

Safeguarding Children against Sexual Violence in Armed Conflict: Legal Pathways

Tanveer Hayat^φ

^φ Tanveer Hayat is a student of the BS LL.B. (Hons) programme of the Department of Law of the University of Malakand (KPK). He can be reached at tanveerhayat113@gmail.com.

Abstract

The circumstances and practices related to sexual violence perpetrated against children during armed conflicts are not a new global community problem. This article examines various legal safeguards for minors against sexual violence during armed conflicts. Twenty-first century armed conflicts are mostly non-international in nature. Therefore, the non-international nature of an armed conflict raises the question of the applicability there to of international humanitarian law, which is geared mostly towards international armed conflicts. The article will shed light on the existence of legal pathways through which international humanitarian law and international human rights law provide protection to children against sexual abuse, both in international and non-international armed conflicts and also in those situations of internal tension and disturbance that fall short of being an armed conflict proper. Moreover, efforts towards the effective implementation of such laws and accountability of the parties involved, will be highlighted to show that curbing the sexual abuse of children in armed conflicts is not impossible.

Introduction

Successive reports of the UN Secretary General (UNSG)¹ and various rulings of international courts and tribunals² point out the special vulnerability of children to sexual abuse during armed conflicts, which represents a serious problem for the international community. It appears that crimes related to sexual violence against children occur in all regions affected by war.³ Reports by the United Nations from the last three years indicate more than thirty thousand cases of sexual violence against children.⁴ Before that, from 2005 to 2016 there were more than seventeen thousand confirmed cases of sexual violence against girls and boys during armed conflicts.⁵

This is notwithstanding the wide protection children have under international law. The United Nations Convention on the Rights of the Child (UNCRC), the Four Geneva Conventions, with their

¹ United Nations Security Council, 'Report of the Secretary-General on Conflict Related Sexual Violence' (15 April 2017) S/2017/249 (hereinafter the 'UNSG Report 2017'); United Nations Security Council, 'Report of the Secretary-General on Conflict-Related Sexual Violence', S/2018/250 (23 March 2018) (hereinafter the 'UNSG Report 2018'); United Nations Security Council, 'Conflict Related Sexual Violence', Report of the United Nations Secretary General, S/2019/280, (29 Mar 2019) (hereinafter 'the UNSG Report 2019').

² *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4, paras 596, ICTR June 01, 2001; *Prosecutor v. Mikaeli Muhimana*, Case No. ICTR-95-1B, paras 542, ICTR April 28, 2005; *Prosecutor v. Anto Furundžija*, Case No. IT-95-17-1, para 185, ICTY December 10, 1998.

³ B Jamille and V Rachel, 'Countering Sexual Violence in Conflict' Council on Foreign Relations, Centre for Preventive Action Women and Foreign Policy, (New York, 2017), at 4 <https://cfrd8-files.cfr.org/sites/default/files/report_pdf/Discussion_Paper_Bigio_Vogelstein_Sexual_Violence_Conflict_OR_1.pdf> accessed 17 May 2019.

⁴ UNSG Report 2017, UNSG Report 2018 and UNSG Report 2019.

⁵ M Kirolos et al., 'The war on children', Save the children international; (2018) 24 <<https://www.refworld.org/pdfid/5a8552924.pdf>> accessed 9 June 2019.

Additional Protocols, the International Criminal Court (ICC) Statute and several other international treaties contain several provisions ensuring the protection of children in all situations. The International Committee of the Red Cross and Red Crescent (ICRC) points out that while international humanitarian law (IHL) is only applicable in times of armed conflicts to each of the parties involved, international human rights law (IHRL) is applicable in all situations, but only to states. Moreover, all but the non-derogable provisions may be suspended, under certain conditions, in situations threatening the life of the nation. As the latter do not only include armed conflicts, the complementarity remains imperfect; in particular, a grey area exists in situations of internal disturbances and tension.⁶ The legal regime they create appear, therefore, to distinguish between the protection of children's rights in international armed conflicts (IAC) and non-international ones, and between war and peace time, just like it does with other human rights.⁷ This paper will show that the fundamental safeguard of children from sexual abuse is a non-derogable form of protection that applies in war time, irrespective of whether the conflict is an international or a non-international one, and also in those situation of internal disturbances and tensions that may fall short of a proper armed conflict.

