

# Re-Examination of Rape and Its Growing Jurisprudence under International Law

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Received: October 3, 2013 Accepted: October 24, 2013 Online Published: November 29, 2013

doi:10.5539/jpl.v6n4p187

URL: <http://dx.doi.org/10.5539/jpl.v6n4p187>

## Abstract

The trend of recurrence rape in our society today constitutes a serious phenomenal threat to the human existence and dignity. This paper examined the offence of rape holistically from definitional perspective with reference to related concepts such as sexual violence, and marital /spousal rape. This paper also examined selected statutes which prohibit rape. It further examined rape in the context of genocide, crime against humanity, torture, and war crimes. Also, some selected statistics of rape were examined. Also, examined are effects and aftermaths of rape.

The aim of this paper is to show that rape is a monstrosity dangerous to humanity and should not be underrated.

This is a desk-based research which relies on both primary and secondary resources of data which have been subjected to contentual and contextual analysis.

It is the findings of this author among others that issue of rape must be frontally attacked but also that the problem of rape cannot be solved by measures taken within the criminal justice sector alone.

**Keywords:** rape, conceptual framework, violence, statutory prohibition, constituent crimes, statistics, effects

## 1. Introduction

Rape and sexual violence have an extremely long history and it occurs both in peace time<sup>1</sup> and also during conflict or war situation. For many centuries, women were viewed as “Victor’s Spoils.” In ancient Greece, as in many other societies, victors in war gained the “right to rape.”<sup>2</sup> Women are raped in all forms of armed conflict, both international and internal, whether the conflict is fought primarily on religious, ethnic, political or nationalist-grounds, or a combination of all these.<sup>3</sup> They are raped by men from all sides –both enemy and “friendly” forces. There have been reports of rapes and other forms of sexual abuse committed by members of the United Nations Peace Keeping Forces: women are not free from interference even from those who are in the territory with an international mandate to restore peace and security.<sup>4</sup> It is a crime whose phenomenon is highly controversial and emotional issues are really involved. Its social context cannot be ignored, yet it is one of the most under-reported crimes. It is difficult to obtain accurate official statistics to show the frequency of this offence but one can say that it is on the increase.<sup>5</sup> The rampancy and ferocity of rape today either in peace or war situation is of global concern.

Historically, the law of rape had as its pre-occupation, the protection of virgins from rape, forced marriage and abduction. Indeed the position of things was such that the complaint of rape by non-virgins was often ignored.<sup>6</sup>

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<sup>1</sup> Roman Matron Lucretia was raped. Livy: The Rape of Lucretia, from the History of Rome. [www.fordham.edu/~Livy-rape.intionl](http://www.fordham.edu/~Livy-rape.intionl). There is an alarming trend of rape across India with a celebrated Gang-Rape Case of 16 December, 2012 caping it. See [www.youtube.com.Rape](http://www.youtube.com.Rape) in peace time is indeed universal and every country has his own fair share.

<sup>2</sup> de-Tham C & Shorts C (2003) *International Criminal Law and Human Rights*, Sweet & Maxwell, London, PP: 345-386 at 347.

<sup>3</sup> C. Chinkin, (1994) “Rape and Sexual Abuse of Women in International Law” 5E.J.I.L 3261.

<sup>4</sup> Ibid. See also B. Nowrojee (1996) “Shattered Lives: Sexual Violence during the Rwandan Genocide and its Aftermath” New-York Human Rights Watch.

<sup>5</sup> Yakubu, J.A, (1990) “The Rape Crisis: Society on Trial,” *The Advocate*, Vol.14&15. Pp.34-40

<sup>6</sup> Ibid P. 34.

The law sought to give protection to a father's interest in the virginity of his daughter or a husband's interest in his wife's fidelity.<sup>7</sup> It was therefore observed in *People V Alberta*<sup>8</sup> thus:

“The purpose behind early rape laws was to protect the chastity of women and thus their proprietary value to their fathers and husbands.”

This paper examines the subject of rape in a holistic manner without necessarily adopting any particular stereotyped method. It examines the nature and seriousness of rape as crime against humanity, war crime, and genocide. It also examines some rape statistics and the effects or aftermaths. This paper concludes with suggestions for reform.

## 2. Definitional or Conceptual Perspectives

### 2.1 Rape

The term “rape” originates from the Latin verb “*rapere*”, meaning “to seize or take by force”.<sup>9</sup> It is an offence that defies any straight-jacketed definition, as it is very difficult to define and administer with precision.<sup>10</sup> Also, according to Howard, a learned Australian author:

“Rapes is at once the most difficult offence to administer reasonably and one of the most difficult to define in a manner which facilitates reasonable administration. This is because it combines in high degree the qualities of ease and accusation and difficulty of denial.”<sup>11</sup>

Rape is defined as a crime in the criminal statutes of most countries in addition to the criminalization of rape under international law.

