

[IV]

PROTECTIONS FOR WOMEN DURING AND AFTER CONFLICT

No society can restore peace or stability when its population lives in daily fear of rape or other sexual assault—or when the perpetrators of such crimes are not held accountable for their actions. We must take strong, unified action to ensure that victims have access to justice, that those responsible for these crimes are held accountable, and that those who contemplate violence against civilians understand that their actions will carry consequences. Sexual violence in conflict is a security issue that must receive the same level of attention as other threats to individuals in conflict situations. The safety of women and their families must be a top priority for security efforts around the world.

—United States National Action Plan on Women, Peace, and Security

12. Protecting Civilians from Conflict-Related Sexual Violence

By Patrick Cammaert

PROTECTING CIVILIANS FROM CONFLICT-RELATED sexual violence is complex, but peacekeepers can make a difference—provided they are trained and willing to implement their mandate. Peacekeepers operate in demanding environments. The strategic context for United Nations (UN) peacekeeping changed dramatically with the end of the Cold War when the Security Council began to more actively promote the containment and peaceful resolution of conflicts within nation states. Many of these conflicts take place in the world's poorest countries where state capacity may be weak and belligerents may be motivated by ideology, past grievances, hope of economic gain, involvement in criminal activities, or some combination thereof. That shift—from concerns about interstate conflict to concerns about intrastate conflict—has given rise to *multidimensional* UN peacekeeping operations. These operations are typically deployed in the aftermath of a violent internal conflict, and they may employ a mix of military, police, and civilian capabilities to support the implementation of a comprehensive peace agreement.

When Is Force Authorized?

Since the failure of UN missions in Bosnia and Herzegovina, Rwanda, and Somalia, most peacekeeping missions have been deployed with a Security Council mandate to act under Chapter VII of the UN Charter. Chapter VII authorizes peacekeeping missions to use all necessary means, including the preemptive use of deadly force, to carry out the tasks in line with the rules of engagement (ROE). The missions in Bosnia and Herzegovina and Rwanda were Chapter VI missions: Their mandates were limited to self-defense and defense of installations. Most UN peacekeeping

missions established since the mid-1990s, starting with the mission in Sierra Leone in 1999, have been mandated under Chapter VII, and many of the missions were specifically tasked “to protect civilians from imminent threat of physical violence . . . including from sexual violence” and authorized to use all necessary means.

Under Chapter VII, peacekeepers are to prevent and address atrocities against civilian populations in general and to protect against sexual violence in particular. This is a complex endeavor. In part because of a lack of guidance and training, peacekeepers have struggled to carry out this task since it was first assigned to the Sierra Leone mission.

Over the past years, protecting civilians, particularly from sexual and gender-based violence, has increasingly been on the agenda at high-level conferences and seminars. This has prompted the United Nations to develop doctrine and guidance, which now includes the three-tier protection strategy of the Department of Peacekeeping Operations’ Office of Coordination for Humanitarian Affairs (DPKO-OCHA) study on the protection of civilians. Many UN policy papers have been published on protecting civilians (including protection from sexual violence), strategic frameworks on sexual and gender-based violence, and a UN infantry battalion manual. These are important advances. Multidimensional peacekeeping is a critical tool to support postconflict countries in achieving lasting peace and stability. The guiding principle in all missions should be concurrent actions to protect civilians through all three DPKO tiers: protection through the political process, physical protection, and establishment of a safe and secure environment.

But challenges face UN peacekeepers, both military and civilian, who operate in demanding environments. Peacekeepers are deployed in vast areas that lack infrastructure. Political and reconciliation processes are slow, state authority is limited, state capacity is weak, and there are many potential spoilers of the peace, including dissident host government soldiers, mercenaries, and militias. Local conflicts over land and intercommunity violence are frequent. Populations have limited access to social services. Religious or ethnic intolerance causes violence and destruction, and there is impunity for many perpetrators of serious violations of human rights and international humanitarian law, including government actors. Sexual violence is epidemic and used not only against women and girls but also against men and boys, often as a weapon of war.

right: Internally displaced persons ride bus to return from camp in Aramba to their home in Sehjanna, near Kutum, North Darfur (United Nations)



Peacekeepers often face hostile armed individuals and groups who wish to spoil the peace processes, postconflict efforts at stabilization, and peace-building. These spoilers target the local population and UN personnel. In spite of the guidance that has been developed over the years, various incidents in UN missions have shown that many times peacekeepers are not sufficiently prepared for such a hostile environment. There seems to be a gap between the organization's policy and the reality on the ground. Many peacekeepers and many countries that contribute troops to the effort appear to prioritize self-defense over protecting civilians, in part because peacekeepers lack training and in part because they lack willingness to take robust preventive action.

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What Is Missing?

The decade's surge in peacekeeping has brought to light the scope and nature of sexual violence. As a result, the Security Council has paid increased attention to the issue. Resolutions 1820 (2008) and 1888 (2009) highlight the link between ending sexual violence and restoring peace and security. The international recognition of sexual violence as a tactic of war and a direct threat to international peace and security was an important milestone. However, new studies in the Democratic Republic of the Congo (DRC) reveal that sexual violence, while sometimes implemented as a weapon of war, can also reflect widespread acceptance of patriarchal norms and of rape myths that justify and normalize rape, the everyday subordination of women, and men's sense of entitlement to women's bodies.¹

Some peacekeeping forces show hesitation or are reluctant to act unilaterally to protect civilians, stating that they can only use force beyond self-defense in support of host government forces, as was the case in Goma, DRC, in November and December 2012. Even if a peacekeeping operation is mandated to support the host government forces, however, protecting civilians is its key priority. If government forces are not capable of or willing to protect their civilians, the United Nations has to take action—regardless of the perpetrators' affiliation. If government forces are the perpetrators of human rights abuses, UN forces should take action directly or indirectly via the leadership of the host government forces. All the mandates of the seven missions currently operating under Chapter VII are strong enough for peacekeepers to take robust action, but in several UN peacekeeping missions, the military lacks a proactive attitude about protecting the civilian population and

preventing sexual violence. This has led to serious criticism following incidents in Côte d'Ivoire, Darfur, and the DRC. Most important, when the city of Goma fell in November 2012 to an armed group (M23), the result was widespread violence, including sexual violence, against the local population, followed by massive displacement. Many member states, frustrated over the peacekeepers' ineffectiveness, have called for the revision of the mission mandate.

