

**PROTECTION AGAINST GENDER BASED VIOLENCE  
WITHIN THE CONTEXT OF LAW OF ARMED CONFLICTS:  
A RETHINK BEYOND OPERATION OF THE LAW\***

**By**

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**ABSTARCT**

It is an established fact that women are the most vulnerable and severely targeted group during and after armed conflicts. Frequently, they are faced with different forms of human rights violations including Gender Based Violence (GBV) or better put as Violence Against Women (VAW). In most cases such violence if committed during armed conflicts will constitute different levels of grave breaches of international humanitarian and human rights laws. Although, GBV/VAW, apart from being a violation of human rights, can equally be considered as a threat to peace and eventually amounts to inequality and injustice. To this effect, several attempts, including setting up legal mechanisms have been made by the international, regional and national bodies to tackle the menace but to no avail. A number of treaties and resolutions intended specifically to prevent these violations with a view to bringing perpetrators to book have been severally adopted by many stakeholders including penal repression and provision of adequate compensation. To this effect therefore, this article

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is aimed at unravelling this lingering problem bedevilling protection against GBV through the law with a view to providing pragmatic and realistic measures. However, it has been identified that apart from the legal mechanisms put in place, other measures too are significant and necessary. In fact, they always play more significant role towards effective protection against GBV during and after armed conflicts than the strict legal measures; as such, the demands for injecting moral values in people through civic education is considered as necessary.

**KEY WORDS: Gender Based Violence, Violence Against Women, Armed Conflicts, Civic Education, Moral Values**

## **1. INTRODUCTION**

Protection of victims of war especially women and children, against any violence or effect of armed conflicts, is one of the cardinal targets of the law of the armed conflicts. In several occasions, it has been reported that women, because of their vulnerability and/or gender status are the most affected persons whose rights are on daily basis infringed upon, especially during and/or after war. They are usually trapped in the circle of such sorry situation by warring parties who take undue advantage of war to perpetrate the violence against them. The violence is mostly gender based in nature and it takes different forms such as rape and sexual violence or abuse; domestic violence; sexual slavery and enforced prostitution; murder; torture, infanticide, forced pregnancy among others. The protection against Gender Based Violence (GBV) which is best known as Violence Against Women (VAW) is generally a human rights violation that is been targeted at women particularly. However, the differences of opinion in terms of its nomenclature is irrelevant to the topic and does not affect the discussion in any way. To this end, the protection against GBV has been provided for by international humanitarian law (IHL), international human rights law, various constitutions and domestic legislations. Indeed, these provisions are made primarily to mitigate if not prevent the violence however to no avail.

Furthermore, it is worthy of note that the dearth of legal mechanisms for tackling this menace (GBV) are somehow proved to be ineffective and inefficient. This however may not be unconnected with issues bothering on implementation of the law rather than its adequacy. It may not also be unconnected with lack of zeal and commitment or interest or political will of the parties concerned to implement the law. Most at times, belligerents who are ordinarily saddled with the responsibility of implementing the law are been accused severally for the violations of same. This indeed leaves no effective room for proper and transparent means of implementation of the law and consequently affects its operation. It is therefore against this backdrop that the paper seeks to examine other pragmatic avenues of protection against GBV to supplement or in lieu of the strict legal measures.

## 2. DEFINITION OF KEY TERMS:

### *Gender Based Violence (GBV)*

GBV in several occasions has been used interchangeably with the term “Violence against Women VAW”. None of the treaty bodies adopted either of the two or more nomenclature as the preferred one. However, the term VAW seems to be readily more applied in the jurisprudence and policy statements of the United Nations.<sup>1</sup> Thus, the Declaration on Elimination of Violence against Women (DEVAW) uses the term VAW to mean GBV and it stated: “any act of GBV that results in, or is likely to result in, physical, sexual, psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.”<sup>2</sup> However, this definition has been criticised by some scholars for several reasons, to wit: the definition has made reference to gender related violence without an extensive explanation of the term “gender”. Hence it ignores other forms of violations women suffer in public, which have nothing to do with an element of sex discrimination. The definition focuses on physical, sexual and psychological harm thereby neglecting other forms of suffering such as structural or economic violence. In fact, the

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<sup>1</sup> Alice Edwards, *Violence Against Women under International Human Rights Law*, (Cambridge University Press, New York, USA, 2011) 20

<sup>2</sup> Art. 1 (UN) Declaration on Elimination of Violence Against Women (DEVAW); UN General Assembly Resolution adopted at the 85<sup>th</sup> Plenary Meeting 20<sup>th</sup> December, 1993 (A/RES/48/104)

definition does not directly make VAW as human rights violation, which is fundamental to it.<sup>3</sup>

### ***Law of Armed Conflicts***

The law of armed conflict which commonly known as international humanitarian law (IHL) or law of war, comprises of the rules which, in times of armed conflict, seek to protect people who are not or are no longer taking part in the hostilities (such as civilians and those rendered *hors de combat* by injury or sickness or capture).<sup>4</sup> The law equally restricts the methods and means of warfare employed. International humanitarian law is the body of laws that seeks to protect civilians and other non-combatants in times of armed conflicts (i.e. international armed conflict (IAC) and non-international armed conflict (NIAC)). In Latin, it is referred to as '*jus in bello*', the law of war that governs the conduct of hostilities.<sup>5</sup> It is a legal corpus "comprised of Geneva Conventions and the Hague Regulations as well as subsequent treaties, case law and customary International law."<sup>6</sup> However, IHL is largely set down in the Geneva Conventions of the 12 August (1949) and the Additional Protocols to the Conventions (1977). The Geneva Conventions comprise of:

1. The first Geneva Convention (GC I) for the Amelioration of the Condition of the Wounded and Sick Armed Forces in the Field.
2. The second Geneva Convention (GC II) for the amelioration of the condition of Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea.
3. The third Geneva Convention (GC III) relative to treatment of prisoners of war (POW).
4. The fourth Geneva Convention (GC IV) Relative to the Protection of Civilian in Time of War.

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<sup>3</sup> Alice Edwards, Op Cit, 21-22

<sup>4</sup> ICRC, *International Humanitarian Law: Answers to your Questions*, (Geneva, Switzerland, December 2004)4.

<sup>5</sup> See Magaji Chiroma, *Civilian Protection in Armed Conflict: The Complementarity of International and Islamic Humanitarian Laws*, (ABU Press, 2019) 19-33

<sup>6</sup> Doswald-Beck, L. (et al); *International Humanitarian Law, an Anthology*, (Lexis Nexis- Butterworths wadhwa, India, 2009)14-15 See also International Humanitarian Law – Definition, available at <http://www.wordiq.com/definition/international-humanitarian-law>, accessed on the 1<sup>st</sup> of November, 2010

The Additional Protocols to the Conventions consist of:

1. The Additional Protocol I (API) Relating to the Protection of Victims of International Armed Conflicts (IAC).
2. The Additional Protocol II (AP II) Relating to the Protection of Victims of Non-international Armed Conflicts (NIAC).