In Nigeria, Section 357 of the Criminal Code defines rape thus:

“Any person who has unlawful carnal knowledge of a woman or girl without her consent, if the consent is obtained by force or intimidation of any kind, or by fear of harm or by means of false and fraudulent misrepresentations as to the nature of the act, or in the case of a married woman by personating her husband, is guilty of a crime which is called rape.”<sup>12</sup>

In England, in 1275 the first Statute of Westminster provided that rape was committed “if a man ravish a married woman, dame or damsel where she neither consented before or after.”<sup>13</sup>

Some jurisdictions offer a broader definition of rape to include penetration of the anus and even penetration of the mouth.<sup>14</sup> By virtue of Section 142 of the Criminal Justice and Public Order Act 1994, it is an offence for a man to rape a woman or another man. It further provides.

“A man commits rape if:

He has sexual intercourse with a person (whether virginal or anal) who at the time of the intercourse does not consent or is reckless as to whether that person consents to it.”<sup>15</sup>

Section 1(1) of the New English Sexual Offences Act 2003 defines rape as including intentional penetration of the virginal, anus, or mouth of the victim by the penis.<sup>16</sup>

<sup>7</sup> The Common Law at this period regarded women as property so that rape was regarded as a *crime of man against man*.

<sup>8</sup> (1984) N.Y 2d 154, P.167.

<sup>9</sup> Encyclopedia Dictionary on Roman Law, PP.667 and 768.

<sup>10</sup> Yakubu, J.A. (2002) “Rape as a War Crime,” University of Ado- Ekiti Law Journal, Vol. 1, PP.11-20; Onibon-Oje, B.O. (2010) “Rape as a War Crime” Jurist Consult Publication of the Law Society University of Ado-Ekiti Vol. 1, No. 7, PP.90-96. It is pertinent to mention that University of Ado-Ekiti is now renamed as Ekiti State University, Ado-Ekiti, Nigeria.

<sup>11</sup> Howard, C. (1970) Australian Criminal Law, The Law Book Company Ltd., P.157.

<sup>12</sup> See Sections 357-360 Criminal Code Laws of Federation of Nigeria 2004. See also, Section 283 of the Penal Code Laws of Northern Nigeria which has a similar provisions. The Penal Code is the main statute regulating criminal offences in the Northern part of Nigeria, while Criminal Code is for the Southern part of Nigeria. Section 77 of the Armed Forces Act of Nigeria makes rape a military offence triable by Court Martial.

<sup>13</sup> Statute of Westminster No2, Clause 34.

<sup>14</sup> Atidoga, D. A. (2009) “A Comparative Assessment of the Legal Framework for the Crime of Rape in Nigerian Penal Laws” in Kogi State University Bi-Annual Journal of Public Law, Vol.1, part 1, PP 112-122.

<sup>15</sup> Section 142 of Criminal Justice and Public Order Act of England 1994. See also the Criminal Law (Rape) Amendment Act 1990 of Ireland which define rape as including penetration of the virginal or anus of the victim.

An international case-law definition was handed down in *Prosecutor V Akayesu*, a Judgment of International Criminal Tribunal for Rwanda where rape was equally defined broadly as “a physical invasion of sexual nature committed on a person under circumstances which are coercive.”<sup>17</sup> The position under international law is such that rape has been broadly defined as including penetration of the vaginal or anus or mouth of the victim by the penis of the perpetrator or any other object used by the perpetrators.<sup>18</sup> The definition of rape keeps expanding.

## 2.2 Sexual Violence

The Tribunal<sup>19</sup> defines rape as a physical invasion of a sexual nature, committed on a person under circumstances which are coercive.<sup>20</sup> Sexual violence is not limited to rape or physical invasion of the human body and may include acts which do not involve penetration or even physical contact.<sup>21</sup>

The Rome Statute of the ICC acknowledge rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence as constituting serious international crimes.<sup>22</sup>

## 2.3 Marital/Spousal Rape

Marital rape also known as spousal rape is a non-consensual sex in which the perpetrator is the victim’s spouse. It is a form of partner rape or domestic violence and of sexual abuse. It can be equally if not more emotionally and physically damaging than rape by a stranger. Once widely condoned or ignored by law, marital rape is now repudiated by international conventions and increasingly criminalized.<sup>23</sup>

Rape is a very serious form of violence that can have life-shattering effects on its victim. While marital rape has been illegal in every State and the District of Columbia since 1993, it is infrequently prosecuted.<sup>24</sup> In 2006, it was estimated that marital rape could be prosecuted in at least 104 countries (in four of these countries, marital rape could be prosecuted only when the spouses are judicially separated), and since 2006 several other countries have out-lawed spousal rape.<sup>25</sup> In some countries, the lack of criminalization of marital rape, coupled with the legal or social acceptance of child marriage, leads to several forms of child sexual abuse.<sup>26</sup>

## 3. Statutory Prohibition of Rape

The Criminal Statutes of most if not all countries prohibit rape with the pains of punishment. The first Westminster Statute of 1275 prohibits rape (ravishment of any woman) and made the offence punishable with two years imprisonment and in 1285 the Second Statute of Westminster turned it into a capital offence.<sup>27</sup>

The Leiber Code sign by President Abraham Lincoln in 1853 listed rape as specific offence and made it a capital offence punishable with death.<sup>28</sup> The Code was adopted as international law in 1907 at an International Conference in Copenhagen, Denmark. Prohibition of rape under international humanitarian law is also recognized by the Common Article 3 of the Geneva Conventions which though does not expressly mention rape or other forms of sexual violence, it prohibits “violence to life and person” including cruel treatment and torture and “outrages upon personal dignity.”<sup>29</sup>

<sup>16</sup> Section 1 (1) New English Sexual Offences Act 2003. See also, Atidoga op-cit. note 14.

