

A comparative analysis on protecting women's rights in conflict situations: Sri Lanka and Rwanda

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Abstract— *Rwandese experience on mass-scale violations of women's human rights in the conflict shook world's conscience. The final outcome of the grave violations of women's human rights resulted in the development of international human rights law and international humanitarian law jurisprudences on women in armed conflict. In comparison to the above mentioned situation, Sri Lanka, as a country is currently in a post-conflict status or even ahead of, assures that there were less incidents on women's human rights violations during the internal conflict. On the other hand, some experts in the area of human rights and human rights situation reports/country reports are of the view that there were women's human rights violations during the conflict and currently, Sri Lanka is subjected to numerous allegations from the international community on human rights violations in general during the conflict.*

The main objective of the research paper is to comparatively analyse the applicable legal standards in protecting women's human rights during the time of the internal conflict in Sri Lanka in comparison to the Rwandese situation.

To establish the facts of the aforementioned comparison, the author of the research conducts an analysis on the jurisprudence of International Humanitarian Law and International Human Rights Law, in light of the issues and situations related to women in both conflicts. The Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka of 2011(Darusman Report) will also be used to establish the Sri Lankan women's rights situation during the conflict period.

Keywords— **Women's Human Rights, Comparative Analysis, Sri Lanka**

I. INTRODUCTION TO RWANDESE CONFLICT

A. Two of Ten Commandments of the Hutu

"Every Hutu should know that a Tutsi woman, wherever she is, works for the interest of her Tutsi ethnic group. As a result, we shall consider a traitor any Hutu who: marries a Tutsi woman; befriends a Tutsi woman; employs a Tutsi woman as a secretary or a concubine.

Every Hutu should know that our Hutu daughters are more suitable and conscientious in their role as woman, wife,

and mother of the family. Are they not beautiful, good secretaries and more honest?"

The Rwandese Armed Forces should be exclusively Hutu. The experience of the October [1990] war has taught us a lesson. No member of the military shall marry a Tutsi."

The aim of this paper is to comparatively analyse the human rights law standards in the context of genocidal armed conflict in Rwanda with the applicable legal standards of human rights law during the internal armed conflict of Sri Lanka. Especially applicability of women's human rights law will be analysed.

Approximately one million Rwandan men, women, and children were massacred in a three-month period in 1994¹. The ethnic tension was a continuing process. By the time an unknown gunman shot down the flight carrying the President; it was at its peak.

Sri Lankan armed conflict had different socio-economic and historical causes different to the background of Rwandese conflict; however it was also between the government and minority militia group (Liberation Tigers for Tamil Eelam) in a particular area of the country. A plethora of political solutions was disseminated among Sri Lankan governments and LTTE for three decades though the aforesaid discussions went without a fruitful discourse. The internal armed conflict came to a peak during 2007-2008. During this period, internal displacement was remarkable.

As is common to most genocidal incidents, women were a party vulnerable to all kinds of sexual violence. What was special about Rwandan genocide was the mass propaganda against Hutu Women. The government media, such as radios, rampantly announced and encouraged violence against women. The massive propaganda, patriarchal attitudes were targeted at gender as well as race, and the outcome was the use of gender identity as a tool or a weapon of war.

Stephanie K. Wood, *Woman Scorned for the Least Condemned War Crime: Precedent and Problems*

¹ Stephanie K. Wood, *Woman Scorned for the Least Condemned War Crime: Precedent and Problems with Prosecuting Rape as a Serious War Crime in the International Criminal Tribunal for Rwanda*, 13 Colum. J. Gender & L. 274, 327 (2004)

with Prosecuting Rape as a Serious War Crime in the International Criminal Tribunal for Rwanda, 13 Colum. J. Gender & L. 274, 327 (2004)

Sri Lanka had its internal armed conflict for three decades though there were fewer reports on sexual violence or rape against minority by the Sri Lankan army or majority. It was the most controversial “Channel 4” video that mainly put forward the accusations against the Sri Lankan government in this regard. However the credibility of the “Channel 4 video” itself led to different interpretations.

