



What Will It Take to Punish Perpetrators of Mass War-Time Rapes?

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Wars and civil wars are often marked by horrific episodes of mass rape – such as those directed against Rohingya women in Burma – as well as by kidnappings for sexual slavery as perpetrated by Islamic State and Boko Haram militants during civil wars in Syria and Nigeria. Almost no one is ever convicted for such violations, and no country has ever mounted an international intervention specifically to protect women's human rights in such episodes. To date, world leaders seem helpless to stop increasingly open and aggressive sexual violence. This is true, even though governments have sometimes cited mass rapes to further legitimize military campaigns against the perpetrators that were already under way for other reasons – as did U.S. President George W. Bush when he pointed to Saddam Hussein's alleged "rape rooms" to help justify the U.S. invasion of Iraq.

Impunity for Wartime Rapists

The London Summit of 2014 increased worldwide public awareness about wartime rapes usually targeted at women and girls. Grassroots activists work with transnational human rights organizations such as Amnesty International and Human Rights Watch to amass country-specific information on sexual violence and demand accountability from governments. Their efforts are positive steps, but insufficient. Condemnation alone has not stopped mass rape. For example, newspaper and television stories, reports from human rights watchdog organizations, and resolutions by the U.N. General Assembly all condemned the political use of rape by ethnic Serbs in Bosnia-Herzegovina in the early 1990s. But none of these condemnations prevented Serbian soldiers and paramilitaries from using similar rape warfare tactics against ethnic Albanian women and girls in Kosovo in 1999.

As Thomas Hobbes put it in the mid-1600s, "covenants, without the sword, are but words, and of no strength to secure a man at all." Unfortunately, even today, international laws about rapes during conflicts – and domestic laws as well – have lacked the backing of the proverbial sword of justice. Whether in war or peacetime, no legal code permits rape, but the international community and individual nations have mostly been unwilling to prosecute such crimes during wars and civil conflicts. The end result has been near-complete impunity for wartime rapists.

Telling Case Studies

My research includes a number of case studies of mass rape during ethno-religious conflicts – including episodes in Bangladesh; Cambodia; Guatemala; Peru; Bosnia-Herzegovina; Rwanda; and India. I assess patterns and the scope of rape in these conflicts, and examine the miniscule numbers of convictions that courts and tribunals were able to secure for the rapists in the aftermath.

Bangladesh, Cambodia, Bosnia-Herzegovina, and Rwanda have tried or are trying perpetrators of sexual violence through international tribunals. But these processes have been expensive -- and ineffective, even though hundreds of thousands, perhaps even a million, rapes took place in the combined civil war conflicts experienced by all of these countries taken together. Only a couple hundred sexual violence cases across all of these countries ever actually appeared before an international tribunal, and the number of convictions was, of course, even lower. The total number of rapes or other episodes of sexual violence in these countries that went to any sort of trial is approximately seven thousand.

When trials have happened, most have not been in any international court but in Rwanda's informal *gacaca*, or "justice on the lawn," courts. A small number of trials happened in the national courts of Bosnia-Herzegovina.

The percentage of convictions in the seven thousand trials is unknown, but when at most a few thousand convictions happen in response to many hundreds of thousands of rapes, the unintended message militants around the world hear is that they can get away with using mass rape as a weapon.

If the record provokes despair about the value of international law in convicting wartime rapists, my case studies show that national courts are no better, as revealed by events in India, Peru, and Guatemala where advocates have used the national court system to try to win justice for survivors of mass rape. Guatemala and Peru have each convicted just two of the men determined to have committed rapes in those countries' protracted, Cold War-era "dirty wars." In India, only a few men have been found guilty of rape during the 2002 communal violence in Gujarat, where throngs of Hindu-nationalist men gang-raped hundreds of Muslim women, most of whom they burned to death immediately thereafter. Such incineration, a Hindu funerary ritual, precluded Muslim burials – and also destroyed forensic evidence, which in India is necessary to prosecute most instances of rape.

In sum, one may count on one's hands the total number of men found guilty of raping during the riots in Gujarat, India and the wars in Guatemala and Peru combined, even though these instances were massive in scope and happened fifteen to forty years ago, plenty of time for justice to be accomplished if any were to happen.

What Can Be Done?

At present, legal covenants, whether domestic or international, are clearly an ineffective deterrent to rapes during wars and civil conflicts – in large part because no one enforces the legal prohibitions in any systematic way. The question of what might be a better deterrent is a subject for much-needed discussion. As Hobbes would suggest, "the sword," or military might, is clearly required to ensure justice for perpetrators of these horrendous offenses, because the law – words on paper – becomes meaningless without legitimate force to back it up.

Very possibly, the international community and post-conflict nations will need to refocus their efforts, perhaps on holding the top political and military leaders in command during mass rapes personally to account. In addition, it might make sense to start holding responsible those who, in the aftermath of conflicts where mass rapes happen, fail to use their authority to implement justice for rape law violations. Lack of due diligence in implementing rape laws, both international and domestic, may itself need to come under the sword of justice.

Read more in Lisa Sharlach, "Rape as Social Policy," in *Global Encyclopedia of Public Administration, Public Policy, and Governance*, edited by Ali Farazmand (Springer, 2016).