<sup>17</sup> *Prosecutor V Akayesu* ICTR-96-4-T. 1 CTR. T. September 1998

<sup>18</sup> *Prosecutor V Kunarac and others ICTY T.Ch.II 22 February, 2001. See also Prosecutor V Delacic and 3 others (Celebici case) IT-96-21-T of Nov.16 1998. See Article 7(1)(9) Rome Statute of the International Criminal Court (ICC) which defines rape as an invasion of the body of a person by conduct resulting to penetration however slight of any part of the victim by the perpetrator’s sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body. Hence a who lot of cruel, inhuman and forceful sexual invasion will constitute rape (sexual violence)*

<sup>19</sup> See *Prosecutor V Akayesu (Supra)*

<sup>20</sup> See *Celebici Case (supra)*

<sup>21</sup> de Than, C. & Shorts, E, Op. C.T.p.369.

<sup>22</sup> Articles 7 (1)(g) and 8 (2)(b) (xxii) Statute of the ICC

<sup>23</sup> UNICEF REPORT-The Progress of Nations 1997, P.48, see also, en.wikipedia.org/wiki/marital-rape.

<sup>24</sup> Rape, Abuse and Incest National Network available @ www.rainn.org/./marital-rape

<sup>25</sup> Ending Violence Against Women: From Words to Action.” Un.org.

<sup>26</sup> See en.wikipedia.org/marital-rape. The following countries among others are yet to make marital rape a criminal offence-Afghanistan, Algeria, Botswana, China, Congo, Egypt, Kenya, Libya, Malawi, Mali, Morocco, Nigeria, Pakistan, Senegal, Singapore, Sudan, Syria, Yemen, Zambia, Iran etc.

<sup>27</sup> Statute of Westminster 2-Clause 34.

<sup>28</sup> Article 44 of Leiber Code 1853. Also the Hague Convention 1907 requires the protection of women ‘s honour’

<sup>29</sup> See Common Article 3 to the four Geneva Convention 1949. Also the 1945 Nuremberg Charter; 1946 Charter International Military

Article 27 of the fourth Geneva Convention Relative to the Protection of Persons provide:

“women shall be especially protected against any attack on their honour in particular rape, enforced prostitution or any form of indecent assault.”<sup>30</sup>

Article 76(1) of the Additional Protocol I of 1977 provides:

“women shall be the object of special respect and shall be protected against rape, force prostitution and any other form of indecent assault.”<sup>31</sup>

Article 4(2)(e) of the Additional Protocol II of 1977 prohibits

“outrages upon personal dignity in particular humiliating and degrading treatment, rape, enforcement prostitution and any form of indecent assault.”<sup>32</sup>

Furthermore, rape, sexual slavery, enforced prostitution, force pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity constitutes crime under the statute of the International Criminal Court as well as under the Statutes of the Yugoslavia and Rwandan Tribunals.<sup>33</sup>

Numerous military manuals state that rape, enforced prostitution and indecent assault are prohibited and many of them specify that these acts constitute war crimes.<sup>34</sup> The legislations of many states provide that rape and other forms of sexual violence are crimes.<sup>35</sup> National case-law has confirmed that rape constitutes a war crime, as early as 1946 in the Takashi Sakai Case before the War Crimes Military Tribunal of the Chinese Ministry of National Defense.<sup>36</sup>

Violations of the prohibition of rape and other forms of sexual violence have been widely condemned by States and international organizations alike.<sup>37</sup> Sexual violence is also prohibited under human right law.<sup>38</sup> Rape is also prohibited as a state practice or as a norm of customary international law applicable in both international and non-international armed conflict.<sup>39</sup>

#### 4. Rape as a Constituent Crime

Rape is not a recent phenomenon. However, rape became an international crime within the last century and so the recent decisions of International Criminal Tribunals have clarified the crime of rape, emphasizing the circumstances in which unwanted sexual acts occur as key to understanding rape.<sup>40</sup>

Rape is not a stand-alone crime. Rape and sexual violence can also be constituent elements of the crimes under international law. Hence, rape could constitute a crime against humanity, genocide and war crimes.<sup>41</sup>

##### 4.1 Rape and Sexual Violence as Genocide

Genocide involves the intentional mass destruction of entire groups, or members of a group.<sup>42</sup> The crime has been committed throughout history and continues to plague humanity today. Genocide whether committed in time of

Tribunal for the Far East,(called Tokyo Tribunal); 1945 Control Council Law No 10 adopted by the Four Allied Powers occupying Germany specifically included rape as a crime therein.

<sup>30</sup> Article 27 of the Geneva Convention IV Relative to the Protection of Persons.

<sup>31</sup> Article 76(1) of the Additional Protocol I of 1977.

<sup>32</sup> Article 4 (2)(e) of Additional Protocol II of 1977.

<sup>33</sup> See Article 7 (1)(g) ICC Statute, Article 5 (g) ICTY Statute, Article 3 (g) ICTR Statute,

<sup>34</sup> See eg. Sections 1584-1585 Military Manuals of Argentina, Australia, France, Nigeria, Germany, Israel, United Kingdom, United States.