Worthy of note is that the greater part of all the above legal regime applies to situations involving international armed conflict waged between subjects of International law; but only limited rules apply to non-international armed conflict (conflicts within a country). That is to say, from almost all the articles of the 1949 Geneva Conventions and their Additional Protocols only 29 Articles apply to non-international armed conflicts, which include an article from the Article 3 Common to the Geneva Convention and twenty-eight others from the Additional Protocol II (1977) to the Geneva Conventions.<sup>7</sup>

### **3. ABOUT THE LAW OF ARMED CONFLICTS (LAC) AND INTERNATIONAL HUMAN RIGHTS LAW (IHRL)**

Law of armed conflicts otherwise known as International humanitarian law is a branch of public international law which is concerned with protection of victims of armed conflicts,<sup>8</sup> and it applies only to a situation thereof.<sup>9</sup> It is important to note that the scope of the application of IHL can be explored in different forms and dimensions such as the subject matter, period and place as well as personal field.

The first dimension is termed as *ratione materiae*, which is obviously the situations of armed conflicts. That is to say, IHL applies only to situations of armed conflicts. In this regard therefore, the existence of an armed conflict should be the determinant factor for the application of IHL. But how to determine whether or not a conflict is an armed conflict is a matter of both fact and law. Thus, the Appeal Chamber of

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<sup>7</sup> Magaji Chiroma, Op Cit

<sup>8</sup> In fact, it is not only the victims of armed conflicts but any person or property affected by or liable to be affected by the conflict has fallen under the protection of International Humanitarian Law.

See also Abraham, G; 'Law of International Armed Conflict', (ICRC, Pretoria, South Africa, 2009)

<sup>9</sup> McCoubrey, H; *International Humanitarian Law, The Registration of Armed Conflict*, (Dartmouth Publishing Company, London, 1990) 1.

the ICTY has clearly explained in the case of *Prosecutor v. Tadic*<sup>10</sup> as follows: “Armed conflicts exist whenever there is a resort to armed force between states or protracted armed violence between such group within a state...”<sup>11</sup> in light of this therefore, it is conclusive to say that any situation which has not reached the threshold of an armed conflict does not, in terms of application fall under the purview of IHL. Similarly, several criteria have been developed through practice for the purpose of identifying what an armed conflict entails. It is said that the parties to the conflict have to be identifiable to the extent that they must have a minimum of organization and structure as well as a chain of command; that the armed conflict must have a minimum level of intensity; that the parties would usually have recourse to their armed forces or to military means; and that the duration of violence is paramount and has to be taken into consideration.<sup>12</sup> IHL does not cover any situation of conflict that has not satisfy the above criteria. Therefore, it is not applicable in situations of internal tensions or disturbances, isolated acts of violence, riots and other acts of a similar nature.<sup>13</sup> However, this has been considered as lacuna by many scholars in recent times where new situations of conflicts especially those that occur in peace time are overwhelming; and the regime of human rights law alone will be inadequate to tackle the situation due to the fact that human rights law is subject to derogation and they are more declarative and less punitive compared to International Humanitarian law which is binding on state actors, non-state actors and individuals.<sup>14</sup> Human rights law hardly covers the non-state actors who in such disturbances also do resort to extremely violent acts, as seen in many cases such as the *Mambila* ethno-religious conflict; farmers/herders conflicts; conflicts in relation to the Indigenous People of Biafra (IPOB) movement as well as Oodua Liberation Movement - OLM (the agitators for Oodua Republic); and ethno-religious conflicts in southern part of Kaduna state among others.<sup>15</sup>

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<sup>10</sup> *Prosecutor v. Tadic* IT-94-1-AR72 (Oct. 2 1995)

<sup>11</sup> Ibid

<sup>12</sup> Mack, M. and Pejic; ‘Increasing Respect for International Humanitarian Law in Non-International Armed Conflict’ (February, 2008) Volume 90, Number 869, International Review of the Red Cross, P.7

<sup>13</sup> See Article1(2) of the Additional Protocol II of 8<sup>th</sup> June, 1977; Protocols Additional to the Geneva Conventions of 12 August 1949.

<sup>14</sup> Magaji Chiroma, Op Cit

<sup>15</sup> Ibid

Furthermore, the scope of IHL can also be determined in terms of the period and place within which to apply the law; and this is termed as *ratione temporis*. In as much as IHL applies to armed conflicts and only to places affected by the conflict, however, the application has to take effect only when armed conflict begun and ceases to apply the moment the conflict comes to an end and the peace is reached. On this point therefore, the Appeal Chamber of the ICTY in *Prosecutor v. Tadic*<sup>16</sup> equally stated:

“...IHL applies from the initiation of such conflicts and extend beyond the cessation of hostilities until a general conclusion of peace is reached; or in the case of internal armed conflict, a peaceful settlement of peace is achieved. Until that moment IHL continue to apply in whole territory of the warring states or in the case of internal conflicts, the whole country under the control of a party, whether or not actual combat take place there.”<sup>17</sup>

Lastly, the scope of IHL can be determined in form of *rationae personae*, that is personal field of application. In this dimension, IHL applies to all sides or warring parties regardless of justification of the war or legality of the war or who initiated the fighting. Hence, it does not concern about the legitimacy of war (*jus ad bellum*) at all, which eventually falls under the scope of international human rights law (IHRL). However, both IHL and IHRL mutually complement one another subject to the principles of complementarity and *lex specialis*. That is to say, in the events of any conflict between the two legal regimes, IHL, being the specific law supersedes the IHRL which is the general law from the perspective of the application of International law. This principle has been demonstrated in the latin maxim: “*lex specialis derogate leges generalis*”. It also important to note that human rights law (HRL) being the general law that applies at all times allows for certain derogations in a ‘state of emergency’ as highlighted by the International Court of Justice (ICJ) in its advisory opinion in the Nuclear Weapons Case<sup>18</sup> thus:

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<sup>16</sup> *Prosecutor v. Tadic* IT-94-1-AR72 (Oct. 2 1995)

<sup>17</sup> *Ibid*

<sup>18</sup> Nuclear Weapons Case, General List, Number 95, 1996

“The protection of the International Covenant on Civil and Political Rights does not cease in times of war, except by operation of Article 4 of the Covenant whereby certain provisions may be derogated from in a time of national emergency. Having recognised the continued applicability of human rights law during armed conflict, the Court analysed the interplay between the application of international humanitarian law and international human rights law in a situation of armed conflict with respect to the non-derogable human right not to be arbitrarily deprived of life. The Court stated that “the test of what is an arbitrary deprivation of life, however, then falls to be determined by the applicable *lex specialis*, namely, the law applicable in armed conflict which is designed to regulate the conduct of hostilities.”<sup>19</sup>

Furthermore, based on the provision of the International Covenant on Civil and Political Rights (ICCPR),<sup>20</sup> the UN affirmed that during armed conflicts generally, rules of IHL become applicable and help, in addition to the provisions in article 4 and article 5, paragraph 1, of the ICCPR, to prevent the abuse of a State’s emergency powers. The Covenant requires that even during an armed conflict, measures derogating from the Covenant are allowed only if, and to the extent that, the situation constitutes a threat to the life of the nation. If an armed conflict occurs, a State will need to consider whether the situation is one that amounts to an emergency “threatening the life of the nation”.