For this reason, this article will first define sexual violence against children, providing data on its widespread occurrence during

⁶ Special protection is provided to the children by various provisions of international documents, which include Geneva Conventions 1949, Common Article 3(1)(c); Additional Protocols to the Geneva conventions 1977, Article 75(2)(b), Article 77(1), Article 4(2)(e); African Charter on the Rights and Welfare of the Child 1990, Article 27; International Criminal Court (ICC) Statute 1998, Article 6(d), article 7(1)(g), Article 8(2)(b)(xxii) and (e)(vi).

⁷ International Committee of the Red Cross (ICRC), 'International humanitarian law and the challenges of contemporary armed conflicts', Report prepared for the 31st International Conference of the Red Cross and Red Crescent (28 November – 1 December 2011).

armed conflicts. In the second part, it will seek to identify the application of IHL especially in instances of non-international armed conflicts (NIAC) or when internal disturbances or tensions take place within states. The case of Pakistan, whose military forces have long been conducting operations against militants in what has been defined as its ‘war on terror’, will be examined in this part.⁸ The paper will highlight the existence of legal mechanisms that aim to ensure the provision of the inalienable right of freedom from sexual abuse of children in all these situations. The issue of implementation, which remains most worrying, will be dealt with in the last part of the paper, where notable instances of a successful reduction of sexual abuse against children in armed conflict situations will be reported.

A. Sexual Violence against Children During Armed Conflicts: Definition and Data

The World Health Organisation (WHO) defines sexual violence as: ‘Any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic or otherwise directed against a person’s sexuality using coercion, by any person regardless of their relationship to the victim, in any setting...’⁹. The report of the United Nations Secretary-General (UNSG) 2017 specifically termed the sexual abuse of people during armed conflicts, including, for the purpose of this paper, children, as ‘conflict-related sexual violence’. This was defined as the:

[r]ape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilisation,

⁸ Syed Muhammad Ali Shah, ‘Pakistan and the War against Terrorism’ (2007) 60(2) Pakistan Horizon 85.

⁹ World Health Organisation, *Violence against women – Intimate partner and sexual violence against women* (World Health Organisation 2011).

forced marriage, and any other form of sexual violence of comparable gravity perpetrated against women, men, girls or boys that is directly or indirectly linked to a conflict.¹⁰

Sexual violence against children in armed conflicts is thus a grave offence against their dignity and basic human rights. The international legal regime caters to this right in armed conflict situations specifically under IHL, but also under IHRL. The combined operation of both, not just on states but also on all parties to the conflict (including non-state actors like insurgents and belligerents), provide an ample and comprehensive legal framework where the parties to the conflict can be held accountable for sexual violence against children, and more importantly, be prevented from carrying out such atrocities in the first place.

1. Statistical Data on Sexual Violence against Children in Conflict Situations

For the purposes of this study, three subsequent reports of the UN Secretary-General submitted to the UN Security Council were analysed. Based on these reports, various statistics were collected showing the number of incidents in various contemporary conflict zones around the world.

The report submitted in 2017, according to Security Council Resolution 2225 (2015), covers the period from January to December 2016.¹¹ The report from 2018 contains data from January to December 2017. It was submitted in accordance with Security Council Resolution 2106 (2013).¹² Similarly, the 2019 report covers

¹⁰ UNSG Report 2017.

¹¹ United Nations Security Council, Report of the Secretary General on Children and Armed Conflicts, A/72/361-S/2017/871 (24 August 2017) (hereinafter the 'UNSG Children Report 2017') at 1.