<sup>35</sup> See eg. The legislation of Armenia, Belgium, Canada, Colombia etc.

<sup>36</sup> See China War Military Tribunal of the Ministry of National Defence, Takashi- Sakai Case. 1946.

<sup>37</sup> e.g the UN Commission on Human Rights Condemned the sexual violence that occurred during the conflicts in Yugoslavia , Rwanda, Sierra-Leon, Uganda, Democratic Republic of Congo, Sudan, etc. See UN Security Council Res. 798, Res. 820, Res. 827, Res.1019, Res. 1034.

<sup>38</sup> Primarily through the Convention on the Prohibition of Torture and Cruel or Inhuman or Degrading Treatment or punishment 1984. Thus both the European Court of Human Rights and Inter-America Commission on Human Rights have in their case- law found instances of rape of detainees to amount to torture . Court of Human Rights found that strip- searching of a male prisoner in the presence of a female prison officer amounts to degrading treatment.

<sup>39</sup> www.icrc.org/customary-ihl/eng/docs.

<sup>40</sup> Ellies Mark (2007) “Breaking the Silence: Rape as an International Crime” *Case W.Res .J. Int’l L.* 38:228-247.

<sup>41</sup> See International Committee of the Red Cross (ICRC) 2013 available at www.icrc.com. The three international crimes that are of central importance to modern-day international law are genocide, war crimes and crimes against humanity. Each of these crimes has its own peculiar features and elements.

peace or in time of war is a crime under international law.<sup>43</sup> Genocide is an umbrella term for a closed list of six distinct sub-species of genocidal acts, committed with intent and knowledge, together with a specific intent to destroy a protected group in whole or in part.<sup>44</sup>

In the *Prosecutor V Akayesu*<sup>45</sup> for the first time in international law, an international court construed and applied the crimes of rape and sexual violence in an international context, finding that rape and sexual violence can constitute acts of genocide. Therefore, when committed with specific intent to destroy a group in whole or in part, rape and sexual violence constitute genocide.<sup>46</sup>

The initial indictment against Akayesu had not charged rape and sexual violence, but during the early stages of the trial many witnesses recounted acts of rape and sexual violence. The judges permitted an amendment to the indictment to add a count of a crime against humanity (rape).<sup>47</sup> The amendment alleged that Tutsi women who had sought refuge at the *Bureau Communal* were repeatedly subjected to sexual violence and that Akayesu knew and encouraged these acts of sexual violence. Evidence adduced in support of these allegation were overwhelming. The Rwanda Tribunal found that there was a widespread and systematic rape of the Tutsi women with intention to destroy them.<sup>48</sup>

The rape of Tutsi women was systematic, wide-spread and perpetrated against all Tutsi women and solely against them. A Tutsi women married to a Hutus, testified before the Tribunal that she was not raped because her ethnic background was unknown. The tribunal was told, for example, that before being raped and killed, Alexia, who was a wife of Professor Ntereye and her two nieces, were forced by the Interahamwe Militias to undress and ordered to run and do exercises “in order to display the thighs of Tutsi women” The Interahamwe who raped Alexia said as he threw her on the ground and got on top of her “let us now see what the virginal of Tutsi women tasted like.” It was proved that on several occasions, by his presence, his attitude and his utterances, Akayesu encouraged such acts, one particular witness testified that Akayesu addressed the Interahamwe Militias who were committing rapes and said that “don’t ever ask me again what a Tutsi women tastes like.”<sup>49</sup> In addition to finding Akayesu culpable for rape as a crime against humanity, the trial Chamber of its own accord, made an important pronouncement, namely, that the same acts of rape and sexual violence under pinning crimes against humanity also constituted genocide.<sup>50</sup> The mass rapes of Tutsi women resulted not only in the physical and psychological destruction of the woman, but, according to the court, their families and communities as well. The sexual violence was “an integral part of the process of destruction.” The tribunal made it clear for the first time that genocide could be accomplished through rape.<sup>51</sup>

#### 4.2 Rape as a Crime against Humanity

The notion of crimes against humanity is intentionally broad and captures many concerns traditionally associated with international human rights law (protection of life, the right not to be tortured, the rights to liberty and, bodily

<sup>42</sup> Nakhjavani, S, (2008) “International Crimes,” African Guides to International Criminal Justice Published by Institute for Security Studies, Pretoria, South Africa, PP.55-98

<sup>43</sup> Article 1, Convention on the Prevention and Punishment of the Crime of Genocide. (Genocide Convention) 1948.

<sup>44</sup> See Articles 2, Genocide Convention 1948 for further definition of genocide.

<sup>45</sup> *Prosecutor V Akayesu (Supra)*; *Prosecutor V Kayishema and Ruzindana (Case ICTR-95-1-T) Judgement 21 May 1999*; *Prosecutor V Musema (Case ICTR-96-13-T) Judgment of 27 January, 2000*.

<sup>46</sup> Ibid. See also Mugwanya, G.W (2011) “The Contribution of the International Criminal Tribunal for Rwanda to the Development of International Criminal Law” *Prosecuting International Crimes in Africa*, Murungu, C & Biegon J, (eds), Pretoria University Law Press. PP.63-96 at p. 68.