But the mandate is not the problem. Any mandate is only as strong as the willingness of the mission's leadership and of the troop-contributing countries to implement it.

Conservative, risk-averse UN officials or commanders (often with the support of their governments and even UN officials themselves) will interpret the mandate as a ceiling. They will be reluctant to take any action that the resolution does not explicitly name and authorize. By contrast, creative and decisive commanders will read the mandate as a floor, breaking the mandate down into operational goals and using all their own capabilities to implement the mandate's intent.

Any UN presence comes with obligations. It creates certain expectations among the host population and the wider international community—expectations that need to be managed. In assessing the nature of a peacekeeping operation and the capabilities required to implement its mandate, police and troop contributors should seriously take on the tasks that are outlined in the resolution, the accompanying ROEs, and other directives about the use of force. Read them carefully. Take them seriously. These offer accurate and useful guidance.

While the mandate enables peacekeepers to use force legitimately, the ROEs explain exactly how force is to be used, delineating limitations. Peacekeeping leaders need to recognize that even when operating under a mandate that allows the use of force only in self-defense, peacekeepers can still stop sexual violence effectively by deploying in force, deterring by their presence and robust posture, and verbally confronting perpetrators. If in response peacekeepers are threatened, they may then use force in self-defense.

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right: United Nations Secretary-General Ban Ki-moon addresses meeting on preventing and responding to sexual violence in conflict, New York City, September 2013 (United Nations/Eskinder Debebe)

Struggling to Protect Civilians

As explained in the DPKO three-tier protection process, any peacekeeping mission must aim to protect civilians from violence, first and foremost, through the political process and the establishment of a protective environment. But establishing this environment takes time and depends in part on the host government's political willingness and authority and in part on spoilers' capacity to disrupt the peace. The host government's consent to allow a UN mission to operate—which is not always guaranteed and has lately become more difficult to secure—is another factor in whether a mission can serve as an effective policing force. The first challenge lies in securing the power and political will of the host government to implement peace.

Second, there is confusion at the strategic level since there is no political consensus between the Security Council, DPKO and/or Department of Field Support, and the major troop-contributing countries on what robust peacekeeping means and what the use of force beyond self-defense means. That leads to the third challenge for the mission on the ground.

The third challenge lies in the mission's projected willingness to use force to protect civilians from physical violence. A peacekeeping operation's robust and confident posture can be most effective in deterring violence. Conversely, spoilers will notice—and exploit—a unit's weak or indecisive posture. Many peacekeeping contingents struggle to adopt a robust posture because they lack training, guidance, and leadership. Commanders must make it clear to themselves, their troops, and others that they are prepared to use force as required and appropriate. With that willingness made clear, commanders can focus on maximizing results rather than minimizing risks. Good training, appropriate equipment, and strong leadership will help mitigate risks.

Fourth, the global financial crisis has also put a strain on peacekeeping. The United Nations is required to do more with less. Missions lack urgently needed equipment, such as military helicopters, intelligence assets, engineers, and surveillance equipment. The lack of military helicopters is particularly challenging. UN troops must be mobile in order to quickly respond to incidents, including those in remote areas; quick response is critical to preventing atrocities and reacting swiftly when called for help. The lack of transport seriously constrains any mission's ability to protect civilians and to prevent sexual violence.



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Fifth, peacekeepers will never be in a position to be everywhere and protect everybody. Managing expectations is therefore essential, including managing them through a public information campaign. Peacekeepers deploy with a mandate that provides the mission with many tasks. The international community's and the local populations' expectations that the United Nations will bring peace and solve all the security problems are high and difficult to manage.

Sixth, troops deployed under the UN flag often lack military capabilities. Protecting civilians requires peacekeeping units that possess the required predeployment training, are willing to act, and have the skills to use force as required. Achieving this requires leadership. Leadership at all levels—including at the UN Headquarters—to take decisive action is vital for success.

Seventh, peacekeepers can only be effective if they closely cooperate with the civilian mission components, which include the police.

Eighth, UN peacekeeping missions lack specialized female personnel, who are desperately needed. Women play very important roles—as peacekeepers, military, police, and civilians—in protecting civilians and preventing sexual violence. Perpetrators of sexual violence are often men in uniform. Survivors of sexual violence therefore often prefer interacting with female peacekeepers, who are for that reason in a better position to reach out to the local population.

More Effectively Protecting Civilians

Over the past 3 years, a great deal of work has been done to enhance the protection of civilians and to better prevent sexual and gender-based violence. On the ground, peacekeeping operations have stepped up efforts to protect civilians and address sexual violence. Assessments were conducted, data collected and examined, strategies developed, and authorities sensitized. An inventory of best practices and scenario training on sexual violence for UN peacekeepers at the strategic, operational, and tactical levels is available on the Web.²

These efforts notwithstanding, missions continue to struggle with implementing this mandate. Policy progress is significant and commendable—but it is not sufficient, as policies alone do not save lives. Peacekeeping missions need to act vigorously to protect civilians and prevent sexual violence. More needs to be done to ensure more effective implementation, including the following.

Build Local Political Institutions that Keep the Peace. Added emphasis should be put on protecting the civilian population by strengthening institutional capacity and ensuring that systems are in place to prevent and manage any form of sexual violence. The mission must impress upon the host country's political leaders that sexual violence is a national security threat that needs to be addressed in order to establish lasting peace and security. Peacekeepers should fight impunity whenever possible to ensure all perpetrators of violence against civilians are brought to justice, whatever their political affiliations. According to recent studies, children and men in postconflict countries who were exposed to violence are more likely to perpetrate violence themselves.³ The mission must help avert this violence by promoting and protecting women's rights—by educating men and boys to treat girls and women equally, changing social norms that fuel violence, ending impunity for sexual violence, and providing psychosocial treatment services to the women, men, and children who have been affected by violence. These efforts should go along with activities aimed at supporting the host government in promoting women's rights and improving gender relations (see Michelle Bachelet's chapter in this book).