¹² UNSG Report 2018, at 1.

the year 2018 and was also prepared following Security Council Resolution 2106 (2013).¹³

Summarising the statistics, it is noted that the Central African Republic has seen a sharp increase from fifty-five (reported) incidents in 2017 to more than three hundred in 2018 and 2019. Colombia is perhaps an even more alarming example, from three cases in 2017, to more than twenty-four thousand in 2018. What is even more interesting is the sharp decline in the following year, when just 254 cases were signalled. This indicates perhaps, not the decline in incidents, but in the effective reporting of sexual violence against children. This problem is even more evident from the case of Iraq, where only one incident was reported in 2017, nine in the following year and no incidents in the current year so far. The 2017 report of the Secretary General to the UN Security Council confirms that three boys were allegedly also sexually abused in Afghanistan.¹⁴

A report by War Child UK revealed that in South Sudan, out of a total of 2,300 cases of sexual violence by mid-2018, 21% of the victims were children. It highlights the important aspect of men, and specifically boys, being affected by rape when this heinous crime is used as a weapon of war. This has been documented in the armed conflicts in Bosnia, Sri Lanka, Central African Republic and the Democratic Republic of Congo.¹⁵

Accordingly, the United Nations Children's Fund and partners helped free 3,419 children (including boys and girls) from armed groups in 2017, among which the majority of forcibly-recruited girls

¹³ UNSG Report 2019, at 1

¹⁴ UNSG Children Report 2017, at 22.

¹⁵ Georgie Lund, 'The Hidden Victims of Sexual Violence in War', Report by War Child UK, (19 June 2019) <<https://www.warchild.org.uk/whats-happening/blogs/hidden-victims-sexual-violence-war>> accessed 14 Dec 2019.

reported cases of sexual abuse.¹⁶ The UN reported 79 cases of sexual exploitation during irregular operations of armed groups in 2016, including forced prostitution, sexual torture, sexual slavery and harassment by armed groups and forces.¹⁷

Most of the time, it has been observed that sexual violence during armed conflict relates to abuse of power by the relevant commanding authority.¹⁸ Indeed, the subjection of children to sexual violence results as a consequence of actions taken by the armed forces. In a UN study on the impact of armed conflict on children, it was noted that millions of children are traumatised by an armed conflict in which ‘they are not just random observers, but are deliberately becoming targets’, and are often killed, raped, mutilated, and used as soldiers.¹⁹

Overwhelming social barriers have also proven to be a serious obstacle in the fight against crime related to sexual violence. For example, the hesitation of the victim's family in taking any action against the armed forces. At the same time, many such crimes remain largely unreported because of bureaucratic obstacles and the perceived threat to the honour and reputation of the family. In addition, child soldiers who are recruited by force are in most cases subjected to sexual violence. During armed conflict, children are mostly detained together with adults, and this exposes them to a higher risk of being sexually abused or raped.

¹⁶ UNSG Report 2017, at 28.

¹⁷ *Ibid.*, at 29.

¹⁸ Dara Kay Cohen, ‘Wartime Sexual Violence: Misconceptions, Implications, and Ways Forward’, Special Report of the United States Institute of Peace (2013) at 6 <<https://www.usip.org/sites/default/files/resources/SR323.pdf>> accessed 28 May 2019.

¹⁹ Graça Machel, ‘Report on The Impact of Armed Conflict on Children’ (1996) <https://www.un.org/ga/search/view_doc.asp?symbol=A/51/306> accessed 13 Dec 2019.

1.1 Invisibility of the Crime

The fact that the sexual abuse and rape of children during armed conflicts mostly goes unnoticed is a dimension of this crime to discuss. One of the main and important issues related to sexual violence against children is that it remains an ‘invisible crime’. Perhaps guilt or shame, fear of reprisal or social taboo, may be the reasons that prevent the victim from reporting the incident.²⁰ Such conditions exist in most conflict zones. For example, Shahrian Kabir in his book, *Tormenting Seventy-One*, noticed that in the 1971 war in Bangladesh, victims of sexual violence migrated mainly due to fear of hatred by society if it learnt that they had been humiliated by the Pakistani military and other militant groups. That is why the exact number of victimised women (including girls) in the 1971 war is nearly impossible to trace.²¹

In this case, it is significant to note that in the report under CEDAW to the Committee, Yugoslavia acknowledged in 1993 that in warzones, women (including young girls) were abused in contravention to IHL. Furthermore, the country issued a formal apology for purporting a false view that rape was a norm in times of war.²²

²⁰ Gaggioli G, ‘Sexual Violence in Armed Conflicts: A Violation of International Humanitarian Law and Human Rights Law’ (2014) 96 (984) *International Review of the Red Cross* 503.