<sup>47</sup> *Prosecutor V Akayesu (Supra)*

<sup>48</sup> Ibid. Note that Article 2 of the ICTR Statute like the Genocide Convention does not expressly identify rape and sexual violence as acts of genocide, but includes two important *actus-reuses* namely “imposing measures intended to prevent births within a group” and “deliberately inflicting on the group condition of life calculated to bring about its destruction”. The trial in the International Criminal Tribunal for the former Yugoslavia in *Prosecution V Tadic (IT-94-1-T ICTY May 7 1996)* was the first International war crime trial since Nuremberg and Tokyo where defendant was specifically charged with rape and sexual violence as crime against humanity and war crime. While Tadic was not convicted of rape, he was convicted of aiding and abetting crimes of sexual violence.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid. See also Ellis Mark, Op.Cit. see generally, Kress, C. (2005) “The Darfur Report and Genocidal Intent,” *Journal of International Criminal Justice*, 562-570; Greewalt (1999) “Rethinking Genocidal Intent: The case of a Knowledge- base Interpretation” *Columbia Law Review* 2259,2288.

integrity etc).<sup>52</sup> Thus, like ‘genocide,’ the term crimes against humanity are an umbrella term describing one of sixteen inhumane acts committed with intent and knowledge. Like genocide, the list of crimes against humanity is at least open to judicial expansion. Crimes against humanity can be committed both during peace time and war time what is important is that it must be committed as part of a wide-spread or systematic attack directed against any civilian population with knowledge of the attack.<sup>53</sup>

Rape and sexual violence constitute crimes against humanity in the ICTY<sup>54</sup> ICTR<sup>55</sup> and ICC<sup>56</sup> Statutes among others. In *Prosecutor V Tadic*,<sup>57</sup> the ICTY prosecuted Tadic for rape and sexual violence as a crime against humanity and war crimes. Tadic was however not convicted of rape but of aiding and abetting crimes of rape and sexual violence.<sup>58</sup> Akayesu was also convicted of crime against humanity on account of rapes and sexual violence which were perpetrated as part of a wide-spread or systematic attack against a civilian population of Tutsi.<sup>59</sup>

In 2001, the International Criminal Tribunal for the former Yugoslavia (ICTY) convicted eight men of crimes against humanity. The case of *Prosecutor V Kunarac*<sup>60</sup> was the first case where allegations focused exclusively on sex crimes as each of the men in the case were charged with various forms of sexual violence.

#### 4.3 Rape and Sexual Violence as Torture and War Crimes

The term “torture” means any act by which several pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes of punishing, intimidating, or coercing him based on discrimination of any kind.<sup>61</sup> In *Prosecutor V Furundzija*<sup>62</sup> the ICTY addressed the war crimes “outrages against personal dignity.” In this case, soldiers made a woman to stand before them naked on a table while they stood around and laughed. While the woman was on the table, the accused pressed a knife against her thigh and threatened her with mutilation if she did not co-operate. Later she was raped by multiple assailants in multiple ways (virginally, anally and orally). The court found that the woman suffered several physical and mental pain (torture) along with public humiliation. All these amounted a violation of her personal dignity and sexual integrity.<sup>63</sup>

The *Delalic Celebici Camp Case*<sup>64</sup> is important in that it recognized rape as torture even when it occurs outside circumstances of interrogation. In *Prosecutor V Kvocka*<sup>65</sup> rape, threat of rape and other forms of sexual violence amounts to torture. Hence, sexual harassment, intimidation and humiliation are held capable of amounting to torture. In *Prosecutor V Todorovic*,<sup>66</sup> rape and other forms of sexual violence were charged where the accused forced two prisoners to perform sexual acts upon each other. The accused who is directly responsible and his superior were held jointly liable.

In *Akayesu Case*,<sup>67</sup> the indictment defined acts of sexual violence to “include forcible sexual penetration of the vaginal, anus or oral cavity by a penis and or of the vaginal or anus by some other objects and sexual abuse, such as forced nudity”. The inclusion of forced nudity in the indictment supports the view that violence need not result

<sup>52</sup> Nakhjavani, S.Op.Cit.P.66

<sup>53</sup> Ibid.

<sup>54</sup> Articles 5 of the ICTY Statute

<sup>55</sup> Articles 3 of the ICTR Statute

<sup>56</sup> Articles 7 of the ICC Statute

<sup>57</sup> *Prosecutor V Tadic (Supra)*

<sup>58</sup> Ibid.

<sup>59</sup> *Prosecutor V Akayesu (Supra)*. In *Nyiramasuhuko and Ntahobali ICTR 2001*, these cases are notable as they involve a woman defendant for charges including sexual violence. Mother and son were guilty of a crime against humanity for using road block to commit offences including murder inciting murder, and systematic rapes. Nyiramasuhuko is the first woman to be convicted of rape as an international crime by an international tribunal and was an accomplice by omission in that she knew that her subordinates were raping Tutsi women and failed to take measures to either prevent it or punish the perpetrators.

<sup>60</sup> *Prosecutor V Kunarac and 2 others (Supra)*. See also Ellis Mark Op.Cit.

<sup>61</sup> See Article 1 Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 1984.