Better Prepare and Train Peacekeepers. If civilians are to be effectively protected from physical threats, including from sexual violence, peacekeeping troops must be prepared and their commanders must be willing to take forceful and effective action. That requires better predeployment training for troop and police contingents, especially of junior and senior commanders. They should be properly briefed on and trained in their mandate, ROEs, the specifics of sexual and gender-based violence, presence and posture of the troops, and successful use of force in addressing or responding to difficult situations.

However, predeployment training is the responsibility of the countries that contribute troops and police. Many lack the resources to provide this training and need help. UN Contingent Commanders courses, developed and implemented by Global Peace Operations Initiative/Center for Civil Military Relations in the Asia-Pacific region, have been successful and could also be implemented on the African continent where an increasing number of peacekeepers are deployed. All peacekeeping training centers responsible for training military personnel should include scenario training on sexual violence in predeployment training curricula.

Increase Female Personnel. More specialized female peacekeepers are needed, both as military and as police. We need women who have been trained to reach out to

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survivors of sexual violence in order to enhance the UN response to sexual violence where peacekeeping operations are deployed. Many Western countries already have this expertise in their national security forces. The United States, for example, has experience with female engagement teams in Afghanistan and could make a difference by deploying some of these officers to UN peacekeeping operations. A training course for female military and police officers on sexual violence and child protection should be developed to prepare both military observers and joint protection teams.

Ensure Troop Mobility. A swift response to calls for help remains critical, especially when peacekeepers are attempting to prevent sexual violence. Countries that may not be in a position to deploy infantry units but have military utility helicopters in their armed forces should be approached and asked whether those helicopters could be made available for UN peacekeeping.

Provide Leadership. UN peacekeeping missions require competent, experienced, decisive, and courageous military and civilian leaders to ensure effective mandate implementation both at headquarters and in the field. The continued support from the Security Council, member states, and troop-contributing countries remains equally important to effectively implement a mandate and ensure that a mission has the necessary means.

Conclusion

UN peacekeepers have shown that they can protect civilians and prevent sexual violence when required in spite of setbacks of insufficient military action. They also have significantly increased women's freedom of movement and decreased the number of rapes through such concrete actions as preventive deployments to potential hotspots in the DRC, firewood patrols in Darfur, escorts for women fetching water in South Sudan, and market patrols.⁴ In Liberia, the presence of female police improved reporting and response on sexual violence.

The UN peacekeeping missions can do more and can do better with the means at their disposal on the ground, as long as member states continue to support the efforts and as long as the Security Council, troop-contributing countries, and DPKO/Department of Field Support have political consensus on what robust peacekeeping means. Ultimately, however, more needs to be done to fight impunity and create conditions in which armed groups see sexual violence as a liability rather than as a tool in the struggle for power or as a cheap weapon of war. The cost of committing

right: Master Corporal Larissa Pollak, Austrian Contingent, which is in charge of transport operations in United Nations Interim Force in Lebanon, with teammates at headquarters, Naqoura, Lebanon, September 2012 (United Nations)



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atrocities will need to be raised to the point where atrocities harm perpetrators even more than these crimes harm victims. In the meantime, peacekeepers have not only the mandate but also a moral obligation to do everything possible to protect civilians and combat sexual violence wherever peacekeepers are deployed. We owe this to the survivors of sexual violence who still live with the shame of the crimes committed against them. We should honor them by paying attention and demonstrating that we do not and will not accept such violence ever again.

Notes

1 “Sexual Violence Is More Than Just a Weapon of War in the Democratic Republic of Congo: Findings from a New Study by Promundo and Sonke Gender Justice,” *PRWeb.com*, December 5, 2012, available at <www.prweb.com/releases/2012/12/prweb10202493.htm>.

2 Letitia Anderson with Patrick Cammaert and Anne Marie Goetz, *Addressing Conflict-Related Sexual Violence: An Analytical Inventory of Peacekeeping Practice*, 2nd ed. (Rome: UN Women, 2012), available at <www.unwomen.org/~media/Headquarters/Media/Publications/UNIFEM/AnalyticalInventoryofPeacekeepingPracticeonli.pdf>.

3 “Sexual Violence Is More Than Just a Weapon of War.”

4 Julie Reynaert, *MONUC/MONUSCO and Civilian Protection in the Kivus* (n.c.: International Peace Information Service, 2011), para 2.2.3, available at <www.ipisresearch.be/publications_detail.php?id=327>.

right: Sudanese woman with her undernourished baby in Malha hospital, North Darfur (UNAMID/Albert González Farran)





13. Gender and Accountability in Conflict, Crisis, and Transition

By Navanethem Pillay

Public policies regarding victims' rights . . . have to be built with [input from] victims.

This is something that you don't do for victims, you do with victims. . . . We have 30 people who are directors of different regional projects and regional offices, and half of those people are women. We believe that women have a different approach towards suffering.

—**from an interview with Paula Gaviria**, Director of the Colombian Special Administrative Unit for Victims' Care and Reparations, conducted as part of the Profiles in Peace Oral Histories Project of the Georgetown Institute for Women, Peace and Security, 2013

VIOLENCE AGAINST WOMEN DURING WARTIME “involves horrendous crimes that must shock the conscience of humanity.”¹ Conflict, political strife, and other unstable situations affect women and girls, men and boys in different ways. While all civilians undergo unimaginable suffering in modern conflicts and crises, women and girls continue to be disproportionately affected and experience all forms of physical, sexual, and psychological violence perpetrated by both state and nonstate actors.

Findings by the United Nations (UN) Office of the High Commissioner for Human Rights and other international bodies and mechanisms have provided overwhelming evidence that conflicts exacerbate preexisting patterns of gender discrimination and put women and girls at heightened risk of violence. Sexual violence as a weapon of war has been used systematically in many recent and past conflicts. It takes such varied forms as rape, forced pregnancy, forced sterilization, forced abortion, forced prostitution, trafficking, sexual enslavement, and forced nudity.

left: Women in Darfur's Zam Zam camp for internally displaced persons work on recommendations during forum organized to raise awareness of issues related to gender-based violence, December 2012 (United Nations/Sojoud Elgarrai)

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Violence against women and girls too often continues or even spikes in postconflict societies due to the general breakdown in the rule of law, availability of small arms, collapse of social and family structures, and the “normalization” of violence. All this adds to preexisting gender-based discrimination.

