

THE EFFECTS OF EXCLUDING MEN FROM INTERNATIONAL AND REGIONAL INSTRUMENTS OF PROTECTION ON SEXUAL VIOLENCE

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Abstract

This paper examines International and regional instrument available for the protection and prohibition of Sexual and gender-based violence within the International community. The paper argues that though there are a lot of conventions and resolutions adopted by the International community through operations of the United Nations on issues of sexual and gender crimes, but that the adopted legal instruments ranging from the Geneva Convention to the latter resolutions by the United Nations General Assembly all tends to pay concentrated attention to violence against women and girls. The paper stresses that of all the instruments of protection available both at the international and regional levels none of them specifically paid attention to men or boys as likely victims of sexual and gender based violence especially during armed conflicts. The paper further captures some major negative effects of excluding men as entities that requires protection by available instruments both regional and international. The paper therefore concluded by calling on the International Community particularly the United Nations to deliberately use gender specific language in including men and boy into legal instruments of protection as potential victims of sexual and gender violence.

Key Words: Sexual, International, Regional, Violence, Geneva, Conventions

I. Introduction

There are so many international and regional instruments that deals with the prohibition of sexual violence both in armed conflict and non- conflict situations. Most of the extant and available instruments on the subject matter, either focuses attention on sexual violence on a general term, employing gender neutral language or on the other hand strictly focusing on female sexual violence projecting women as the likely victims of sexual and gender-based crimes without any form of recourse to the plights and sufferings of men. Based on this age long traditional perspective and lack of the acknowledgment that men can be raped or become victims of sexual violation. It must be established that male sexual violence are largely unreported and unprosecuted. Owing to the belief that men ought to be protectors of women and not to be protected from violence. They are therefore either not included in protection instruments at all or included but not with a specific mention with clarity of language. Only a few recent instruments and conventions make reference to male directed sexual violence.

This paper argues that rape and other forms of sexual violence has developed over the years, starting from the mid-nineteenth century stressing that little nothing has been done in terms of implementation and enforcement of the extant laws both at the

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international and regional levels in prohibiting sexual violence against men and women.¹

II. A Review of International and Regional Instruments on Sexual and Gender-Based Violence

1. The Geneva Conventions of 1949

The Geneva Conventions historically as it were is about the very first international legal instrument to recognize and make provision for the protection women against sexual and gender based violence in armed conflict. The Geneva Convention was established with the help of the International Committee of the Red Cross, which was birthed as a result of the widespread abuse and violation of human rights during the Second World War. Out of the four Geneva Conventions adopted as a result of World War II, it is only the fourth Geneva Convention as it were that contains an explicit prohibition of rape in its Article 27, which provides that: ‘Women shall be especially protected against any attack on their honor, in particular against rape, enforced prostitution, or any form of indecent assault’.²

The scope and wordings of Article 27 is expressly and strictly limited to women as victims of sexual and gender based violence and this has a tendency to bring back harmful stereotypes, including that a raped woman is ‘disgraced’ and that rape is a crime against honor.³ A look at Article 147 of the same Fourth Convention gives an understanding of what constitutes grave breaches of the convention, but expressly failed to include rape and sexual assault as part of it. This may not be far from the fact that in Geneva Convention IV, rape is included in the list of sexual violence not as a category of rights protecting a person’s integrity but to the provision offering protection for family rights. Although rape could be explained as falling within Article 147 relating to the prohibition on grave breach of inhuman treatment, it must be stated that explicit recognition of rape as a grave breach is absent from the convention.

However, Article 14 of the Third Convention engaged the use of sex neutral

¹ Dustin A. Lewis, ‘Unrecognized Victims: Sexual Violence against Men in Conflict Settings under International Law’ (2009) vol. 27 *Conflict and Sexual Violence against Men* No.1 p.17.

² Laetitia Ruiz, ‘Gender Jurisprudence for Gender Crimes?’ (June 2016) *International Crimes Database* available at www.internationalcrimesdatabase.org accessed 13 August 2019.