II. APPLICABLE LEGAL STANDARDS FOR RWANDA

A. *Committee on the Elimination of all forms of discrimination against Women (Women’s Committee).*

The Committee, in its Concluding Observation in 1996 on Rwanda stated:

The Committee was dismayed at the deep psychological trauma, the unwanted pregnancies and the massive rape of women and girls during the genocide, which resulted in widespread HIV/AIDS and other sexually transmitted diseases. This can of course eventually lead to further illness and death for thousands of women and girls.²

Internal displacement is a serious implication of long term armed conflict. Women’s Committee has extensively focused on this issue in the context of Rwanda from 1993.³

In reply to questions on the number and category of persons that had been affected by the civil war, the representative stated that the number of displaced persons was 320,828, among whom there were 18,828 children under five years of age, 2,832 orphans, 780 widows and 11,000 pregnant or lactating women.⁴

In its 2009 Concluding Observations on Rwanda, Women’s Committee again addressed this issue of internally displaced women.⁵

“Special Rapporteur on violence against women its causes and consequences” is established under the U.N. Commission on Human Rights on the UN Resolution 2003/45. Dr Radhika Coomaraswamy, the Special

² Committee on the Elimination of all forms of Discrimination Against Women, Concluding Observations: Rwanda, paras. 301- 331, U.N. Doc. A/51/38, (1996).

³ Committee on the Elimination of Discrimination Against Women, Concluding Observations: Rwanda, paras. 451-473, U.N. Doc. CEDAW A/48/38 (1993).

⁴ Ibid

⁵ The Committee expresses concern at the situation of refugee women and women returnees, including women with disabilities, displaced by violence and conflict, in particular in view of their precarious living conditions in camps where they are at risk of sexual and other forms of violence and lack access to health care, education and economic opportunities.

Rapporteur on violence against women report on Rwanda⁶, in the Report of the Special Rapporteur on violence against women, that its causes and consequences are a reflection of the status of Rwandese women in postwar situation.

B. *International Criminal Tribunal for Rwanda (ICTR)*

ICTR is considered as a giant step forward in international humanitarian law as well as the international law. ICTR was established by UN under the Security Council Resolution 955 of 8 in November 1994.⁷ Up to date, there are 50 cases that have been completed, 24 cases in progress, 8 cases on appeal and 8 detainees acquitted.⁸

The beauty of this broad interpretation process is that it covers the sexual violence in all its nature. The Chamber defined rape as “a physical invasion of a sexual nature, committed on a person under circumstances which are coercive. Sexual violence which includes rape is considered to be any act of a sexual nature which is committed on a person under circumstances which are coercive.”⁹

C. *Concluding Remarks for Rwandese Situation*

“Women in war” is currently a recognized legal phenomenon. A plethora of international law instruments were utilised to protect and promote rights of women in war¹⁰ and it was clear that U.N. human rights protection mechanisms were applied in order to protect women’s rights in violations such as in sexual violence and to protect rights of the internally displaced women. As the Committee noted with relief, ICTR is in its maximum progressive approach to prosecute perpetrators.¹¹

Criminal justice for the Rwandese rape victims is a must; but clearly it is not sufficient in order to improve their lives in the long term.

III. APPLICABLE LEGAL STANDARDS FOR SRI LANKA

In this part of the paper, violations listed out in the Darusman Report will be the first to be discussed. Further, the interpretations given by the respective domains of the Women’s Committee, Committee on the Elimination of Racial Discrimination (Race Committee) on Sri Lankan

⁶ Report of the Special Rapporteur on Violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, Report of the mission to Rwanda on the issues of violence against women in situations of armed conflict, UN Doc. E/CN.4/1998/54/Add.1, 4 February 1998

⁷ Recognizing that serious violations of humanitarian law were committed in Rwanda, and acting under Chapter VII of the United Nations Charter, the Security Council created the International Criminal Tribunal for Rwanda (ICTR) by resolution 955 of 8 November 1994. The purpose of this measure is to contribute to the process of national reconciliation in Rwanda and to the maintenance of peace in the region. Available at <http://www.ictor.org/default.htm>

⁸ Accessed at: <http://www.ictor.org/default.htm>

⁹ Ibid

¹⁰ Ibid

¹¹ Committee on the Elimination of Discrimination Against Women, Concluding Observations: Rwanda, U.N. Doc. A/51/38, paras. 301-331 (1996).

women and the other related treaty-based mechanisms will be discussed.