This chapter focuses on promoting accountability for violence that women and girls have suffered during conflict, political strife, and instability. We must demand accountability in a broad sense as encompassing processes, norms, and structures to hold individuals and entities responsible for their actions, impose adequate sanctions, ensure remedies for survivors, address impunity for past crimes, and avoid repetitions of violations in the future. Such processes, norms, and structures must be built on fundamental principles of equality and nondiscrimination. Postconflict institutions and approaches must fully take into account women’s and girls’ experience of conflict and instability. Without accountability, human rights will be denied, crime will flourish, and impunity for past conflict-related crimes will persist, undermining legitimacy and prospects for reconciliation.

The following sections outline some of the substantive and procedural implications and challenges of a gender-sensitive approach to some elements of accountability, including criminal prosecution, reparations, efforts to uncover the truth for past violations, security sector reforms and demobilization efforts, and other institutional reforms.

Criminal Prosecution

Both treaty and customary international law impose a duty to prosecute serious violations of international humanitarian law or human rights. To satisfy such obligations, states should undertake prompt, rigorous, and impartial investigations and whenever possible undertake judicial and other appropriate responses. Pursuing accountability at all levels is crucial to restore survivors’ sense of dignity and justice and to send the message that violence against women will not be tolerated.

Yet for far too many women who have been victims of serious wartime crimes, prospects of having the perpetrators brought to justice are remote. Estimates of the number of women raped during the war in Bosnia-Herzegovina range from 20,000 to 50,000. Yet by 2009, fewer than 40 perpetrators had been convicted by the local courts and the International Criminal Court for the former Yugoslavia.² Even in the absence of accurate data, estimates suggest that between 10,000 and 20,000

women and girls suffered sexual violence during the war in Kosovo. However, few charges of wartime rape and other crimes against women have been brought against perpetrators, and not a single person has been convicted.³ The 2012 UN Secretary-General's report on sexual violence in conflict⁴ highlights the low or insufficient level of convictions in Colombia,⁵ Côte d'Ivoire, Democratic Republic of the Congo (DRC), Nepal, and Liberia.

The obstacles that women and girls face to judicial accountability are many and vary from country to country. Among these are inadequate legal frameworks that treat sexual and gender-based violence as violations of morality, public decency, and honor rather than as violations of an individual's bodily integrity. This approach treats women as objects of protection rather than as autonomous beings with individual rights. Sometimes inadequate definitions for sexual and gender-based crimes leave out certain grave forms of violence, such as penetration with objects, or exclude groups of victims, such as male victims of rape. More generally, amnesty laws are an obstacle to prosecution, especially when they cover crimes that disproportionately affect women, such as sexual violence.⁶ Other obstacles include:

- ✦ large geographic distances from courts or other judicial accountability mechanisms, which can be difficult for women who lack their own transportation and who are burdened with childcare responsibilities
- ✦ costs to file complaints, which can be more difficult for women to pay when they lack access to economic resources
- ✦ legal assistance, which may not exist in a form that is effective, free of charge, and gender-sensitive
- ✦ adequate protection for victims and witnesses, which may not exist
- ✦ stigma, which may be associated with being identified as victims of certain crimes, especially sexual violence.

Many of these obstacles were noted by survivors of sexual violence when interviewed by the UN High Commissioner for Human Rights' High Level Panel on the Democratic Republic of the Congo.⁷

Furthermore, law enforcement and judicial institutions may be permeated with bias, stereotypes, and prejudice against women, leading them to respond

negligently and inadequately. For example, investigators and prosecutors still tend to address cases of sexual violence that occurred during the conflict exclusively by using testimonial or physical evidence, ignoring alternative forms of evidence, such as anthropological expert reports. Investigations are often not centered on victims and do not take into account victims' concerns about their security. For example, some investigators may require displaced victims to return to the place where the violence took place. That not only imposes an additional financial burden, but it may also make the victims more vulnerable to reprisals, threats, or intimidation by perpetrators. Traditional justice mechanisms, which often are the only accessible dispute resolution mechanisms accessible to women, sometimes replicate societal patterns of discrimination by having inadequate sanctions against sexual and gender-based violence or by being procedurally biased against women and girls.⁸

Some national judicial systems have made serious efforts to end impunity for crimes against women and girls and have had significant results. Under the comprehensive strategy to combat sexual violence in the DRC,⁹ the Joint Human Rights Office (JHRO) in the UN Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) supports legal clinics that represent victims of sexual violence. The JHRO also trains police, prosecutors, and magistrates to better handle sexual violence investigations and trials. As a result of these and other efforts, such as innovative mobile gender courts,¹⁰ more convictions have been registered as noted in the UN Secretary-General's report on conflict-related sexual violence:

Between December 2010 and August 2011, more than 250 trials of elements of national security forces were held with the assistance of MONUSCO and other United Nations entities, including through holding mobile hearings. As a result, more than 150 [Armed Forces of the Democratic Republic of Congo] and Congolese National Police elements were sentenced for rape and other acts of sexual violence. In addition, on 16 August 2011, in a landmark trial, the Bukavu military tribunal convicted two Rwandan [Democratic Forces for the Liberation of Rwanda] combatants charged with crimes against humanity, including rape, committed against the population of Kalonge and Bunyakiri from June 2006 to January 2007.¹¹

Many obstacles, however, continue to impede progress toward effective prosecution, including insecurity, absence of appropriate financial resources, piecemeal interventions, and a lack of political will to make comprehensive structural reforms a priority. In Colombia, for instance, the attorney general's office took important steps to address conflict-related sexual violence attributed to members of security forces, such as offering prosecutors specialized training on gender issues, creating a gender committee to facilitate inter-institutional cooperation, establishing dedicated centers throughout the country to support the victims, investigate crimes, and assist with these prosecutions, and elaborating a protocol for investigating such cases. In October 2012, the attorney general's office established a Context and Analysis Unit to analyze where gross human rights violations occurred and to identify command responsibility. Cases of conflict-related sexual violence are among its priorities. Yet the attorney general's office has not been able to complete the prosecutions of 183 cases of sexual violence against women and girls that the Constitutional Court of Colombia ordered it to investigate without delay in 2008. Similarly, in the DRC, in spite of reported progress, much more commitment is needed to ensure that the judicial institutions tasked with prosecuting sexual violence have enough capacity, resources, and authority to do so. (As discussed later, increasing the number of female judges, lawyers, prosecutors, and police officers may help address some of the obstacles outlined above.)