³ Dustin A. Lewis, *Unrecognized Victims: Sexual Violence against Men in Conflict Settings under International Law* (2009) vol. 27, *Wisconsin International Law Journal*, p. 23.

language and does not expressly prohibit rape as a crime, it provides that prisoners of war are in all circumstances entitled to ‘respect for their persons and their honor’.⁴ It must however be noted that both the 3rd and fourth Geneva Conventions, none made reference in any way to men as entities requires protection whatsoever.

It must also be stated that Common Article 3 to the Geneva Conventions provides protection from rape to civilians in times of armed conflict – but this fact was not so provided explicitly, it only mentions rape with women in view as the object of protection. Another point worthy of attention is the clause on non-discrimination based on sex, contained in the same article which implies that the obligation to treat persons not taking an active part in hostilities must be done humanely without any distinction based on, among others, sex, and the assumption should be that it encompasses both men and women.⁵

The 1977 Additional Protocols to the 1949 Geneva Convention in addition further enhanced protection against sexual violence in conflict settings, it failed however, to explicitly mention men as targets for rape and other forms of sexual abuses but it does not focus on the men folk in any way as potential victims of sexual violence and does not make them visible members of the group in need of protection.⁶ Article 7 of Protocol I employs sex-neutral language in prohibiting ‘outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault’.⁷ Article 76 of the same protocol on the other hand, out rightly prohibits rape against women in very clear terms.⁸

The second Additional Protocol to the Geneva Conventions (AP II) uses a different language in its provision on the prohibition of rape. Rather than targeting specifically women, AP II refers to the prohibition of rape against ‘persons’.⁹ This as it were may indicate a possible existence of male rape victims but it remains unclear the extent of its applicability. It should be noted that these protocols are still yet to be

⁴ The Third Geneva Convention, Article 14, first paragraph, 1949.

⁵ Latitia (n2)

⁶ Ibid.

⁷ Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), Geneva, 8 June 1977, 1125 UNTS 3 (entry into force 7 December 1978) Article 7.

⁸ Dustin (n3)

⁹ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), Geneva, 8 June 1977, 1125 UNTS 609 (entry into force 7 December 1978), Article 4(2)(e).

ratified universally for the purpose of application.¹⁰

2. The Lieber Code of 1863

Another useful instrument enacted for the prohibition, protection and punishment of the crime of gender violence is the Lieber Code, which was the first codification of customary international laws of land warfare, it provided explicitly for the protection against sexual violence.¹¹ During that time, rape during conflict was conceived as an inevitable and natural consequence of war. The Lieber Code prohibits rape in two major provisions. As can be clearly seen in Articles 37 and 44. While Article 37 gives women special protection by linking them to family honour relationship, It however provides that '[t]he United States acknowledges and protect women in hostile countries, offences to the contrary shall be rigorously punished'.¹² Article 44 on the other hand classifies rape and other forms of sexual violence as a crime of troop discipline, yet at the same time appears to recognize the violent character of rape. It further provides that:

All wanton violence committed against persons in the invaded country, all destruction of property not commanded by the authorized officer, all robbery, all pillage or sacking, even after taking place by the main force, all rape, wounding, maiming, or killing such inhabitants, are prohibited under the penalty of death, or such other severe punishments as may seem adequate for the gravity of the offense committed.¹³

It is instructive to note that at the time of the Lieber Code, rape existed in a world much different from the world of today. According to a Scholar, David S. Mitchell, in 1863, rape was 'closely associated with crimes of property rather than crimes against the person ... hence the phrase 'rape and pillage''. David Mitchell further asserts that 'at this stage (in 1863) rape remains a property crime perpetuated against a man's honor and ... it was rare to find rape reported as a crime against the person'.¹⁴ The Lieber Code nonetheless, used sex-neutral terminology, which may as

¹⁰ Catherine N Niarchos, *Women, War and Rape: Challenges Facing the International Tribunal for the Former Yugoslavia* (1995) 17 *Human Rights Quarterly* 649 at 676.

¹¹ Francis Lieber, 'Instructions for the Government of Armies of the United States in the Field' (April 24, 1863) reprinted in Francis Lieber's Code and the Law of War 45 (1983) [herein after Lieber Code].