<sup>62</sup> *Prosecutor V Furundzija ICTY IT-95-17-1-T* December 10, 1998, here the court held that the rubbing of a knife against a woman’s thigh and stomach coupled with a threat to insert the knife into her vagina, once proved are serious enough to amount to torture. The Tribunal also observed that person can be liable as accomplice to rape, co-perpetrator or as superior.

<sup>63</sup> Ibid

<sup>64</sup> *Prosecutor V Delalic Celebici Camp Case (ICTY) (Supra)*

<sup>65</sup> *Prosecutor V Kvocka ICTY Trial Chamber November 2, 2001*.

<sup>66</sup> *Prosecutor V Todorovic (Supra)*

<sup>67</sup> *Prosecutor V Akayesu (Supra)*

solely from physical violence, but also includes mental violence of this nature.<sup>68</sup> Most of the rapes were committed in public places and often by more than one assailant thereby exposing the victims to the worst public humiliation.

The ICTR was told by a witness that before being raped and killed, Alexia who was wife of Professor Nytereye, and her two nieces, were forced by the Interahamwe militia to undress and ordered to run and do exercises “in order to display the thighs of Tutsi women.” The tribunal was further told that the Interahamwe Militia who raped Alexia said as he threw her on the ground and get on top of her, “let us now see what the virgina of a Tutsi woman tastes like”.<sup>69</sup> As earlier stated, Akayesu himself while speaking to the Interahamwe Militia who were committing the rapes said to them: “don’t ever ask me again what a Tutsi woman tastes like”.<sup>70</sup>

The court held that like torture, rape is used for such purposes as intimidation, degradation, humiliation, discrimination, punishment, control, or destruction of a person.<sup>71</sup> Like torture, rape is a violence of personal dignity, and rape in fact constitutes torture when it is inflicted by or at the instigation of or with the consent or acquiescence of a public officials or other person acting in an official capacity.<sup>72</sup>

The statutes of the ICTY and ICTR gave the tribunals jurisdiction over war crimes (i.e grave breaches of the Geneva Convention including Common Article 3). Also, Article 4 of the ICTR statute makes rape explicitly a war crime.<sup>73</sup> Also, the statute of the ICC makes rape a war crime in Article 8 thereof.<sup>74</sup> The Rome Statute of the ICC built on and extended the advances made in the ICTY and ICTR with respect to gender crimes. In addition to providing a broader basis for prosecuting sexual crimes as part of international laws of war, genocide and crimes against humililty, the ICC incorporates mechanism to facilitate victim reparation and to protect victim rights.<sup>75</sup>

## 5. Selected Statistics of Rape

This sub-head examine some selected statistics of rape in peace time as well as statistics of rape in war time starting with the former.

### 5.1 Statistics of Rape in Peace Time

Statistics of rape and sexual assault are commonly available in advanced countries and are becoming more common throughout the world. Inconsistent definitions of rape, different rates of reporting, recording, prosecution and conviction for rape create controversial statistical disparities, and lead to accusations that many rape statistics are unreliable or misleading.<sup>76</sup> In some jurisdictions, male-female rape is the only form of rape counted in the statistics.<sup>77</sup> In many parts of the world, rape is very rarely reported, due to the extreme social stigma cast on women who have been raped, or the fear of being disowned by their families, or subjected to violence including subjected to honor killing.<sup>78</sup>

While rape statistics in USA appear to be higher than some countries, officials acknowledge lack of accuracy in all countries.<sup>79</sup>

In January 2013, the Ministry of Justice (MOJ), Office for National Statistics (ONS), and Home Office released its first ever Joint Official Statistics Bulletin on sexual violence, entitled An Overview of Sexual Offending in England and Wales. In that report an approximately 85,000 women are raped on average in England and Wales

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<sup>68</sup> Ibid.

<sup>69</sup> Ibid.

<sup>70</sup> Ibid.

<sup>71</sup> Ibid.

<sup>72</sup> Ibid. See also De Than, C and Shorts, E. Op.Cit.P.369. Prohibition against rape has acquired the status of jus-cogens i.e a peremptory norm of international law from which no derogation is permitted.

<sup>73</sup> Article 4 Statute of the ICTR 1994

<sup>74</sup> Article 8 Statute of the ICC 2002

<sup>75</sup> Ellis Mark. OP.Cit. Generally speaking, war crimes are crimes committed in violation of international humanitarian law applicable during armed conflict. War crimes amounts to the violation of the rules and laws governing armed conflict. See Nakhjavani S.A. Op.Cit.P.73.