The tribunals have played an immensely useful role in advancing international recognition for gender-based crimes. Both the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda (ICTR) have recognized sexual violence, including rape, as acts of torture and crimes against humanity. One landmark case involved the prosecution of Jean-Paul Akayesu, who had been mayor of Taba during the Rwandan genocide in 1994. Akayesu was accused of not only failing to stop the killings while he was responsible for maintaining order, but also of personally supervising the murder of various Tutsis and of ordering house-to-house searches to locate Tutsis. He stood trial for 15 counts of genocide, crimes against humanity, and violations of the Geneva Convention and was found guilty of nine counts of genocide and crimes against humanity. In his case, the ICTR judgment recognized that sexual violence is not limited to physical invasion of the human body, sexual violence may include acts that do not involve penetration or even physical contact, and found that rape and sexual assault “constitute acts of genocide

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insofar as they were committed with the intent to destroy, in whole or in part, a targeted group.” The judgment further stated that the rapes perpetrated against Tutsi women, for which Akayesu was tried, “resulted in physical and psychological destruction of Tutsi women, their families and their communities. Sexual violence was an integral part of the process of destruction.”¹²

The International Criminal Court (ICC) is the world’s first permanent body able to hold individuals criminally responsible for genocide, crimes against humanity, and war crimes. The 1998 Rome Statute,¹³ the international treaty that established the ICC, recognizes serious crimes of violence against women such as rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, gender-based persecutions, trafficking, and other forms of sexual and gender-based violence as war crimes, crimes against humanity, and in some instances as acts of genocide. As a result, each case brought before the ICC can include gender-based crimes. Notably, as of February 2013, charges for gender-based crimes have been brought in six of the seven situations that are under consideration of the ICC: Uganda, the DRC, the Central African Republic, Darfur, Kenya, and Côte d’Ivoire. No charges for gender-based crimes have yet been brought in the Libya situation, although the ICC’s Office of the Prosecutor has indicated that investigations into sexual violence in Libya are ongoing. Of the 29 individual suspects and accused who have been charged by the ICC, 16 have been charged with crimes of gender-based violence, a proportion of just over 55 percent. This indicates a positive trend toward a greater recognition of women’s experience of conflict and repression.

Reparations

Most victims’ primary desire is to see the perpetrators apprehended and brought to justice. However, victims have reported that this will not be enough unless they can live free from fear of violence’s recurrence—free of the breakdown of law and order that put them in harm’s way in the first place—and unless they are offered the medical, social, psychological, and material support they need to face the consequences of the harms they have suffered.

The concept of remedies encompasses the right to equal and effective access to justice and to adequate, effective, and prompt reparation for the harm suffered. Reparations are a recognized right. However, survivors and their families have often unintentionally been neglected. A number of resources are invested to equip states

with the means and capacities to apprehend and try perpetrators, but this is not balanced with efforts to ensure appropriate and adequate reparations for the victims. While this is true for all victims, it has a particular bearing on women and girls given that the harms they have suffered and the consequences of those harms grow from structural discrimination and disempowerment.

Ensuring that reparations are just and adequate requires a full understanding of the gendered nature and consequences of the harm suffered, as well as of how gender must come to bear in operationalizing reparations in a way that does not exclude, marginalize, or penalize women. Regardless of whether reparations are ordered by courts or are part of an administrative program, a number of general principles and programmatic guidelines should be kept in mind to this end.

First, women's genuine and informed participation in designing and delivering reparations is crucial. Only victims can determine what forms of reparation are best suited to their situations, what is culturally appropriate and does not expose them to further harm and victimization, what can lead to reconciliation, and what has the potential to address the underlying causes that made them vulnerable in the first place. Ensuring meaningful participation requires an investment of time and resources to reach out to victims and overcome obstacles such as risks of exposure and related stigma or retaliation, poverty, and the physical and mental health consequences of the violence suffered.

Second, reparations should be guided by the imperative to ensure an adequate and gender-sensitive assessment of the harm suffered. For instance, in the DRC, women interviewed by the High Level Panel noted that apart from the physical and psychological consequences of sexual violence, they had also been stigmatized and ostracized from their families and communities, had lost access to their livelihoods, had become the sole breadwinner, and faced enormous difficulties in providing for themselves and their children.

Third, reparations should be guided by the aspiration to transform the structural conditions within society that allowed the violence to happen. Priority should therefore be given to reparations and material benefits that could help enhance women's autonomy and create opportunities traditionally denied to them, such as meaningful employment, education, skill training, and access to land titles. *Guarantees of non-repetition*—a legal term that refers to a form of reparation—offer great potential for transforming gender relations. Doing so may require legislative and

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In Mauxiga, a village in Timor-Leste, the Commission for Reception, Truth, and Reconciliation successfully encouraged hundreds of women to come forward and testify about systematic sexual abuse. The villagers then chose to organize the commemoration of events in 1983 that saw hundreds of politically motivated killings, thousands of men imprisoned on the island of Atauro, and hundreds of women systematically raped in a schoolhouse where they were detained. However, during the commemoration itself, the women who actually brought the whole story of Mauxiga to the commission stayed in the background cooking for the event. Later, when names of the “heroes of Mauxiga” were read out, they were all men.¹⁴

institutional reforms to prevent, for example, the army or police from engaging in sexual violence, including better vetting, oversight, and training.

For reparations to be gender-sensitive and transformative, complex programs are required, providing for a combination and interplay of different forms of reparation (restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition), as well as of material and symbolic, and individual and collective reparations. In contemplating the forms of reparations, deciding bodies must take into account existing obstacles and challenges women may face in owning land or receiving and managing money. Symbolic reparations, such as measures of satisfaction, should pay attention not to reinforce negative stereotypes (see sidebar).