On whether application of IHRL will be extended extra-territorially, couple with the fact that armed conflicts can be of international and occupational in nature. Notwithstanding of some positions that human rights obligations do not extend extra-territorially as in *Banković* case<sup>21</sup>, the judicial precedents within the human rights bodies and the International Court of Justice (ICJ), however, tend to be

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<sup>19</sup> Ibid

<sup>20</sup> Article 4 of the ICCPR: A Treaty adopted by the UN General Assembly Resolution 2200 (XXI) on 16<sup>th</sup> December 1966 and in force from 23<sup>rd</sup> March 1976

<sup>21</sup> *Banković v. Belgium*, 2001–XII Eur. Ct. H.R., at paras. 70-71 (GC) 333.



in support of its application extraterritorially;<sup>22</sup> especially in situations where the state exercises effective control over a territory.<sup>23</sup> According to ICJ in relation to Palestinian occupied territories, that once a state exercises effective control over a territory, it is incumbent upon it to abide by its obligations under IHRL.<sup>24</sup> However, even in the *Banković* case (supra), the court reaffirms its position that human rights obligations do extend to cases in which there is effective control of territory.<sup>25</sup>

IHL and IHRL are two separate and distinct legal regimes that cohabit and apply during armed conflicts, however its application has been described in a multitude of terms, such as parallel applicability, convergence, complementarity, cross-fertilization, and harmonization.<sup>26</sup> Although, they are of different origin and attributes, each has unique advantages and roles to play, but they can be applied simultaneously based on the popular criterion that *lex specialis derogat legi generali* [the special law (IHL) displaces the general law (IHRL)]. However, there are some challenges bedevilling the co-application of IHL and IHRL on the basis of the above criterion. These challenges are usually centre on issues concerning “use of force” and “detention”. The IHRL relates to the concept of *jus ad bellum*, (the laws on the resort to force), whereas IHL can be indifferent to it. Under IHRL, there is an assumption of a right to peace, and also the legitimacy of the aims is part of the test for lawfulness of the means. Accordingly, there may be killings that take place in armed conflict and are lawful under IHL, but a proper application of IHRL would be expected to also look at the

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<sup>22</sup> Noam Lubell, “Parallel Application of International Humanitarian Law and International Human Rights Law:

An Examination of the Debate” ISR. L. REV. Vol. 40, No.2, (2007) 648-660.

<sup>23</sup> See the cases of *Loizidou v. Turkey*, 310 Eur. Ct. H.R. (ser. A) (1995) (Preliminary Objections), at para. 62-64

[hereinafter *Loizidou* (Preliminary Objections)]. *Cyprus v. Turkey*, 2001–IV Eur. Ct. H.R., at para.

77 (GC); *Wall case*, supra note 7, at paras. 107-112; Concluding Observations: Israel, 10, U.N.

Doc. CCPR/C/79/Add.93 (Aug. 18, 1998).

<sup>24</sup> Noam Lubell, Op Cit

<sup>25</sup> *Banković v. Belgium*, 2001–XII Eur. Ct. H.R., at paras. 70-71 (GC) 333. See also Noam Lubell, “Parallel Application of International Humanitarian Law and International Human Rights Law:

An Examination of the Debate” ISR. L. REV. Vol. 40, No.2, (2007) 648-660.

<sup>26</sup> Noam Lubell, Op Cit

background for the use of force, and whether legitimate aims are being pursued, which would then include the *jus ad bellum* question of whether this may have been an unlawful war of aggression. This is an issue often gone unnoticed in the debate on the relationship and if the two bodies of law are to co-exist peacefully, it will need further clarification. A similar issue in the context of detention, IHL allows for the detention of opposing combatants as prisoners of war, with no trial and with no scheduled date of release other than waiting for the armed conflict to end; IHRL has requirements of legitimate grounds for detention, and whilst it might be possible to fall back upon the *lex specialis* principle to show that prisoner of war detention is allowed. Perhaps questions could be raised as to whether the grounds for detention under IHRL would be equally legitimate in the case of soldiers fighting in self-defence, as opposed to soldiers fighting for the aggressor state. Whilst this sounds counter-intuitive when thinking of the reasoning behind the rules of IHL, the question might not be out of place in an IHRL mindset.<sup>27</sup>

As earlier on highlighted, IHL basically concerns two situations, namely: International armed conflict (IAC) and Non international armed conflicts (NIAC). International armed conflict is a conflict which involves at least two sovereign states, or between two internal factions within a state and both of which are backed by different states; or direct hostilities between two foreign states.<sup>28</sup> International armed conflict also consists of war involving a foreign intervention in support of an insurgent group fighting an established Government.<sup>29</sup> Non international armed conflict is a conflict which takes place within a country (such as those between government forces and rebels). This may equally involve an undeclared armed conflict or any other armed conflict which may arise between two or more rebel groups.<sup>30</sup>

One of the primary objectives of IHL is to solve humanitarian problems directly arising from either international or non-international

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<sup>27</sup> Ibid

<sup>28</sup> Stewart, J. G.: "Towards a Single Definition of Armed Conflict in International Humanitarian Law" (2003) 85: June (Number 850) IRRC, 315.

<sup>29</sup> Ibid see also for more details Magaji Chiroma, *Civilian Protection in Armed Conflict: The Complementarity of International and Islamic Humanitarian Laws*, (ABU Press, 2019) 19-33

<sup>30</sup> See Article 2 Common to the Geneva Conventions 1949.

armed conflict.<sup>31</sup> In situations of international armed conflict, the four Geneva Conventions and Additional Protocol 1 apply. Whereas, in the event of a non-international armed conflict, Article 3 common to the four Geneva Conventions and the Additional Protocol II apply.<sup>32</sup> Furthermore, the rules of IHL can be obtained in subsequent treaties, customary laws and judicial decisions which is recognized by the International Court of Justice (ICJ) as one of the instruments to be applied in resolving disputes before the Court. These rules of IHL are bound by nearly every state in the world,<sup>33</sup> and this has indeed contributed immensely to the development of IHL. In addition, divine scriptures such as the Glorious Qur'an and the holy Bible contributed immensely to the development of IHL, as many provisions in these scriptures provide for respect of humanity and guaranteed the protection of rights.

International Humanitarian law has provided for the basis of humanitarian services based on principles of humanity, impartiality, neutrality and independence. IHL as treaty-based, has formed today a universal body of law. Thus, the Geneva Convention (1864) laid down the foundations for the contemporary humanitarian law which was chiefly characterized as universal in scope; multilateral in nature; open to all states; and neutral when it comes to the obligation to extend care to victims and personnel.<sup>34</sup> The contemporary IHL is widely acknowledged in societies across the globe.<sup>35</sup> It is commonly written,<sup>36</sup> and emerged in a treaty<sup>37</sup> and therefore, it creates an avenue for

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<sup>31</sup> Hansungule, M; 'Protection of Civilians, Wounded, Sick and Shipwrecked, Prisoners of War', in Doswald-Beck, et al (eds), *International Humanitarian Law: An Anthology*, (Lexis Nexis- Butterworths wadhwa, India, 2009) 110

<sup>32</sup> Sassoli, M. and Bourvia, A. A; *How Does Law Protects in War (Cases Documents and Teaching Materials on Contemporary Practice)*, *International Humanitarian Law*, (ICRC, Geneva, 1999) 88-90

<sup>33</sup> Botha, C. J; 'International Humanitarian Law, Means and Method of Warfare', a Paper Presentation, (Pretoria, South Africa, 2009), where Geneva Law has been defined as rules which protect victims of war, whereas, the Hague Law are rules about the conduct of Hostilities.