A. Darusman Report

Darusman Report could be recognized as the most controversial document issued by UN during the decades of relationship between Sri Lanka and UN. However, the report is not completely silent about the women's rights violations during the Sri Lankan conflict. There are incidents such as violations of peculiar human rights of internally displaced women (herein after referred as ID women); mostly, right to health, right to life and physical security and integrity of the persons, sexual and gender-based violence in Internally Displaced Persons' camps and sexual harassment during the screening process that were highlighted in the Darusman report as alleged women's human rights violations.

B. Applicable UN Human Rights System and its Respective Domains in protecting Women's Human Rights during the Sri Lankan Conflict

In this part of the research, focus will mainly be on the concluding observations issued by the Women's Committee, Race Committee, U.N. Human Rights Committee and U.N. Committee against Torture (Torture Committee). The main objective of this part is to analyse the recommendations and/or observations of the aforesaid UN Committees to establish whether there are any strong allegations or recommendations to the Sri Lankan government to eliminate the violations of women's human rights during the Sri Lankan conflict.

C. Women's Committee

Women's Committee issued two periodical reviews on Sri Lanka during the period of Sri Lankan conflict. In its latest report on Sri Lanka, it indicates that the committee recognizes the challenges faced by the government in implementing the convention.¹² In the part of "Impact of conflict on women, it is indicated that "the Committee remains deeply concerned about reports of gross violations of the human rights of women on both sides, particularly the Tamil minority group, the internally displaced women and the female ex-combatants."¹³ Further, it indicates "The Committee is particularly concerned about reports of sexual violence allegedly perpetrated also by the armed forces, the police and militant groups."¹⁴ The Committee also discusses about the violations of

internally displaced women's right to health, water and sanitation. Finally, the Women's Committee urges the government to carry-out investigations on the sexual violence during war and also to extend the psychological support to those who were subjected to the sexual violence during the Sri Lankan conflict. There are other recommendations focusing on implementation of women's human rights as well. Internally Displaced Women's issues were also discussed and urged the government to implement such measures.¹⁵

D. Race Committee, Torture Committee and U.N. Human Rights Committee on Sri Lanka

Race Committee's 1995 Concluding Observations on Sri Lanka¹⁶ and 2001 Concluding Observations¹⁷ are completely silent on women's human rights. It neither mentions that sexual violence was used as a weapon of war nor does it contain any similar finding. The aforesaid phenomenon leads to the conclusion that sexual violence or women's rights violations during the war were never used to eliminate a race. Also, the Human Rights Committee does not have any finding in women's rights violations in its 1995 report on Sri Lanka.¹⁸ In its Concluding Observations in 2003, also there were no concerns on women's rights violations during the armed conflict.¹⁹

IV. CONCLUSION

Applicability of U.N. based human rights standards was prominent in the Rwandese conflict in order to protect women's human rights. Especially in order to address the grim realities of genocidal rape, not only during the conflict time, but also in the post-conflict situation, human rights standards were applied and raised the issues regarding the genocidal rape in U.N.'s respective domains.

Contrary to the above mentioned situation, women's rights situation in the Sri Lankan conflict was not much discussed in the respective domains of U.N. Women's Committee except for the recent concluding observation on Sri Lanka. Darusman report and the areas based on sexual violence in the above mentioned concluding observation seem to be based on the Channel 4 video that is not yet proved as a credible piece of work.

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¹³ Concluding observations of the Committee on the Elimination of Discrimination against Women, Sri Lanka, U.N. Doc. CEDAW/C/LKA/CO/7 (2011).

¹⁴ Concluding observations of the Committee on the Elimination of Discrimination against Women, Sri Lanka, U.N. Doc. CEDAW/C/LKA/CO/7 (2011).

¹⁵ Ibid

¹⁶ Conclusions and recommendations of the Committee on the Elimination of Racial Discrimination, Sri Lanka, U.N. Doc. A/50/18, paras. 110-142 (1995).

¹⁷ Conclusions and recommendations of the Committee on the Elimination of Racial Discrimination, Sri Lanka, U.N. Doc. A/56/18, paras. 321-342 (2001).

¹⁸ Concluding Observations of the Human Rights Committee, Sri Lanka, U.N. Doc. A/50/40, paras. 436-476 (1995).

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