Finally, reparation processes should be inclusive and involve conscious efforts to avoid directly or indirectly marginalizing women. The process should allow women and girls to come forward when they are ready. Eligibility standards should ensure inclusiveness and avoid revictimization. For example, documentation required for restitution should take into account greater difficulties faced by women in proving property titles. General rules of evidence should include mechanisms to balance the rigidity of the burden and standard of proof with suitable presumptions.

In practice, reparation programs have not been funded fully enough to transform victims’ lives. Court-ordered reparations are too often at least partly ignored. Since 2006, for instance, military courts and tribunals in the DRC have awarded damages to perhaps hundreds of victims of sexual violence, but no victims have yet received compensation. States often argue that they lack adequate resources for comprehensive reparation programs or that the states themselves should not be held responsible for the actions of individuals in other states or armed groups. But they must fulfill their duty under international law.

Truth and Reconciliation Commissions

Efforts to uncover the truth about past human rights violations have not always been sensitive to gender issues. This is in part due to truth and reconciliation commissions and similar bodies’ mandates, compositions, and methods of operation. In recent years, however, recognition has been growing that these bodies must take specific measures to ensure they fully take into account women’s and girls’ experiences. For instance, reports from the truth and reconciliation commissions in Sierra Leone,

Timor Leste, Peru, and Guatemala have explicitly acknowledged the serious harm that women and girls suffered from conflict-related sexual violence.

But considerable challenges remain. In the 10 such commissions opened between 2000 and 2003, on average only 23 percent of the commissioners were women. In the 12 opened since 2004, women made up 28 percent.¹⁵ From 2004 to 2012, 12 truth commissions were established.¹⁶ Of those, only explicitly included provisions on sexual and gender-based crimes in their mandates. One called for dedicated gender and children's experts to be part of the commission (Liberia) and another for a special services unit to include gender issues (Kenya). Of the 7 commissions among the 12 with publicly available outcome reports, 5 (71 percent) included gender-specific recommendations.

As with reparations, truth and reconciliation commissions must make specific efforts to encourage and facilitate women's full and meaningful participation. Such measures must take into account all procedural factors that may hinder or discourage participation, such as lack of measures to ensure confidentiality, poverty, illiteracy, mobility limitations, and relevant cultural and societal norms. For instance, the South African Truth and Reconciliation Commission found that women downplayed or remained silent about their own suffering, particularly sexual violence. It then decided to take special steps to encourage women to testify, including holding three special women's hearings. In its final report, the commission discussed how these hearings brought to light the particularly gendered ways in which women experienced human rights violations and furthered the process by which the "commissioners distinguished less and less between what were originally perceived as 'primary' and 'secondary' victims."¹⁷

Institutional Reforms

After conflict, as states and international actors are reforming the security sector, they should take the opportunity to strengthen the transparency, accountability, and professionalism of the security apparatus and to make it more aware of gender. Doing so enables women to have greater access to justice and strengthens accountability for gender-based crimes. Security sector reform should include efforts to strengthen the capacity of security sector agents to understand how sex and other factors can influence security threats and to help remove gender biases. Women, girls, men, and boys have different security experiences and priorities. Reforms should involve

if perpetrators are placed in positions of authority, victims are not only humiliated, but it also sends the message that violence against women is socially acceptable, discourages victims from coming forward, and possibly exposes other women and girls to violence

building the needed skills within security sector institutions to respond to these varied experiences as they investigate, gather intelligence, and treat witnesses, victims, and suspects. As necessary, new structures may be needed to address and prevent gender-based violence. Internal and external oversight may be needed to increase institutional accountability on gender. Security sector reform can be an opportunity to ensure there are enough women in the security forces, which in turn encourages higher rates of reporting of incidents of gender-based violence and improves gender-sensitive treatment of female witnesses, victims, and suspects.

The disarmament, demobilization, and reintegration of former armed combatants, which often follows a peace agreement, are closely linked to security sector reform. Former combatants are often encouraged to transition into security forces. Vetting ex-combatants applying for security jobs should include appropriate checks to disqualify known perpetrators of sexual and gender-based violence. This alone can offer some satisfaction to victims who cannot achieve a prosecution or a conviction. If this is not done, and if these perpetrators are placed in positions of authority, victims are not only humiliated, but it also sends the message that violence against women is socially acceptable, discourages victims from coming forward, and possibly exposes other women and girls to violence.

Women must participate fully in reforming laws and institutions and must be adequately represented in legislative assemblies and governments. This helps ensure full recognition of women's rights and gender equality. The public and international community often pay attention to whether women will be in positions of power and able to make decisions in the future political systems—parliaments, ministries, security sector institutions, and the like—of countries emerging from conflict. But there has been less discussion about how discrimination in other spheres of life prevents women's effective participation in public life. Affirmative action measures, such as quotas, to correct imbalances in gender representation as provided for in the Convention on the Elimination of Discrimination against Women will be important in achieving gender equality, but will not suffice unless measures are taken to eliminate negative stereotypes about women's role in society and to promote women's substantive equality in fields such as education and access to property and productive resources. Strategies to expand women's participation must be grounded in recognition of women's right to participate in public affairs on an equal footing

with men and of the state's obligation to dismantle obstacles to such full and equal participation, including illiteracy, poverty, discrimination, and violence.

International, regional, and national human rights protection systems, especially mechanisms to advance women's rights and eliminate discrimination, are crucial to guide states and the international community in their efforts to build just and equitable societies and to hold states accountable to their obligations toward women and girls.

Conclusion

Accountability for wartime actions includes a broad range of actions, including measures to overcome perpetrators' impunity and promote women's access to justice, adequate recognition and consideration of women's and girls' experiences in efforts to uncover the truth, gender-sensitive reparation programs, and institutional and legal reforms to avoid future violations of the rights of women and girls.

If impunity is to be tackled, coherent, comprehensive, and sustained efforts and resources are needed to reform discriminatory legal frameworks and ensure gender-responsive and unbiased law enforcement and judicial institutions and processes. If reparations for women and girls are to be just, legal and institutional frameworks and processes must be put in place and must be adequately financed so as to guarantee that women can access them and that the harm inflicted on them is fairly assessed. Preventing recurrence of violations against women and girls requires seizing the opportunity that societies emerging from conflict and instability present to develop and institutionalize legislative, policy, and other measures to advance human rights and to overcome deeply rooted patriarchal customs and norms. A genuine commitment by the state to tackle all the above should be the measure of accountability.