<sup>34</sup> Magaji Chiroma, Op Cit, 19-33

<sup>35</sup> Hansangule, M. Op Cit, P. 111

<sup>36</sup> Bennoune, K; 'Assalamu Alaikum? Humanitarian Law in Islamic Jurisprudence' (1994) volume 15, No 2 Michigan Journal of International Law (Mich. J. Int'l) 606

<sup>37</sup> Roberts, A.: The equal Application of the Laws of War: principle under Pressure, (2008) Volume 90, Number 872, *International Review of the Red Cross (Direct Participation in Hostilities)*, P. 937

operational services based on the principles of universality, neutrality, impartiality and humanity.<sup>38</sup>

Generally, protection of civilian is the major concern of IHL due to frequency of intensified violence against them, which indeed is more marked among women owing to their vulnerability.<sup>135</sup> Hence, women during armed conflict must be specially protected against any attack on their honour, and in particular against rape, enforced prostitution and any other form of indecent assault.<sup>39</sup> To this end, the Security Council in a resolution<sup>40</sup> highlighted that threat to women in war is distinct from that facing the civilian population as a whole; thus, the Resolution expands similar provisions relating to protection of women contained in Resolution 1265 of (1999).<sup>41</sup> However, a resolution (R 1325 of 2000) points out that women are being increasingly targeted during armed conflicts and stresses the importance of full respect of International law relative to protecting women from GBV such as rape and other forms of sexual abuse and violence in situation of armed conflict, and calls upon states to take special measures to protect women.<sup>42</sup> In fact, women must be treated with all sense of respect dignity and humour because of their vulnerability.<sup>43</sup> In addition, the Resolution (1325 of 2000) further stipulates that gender based crimes cannot be included in any amnesty provision, and that states have a responsibility to prosecute perpetrators of such acts. In the same Resolution, the Council also urges that the gender-specificity of needs be taken into account some activities such as clearance of dangerous mines, negotiating peace agreements among others. The Resolution breaks new ground not only in the area of protection, but also in promoting women both as the solution to their

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<sup>38</sup> Magaji Chiroma, *Civilian Protection in Armed Conflict: The Complementarity of International and Islamic Humanitarian Laws*, (ABU Press, 2019) 19-33

<sup>135</sup> Tachou-Sipowo, A; 'The Security Council on Women in War: Between Peace Building and Humanitarian Protection', (March 2010) Volume 92, Number 877, International Review of the Red Cross, P.204

<sup>39</sup> See Article 27 of the Fourth Geneva Convention 1949

<sup>40</sup> Resolution 1325 of (2000)

<sup>41</sup> This is a Resolution passed on 17 September 1999 generally addressing the protection of civilians in war

<sup>42</sup> Tachou-Sipowo, A., Op Cit, P.214

<sup>43</sup> See Articles 12(4) of the third Geneva Conventions I and II

own suffering and as active and valuable participants in the restoration of peace and security.<sup>44</sup>

#### **4. WHAT SAYS THE LAW OF ARMED CONFLICTS ABOUT THE PROTECTION AGAINST GBV**

In addition to the general rules of protection against GBV provided for the conduct of hostilities, the law of armed conflicts equally seeks to provide special protection to the victims of armed conflicts against the specific acts of violence against humanity especially women. They are serious types of violence committed during armed conflicts as a result of undue advantages taken by the perpetrators against women. They are discriminatory in nature and targeted on specific persons based on the vulnerability of their persons. In fact, they are called GBV because they are targeted and inflicted on women and girls in different forms such as rape, enforced prostitution, sexual assaults and domestic violence such as sexual slavery, forced pregnancy, infanticide, etc. In fact, most of these acts are in several occasions, considered as either torture and/or inhuman and degrading treatment under the law of armed conflicts. Hence, they constitute a grave breach of the law, war crimes<sup>45</sup> and crimes against humanity.<sup>46</sup>

Rape, sexual violence, enforced prostitution, forced pregnancy and sexual slavery, for instance, are in most cases considered as torture and inhuman and degrading treatment under the International human rights laws (IHRL).<sup>47</sup> This is because it involves a kind of assault, torture in form of psychological trauma, inhuman and degrading treatment of victims, etc. Similarly, under the IHL and the decisions of International Courts and Tribunals such acts are considered as grave breaches of the law, war crimes and crimes against humanity. In

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<sup>44</sup> See Magaji Chiroma, Op Cit 76-78

<sup>45</sup> These consist of any grave breaches of the Geneva Conventions and other serious violations of the law of armed conflicts. However, not all violations of the conventions or laws of the armed conflicts constitute war crimes, but it has to be “serious violations”. See the decision of ICTY Appeal Chamber in the case of *Prosecutor v. Tadic* IT-94-1-AR72 Oct. 2, 1995

<sup>46</sup> This is defined as any acts when committed as part of a widespread and systematic attack directed against any civilian population with knowledge of the attack (Art. 7 of the Rome Statute of the International Criminal Court, 17<sup>th</sup> July 1998).

<sup>47</sup> See the case of *Marti de Mejia v. Peru* I-A CmHR., Case N. 10.970. Res. No. 5/96 (1 March 1996). In this case, the court equates rape with torture.

*Prosecutor v. Jean Paul Akayesu*,<sup>48</sup> the Trial Chamber of the ICTR stated thus: “Like torture, rape is used for such purposes as intimidation, degradation, humiliation, discrimination, punishment, control or destruction of the person. Like torture, rape is a violation of a personal dignity.”<sup>49</sup> It can be considered as domestic violence<sup>50</sup> when forcefully committed by a spouse against the will of the other spouse. This of course, in some jurisdictions could be termed as “spousal rape”. However, under the Penal Code of Northern Nigeria,<sup>51</sup> the term spousal rape does not unconditionally amount to rape.<sup>52</sup> It has been distinguished from rape simpliciter which is known as having unlawful sexual intercourse by a man with a woman that is not his wife through force and against her will.<sup>53</sup>

Infanticide in some ways is considered as genocides,<sup>54</sup> because it involves killing (murder) of certain group or category of people called “infants”.

In view of the above, IHL being the special law, has provided for the specific protection of women against GBV as it has accorded general protection to civilians against any kind of inhuman behaviour.<sup>55</sup> This was stressed by the Security Council (SC) in its resolution, that threat to women in war is distinct from that facing civilian population as a whole.<sup>56</sup> Therefore, warring parties should always desist from

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<sup>48</sup> ICTR-96-4-T (Appeal Court) (1st June 2001)

<sup>49</sup> Ibid

<sup>50</sup> Domestic violence refers to a broad range of actions from verbal abuse, including threats, to spousal rape and murder that take place within the privacy of an intimate relationship, often within the marital home.

<sup>51</sup> Section 282 (2) of the Penal Code of Northern Nigeria; the section provides that sexual intercourse by a man with his own wife is not rape, if she has attained the age of puberty.

<sup>52</sup> Ibid

<sup>53</sup> Bryan A. Garner, *Black's Law Dictionary* (7<sup>th</sup> Edition, West Group Publishing Co., 1999) 1267

<sup>54</sup> This is a serious crime against humanity, it is a crime of all crimes aimed specifically at destruction of a whole nation or part, or destruction of any ethnic, racial or religious group. See (Art. 2 of the Genocide Convention of the Prevention of the Crime of Genocide 1951); see also (Art. 2 of the ICTR Statute and Art. 4 of the ICTY Statute, which are making replica of Art. 2 of the Genocide Convention 1951). See Barbara Stark, *International Family Law: An Introduction* (Asgate Publishing Limited, Finland, 2005) 227

<sup>55</sup> See the Geneva Conventions (GC IV).