²¹ Kabir, S. (ed), *Tormenting Seventy One An Account of Pakistan Army’s Atrocities during Bangladesh Liberation War of 1971* (1st Mohakhali Dhaka, 1999) 4, 9.

²² Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law* (ICRC, 2005) 325.

B. Allocating Responsibility for Sexual Violence During Armed Conflicts

The end of World War II, and the advent of international organisations for the purpose of peace and security, has brought about an observed decline in international conflicts formally declared between states. That is not to say, however, that armed conflicts have seen a decline. In the ensuing hostilities, it becomes almost impossible to identify which parties of the conflict are accountable for the gross violations of Human Rights Law and Humanitarian Law that are carried out. Civilians bear the brunt of these actions and children are particularly vulnerable.

The main problem seems to be the implementation of the Geneva Conventions to armed conflict of different kinds and non-compliance by the armed groups involved. The next sections will continue by showing how international humanitarian rules that protect children from sexual abuse are equally applicable to conflicts that are international as well as non-international.

1. Protection of Children under Humanitarian Law in International Armed Conflicts

Common Article 2 of the Geneva Conventions lays out the basic definition for the classification of an armed conflict as international as follows: ‘all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties.’

It is pertinent to note that all Four Geneva Conventions, and Additional Protocol I, apply in their entirety to armed conflicts which are international in nature. The legal provisions are adequately detailed in nature for the protection of sexual violence against children in an International Armed Conflict. Examples of this are the

provisions of the Fourth Geneva Convention, which is specifically dedicated to the protection of civilian populations. Notable among them are Article 24, which contains specific provisions for the welfare of children during international conflicts, and Article 50, which is entirely dedicated to the protection of children in occupied territories.

However, the ICRC has pointed out that the most widely prevalent form of armed conflict in today's time is non-international in nature.²³ Hostilities are not between state parties but amongst states and non-state actors, which are organised within the state.²⁴ In armed conflicts within states, it has always been a major challenge to provide awareness of, and ensure respect for the rules of IHL to the parties in conflict. The purpose of the next section of this part, is to trace the rules that apply specifically to the protection of children against sexual violence and abuse in NIAC, to explore its applicability to Pakistan, which is officially not at war with any other state, while at the same time conducting military operations within its territory.

2. Protection of Children under Humanitarian Law in NIAC.

For conflicts not classified as international, Common Article 3 to the Geneva Conventions applies, which reads as follows:

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

²³ Michelle Mack and Jelena Pejic, *Increasing Respect for International Humanitarian Law in Non-International Armed Conflicts* (ICRC Publication, 2008) in the foreword by Dr Jakob Kellenberger, the then President of ICRC.

²⁴ *Ibid.*

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) taking of hostages;

(c) outrages upon personal dignity, in particular humiliating and degrading treatment;

(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognised as indispensable by civilised peoples.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

Common Article 3 does not define non-international conflicts. However, the ICRC Commentary to the Geneva Convention clarifies that:

the qualification of ‘internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature’ in Article 1 of Additional Protocol II as ‘not being armed conflicts’ is also considered accurate for Common Article 3. A situation of violence that crosses the threshold of an ‘armed conflict not of an international character’ is a situation in which organised Parties confront one another with violence of a certain degree of intensity. It is a determination made on the facts.²⁵

Further light on the definition of NIAC is shed by international case law, especially that of the International Criminal Tribunal for the Former Yugoslavia (ICTY).²⁶ In the case of *Prosecutor v Tadic*,²⁷ the tribunal confirmed that a non-international armed conflict would exist between governmental authorities and organised armed groups, or between such groups within a state. Furthermore, the ICTY observed that Common Article 3 to the Conventions reflected customary international law. The court went as far as to imply that guerilla war

²⁵ ICRC, Commentary to Common Article 3 of the Geneva Conventions (2016) <<https://ihl.databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=59F6CDFA490736C1C1257F7D004BA0EC>> accessed on 16 Dec 2019.