Women and girls should be seen not only as those to whom accountability is due, but also as those who help create and carry out the accountability processes. Women's agency, including that of victims of gender-based crimes, should be acknowledged and actively promoted. The best accountability measures for women and girls affected by conflict, political strife, and instability will be designed and implemented with their active participation.

Notes

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right: Madam Fenella Khellah is a police adviser from Sierra Leone and officer in charge of the family and child protection unit "Sector North," North Darfur (UNAMID/Sojoud Elgarrai)





14. Women, Conflict, and Trafficking: Building a World Free of Slavery

By Luis CdeBaca

Today, I want to discuss an issue that . . . ought to concern every person, because it is a debasement of our common humanity. It ought to concern every community, because it tears at our social fabric. It ought to concern every business, because it distorts markets. It ought to concern every nation, because it endangers public health and fuels violence and organized crime. I'm talking about the injustice, the outrage, of human trafficking, which must be called by its true name—modern slavery.

—President Barack Obama

IN HIS SPEECH TO THE CLINTON GLOBAL INITIATIVE in September 2012, President Barack Obama called trafficking in persons “one of the great human rights causes of our time.” Like many other human rights issues, this form of modern slavery weighs heavily on vulnerable and marginalized communities, especially women, who become more vulnerable in times of upheaval, scarcity, and conflict. As with so many other challenges—from promoting broad economic opportunity to spreading peace and stability to finding sustainable sources of food and energy—women are a critical part of the solution.

A major challenge to American diplomacy in the struggle to combat modern slavery—what we call trafficking in persons—has been persuading governments to look at this issue for what it is first and foremost: a crime. According to the standards established in the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (the Palermo Protocol),¹

left: Girl stands on outskirts of camp for internally displaced persons outside of Belet Weyne, Somalia (United Nations/Tobin Jones)

trafficking in persons should be regarded as a serious crime, meriting punishment commensurate with those of other serious crimes such as rape or kidnapping. Because it is a crime by international standards, governments are on the hook. Only governments can arrest and prosecute suspected criminals. Only governments can incarcerate convicts. Only governments can provide legal recourse for victims.

Through its Trafficking Victims Protection Act,² the United States is committed to meeting this challenge according to the international framework established in Palermo. Around the world, we are pushing the idea that, as Secretary of State John Kerry stated during the release of the 2012 *Trafficking in Persons Report*,³ “every government is responsible for dealing with it, and no government is yet doing enough.”

Normalizing this idea has taken time. As with domestic violence or sexual abuse, many governments, when confronted with this issue a decade ago, took the position that trafficking in persons simply was not a problem in their countries. It simply did not exist, and the absence of an antitrafficking law or support structures for victims merely reflected the absence of the problem in the first place—despite the fact that research dating to the beginning of the antitrafficking movement has verified that modern slavery affects every country. Women abused in factories, brothels, and private homes were classified as anything other than trafficking victims to avoid calling what was happening to them slavery.

Fortunately, we have made a great deal of progress on this front. Since the Palermo Protocol was written 13 years ago, more than 150 countries have become party. Nearly as many have adopted modern, comprehensive antitrafficking laws that treat modern slavery with the gravity it deserves. Only in a few outlying places do our ongoing diplomatic efforts still require us to start with the baseline idea that trafficking is a crime that affects all countries and that all governments are responsible for responding to it. Governments around the world have built the legal framework necessary for addressing this problem, and we are seeing more victims identified and more convictions year after year.

These successes are modest; data from governments tell us that roughly 46,000 victims⁴ were brought to light last year for a crime that victimizes 27 million,⁵ according to estimates from leading social scientists. Yet any measure of success is meaningful. Each victim identified can become another survivor free to move ahead with the life she or he chooses. More broadly, as legal structures around the world

gain momentum driven by the political will of committed governments, it enables the rest of the antitrafficking movement to focus on other aspects of modern slavery.

Targeting Victims in Vulnerable Circumstances

While trafficking in persons is first and foremost a crime, it is many other things as well. Traffickers target vulnerable populations and operate in zones of impunity where the light of the law does not shine. Wherever we find vulnerable populations—people whose communities struggle under the weight of poverty or whose countries have been ravaged by war, a migrant group crossing borders in desperate search for stable employment, or agricultural workers in a country where labor protections are weak—we find areas where trafficking is likely to occur. So we need to view trafficking as cross-cutting: a migration issue and a labor issue, a development issue and a health issue, a peace and security issue, and certainly a women’s issue.

The little hard data we have about trafficking in persons tell us that this crime disproportionately victimizes women. Sectors in which trafficking is a major problem, whether domestic work or commercial sex, are sectors overwhelmingly made up of women. In recent years, we have seen a trend called the “feminization of migration.” The composition of massive migrant populations—particularly in southeast Asia—has been shifting, becoming overwhelmingly women and girls.

But we do not even need the data to tell us why trafficking in persons and women’s issues are so closely linked. Many of the most brutal practices women face in conflict situations are, in fact, cases of modern slavery. Even as the Rome Statute and the Palermo Protocol were being negotiated, prosecutors at the International Criminal Tribunal for the Former Yugoslavia were bringing the first mass sexual slavery prosecution in an international court. Today, we hear of the use of rape as a weapon of war in the eastern Congo, a brutal form of slavery in which village women and their children are kidnapped en masse to serve as porters and to cook, clean, and submit to their captors’ sexual demands.

What is happening in Congo is hardly new. During the Sudan conflict, Dinka women and girls were captured and used as domestic slaves in Khartoum and elsewhere. During the conflicts in Rwanda, Sierra Leone, and South Sudan, various combatant groups kidnapped and enslaved children as cooks, porters, concubines, and combatants, and forcibly prostituted girls and women or sold them to people in wealthier countries for use as domestic slaves.