<sup>56</sup> See the Security Council (SC Resolution 1325 of 2000).

inflicting threats to women let alone perpetrating any acts of GBV. Such acts are characterized as form of genocide, torture and other serious war crimes depending on the nature in which they are carried out.<sup>57</sup> Similarly, in *Prosecutor v. Jean Paul Akayesu*,<sup>58</sup> it was held that rape may constitute a form of torture for the purpose of criminal liability based on the fact that it is used for such purposes as intimidation, degradation, humiliation, discrimination, punishment among others. In fact, rape is a violation of personal dignity. Furthermore, as part of emphasis on the protection against GBV, it is implied in the Geneva Conventions (GCs) that wilful killings, torture, inhuman treatment, serious injury to body or health, are considered as grave breaches of IHL.<sup>59</sup> Therefore, acts of humiliating and degrading treatment such as sexual slavery, enforced prostitution forced pregnancy are considered as forms of war crimes according to the Rome Statute.<sup>60</sup> This reaffirms the position of IHRL on the prohibition against torture and other cruel, inhuman or degrading treatment or punishment that no person shall be subjected to torture, or cruel, inhuman or degrading treatment or punishment.<sup>61</sup> Similarly, the provision for the right to freedom of life as contained under International, regional and domestic instruments is a clear protection against deprivation of lives as well as implication to protect persons from any violence (including GBV) that may cause or result into deprivation of such lives.<sup>62</sup> To this end, it is conclusive to put that inflicting GBV of certain kinds may probably result to breach of right to life, dignity of human person and personal liberty. This will as well remain a major threat to protection of innocent lives as enshrined under both the IHL and IHRL.<sup>63</sup> These two laws seek to protect all the victims of armed conflicts against any act of violence regardless of any adverse distinction.

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<sup>57</sup> See Art. 7 of the Rome Statute. In the Statute, rape and sexual violence are considered as war crimes.

<sup>58</sup> ICTR-96-4-T (Appeal Court) (1st June 2001)

<sup>59</sup> See Art. 50 of GC1

<sup>60</sup> Art. 8 of the Rome Statute

<sup>61</sup> See Art. 7 ICCPR. See also Art. 5 Universal Declaration of Human Rights (UDHR), adopted by UN General Assembly Resolution 217 A (III) of 10<sup>th</sup> December 1948.

<sup>62</sup> See Art.3 UDHR and Art. 6 ICCPR

<sup>63</sup> Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law Volume I: Rules* (Cambridge University Press, UK, 2005) 306-308

Adverse distinction in the application of IHL as well as the treatment of civilians and *hors de combat* on the bases of race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria is prohibited.<sup>64</sup> This prohibition is provided for under Article 3 of the Geneva Conventions as well as in the Third and Fourth Geneva Conventions. However, the prohibition does not imply a distinction which is made to give priority to those in most urgent need or care.<sup>65</sup> Similarly, the IHL prohibits adverse distinction in relation to its application and the treatment of non-combatants. The prohibition is implied in the popular principle of “non-discrimination” which is stipulated under the U.N. Charter and international instruments. To this end, the UN Human Rights Committee stated in its General Comment on Article 4 of the International Covenant on Civil and Political Rights that:

Even though article 26 or the other Covenant provisions related to non-discrimination . . . have not been listed among the non-derogable provisions in article 4, paragraph 2, there are elements or dimensions of the right to non-discrimination that cannot be derogated from in any circumstances. In particular, the provision of article 4, paragraph 1, must be complied with if any distinctions between persons are made when resorting to measures that derogate from the Covenant. Article 4(1) of the Covenant provides that measures that derogate from it may not involve “discrimination solely on the ground of race, colour, sex, language, religion or social origin”. While discrimination on grounds of political or other opinion, national origin, property, birth or other status is prohibited under Article 2(1) of the Covenant, these grounds are not listed in Article 4(1) dealing with derogations.<sup>66</sup>

It is also significant however, that the Additional Protocols prohibit discrimination on grounds of political or other opinion, national origin, wealth, birth or other status and thus recognise that the

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<sup>64</sup> Ibid

<sup>65</sup> Ibid

<sup>66</sup> Ibid



prohibition of discrimination on such grounds cannot be dispensed with, even during armed conflict. This is also the approach of the African Charter on Human and Peoples' Rights and the Convention on the Rights of the Child, which prohibit discrimination on grounds of political or other opinion, national origin, property, birth or other status and do not allow for any derogation.<sup>67</sup> Having highlighted on the nature and application of the law of armed conflicts, the article examines various and specific acts of violence that will directly or indirectly amount to GBV as contemplated by the law as follows.

Murder generally, is a prohibited act of violence, but if committed during armed conflicts amounts to war crime. This has been confirmed by various codes, international and regional instruments<sup>68</sup> and decisions of various international tribunals.<sup>69</sup> Similarly, murder of all kinds if committed against non-combatants tantamount to "violence to life and person" under Article 3 of the Geneva Conventions hence punishable under the law. Whereas, if committed against women thereby taking undue advantage of their gender status and/or vulnerability, can be considered as GBV that is punishable under the law. Most of the specific acts of GBV such as torture, rape and slavery, if committed, will probably result into violence to life and person (death) of the victims. Hence, the act of murder generally is considered as GBV on that basis.

Torture, cruel or inhuman treatment are prohibited and considered GBV if committed against women. Whenever such offences occur during armed conflict will amount to war crime and indeed constitute grave breaches of the Geneva Conventions. These are malicious crimes that cause great suffering or serious injury to body or health. This has been reiterated in all the Geneva Conventions and the Additional Protocols.<sup>70</sup>

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<sup>67</sup> Ibid

<sup>68</sup> See for instance articles 23 and 24 of Lieber Code

<sup>69</sup> See for example article 6 (b) the Charter of the International Military Tribunal at Nuremberg; see also Article 8(2)(a)(i) and (c)(i) of the ICC Statute; see also Article 2(a) of the ICTY Statute; see also Article 4(a) of the ICTR Statute; and see also Article 3(a) of the Statute of the Special Court for Sierra Leon,

<sup>70</sup> See for instance Article 12, second paragraph ("torture") of the First Geneva Convention; Article 12, second paragraph ("torture") of the Second Geneva Convention; Article 17 fourth paragraph ("physical or mental torture"), Article 87, third paragraph ("torture or cruelty") and Article 89 ("inhuman, brutal or dangerous")

Rape is a form of sexual violence which occurs against the will and consent of the victim. Thus, according to the International Criminal Tribunal for the Former Yugoslavia (ICTY) in its judgement in the *Furundžija* case (1998),<sup>71</sup> the act of rape requires “coercion or force or threat of force against the victim or a third person”. The Tribunal however, in its later case-law in the *Kunarac* case in 2001,<sup>72</sup> considered that there might be other additional factors “which would render an act of sexual penetration non-consensual or non-voluntary on the part of the victim”. Hence this consideration defined the accurate scope of the definition of rape under international law. Similarly, the International Criminal Tribunal for Rwanda (ICTR) in the *Akayesu*’s case in 1998<sup>73</sup> held that “rape is a form of aggression” and that “the central elements of the crime of rape cannot be captured in a mechanical description of objects and body parts”. It defined rape as “a physical invasion of a sexual nature, committed on a person under circumstances which are coercive”.<sup>74</sup>

Rape by its nature is a GBV. It is committed mostly against women at all times and in all situations. However, if the act is committed during war may constitute a war crime. Hence it is prohibited under the laws of armed conflicts generally. Notwithstanding the fact that some of the laws (such as common Article 3 of the Geneva Conventions) do not explicitly mention the prohibition but regarded it as “violence to life and person including cruel treatment and torture and “outrages upon personal dignity”. Sexual violence in whatever form and/or circumstance is prohibited. Whether executed before, during or after the war. Thus, at all times, non-combatants are generally entitled to respect for their persons and their honour as well as protection against humiliating and degrading treatment, enforced prostitution and any form of indecent assault (including rape).<sup>75</sup> All these actions constitute war crimes under the Statutes of the International Criminal Tribunal for Rwanda (ICTR) and

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disciplinary punishment of the Third Geneva Conventions; and Article 32 (“torture” and “other measures of brutality”) of the Fourth Geneva Convention.