¹² *Ibid*, art. 37.

¹³ *Ibid*, art. 44.

¹⁴ Dustin (n1) 21.

it were suggest that the prohibition of rape could be not only against women but also against men.¹⁵

3. **The Convention on the Elimination of Discrimination against Women (CEDAW) of 1979.**

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which was rightly adopted in 1979 is yet another important extant instrument for the protection of victims of sexual and gender-based violence and also its serves as the most extensive international instrument dealing with the rights of women.¹⁶ With the adoption of General Recommendation 19 by the CEDAW Committee in 1992, the definition of discrimination against women set out in Article 1 of the Convention includes ‘gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately.

The Convention makes provision for acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.¹⁷ The Convention further provides for remedies for violence against women, including sexual violence;¹⁸ the vulnerability of men as victims is out rightly ignored by the convention. The convention calls on states to issue reports which ‘include all available data on the incidence of each form of violence and on the effects of such violence on the women, who are victims’.¹⁹

However, the CEDAW’s Committee through its General Recommendation No. 24, makes brief reference to adolescent males on states obligation to provide sex education. It provides that ‘... In particular, states parties should ensure the rights of female and male adolescents to sexual and reproductive health education by properly training personnel in specially designed programmes that respect their right to privacy and confidentiality’.²⁰ In terms of sexual violence against men and boys in armed conflict, they are completely excluded from the provisions and recommendations of the Committee on the Elimination of Discrimination against Women (CEDAW). It provides mainly for the protection of women and girls from violence, and little or no

¹⁵ Ibid.

¹⁶ Convention on the Elimination of All Forms of Discrimination against Women art.17. December 18, 1979, 1249 U.N.T.S. 13.

¹⁷ UN Committee on the Elimination of Discrimination against Women, General Recommendation 19: *Violence Against Women*, 6 UN Doc. A/47/38 (Jan 29, 1992).

¹⁸ Ibid 24.

¹⁹ Ibid 24(u).

²⁰ Committee on the Elimination of Discrimination against Women, General Recommendation 24: *Women and Health*, art 12(1) 18 UN Doc A/54/38/Rev. 1 ch. 1 (Feb 5, 1999).

recourse is made to men and boys as potential victims of sexual violence, thereby making their recognition and visibility much difficult.

4. The African Charter on Human and Peoples' Rights (ACHPR) of 1981.

The African charter is also a useful instrument in the protection of the rights of victims of gender violence. African member States of the organization for African Unity (OAU) now the AU adopted the African Charter on Human and People's Rights (African Charter) in Nairobi in 1981. The Charter sets out not only rights, but also duties of African people as it affects the rights of other person and their respective countries. The Charter established the African Commission on Human and People's Rights, an institution mandated to promote and protect human rights on the continent. It recognizes and gives equal importance to the observance of civic and political rights as well as economic, social and cultural rights.²¹

As it relates to sexual violence and its prohibition, the African Charter has some provisions which prohibits discrimination and sexual violence, but what seems to be its major consideration, is that of crimes committed against women and girls. Any recognition given to men or boys is done in passing and no real recognition is accorded to the sufferings of the male gender in peace time or in conflict situations. *Article 5 of the African Charter* provides that:

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.²²

The above provision seems to have a general coverage, in the sense that it uses sex neutral language such as "every individual" and "man", when referring to the prohibition of all forms of exploitation and degradation persons suffer. Article 18(3) in the same light provides that:

The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of

²¹ National Human Rights Commission, "The African Charter on Human and People's Right' (2018) available at <<https://www.nigeriarights.gov.ng>> accessed August 19, 2019.