²⁶ *The Prosecutor v Thomas Lubanga Dyilo*, Pre-Trial Chamber, Decision of Confirmation of Charges, ICC-01/04-01/06, 29 January 2000; *The Prosecutor v Sesay, Kallon and Gbao*, Judgment, SSL-04-15-T, 2 March 2009, §95; International Criminal Court

²⁷ Para 67

tactics applied by a terrorist group may also fall under the definition of an armed conflict.²⁸

If the ICTY was correct in *Tadic*, it can be analogically deduced that the ‘war on terror’ conducted by the Pakistani military may well fall under the category of a non-international armed conflict under IHL. In this case, the guarantees of Common Article 3 would apply to all civilians in Waziristan, Swat and other areas where operations against the Taliban were or are being conducted, where the latter would be an organised non-state party to the conflict.

The ICJ in *Nicaragua v The United States of America*²⁹ took the view that Common Article 3 assumes greater importance than AP II to the Geneva Conventions, since the Conventions have been ratified almost universally. Furthermore, the article has been declared (though not without question)³⁰ to be part of customary international humanitarian law.

In effect, this allows for the applicability of Common Article 3 to civil conflicts (including civil wars)³¹ and rebellions, when the state party makes a claim that such a conflict in a non-international armed conflict.

This is further substantiated by the codification of rules of customary IHL by the ICRC. Rule 135³² is with specific respect to children in an armed conflict, whereas Rule 93 guarantees protection against all forms of sexual violence, including that against children.

²⁸ *Prosecutor vs. Tadic* (Jurisdiction) (Appeal Chamber), 105 ILR 488.

²⁹ 1986 ICJ Rep. 14

³⁰ See T. Meron, *Human Rights and Humanitarian Norms as customary law*, (1989) 25-27

³¹ Geza Herczegh, *Development of International Humanitarian Law* (Akademiai Kiado, 1984) 64.

³² Rule 135, ICRC Customary IHL

Rule 135 enjoins states to respect and ensure respect for the rules of IHL relevant to children, by taking all feasible measures to care for children who have been affected by armed conflict, particularly mentioning the protection of children from sexual exploitation. The explanation by the ICRC further points out that in Common Article 3, the terms ‘violence to life and person’ and ‘outrages upon personal dignity’ include rape and sexual violence, even if they do not mention them explicitly. The same is, as shown above, provided in Additional Protocol II.³³ In line with this interpretation under customary international law, as applicable to all parties in the conflict, the European Court of Human Rights in the case of *Aydin v. Turkey*,³⁴ and the Inter-American Commission on Human Rights in *Case 10.970 (Peru)*,³⁵ have found that the rape of detainees amounts to torture. By analogy, it is seen that rape in armed conflict may constitute torture in any case, and thus sexual violence against children directly falls under Common Article 3 of the Geneva Conventions. This was confirmed by the ICTY in the *Delic Case*³⁶, which was the first judgment of an international criminal tribunal stating that rape did indeed qualify as a form of torture. The same legal stance was followed by the ICTY in the *Tadic case*.³⁷

Rule 139, as codified by ICRC, reads as follows: ‘Each party to the conflict must respect and ensure respect for IHL by its armed forces and other persons or groups acting in fact on its instructions, or under its direction or control.’ Thus, the direction for respecting the

³³ Article 4(2).

³⁴ *Aydin v Turkey* 57/1996/676/866, European Court of Human Rights, 25 September 1997 (1986 ICJ Rep. 14).

³⁵ *Raquel Martí de Mejía v. Perú*, Case 10.970, Inter-American Commission on Human Rights (IACHR), 1 March 1996.

³⁶ *Prosecutor v. Zdravko Mucic aka ‘Pavo’, Hazim Delic, Esad Landzo aka ‘Zenga’, Zejnil Delalic* (Trial Judgement), IT-96-21-T, International Criminal Tribunal for the former Yugoslavia (ICTY) (16 November 1998).

³⁷ *Prosecutor vs. Tadic* (Jurisdiction) (Appeal Chamber), 105 ILR 488.

law is not only to leaders of armed opposition groups but also extends to ensuring that the combatants under their control both ‘respect’ and ‘ensure respect’ for IHL.

The problem here lies with the fact that states, fiercely protective of their internal sovereignty, would not deem to qualify these internal matters as such. Moreover, it is observable that while the existence of seemingly ample and comprehensive provisions is sufficient to provide the legal framework in international law for the protection of children in NIAC, they are still not as comprehensive as those in IAC.