<sup>71</sup> ICTY, *Furundžija* case, Judgement (1998)

<sup>72</sup> ICTY, *Kunarac* case, Judgement (2001)

<sup>73</sup> ICTR, *Akayesu* case, Judgement (1998)

<sup>74</sup> Ibid

<sup>75</sup> See Article 75(2) of Additional Protocol I to the GC; and Article 4(2) of the Additional Protocol II to the GC

of the Special Court for Sierra Leone.<sup>76</sup> Similarly, issues of GBV such as rape, sexual slavery, enforced prostitution, forced pregnancy etc, or any other form of sexual violence do not only constitute war crimes but also constitute serious violations of human rights.<sup>77</sup> In addition, rape and other acts of indecent assault equally constitute crime against humanity under the Statutes of the International Criminal Courts (ICC) such as those of the International Criminal Tribunals for the Former Yugoslavia and International Criminal Tribunals for the Former Rwanda (ICTY and ICTR).<sup>78</sup>

Furthermore, slavery of all kinds including sexual slavery and all forms of slave trade are prohibited. This is contained in various instruments regulating armed conflicts. Many rules are set out in the GCs in respect of the labour of prisoners of war and civilians, as well as the issues concerning their release and return. Similarly, the rules against prohibition of slavery is equally encapsulated in the Hague Regulations of the forced allegiance of persons in occupied territory.<sup>79</sup> In addition, enslavement has been considered also as a crime against humanity under the Charters of the International Military Tribunals at Nuremberg and Tokyo<sup>80</sup> as well as that of the Statutes of the International Criminal Court and Tribunals for the Former Yugoslavia and for Rwanda.<sup>81</sup> Worthy of note also is that if non-combatant females are captured and detained for the purpose (including sexual slavery and enforced prostitution) other than intern for their safety, may equally amount to an act of “taking of hostages” which is prohibited under the IHL. The prohibition is firmly entrenched in customary international law and is considered a war crime under the Statutes of the International Criminal Tribunals for the Former Yugoslavia and for Rwanda and of the Special Court for Sierra Leone.<sup>82</sup> In fact, it is

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<sup>76</sup> See Article 4(e) of the ICTR Statute; and Article 3(e) of the Statute of the Special Court for Sierra Leone.

<sup>77</sup> See Article 8(2)(b) of the ICC Statute.

<sup>78</sup> See Article 5(g) of the ICTY Statute; Article 3(g) of the ICTR Statute; and See also Article 7(1)(g) of the ICC Statute.

<sup>79</sup> See Articles 49–68 and Articles 109–119 of the Third Geneva Convention; see also Article 40 of the Fourth Geneva Convention.

<sup>80</sup> See Article 6 of the IMT Charter (Nuremberg),

<sup>81</sup> See Article 5(c) of the ICTY Statute; Article 3(c) of the ICTR Statute; Article 7(1)(c) of the ICC Statute

<sup>82</sup> Article 2(h) of the ICTY Statute; Article 4(c) of the ICTR Statute; Article 3(c) of the Statute of the Special Court for Sierra Leone

recognized as a violation of fundamental guarantee for civilians and persons *hors de combat* in Additional Protocols I and II.<sup>83</sup>

## **5. PROTECTION AGAINST GBV WITHIN DOMESTIC LEGISLATIONS**

Most countries in the world if not all have either enacted general or specific laws for the protection against GBV, though, such laws are mostly applicable during peace time. The laws are directly or indirectly promulgated to guarantee safety and protection against any sort of GBV, as it obviously jeopardizes the right to life and other fundamental rights and freedoms enshrined in various constitutions. As earlier on mentioned, GBV comprises of violence such as domestic violence (which includes sexual assaults, sexual slavery, enforced prostitution, forced pregnancy, infanticide among others). All these categories of violence affect the fundamental rights of persons directly or indirectly. This indeed jeopardizes particularly the right to life, the right to dignity of human person and the right to freedom from discrimination among others. Thus, it is against this backdrop that in Nigeria for instance, the Constitution 1999, in ensuring and guaranteeing the general protection of people provides for the freedom of right to life, and it states thus: “Every person has a right to life, and no one shall be deprived intentionally of his life, save in the execution of the sentence of a court in respect of criminal offence of which he has been found guilty in Nigeria.”<sup>84</sup> No person shall be regarded as having been deprived of his life in contravention of this section if he dies as a result of: ensuring defence of any person from an unlawful violence or for the defence of property; or effecting lawful arrest or preventing the escape of a person lawfully detained; or suppressing a riot, insurrection or mutiny.<sup>85</sup> Similarly, the Constitution of the FRN (1999) provides for the right to dignity of human person. Thus, it stated that no person shall be subjected to torture or to inhuman or degrading treatment; or no person shall be held in slavery or servitude; or no person shall be required to

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<sup>83</sup> Article 75(2)(c) of the Additional Protocol I; Article 4(2)(c) of the Additional Protocol II

<sup>84</sup> Section 33(1) of the Constitution FRN (1999), hereinafter refers as “the Constitution”

<sup>85</sup> Section 33(2) of the Constitution

perform forced or compulsory labour.<sup>86</sup> The Constitution also provides for the right to freedom from discrimination, and that no citizen of Nigeria shall be subjected to any kind of discrimination on the basis of ethnicity, place of origin, sex, religion or political opinion.<sup>87</sup>

Similarly, in the Penal Code (PC) which is applicable to Northern states of Nigeria, the offence of rape is defined as having sexual inter course with a woman in any of the following circumstances: against her will; or without her consent; with her consent, when the consent has been obtained by putting her in fear of death or of hurt; or with her consent when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married; or with or without her consent, when she is under fourteen years of age or of unsound mind.<sup>88</sup> However the same PC reaffirms that having sexual inter course by a man with his own wife does not amount to rape, if she has attained puberty.<sup>89</sup> In fact, several marital instruments reaffirm that both husbands and wife have the rights to sexual intercourse which must at all times be exercised reasonably. Thus, having an unconsented sexual inter course with a wife therefore will not be a sufficient ground to qualify an act as rape, because of the fact that the contract of marriage alone is an implied consent. However, the act (unconsented sexual inter course) as well as excessive sexual demands may form a good ground for divorce.<sup>90</sup> The Punishment of rape is provided for by the PC thus: “whoever commits rape, shall be punished with imprisonment for life or for any less term and shall also be liable to fine.”<sup>91</sup>