²² Article 5, African Charter on Human and People's Rights (1981), p.2.

the women and the child as stipulated in international declarations and conventions.²³

This provision only deals with the protection of women. There is no mention of men or their vulnerability as victims of sexual and gender crimes. In 2003, a Protocol to the African Charter on People's and Human Rights on the Rights of women in Africa was adopted by State parties. *Article 1(j)* defines what violence against women means and it defines it to mean ... all acts perpetrated against women which cause or could cause physical, sexual, psychological and economic harm...²⁴ Another provision of the same protocol provides that 'state parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures'.²⁵ *Article 4(2) (a)* of the Protocol also states that:

State parties shall take appropriate and effective measures to enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public.²⁶

Article 11(2) also provides for protection of women thus: 'state parties shall ... protect civilians including women, irrespective of the population to which they belong, in the event of armed conflict'.²⁷

In 2006, countries of the African Great Lakes Region agreed on a Protocol on the Prevention and Suppression of sexual violence against women and children, obliging them to prevent, criminalize and punish such acts.²⁸ In all of these provisions of the Charter, what seems clear is that, its major concern is on the protection of women and girls. It accords little or no recognition to the plights of men and boys, particularly as it relates to sexual violence committed against them in armed conflict. They are in fact not seen as victims but are seen as perpetrators of violence.

5. The UN Declaration on the Elimination of Violence against Women

²³ Article 18(3) African Charter on Human and People's Right (1981) p. 3.

²⁴ Article 1(j) Protocol to the African Charter on People's and Human Rights on the Rights of Women in Africa (2003)

²⁵ Article 2(1) Ibid.

²⁶ Ibid, Article 4(2) (a).

²⁷ Ibid, Article 11(2).

²⁸ Tom Hennessey and Felicity Gerry "International Human Rights Law and Sexual Violence Against Men in Conflict Zones" (2012) Halsbury's Law Exchange available at http://www.halsburyllawexchange.co.uk/wpcontent/uploads/sites/25/2012/policy_paper_sexual_violence_main.pdf

The Declaration on the Elimination of Violence against Women in the same vein provides for the protection of victims in respect to sexual and gender violence. This Declaration was adopted due to the urgent need for the universal application to women of the rights and principles with regard to equality, security, liberty, integrity and dignity of all human beings.²⁹ The provision of this declaration recognizes women in conflict settings as an especially vulnerable group, and it encompasses Gender-based violence in its definition of violence against women. *Article 1* provides that:

... the term ‘violence against women’ means any act of gender-based violence that results in or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.³⁰

Article 2 further provides an understanding of violence against women and it provides that it may include ‘physical, sexual and psychological violence occurring in the family’³¹ and also, it may include ‘psychical, sexual and psychological violence occurring within the general community, including rape, sexual abuse in educational institutions and elsewhere, trafficking in women and forced prostitution’.³² *Article 2(c)* explains it to mean ‘physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.’³³

This Declaration on the Elimination of Violence against Women adopted by the UNGA is majorly focused on the violence both sexual and otherwise suffered by women. It has just six articles and none of these articles mentions men as likely victims of gender crimes. This makes the recognition of men as victims of sexual violence in peace time or in conflict situations more difficult. With regard to violence, the U.N’s belated response was to frame sexual violence as women’s issue. The female-specific approach used by the UN can therefore be treated to its neglect of women’s issues.³⁴

²⁹ Declaration on the Elimination of Violence against Women, (Dec. 20, 1993) General Assembly Resolution 48/104, Preamble U. N. Doc. A/48/49.

³⁰ Ibid, Article 1.

³¹ Ibid, Article 2(a)

³² Ibid, Article 2(b)

³³ Ibid, Article 2(c)

³⁴ Lara Stemple, “Male Rape and Human Rights’ (Feb, 2009), p.627.

6. Resolutions of the UN Security Council on Sexual Violence

Aside from the above discussed international and regional instruments there are also several resolutions of the United Nations adopted with the aim of protecting victims of sexual and gender based violence. The Security Council is the UN's primary body for promoting International peace and security. The legal status of the Council's resolutions has not been conclusively agreed on, but they bring substantial international attention to an issue and provide a political framework that compels action by governments and International Organizations.³⁵ The sustained attention to violence against women in armed conflict has resulted in noteworthy resolutions by the United Nations Security Council and an examination of a series of such resolutions can tell us a great deal about the development of International discourse on a specific topic. Again in this resolution and other subsequent adopted examined in this paper only made reference to states putting measures in place in stopping and preventing sexual violence against women.³⁶