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Second-Class Citizens

Of course, human trafficking affects civilian security even outside war zones. Too many women and girls around the world continue to live in a state of official limbo, dependent on their husbands or fathers for legal status, reduced to chattel who can be easily sold for profit or given in satisfaction for a family debt. In far too many places, even when they do have legal rights, women and girls remain second-class citizens, cast to the margins of society with no education, no economic opportunity, no voice in government. Those are the vulnerabilities that traffickers prey on. So long as women still struggle for equality and opportunity, so long as women and girls still leave home in search of a better life for themselves and their families, so long as regions are thrown into upheaval in times of conflict, modern slavery will remain a threat, whether it manifests in the sex industry or in otherwise valid forms of labor.

On the other hand, when women are able to live as full participants in their societies—contributing to their economies and playing a role in open and responsive governments—their actions create ripple effects that strike at the root causes of modern slavery and the conditions that allow it to thrive: poverty, inequality, and lack of opportunity.

Trafficking Linked to Status

Two broad areas illustrate why our efforts to eradicate modern slavery and our efforts to advance the lives of women and girls, including in securing peace, should be closely coordinated.

First, by grappling with modern slavery where it already victimizes women and girls, we are taking an initial step toward all the other ways we want to help them lead fuller, more productive lives. If women are involved in helping to define the terms of peace and prosperity, they are more likely to help set terms that protect girls and women from the circumstances that leave them vulnerable to trafficking.

We know that education and economic opportunity are key to helping women and girls. When women can act as full participants in their economy—whether starting up a business or getting simple equipment to irrigate a farm year-round—they will be better able to provide for themselves and their families. They will also make bigger contributions to their countries' economies, spreading prosperity and helping to lift entire populations.

We also know that when women are able to participate in government and have a voice in choosing their leaders, governments will become more transparent, accountable, and responsive. Full participation of women and girls in their societies is an important aim of our work on this issue, and we want all women to enjoy that freedom—to choose for themselves the lives they want to lead.

When modern slavery victimizes women, however, those choices are out of reach for them, even in countries where there are no legal obstacles to going to school or opening a shop or casting a ballot. As we work to promote all the other freedoms women and girls should enjoy and be allowed to exercise, freedom from enslavement must be the baseline.

The “3Ps” of Fighting Modern Slavery

Antitrafficking efforts around the world are guided by what we call the victim-centered approach following the “3Ps” of fighting modern slavery: prosecution, protection, and prevention. Fighting modern slavery requires us to bring traffickers to justice—prosecution. Just as important is getting victims out of harm’s way, providing them the support and services they need, and helping them get their lives back on track—protection. For women and girls who are exploited in modern slavery, this process, if done well, puts them back in a position to choose their own paths forward.

From that point—recovery and rehabilitation—many other elements of our agenda for women and girls come into play. Once a woman has recovered from her experience, will she be able to find a job? Once a girl escapes the horrors she has endured, will there be a classroom and a community where she will feel at home? Once a victim becomes a survivor, will there be a transparent and responsive government where she can advocate for the rights of other victims? All this is more likely when women are full participants in creating the peace, building civil society, and taking part in legislatures and governments.

These questions help illustrate a second connection between antitrafficking efforts and women’s postconflict issues more broadly. While it is clear that prosecution and protection are critical to strengthening the basic rights of women and girls, it is when our other priorities for women and girls are succeeding that we will also see progress on the third P—prevention.

Targeted trafficking prevention measures have been effective in warning men and women around the world about the risks of modern slavery—like the so-called

Wilberforce Pamphlet that the U.S. Department of State gives to all work visa applicants, which explains their rights when they come to our country and what to do if they find themselves in a situation of exploitation.⁶ Such efforts to change the power dynamic between sponsor and guest worker are important especially when focused on populations that are disproportionately exploited, such as migrant domestic workers or women in prostitution.

But those efforts can only do so much in stopping a crime that has persisted for millennia. As we know from history, conflict has long been a source of slavery, with conquered peoples being enslaved. However illegal, this still continues. At the end of the day, slavery will find its way into any vulnerable group—especially those who live amid danger and upheaval because of conflict, who are willing to take a risk to pursue an opportunity, who have no choice but to leave home in search of a better life, or who believe the promises of a charismatic recruiter.

When women and girls are given a chance to succeed, it strikes at a root cause of modern slavery. When governments stand up for all their citizens and support the rule of law, it sends a message that this type of exploitation will not be tolerated. The more progress we make on educational, economic, and political opportunities for women and girls in and out of conflict situations, the more the vulnerabilities—the imbalance of power and information and status—that create the risk of trafficking will fall away.

Ending Modern Slavery

That outcome—prevention of trafficking in persons—shows how raising the status of women and girls within their societies has ripple effects far and wide. Women's issues are inextricably tied to modern slavery and also to the host of other complex challenges that shape the global landscape of the 21st century: peace and security, yes, but also the environment and climate change, sustainable food and energy sources, maternal health and infant mortality. These issues are interconnected, so when we grapple with one of them, we are grappling with all of them.

These issues demand our focus because it is the right thing to do. The United States believes in the fundamental rights and dignity of all people—freedom and opportunity for men and women to choose their own paths and live up to their potential. A world in which women are treated equally and slavery is a thing of the past is a world that is more inclusive, vibrant, and just for everyone.

right: Farahi girl waits to receive assistance during visit to her village by Provincial Reconstruction Team Farah, February 2013 (U.S. Navy/Matthew Stroup)



As former Secretary of State Hillary Rodham Clinton often stated, dealing with these issues is the smart thing to do. Because when we do, we are helping project peace and stability across regions and around the world. We are building stronger partners on the world stage and helping men and women live fuller, healthier, and more productive lives. We are strengthening our own security, and advancing our country's interests.

At the Clinton Global Initiative, President Obama recognized survivor Ima Matul. Once enslaved as a domestic servant in California, wondering if anyone knew or cared about what happened to her, she is now a strong voice demanding that we hold a light to this issue, that we come to the aid of those who are exploited and punish those responsible. There are many others like Ima—victims who have become survivors, insistent that no one else endure what they have endured. In that speech, and through the policies and commitments of the Obama administration, we are sending a message that we have heard Ima's voice and the voices of so many others—that we will keep pushing forward until we build a world in which every girl believes in her own worth and is free to pursue her own dreams. For them, we can—*we must*—imagine a world free from slavery.

Notes

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