In the same vein, rape under the Criminal Code (CC) which is applicable in the Southern states of Nigeria is defined as having carnal knowledge of a woman or girl, without her consent, or with her consent if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of harm, or by means of false and fraudulent

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<sup>86</sup> Section 34(1) of the Constitution

<sup>87</sup> Section 42(1) of the Constitution

<sup>88</sup> Section 282(1) PC

<sup>89</sup> Section 282(2) PC

<sup>90</sup> Yahaya A. Muhammad, Examination of Rape as Criminal Offence and Sexual Harassment as Misconduct under the University of Maiduguri Act and the Public Service Rules 2008 (FRN)

<sup>91</sup> Section 283 PC

representation.<sup>92</sup> To this effect, the law provides for the punishment thus: “Any person who commits the offence of rape is liable to imprisonment for life, with or without whipping.”<sup>93</sup> Similarly, under the Violence Against Persons (Prohibited) Act 2015, the punishment of rape is life imprisonment except where the offender is less than 14 years of age, the offender is liable to a maximum of 14 years imprisonment; in all other cases, to a minimum of 12 years imprisonment without an option of fine; or in the case of rape by a group of persons, the offenders are liable jointly to a minimum of 20 years imprisonment without an option of fine.<sup>94</sup> In addition, the court shall award appropriate compensation to the victim as it may deem fit in the circumstances.<sup>95</sup> The award of appropriate compensation is motivated by the devastating, traumatic nature of the act of rape against female gender which always leaves a bitter experience in their minds. On this note therefore, the Supreme Court of Nigeria, in the case of *Shuaibu Isa v. Kano State*,<sup>96</sup> made a comprehensive description of the act of rape, thus it says: it is an unlawful act by its nature, because it involves an aggressive carnal knowledge of a female without her consent; and indeed, it is grave, devastating, traumatic and reduces the totality of the victim’s personality.<sup>97</sup> To this effect, his lordship, Hon. Justice Ibrahim Tanko Muhammad, the Chief Justice of Nigeria (who was Justice of the Supreme Court) equally described a rapist as a cancer in the society who is worse than an animal.<sup>98</sup> In recent past, the Kaduna state government passed a Bill (on the 11<sup>th</sup> September 2020) to amend the Kaduna State Penal Code which now is to be cited as “the Kaduna State Penal Code (Amendment) Law, 2020”. This law has amended the section 258 of the Principal Law<sup>99</sup> thereby substituting it to include as follows:

“whoever commits rape of a child below the age of fourteen (14) years shall on conviction be punished with

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<sup>92</sup> Section 357 CC

<sup>93</sup> Section 358 CC

<sup>94</sup> Section 1 of the Violence Against Persons (Prohibited) Act 2015 “hereinafter referred to as the VAPP Act 2015”

<sup>95</sup> Section 1 (3) VAPP Act 2015

<sup>96</sup> (2016) 6 NWLR, (pt. 1508) at 243

<sup>97</sup> *Shuaibu Isa v. Kano State* (2016) 6 NWLR, (pt. 1508) at 243

<sup>98</sup> *Shuaibu Isa v. Kano State* (2016) 6 NWLR, (pt. 1508) at 243

<sup>99</sup> The Principal Law was the former Penal Code Law (No. 5) of Kaduna State, 2017

surgical castration and death.”<sup>100</sup> “whoever has sexual intercourse with a male a child below the age of fourteen (14) years shall on conviction be punished with surgical castration and death.”<sup>101</sup> “Where a female adult is convicted for the offence of rape of a child, the court shall punish the accused with bilateral salpingectomy and death.”<sup>102</sup> “Where the victim is above fourteen (14) years, the court shall on conviction sentence the accused with punishment of surgical castration and life imprisonment.”<sup>103</sup> “where the convict is a child, the court shall order as appropriate under the Children and Young Person Law Cap 26 Laws of Kaduna State 1991.”<sup>104</sup> “where the victim is a child, the court shall in addition to the conviction under subsection (1) and (2) order that the convict be listed in the sex offenders register to be published in the media by the Attorney General.”<sup>105</sup> “Where the court is trying the offence of rape involving a child below the age of fourteen (14) years corroboration of medical report is necessary.”<sup>106</sup>

Worthy of note in respect of domestic violence generally, the Federal Government of Nigeria has enacted the law which is gender sensitive that guarantees protection against GBV regardless of sex (who the victim is), and is cited as “Violence Against Persons (Prohibited) Act [VAPPA] 2015”. This Act was enacted in order to protect and prevent issues of sexual abuse and domestic violence and other related crimes in the country. Though the law is made to be applicable only to FCT, Abuja, but some states’ government in the country have almost replicated it within their domain for the same purpose of protection against gender related violence. In fact, they did that as response to the rising incidents of violence against women in their respective jurisdictions such as issues of killing and maiming, pouring acid on spouse as well as slavery. A typical example of such law is the one

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<sup>100</sup> Section 4 (1) of the Kaduna State Penal Code (Amendment) Law, 2020; which is equivalent to section 258 (1) of the Penal Code Law (No. 5) of Kaduna State, 2017

<sup>101</sup> Section 4 (2) of the Kaduna State Penal Code (Amendment) Law, 2020

<sup>102</sup> Ibid Section 4 (3)

<sup>103</sup> Ibid Section 4 (4)

<sup>104</sup> Ibid Section 4 (5)

<sup>105</sup> Ibid Section 4 (6)

<sup>106</sup> Ibid Section 4 (7)

enacted by the Lagos State Government, that is, the Protection Against Domestic Violence Law of Lagos State, No. 15, 18<sup>th</sup> May, 2007; and that of Kaduna state (which is cited as "Violence Against Persons (Prohibition) Law No. 32, 1<sup>st</sup> December 2018"). Other states such as Bauchi, Anambra, Ekiti, Enugu and Oyo have also been able to make efforts in this regard.

The VAPPA, in addition to prohibition of the various forms of the violence also provides for the respective punishments, remedies and compensation (adequate compensation to victims).<sup>107</sup> Thus, the following acts are prohibited under the VAPPA: rape,<sup>108</sup> spousal battery,<sup>109</sup> forceful ejection from home,<sup>110</sup> forced financial dependence (economic abuse),<sup>111</sup> harmful traditional practices,<sup>112</sup> among others. Furthermore, it is a crime under the Act to abandon one's spouse, children and other dependants without maintenance; and it attracts imprisonment of a term not less than one year or to a fine not less than ₦100, 000.<sup>113</sup> Forceful ejection from home attracts imprisonment for a term not exceeding 2 years or to a fine not exceeding ₦300, 000.<sup>114</sup> In the case of spousal battery, the offender is liable on conviction to a term of imprisonment not exceeding 3 years to a fine not exceeding ₦200,000. Similarly, the case of incest i.e. father sleeping with his own daughter or brothers and sisters, grandfather and a granddaughter,<sup>115</sup> etc; the offender is liable on conviction to a term of 10 years imprisonment without an option of fine where the offence is committed without consent; and where it is committed by two consenting parties, it attracts 5 years of imprisonment without an option of fine.<sup>116</sup>

Domestic violence according to the Protection Against Domestic Violence Law of Lagos State, No. 15, 2007 includes: physical abuse, sexual abuse such as rape, sexual assault and incest, starvation, emotional verbal and psychological abuse, economic abuse