7. United Nations Security Council Resolution 1325

In 2000, the UN Security Council Resolution 1325 on Women, Peace and Security reaffirmed the Beijing Report's Commitments and specified that Women rights law to be extended to women during armed conflict and in the immediate aftermath of armed conflict. Resolution 1325 recognized 'the need to implement fully international humanitarian and women rights law that protects the rights of women and girls during and after conflicts.'³⁷ It further calls on "all the parties to an armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse,³⁸ and emphasized the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity and war crimes including those relating to sexual and other violence against women and girls...'.³⁹ The Resolution also called for increased representation of women at all decision making levels in national, regional and international institutions; mechanisms for the prevention,

³⁵ Note 8, supra.

³⁶ Ibid.

³⁷ Security Council Resolution 1325 (Oct. 31, 2000) Preamble. UN Doc S/RES/1325

³⁸ Ibid, 10.

³⁹ Ibid, 11.

management and resolution of conflict, and expansion of the roles and contributions of women in United Nations field operations.⁴⁰

The Resolution however, begins by ‘expressing concern that civilians, particularly women and children, account for the vast majority of those adversely affected by armed conflict,⁴¹ appearing therefore to include in its focus, the plight of boys. However, once sexual is addressed, more specifically, the language shifts by calling on all parties to armed conflict to take special measures to protect women and girls from gender-based violence....’ It is therefore difficult to discern whether it is a statement about the degree of impact on women and children or on all civilians, including men.⁴²

8. United Nations Security Council Resolution 1820

In June 2008, the Security Council unanimously passed the ground-breaking Resolution 1820, which gave specific recognition to the fact that sexual violence represents a threat to security, especially the security of the international community as a whole⁴³ The Resolution does not however provide a comprehensive understanding of sexual violence during armed conflict because it focuses on women and girls. No specific and explicit mention of men and boys is made at any point in the resolution, which is puzzling when taking into account that their experiences would undoubtedly contribute to better understanding the problem of sexual violence.⁴⁴

The Resolution noted that ‘women and girls are particularly targeted in that sexual violence is mainly used as a tool, including as a tactic of war to humiliate, dominate, instill fear in, disperse and/or forcibly relocate civilian members of a community or ethnic group,⁴⁵ and stressed that such violence can significantly exacerbate situations of armed conflict and may impede the restoration of international peace and security...’.⁴⁶ The Council demanded that:

All parties to armed conflict immediately take appropriate measures to

⁴⁰ Ibid 1-2, 4

⁴¹ Ibid, 15.

⁴² Lieber Code (n12)

⁴³ Rashida Manjoo & Calleighn McCaith, Gender-Based Violence and Justice in Conflict and Post Conflict Areas’ (2011) 44 *Cornea International Law Journal*.

⁴⁴ Laetitia Ruiz, ‘Gender Jurisprudence for Gender Crime’ (June 2016) 1 C D p.6.

⁴⁵ Security Council Resolution 1820 (June 19, 2008) Preamble, UN Doc. S/RES/1820.

⁴⁶ Ibid, 1.

protect civilians, including women and girls, from all forms of sexual violence, which could include, *inter alia*, enforcing appropriate military disciplinary measures and upholding the principle of command responsibility, training troops on the categorical prohibition of all forms of sexual violence against civilians, debunking myths that fuel sexual violence, vetting armed and security forces to take into account past actions of rape and other forms of sexual violence and evacuation of women and children under imminent threat of sexual violence to safety...⁴⁷

Noteworthy here, is the Council's statement that 'rape and other forms of sexual violence can constitute a war crime, a crime against humanity or a constitutive act with respect to genocide yet again there was no specific reference on men and boy as likely victims of gender violence needing any form of special attention or protection'.⁴⁸

1. United Nations Security Council Resolution 1888

In September 2009, the Security Council adopted Resolution 1888⁴⁹ which calls for the following:

- a. The appointment of a special Representative to provide leadership, strengthen existing UN coordination mechanisms, and advocate ending sexual violence against women with government including military and judicial representatives and with parties to armed conflicts.⁵⁰
- b. The creation of a team of experts, including specialists in areas such as the rule of law, judicial systems, criminal investigation and security sector reform to assist governments and peacemaking forces in coping with sexual violence in armed conflict, enhancing national capacity and strengthening rule of law and state authority to prevent impunity.⁵¹
- c. The appointment of women's protection advisers in peacekeeping missions.⁵²
- d. The provision of data and information about the prevalence of sexual violence in reports made by peacekeeping missions to the Security Council,⁵³ and

⁴⁷ Ibid, 3.