The difference in the obligation to respect the provisions of both humanitarian and human rights law comes from who they are addressed to; while the provisions are quite similar to certain human rights provisions which are non-derogable, human rights provisions are addressed to states. In contrast, Common Article 3, and the provisions of Additional Protocol II are addressed to all parties to conflict, which would well include any non-state party such as rebel forces.³⁸

The next step would be to analyse those situations where IHL is not applicable, to see whether the safeguards to children are still applicable under IHRL.

³⁸ Felix Ermacora, special rapporteur on the Situation of Human Rights in Afghanistan stated that all parties to the conflict are at least bound by common Article 3 of the Geneva Convention regardless of whether the conflict is considered to be international or non-international. U.N. DOC. A/40/893 p. 128.

C. Protection of Children during Armed Conflicts under IHRL

The ICRC, in its codification of customary international humanitarian law, confirms that human rights law continues to apply at all times, including armed conflicts, except for certain derogations in a ‘state of emergency.’³⁹ However, the right of children to be free from torture and other inhuman, humiliating and degrading treatment is absolute, and therefore non-derogable.⁴⁰ As stated above, the European Court of Human Rights in the case of *Aydin v. Turkey*⁴¹ and the Inter-American Commission on Human Rights in *Case 10.970 (Peru)*⁴² have found that the rape of detained persons amounts to torture. Therefore, the rape of children during armed conflict is an act of torture, and constitutes a violation of one of those non-derogable provisions of human rights law that continue to be applied even during armed conflicts.

The Convention against Torture⁴³, the Convention for the Supressing of the Traffic in Persons and of the Exploitation of the Prostitution of Others⁴⁴, are all examples of the international regime affording protection to children by virtue of such inalienable human rights. Thus, since the human rights listed above pertain to the category of inviolable, non-derogable rights, they would not cease to

³⁹ Henckaerts and Doswald-Beck, (n 22) 299.

⁴⁰ *Ibid.*, at 317.

⁴¹ *Aydin v Turkey* 57/1996/676/866, European Court of Human Rights, 25 September 1997 (1986 ICJ Rep. 14).

⁴² *Raquel Martí de Mejía v. Perú*, Case 10.970, Inter-American Commission on Human Rights (IACHR), 1 March 1996.

⁴³ United Nations Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, 1984.

⁴⁴ Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others 1950.

exist in an armed conflict simply because said armed conflict can endanger the existence or hinder the well-functioning of the state.

Thus, under the various mechanisms of the UNSC Special Rapporteur and the mechanisms under the conventions, states have an adequate framework of legal obligations not just to report and provide redress, but also to prevent such abuses of human rights. The state of Pakistan also has a framework of being obliged to report, investigate, provide redress, and significantly, prevent crimes even in armed conflict situations, when it refers to children and gross human rights violations being carried out against them, including sexual violence afflicted. This is despite the fact that almost no reporting has been done, nor any official figures released in army operations against militants in North Waziristan, or during army clean sweep operations against militants such as Operation Zarb-e-Azb. Only by being acutely aware of the seriousness and legality of their responsibility towards this right of children can incidents (if any) be reported, redresses and prevented. So far, neither official state publications nor the civil society has been able to shed light on this issue in Pakistan.

A notable case of compliance with international standard of child protection is highlighted in the UNSG Report 2017⁴⁵ that points to a significant improvement and reduction in the number of cases of sexual violence in Congo. The government took initiatives to stop the recruitment of child soldiers and pointed out that perpetrators of sexual violence against children were convicted in 129 cases, which is an iconic initiative of a separate nature to end a serious violation of humanitarian law.⁴⁶

⁴⁵ UNSG Report 2017.

⁴⁶ *Ibid.*, at 71.