<sup>76</sup> Kevin Johnson, “Rape Statistics is not crystal clear” USA Today November 19, 1998. See also en.wikipedia.org/wiki/Rape-Statistics assessed 14 September, 2013

<sup>77</sup> Tim. Statistics can be misleading available at cjonline.com

<sup>78</sup> See <http://www.bbc.co.uk/news/world-africa-13760895>. assessed 14 September, 2013

<sup>79</sup> Ginger Vieira, “Rape Statistics much Greater than Reports Reveal” Las Vegas Guardian Express September 2, 2013.

every year; over 400,000 women are sexual assaulted each year; one in five women (aged 16-59) has experience some form of sexual violence since the age of 16.<sup>80</sup>

As far as India is concerned, 244,270 incidents of crimes against women were reported all over the country in 2012.<sup>81</sup>

The rate of sexual violence in South Africa is among the highest in the world. According to the report by the United Nations Office on Crimes and Drugs for the period 1998-2000, South Africa was ranked first for rapes per capita.<sup>82</sup> In 1998 one in three of the 4,000 women questioned in Johannesburg was raped according to Community Information Empowerment and Transparency (CIET) Africa.<sup>83</sup> While Women's Group in South Africa estimate that a woman is raped every 26 seconds, the South African Police estimates that a woman is raped every 36 seconds.<sup>84</sup>

According to a survey that questioned rape victims who did not report the crime to the police, 33.3% of victims cited that they feared reprisal, 9.6% cited that they felt the police would not be able to solve the crime as perpetrator are rarely convicted, and 9.2% cited embarrassment as their reasons for not reporting the crime.<sup>85</sup>

In Nigeria, the Commissioner of Police in Lagos State recently revealed that the command recorded 678 cases of rape in Lagos State between March 2012 and March 2013.<sup>86</sup> This statistics is coming against the backdrop that rape of minors has been on the increase in Nigeria despite the various laws on rape. This ugly trend reported in the media and social media however does not depict the true statistics on rape as most of the victims do not have their cases reported to the police and therefore the rapist go scot free.<sup>87</sup>

Welcome to the world of rapist and their victims in Nigeria, there has been anger in the country and beyond ever a 10-minute video on the internet, where a girl was raped by five men in a student hostel believe to be some where in Abia State. For perpetrators to have gone further to record the act and posting it to the internet shows that they are daring the society, it also, shows there is a high level of impunity.<sup>88</sup> Across the world the statistics of rape in peace times keeps rising and in ferocious dimension. No country is exempted from this phenomenon which is indeed a global threat

### 5.2 Statistics of War Time Rape

Rape has accompanied warfare in virtually every known historical era.<sup>89</sup> Rape in the course of war is mentioned multiple times in the Bible. For instance Zacharia 14:2 says: "For I will gather all the nations against Jerusalem to battle, and the city shall be taken and the houses plundered and the women raped..."<sup>90</sup> In Isaiah 13:16 "Their little children will be dashed to death before their eyes. Their homes will be sacked, and their wives will be raped."<sup>91</sup> War rapes may include gang rape and rape with objects.

Female slavery and war rapes were also common during the medieval Arab Slave Trade, where prisoners of war captured in battle from non-Arabs lands often ended up as concubine slaves in the Arab world.<sup>92</sup> In German South West Africa during Herero and Namaqua Genocide, German soldiers regularly engaged in gang rapes before killing Herero women, or leaving them in the desert to die.<sup>93</sup>

<sup>80</sup> Rape Crisis England and Wales @ [www.rapecrisis.org.uk/statistics2.php](http://www.rapecrisis.org.uk/statistics2.php) assessed 14 September, 2013.

<sup>81</sup> BBC News @ [www.bbc.co.uk/news/world-asia-india](http://www.bbc.co.uk/news/world-asia-india). The court in India 13-9-2013 sentenced three men to death for the 12 December 2012 celebrated rape which led to the death of a 23 year old medical student.

<sup>82</sup> "Nation Master: Crime Statistics Rape Per Capita (most recently) by country" NationMaster.com

<sup>83</sup> "South Africa Rape Shock "BBC News 19<sup>th</sup> January 1999.

<sup>84</sup> Itano Nicole, "South Africa Begin getting tough on Rape" Women's News.

<sup>85</sup> Orkin F.M (2000) qualitative Research findings on Rape in South Africa also available @ "en.wikipedia.org/wiki/sexual-violence

<sup>86</sup> See The EAGLE ONLINE @ [theeagleonline.com.ng/news/lagos-report](http://theeagleonline.com.ng/news/lagos-report) assessed 8 September, 2013.

<sup>87</sup> Ibid. The Punch of 14 September, 2013 reports that a boy raped his own mother in Ekiti-State of Nigeria. See [punchonline.ng](http://punchonline.ng)

<sup>88</sup> See [www.thenationonline-eng.net/2011/inde..](http://www.thenationonline-eng.net/2011/inde..) accordingly Rape is not an act of love. So it usually does not take long, No foreplay, No Kisses, No Petting or Necking. Just plain violent sex in dark corners which leaves sorrow, tears and at times blood in its trail. Neither the victims, nor the victors are bold enough to narrate their experience without watching their back.

<sup>89</sup> Levinson, B.M (2004) "Gender and Law in Hebrew Bible and the Ancient Near East," p.203; Askin, K.D.(1997) War Crimes against Women: Prosecution in International War Crime Tribunal, Martinus Nijhoff Publishers.