⁴⁸ Ibid, 4.

⁴⁹ Security Council adopted Resolution 1888 (Sept. 30, 2009) UN Doc. 8/RES/1888).

⁵⁰ Ibid, 4.

⁵¹ Ibid, 8.

⁵² Ibid, 12.

- e. An annual reporting on the progress made on implementing Resolution 1820 and this new Resolution.⁵⁴

The focus of this resolution is still clearly on any victim as long as they are not men, but the resolution ‘Requests that the United Nations Secretary General appoint a special Representative in order to address, at both headquarters and country level, sexual violence in armed conflict.’ The first of such special Representative is Margot Wallstrom who was appointed in February 2010. Her title, however, may be a little misleading, as the Secretary-General made clear when he stated that she been appoint to end ‘sexual violence against women and children in conflict areas’. In her first presentation to the UN, Wallstrom included 39 uses of the ‘women’ but none of ‘men’.⁵⁵

10. Nations Security Council Resolution 1960

In December 2010, noting that sexual violence during armed conflict remains systematic, rampant and widespread; the Security Council unanimously adopted a new resolution, Resolution 1960.⁵⁶ This resolution creates institutional tools and teeth to combat impunity and outlines specific steps needed for both the prevention of and protection from sexual violence in conflict. The new ‘naming and shaming’, listing mechanism mandated in the Resolution is a step forward in bringing justice for victims and a recognition that sexual violence is a serious violation of human rights and international law.⁵⁷ The list comprises of those who are ‘credibly suspected of committing or being responsible for patterns of rape and other forms of sexual violence in situations of armed conflicts’. This resolution does not deal with victims of sexual violence but the perpetrators and so does not use a specific gender language. There is no recourse to either females or males as being victims of sexual violence and this could be a calculated efforts at excluding men as likely victims.

⁵³ Ibid, 24

⁵⁴ Ibid, 24.

⁵⁵ Note 8, supra.

⁵⁶ Security Council Resolution 1960 (Dec 16, 2010) UN Doc S/RES/1960

⁵⁷ Peace Women, Security Council Resolution 1960 (2010) Women International League for Peace & Freedom <<https://www.peacewomen.org>> accessed 10 August 2019

III. The Effects of Excluding Men from Instruments of Protection

The exclusion of men from both international and regional instruments of protection has with it a whole lot of negative impact on the men folk. Firstly, it has resulted to the continued sufferings of men from acts of sexual violence perpetrated against them this is because there is no known or identifiable laws that tends to serve as a check to perpetrators of sexual violence against men especially during armed conflicts. Secondly, male victims of sexual and gender crimes find it very difficult to speak out or report acts of violence perpetrated against them because of lack of available law and existing legal instruments under which they could stand to fight for justice. Law is an instrument of justice, where there is no law it difficult to talk of justice, the law aids justice.

Thirdly, because there are no laws in place that out rightly prohibits and criminalizes such acts of violence, there can be no adequate reparations for the male victim,

Similarly, if there is no substantial recognition of male-directed sexual violence, the need for victims to speak out about their plights will be further diminished. The more legal instruments are oblivious to sexual violence against men, the more the victims of such crimes will be reluctant to speak out about its occurrence. According to the arguments of the UN Secretary-General, he says that 'it is my strong belief that when it comes to sexual violence, we cannot expect peace without justice, reparation without recognition, and sustainable development without the full empowerment of those who have suffered sexual violence or are at risk'.⁵⁸

Men should be provided with enhanced protection against sexual violence in armed conflict by treaty drafters, prosecutors and jurists. This is because international law may reinforce certain stereotypes and norms that may fuel such violence in the first place and lead to its underreporting. These stereotypes includes femininity and masculinity and stereotypes from pernicious cultural norms regarding sexuality, especially same-sex sexual behavior.⁵⁹ Also, to delegitimize the harmful stereotypes and norms that fuel such violence, treaty drafters should use the definition of sexual violence laid out earlier, in which sexual violence includes attacks directed at an

⁵⁸ Note 28, *supra*.