Conclusion

Sexual violence against children is perpetrated in armed conflicts, both international and non-international. The rules of IHL in this case are quite comprehensive. However, most conflicts in the twenty-first century are not of an international nature. This leaves gaps in ensuring the accountability of perpetrators for heinous sexual acts committed against children, who are particularly vulnerable. This paper has highlighted legal pathways that may be followed in bringing perpetrators to accountability, and for states particularly to discharge their duty to protect children during times of armed conflict and to ensure reporting, transparency and bringing perpetrators to justice. Thus, it has been shown that there are no grey areas and no lack of legal mechanisms to do the same. In IAC, the laws are self-explanatory and comprehensive. In case of a non-international armed conflict Common Article 3 of the Four Conventions, Additional Protocol II, and Customary IHL are applicable to both state and non-state parties. There is very little room to escape the legal structure vociferously protecting children from sexual exploitation in armed conflicts, since international human rights law extends its application of the prohibition of degrading treatment of children rules to armed conflicts too and, *a fortiori*, to situations that fall short of being classified as armed conflicts, such as internal disturbances and tensions. The international legal regime has legal pathways to be found in both IHL and IHRL, to ensure that neither state parties nor non-state armed opposition groups can escape liability for the sexual exploitation of children in armed conflicts.

Bibliography

Primary Sources

International Conventions

1. Additional Protocol to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of NIAC (Protocol II)
2. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others 1950
3. Geneva Conventions (I-IV) 1949
4. United Nations Convention on the Rights of the Child 1990
5. United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984

UN Reports

6. United Nations, Security Council, Children and Armed Conflict; Report of the Secretary-General, A/72/361–S/2017/821, 24 August 2017
7. United Nations, Security Council, Report of the Secretary-General on Conflict-Related Sexual Violence, S/2017/249, 3 March 2017
8. United Nations, Security Council, Report of the Secretary-General on Conflict-Related Sexual Violence, S/2018/250, 23 March 2018
9. United Nations, Security Council, Report of the Secretary-General on Conflict Related Sexual Violence; S/2019/280, 29 March 2019

Cases

10. *Aydin v. Turkey*, 57/1996/676/866, Council of Europe: European Court of Human Rights, 25 September 1997 (1986 ICJ Rep. 14)

11. *Prosecutor v. Dusko Tadic aka 'Dule'* (Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction), IT-94-1, International Criminal Tribunal for the former Yugoslavia (ICTY), 2 October 1995
12. *Prosecutor v. Zdravko Mucic aka 'Pavo', Hazim Delic, Esad Landzo aka 'Zenga', Zejnil Delalic* (Trial Judgement), IT-96-21-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 16 November 1998
13. *Raquel Martí de Mejía v. Perú*, Case 10.970, Inter-American Commission on Human Rights (IACHR), 1 March 1996

Secondary Sources

Books

14. Kabir, S. (ed), *Tormenting Seventy One: An Account of Pakistan Army's Atrocities during Bangladesh Liberation War of 1971* (1st Mohakhali Dhaka, 1999)
15. Mack M. and Pejic J., *Increasing Respect for International Humanitarian Law in Non-International Armed Conflicts* (ICRC Publication, 2008)
16. Meron T., *Human Rights and Humanitarian Norms as Customary Law* (1989)
17. Pictet J. S., *Geneva Conventions of 12 August, 1949: Commentary* (Geneva, 1958)
18. Herczegh G., *Development of International Humanitarian Law* (Akademiai Kaido, 1984)

Articles from Journals

19. Gaggioli G, 'Sexual Violence in Armed Conflicts: A Violation of International Humanitarian Law and Human Rights Law', (2014) 96 (984) *International Review of the Red Cross* 503
20. Shah S. M. A., 'Pakistan and the War against Terrorism' (2007) 60(2) *Pakistan Horizon* 85

Reports

21. Cohen D. K., *Wartime Sexual Violence: Misconceptions, Implications, and Ways Forward*, Special Report of the United States Institute of Peace, (2013)
22. Jamille B. and Rachel V., *Countering Sexual Violence in Conflict*, Council on Foreign Relations, Centre for Preventive Action Women and Foreign Policy (New York, 2017)
23. Kirollos M. et al., 'The war on children', Save the children international, (2018)
24. Lund G., *The Hidden Victims of Sexual Violence in War*, Report by War Child UK (19 June 2019)
25. Machel G., *Report on 'The Impact of Armed Conflict on Children'* (1996)
26. Report prepared by the International Committee of the Red Cross for the 31st International Conference of the Red Cross and Red Crescent, 28 November-1 December 2011
27. World Health Organisation (WHO), 'Violence against women – Intimate partner and sexual violence against women' (Geneva, 2011)