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<sup>107</sup> See Sections 1 (3) and 2 (5) of the VAPP Act 2015

<sup>108</sup> Section 1 of the VAPP Act 2015

<sup>109</sup> Section 19 of the VAPP Act 2015

<sup>110</sup> Section 9 of the VAPP Act 2015

<sup>111</sup> Section 12 of the VAPP Act 2015

<sup>112</sup> Section 20 of the VAPP Act 2015

<sup>113</sup> Section 16 (1) – (3) of the VAPP Act 2015

<sup>114</sup> Section 9 of the VAPP Act 2015

<sup>115</sup> Section 46 of the VAPP Act 2015

<sup>116</sup> Section 25 of the VAPP Act 2015



and exploitation, intimidation, harassment, deprivation etc.<sup>117</sup> Similarly, the Violence Against Persons (Prohibition) Law of Kaduna state defined Domestic violence as any act perpetrated on any person in a domestic relationship where such act causes harm, or may cause imminent harm to the safety, health or wellbeing of any person.<sup>118</sup> This equally encompasses all the specific acts listed above in the Lagos law in addition to female circumcision or genital mutilation.<sup>119</sup>

It is important to note that the Lagos state law is largely focusing on protection rather than penalties. It protects victims in different ways and circumstances through the courts and relevant authorities. These protections include prohibition of domestic violence itself,<sup>120</sup> application for protection order against the respondent,<sup>121</sup> issuance of protection order by the court<sup>122</sup> as well as warrant of arrest,<sup>123</sup> seizure of arms and dangerous weapons in the possession or under the control of the respondent through the Police,<sup>124</sup> etc. Unlike the Lagos state law, the Kaduna state law, in addition to provision of various protection also prescribed the general and specific punishments for the offences related to domestic violence. The law in this regard provides that: “any person who wilfully or knowingly places a person in fear of physical injury commits an offence and is liable on conviction to imprisonment for a term of not less than two (2) years or a fine of not less than two hundred thousand (₦200,000) only or both.”<sup>125</sup> “Any person who attempts to commit the offence as provided for in subsection (1) of this section is guilty of an offence and is liable on conviction for imprisonment to a term of not less than one (1) year or to fine of not less than two hundred thousand (₦200,000) only or both.”<sup>126</sup> “A person who aids, abets or counsels another person to commit the offence

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<sup>117</sup> Section 18 (1) (g) the Protection Against Domestic Violence Law of Lagos State, No. 15, 2007

<sup>118</sup> Section 3 of the Violence Against Persons (Prohibition) Law of Kaduna State, No. 32, 2018

<sup>119</sup> See Ibid Section 5

<sup>120</sup> Section 1 the Protection Against Domestic Violence Law of Lagos State, No. 15, 2007

<sup>121</sup> Ibid Section 2

<sup>122</sup> Ibid

<sup>123</sup> Ibid

<sup>124</sup> Ibid

<sup>125</sup> Section 4 (1) of the Violence Against Persons (Prohibition) Law of Kaduna State, No. 32, 2018

<sup>126</sup> Ibid

provided for in subsection (1) of this section is liable on conviction for imprisonment to a term of not less than one (1) year or to fine of not less than two hundred thousand (~~N~~200,000) only or both.”<sup>127</sup> “Any person who receives or assists another who has committed the offence provided for in subsection (1) of this section is an accessory after the fact and is liable on conviction for imprisonment to a term of not less than one (1) year or to fine of not less than two hundred thousand (~~N~~200,000) only or both.”<sup>128</sup>

## **5. A RETHINK BEYOND OPERATION OF THE LAW**

Having explored the various international and domestic legislations in relation to protection against GBV, one can realize that there exists a dearth of legal mechanisms that have been put in place to combat the menace at different levels. In fact, in some jurisdictions, stringent measures and penalties are equally set out on different occasions and circumstances to an extent that the offenders are sometimes faced with death penalties. The legal mechanisms are presumed to be effective, fairly adequate and sufficient to have suppressed violence against women in the contemporary society but to no avail. Perhaps, the problem may lie with lack of capability and ineffectiveness of the implementing stakeholders such as various UN Committees/agencies, International Committee of the Red Cross (ICRC) and the Committee on the Elimination of Discrimination against Women (CEDAW), part of whose mandates basically is to promote implementation of the laws and conventions. Consequently, little or no major success is said to have been recorded in that regard considering their primary duties. Hence, it is the conclusion of this article that the matter should better be conceived beyond the instrumentality of the law.

Protection against GBV is vital to actualization of Human rights protection in general and women’s right protection in particular. It is a fact that the rate of which women are been targeted during armed conflicts is increasing by the day. This happens not only because of their vulnerability but also as part of deliberate and political strategies to humiliate them and their families. However, the protection against GBV through compliance with and full respect to the rule of law during and after armed conflicts is not only significant but remains a duty upon

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<sup>127</sup> Ibid

<sup>128</sup> Ibid

all and sundry. Hence, the protection can be viable in this contemporary society if other means or measures (in addition to legal measures) are to be imbibed. To this end, it is imperative therefore to consider non-legal measures as they anticipate good and always live to stay with people. These measures include *inter alia*:

- Inculcating civic and moral values in belligerents such as security forces, armed groups, insurgents and of course, even civilians such as children and young persons should not be left out. This can be achieved through media dissemination and teaching civic education at different fora. Belligerents and children are required to be taught about humanity as well as good and bad habits rather than putting emphasis on execution of stringent penalties. Moral values will always continue to remain in them and will equally have significant impact throughout their lives. In fact, this alone can play a significant role towards protection against GBV even better than dissemination of basic humanitarian principles and the rules of war to belligerents.
- Resorting to informal social control. This will certainly help in tackling issues concerning protection against GBV, as the formal social control through the law has not yielded a required result. People should therefore begin to think about other alternatives such as resort to informal social control. In this regard therefore, the role of religious and traditional institutions is imperative and cannot be overemphasised. As custodians of peace and tradition, they always play a significant role in shaping and moulding the society. This role is certainly not quantifiable and is over and above the roles played by contemporary politicians, administrators, security agencies and institutions. Similarly, secessionists' and insurgents' leaders are to be intimated and engaged in discussion about the danger leading to collapse of the society that maltreats, abuses and disrespects its women and girls. Any society that does not honour and respect its female gender will never prosper or develop; because they are the backbone of every society. Importantly, in the events of the discussion, the provision for a neutral facilitator, neutral ground and level playing grounds are required.

- Renouncing or redefining harmful customs and practices. Some customs especially those that degrade or humiliate female gender should be renounced and/or redefined as they would not stand the test of time. Such customs are proved both from religious and moral perspectives as barbaric and repugnant to natural justice. Consequently, these kinds of customs contribute to promotion of GBV during and after the conflicts. Thus, it is imperative to always seek for innovative solutions in harmony with local customs, while at the same time endeavouring to sensitize people especially warriors on the dangers, abuses and suffering to which women are exposed to.

Ensuring the economic advancement and provision of an enabling environment for women to thrive and compete. This will help in making them economically independent devoid of any kind of things that will subject them to temptation, deceit, duress or coercion, slavery and enforced prostitution. That is to say, whenever they are economically independent and financially buoyant, no one can take undue advantage of them. Not even during or after war.