⁵⁹ Dustin A. Lewis, *Unrecognized Victims: Sexual Violence against Men in Conflict Settings under International Law* (2009) vol. 27 Conflict and Sexual Violence against Men No.1 p. 48.

individual's perceived, imputed or actual sexuality.

Criminalizing attacks targeting an individual's sexuality would work toward delegitimizing the destructive stereotypes attending heterosexuality and homosexuality in wartime,⁶⁰ stereotypes that provide some of the motivation for men (and women) to commit sexual violence against men. Such explicit recognition in international instruments would also put potential perpetrators on notice that sexual violence against men is just as serious a crime as it is against women. Moreover, such recognition would provide male victims with a vocabulary to articulate their experiences.⁶¹ If men continue to be ignored as victims of sexual violence, doctors and humanitarian-aid workers will find it difficult to identify and better treat such violence.

However in terms of investigation and prosecution male related sexual violence International criminal tribunals for Rwanda and Yugoslavia had clearly recorded and documented cases of rap and other forms of sexual violence against men. For instance the international criminal tribunal for the former Yugoslavia gave a conviction in the case of *Prosecutor v. Delalic*, in this case, the three defendants involved were convicted of placing fuse cords around the genitals of some male detainees and forcing them to perform oral sex on each other.

Also in *Prosecutor v. Dukotadi*, the defendants in this case were convicted of several sexual violence offences against detainees including biting off of the testicles of male victims. It is a surprise to note that none of the decisions of the International Criminal Court for the former Yuogoslavia in specific recognized the acts for which the perpetrators were charged to be crimes of rape or sexual violence against the identified victims. It is the view of some feminists scholars like Sandesh that in situations where acts of sexual violence especially rape against men have been acknowledged by the International criminal court and the ad hoc tribunals, sexualized violence against men have not been categorized as gender based violence, rather such crimes as referred to as torture, or an abuse .

IV Conclusion

Men are usually in the fore front as fighters for the purpose of defense of the territorial sovereignty of any identified region in the event of conflicts both armed and

⁶⁰ Robert D. Sloane, *The Expressive Capacity of International Punishment: The Limits of the National Law Analogy and the Potential for International Criminal Law* (2007) 43 STAN. J. INT'L. L. 39.

⁶¹ Note 59, supra at 49.

non-armed conflicts. As a result of this, men are also the most vulnerable set of people to attacks and violations. Traditionally, men acts as reliable defense to both their community and immediate family and hence society believe that men cannot be sexually abused in any form, this particular traditional view has informed the reason why men find it difficult to talk about sexual violence perpetrated against them, or report sexual abuses against them to law enforcement agents. No doubt, there are a plethora of instruments both International and regional on protection against sexual violence, while some of these instruments have been operational for the past decades, others are relatively recent most especially the resolutions adopted by the United Nations.

The important fact to note here about these available instrument on gender violence is that they are all tailored, prepared and drafted with a gender specific language, and the language of them all is the “Language of Women”, thus, all the instruments reviewed have elaborate provisions on prohibition and protection of women against sexual and sexual violence. There seem to be total silence and absence of recognition of men as possible victims of sexual and gender violence. There has always been reports of men being raped and sexually abused during armed conflicts. For instance, the Rwandan and Yugoslavian conflicts revealed shocking reports of the rape of men as well as the genital mutilation of several male victims.

It is important to note that the lack of inclusion of men in instruments of protection against sexual and gender violence results in lack of prompt prosecution of perpetrators of the crime and as well makes it difficult for male victims of sexual violence to speak out and report acts of sexual violation committed against them.