage and birthed at least one child, are very unlikely to re-enroll in education³⁵. Approximately half of out-of-school children of primary school age live in conflict-affected areas³⁶, where girls net enrolment rate in primary education is 13.53 percentage points below the global rate³⁷. Each additional year of a girl's education has a dramatic impact on maternal mortality, infant mortality and carry marriage, to say nothing of the overall social and economic benefits, contributing greatly to overall stability particularly in post-conflict settings³⁸. And gender equality programming has been shown to improve access to education and education outcomes for girls and boys, demonstrating the crucial link between gender equality and the effectiveness of humanitarian assistance³⁹.

4. The right to property, housing and livelihoods:-

Parties to armed conflict regularly use occupation or destruction of land as a deliberate strategy of war. They confiscate land illegally, evict occupants by force, secure property transactions under duress and destroy documentary evidence of ownership⁴⁰. For women, violations of their rights to land and housing are central to their experience of war. In many cases, they are ones at home when armed actors take over or destroy their property, usually violently. In other cases, in the context of displacement and return, family loss or separation, they are only able to access their land through the men in their family⁴¹. Young widowed, single or divorced women are particularly likely to experience difficulties with access to land or land rights. For women who are ex-combatants, pregnant from rape outside of marriage or otherwise stigmatized, the challenges can become insurmountable. Even when laws provide for women's right to inherit property and land, women may be unaware of this or may lack documents and titles. Few will possess the social and economic resources to pursue their claims, through either non-formal or statutory means, particularly when they have to navigate unresponsive authorities, ineffective courts and biased attitudes among family and community members⁴². As a result, the percentage of women with legal titles to land is significantly lower in conflict and post-conflict countries.

Much can be done to address this gap, including through legislative reform, land reform campaigns

and charges in registration procedures⁴³ where statutory law is not in compliance with international human rights obligations of equality and non-discrimination, humanitarian and development actors should advocate for the removal of discriminatory legislation and the amendment, of marriage, inheritance and related laws to ensure woman's equality in accessing land and housing. Donors can invest in legal representation for women and other measures to address the practical barriers women face in accessing justice resulting from their poverty, illiteracy or marginalization.

International organization should always register women independently from male heads to households, promote this practice with government counterparts and refrain from documenting and registering housing or land assets only in the name of the principal adult made in the household⁴⁴. However cultural, religious and customary practices, which often exist in predict with statutory laws, can also have an impact on women's rights related to land, property and housing.

5. The right to asylum, nationality, and documentation:-

Various challenges confront women and girls who flee conflict or persecution and are in search of asylum, including lack of proper documentation establishing country of origin in gender-related claims, and adjudicators characterizing sexual violence in conflict as a private act rather than politically motivated persecution consequence of sexual violence, especially the associated social stigma, are also often not taken into consideration by adjudicators in assessing the risk of further persecution or internal flight alternatives.

While the number of women becoming heads of household as a result of displacement is increasing, discriminatory. Citizenship laws in both resident and home countries prevent them from owning property, accessing land rights or being entitled to a full range of other economics, social and political right. Refugees have a right to documentation, including identity papers and travel documents, and returnee women and girls have equal rights to these documents and for these to be issued in their own names, but this often not the case in practice⁴⁵. Some countries require women to produce a marriage certificate before permitting birth registration. In others a birth must be registered by the child's father, regardless of any nationality issues or whether he is known or not.

On a more positive note, 12 states have reformed their laws in the past decade to eliminate gender discrimination in citizenship. The Global Campaign for equal nationality rights was launched in June 2014 with the aim of eliminating gender discrimination in nationality laws, and in the same year UNHCR launched its campaign to end statelessness in layers, which includes as one of its key actions the removal of gender discriminating laws at the national level.

6. The right to food:-

One of the earliest ways in which humanitarian took gender issues into account was by targeting women and girls during food distribution. For example, in 2001, one of UNHCR's five major commitments to refugee women was ensuring their participation in the management and distribution of both food and non-food, items⁴⁶ and WFP Policy instituted that some year was that women should control the family food aid

entitlement in 80 percent of WFP food distributions⁴⁷. Already by 2005, the majority of refugee camps were distributing as much food directly to women as to men⁴⁸.

The benefits are clear. Food distribution interventions that target women as main recipients help to substantially reduce child malnutrition rates. A recent multi-country study shows that prioritizing women in food distribution is strongly correlated with greater dietary diversity and in one country, a 37 percent lower prevalence of hunger⁴⁹ WFP case studies in had DRC indicate that providing take home rations for girls in their last two years of primary school contributed to a decrease in the frequency of early marriage.

Safe access to fuel and energy (SAFE) has grown into a full-pledged sector of its own⁵⁰, and cookstove and fuel projects by WFP, the United Nations Environment Programme (UNEP), UNHCR, the women's Refugee Commission (UNEP), UNHCR, the women's Refugee Commission (WRC) and others have had measureable sources in reducing women's fuel collection trips, often by half. These efforts have sometimes been linked to a reduction in violence and an increase in community-based protection in groups to collect firewood or greater involvement of men in its collection⁵¹.

Conclusion and Suggestions:-

The main conclusion of this research paper is that women, peace and security, on the one hand, and gender equality in humanitarian action, on the other, have the some broad objectives, the same focus on women's leadership and women's human rights and pay the same special attention to women's needs and priorities. Both also deal with largely the same settings as most complex emergencies are related to armed conflict and have become increasingly protracted. Efforts to support the voice and choice of women in the assessment, design and delivery of assistance remain the exception to the rule. Other highlighted gaps identified in the research paper are the needs of women and girl survivors of rape who are left with unwanted pregnancies, the difficulties faced by women and girls who lack documentation to exercise their rights or find asylum.

Suggestions:

1. Member states and UN should ensure that preparations for outcomes of the 2016 world humanitarian summit have gender equality and women's human rights as a focus are as well as integrated throughout the other themes.
2. The UN and NGOs should commit to create a humanitarian workforce that is 50 percent women and 100 percent trained in gender equality programming and the protection of women's human rights.
3. The UN should ensure that UN women is a member of all relevant high-level inter-agency forums on peace and security and humanitarian response, including the IASC and the Senior Advisory Group on peace and security to ensure a gender perspective is mainstreamed throughout the UN's response in conflict and emergencies.
4. All relevant actors, including member states, the UN, donors, and civil society, should ensure that all

global humanitarian and local health-care workers are trained in basic life-saving sexual and reproductive health care, in accordance with international human rights standards, as well as emergency response for survivors of domestic and sexual violence including emergency contraception and abortion / post-abortion services.

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