<sup>90</sup> Holy Bible King James Version Zacharia 14:2

<sup>91</sup> Holy Bible King James Version Isaiah 13:16

<sup>92</sup> Islam and Slavery: Sexual Slavery

<sup>93</sup> Samuel T; Paul, R.B and Steven L.J (2007) Dictionary of Genocide: M-Z. Green Wood, P.272; Cocker, M.(1998) Rivers of Blood, Rivers

Rapes were routinely committed during the First World War<sup>94</sup> In World War II, wide-spread and systematic occurrence of war rape by soldiers and civilians of women has been documented. The Judge Advocate General's Office reports that there were 971 convictions for rape in the U.S Military from January 1942 to June 1947.<sup>95</sup>

The term "Comfort Women" is an euphemism for the estimated 200,000 mostly Korean, Chinese, Taiwanese and Filipino women who were forced to work as prostitutes in Japanese military brothels during World War II.<sup>96</sup>

At the end of World War II, Red Army Soldiers are estimated to have raped around 2,000,000 German women and girls.<sup>97</sup> The documented instances of war rape include the first Liberian Civil War and in East Timor during the occupation by Indonesia in 1975.<sup>98</sup> It has been reported that during the 1990 invasion of Kuwait an estimated 5,000 Kuwaiti women were raped by Iraqi Soldiers.<sup>99</sup> The magnitude of rape in Bosnian and Herzegovina has been described as "especially alarming."<sup>100</sup> It has been estimated that during the Bosnian war between 20,000 to 50,000 women were gang raped by soldiers in numerous "rape camps."<sup>101</sup> According to the Women's Group Tresnjevka more than 35,000 women and children were held and raped in the Serb-run "rape camps."<sup>102</sup>

According to a 2000 Human Rights Watch report, war rape in the Kosovo war can generally be subdivide into three categories: rapes in women's homes, rapes during fighting, and rapes in detention, perpetrated majorly by Serbian Para-militaries, Serbian special police or Yugoslav soldiers.<sup>103</sup>

During Rwanda genocide in 1994, hundreds of thousands of women and children (mostly Tutsi) were raped and or became victims of other forms of sexual violence.<sup>104</sup> Considering the massive scale and public nature of war rape during the Rwanda Genocide "it is difficult to imagine anybody in Rwanda who was not aware of the sexual violence taking place.<sup>105</sup> Hence, the ICTR in its "landmark judgment in Prosecutor V Akayesu<sup>106</sup> held that rape constitutes genocide.

The Special Rapporteur on Rwanda estimated in his 1996 report that between 2,000 and 5,000 pregnancies resulted from war rape and that between 250,000 and 500,000 Rwandan women and girls had been raped.<sup>107</sup>

In Sierra-Leone, although the civil war ended in 2002, women in the country are still facing another deadly front-sexual and gender based violence.<sup>108</sup> Sexual and gender-base violence has continued unflinchingly into the post-war years and is now morphing into the society's culture that is understood and even accepted. The influence of the civil war is apparent. The statistics are horrifying. Samuel Harbor, UNDP Deputy Country Director said "By the end of her life span, nearly all Sierra-Leonean women will suffer from some form of sexual or gender based violence."<sup>109</sup> Accordingly, in 2009, there were 927 reported cases of sexual abuse.<sup>110</sup> The UN Agencies estimated that more than 60,000 women were raped during the civil war in Sierra-Leone during 1991-2002; more than

of Gold: European's Conflict with Tribal Peoples-Jonathan Cape, London, P. 308.

<sup>94</sup> Brownmiller, S (1975) "Against Our Will," P.40-48.

<sup>95</sup> Brownmiller, S (1993) "Against Our Will: Men, Women and Rape" P.81

<sup>96</sup> Comfort women were "Rape": U.S Ambassador to Japan

<sup>97</sup> Beevor, A. "They Raped every German Woman from eight to 80" The Guardian London, 1<sup>st</sup> May, 2002; Johnson, D. "Red Army Troops Raped even Russian women as they free them from Camps-Telegraphs" The Daily Telegraphs (London) 24 January, 2002.

<sup>98</sup> en.wikipedia.org

<sup>99</sup> Ibid

<sup>100</sup> De Brouwer A.M (2005) Supranational Criminal Prosecution of Sexual Violence. Intersentia P.9

<sup>101</sup> Ibid. Massachusetts Institute of Technology-Short-time Line of Yugoslav War with number of Rapes.

<sup>102</sup> De Brower, A.M op. cit; Angel Robson, "Rape: Weapon of War" *New Internationalist, Issue 244*, June 1993; Human Rights News Bosnia: Landmark Verdicts on Rape, Torture, Sexual Enslavement: Criminal Tribunal Convicts Bosnia Serbs for Crimes Against Humanity 22 February, 2001.

<sup>103</sup> de-Brouwer, Op.Cit.

<sup>104</sup> Ibid.

<sup>105</sup> Ibid.

<sup>106</sup> *Prosecutor V Akayesu (Supra)*

<sup>107</sup> en.wikipedia.org

<sup>108</sup> IRIN, SIERRA-LEONE: Sex Crimes Continue in Peacetime, 20 June, 2008; IRIN, SIERRA-LEONE: Impunity in Rape cases Thrives. 22 June, 2010

<sup>109</sup> UNDP.Newsroom. Sierra-Leone: Sexual Violence Remains Unpunished, 10 February, 2010.

<sup>110</sup> Ibid.

40,000 in Liberia between 1989-2003; up to 60,000 in the former Yugoslavia 1992-2003; and at least 200,000 in the Democratic Republic of Congo since 1998.<sup>111</sup>

In Sudan, the Sudanese wields rape as a weapon of war. The Janjaweed militia aligned with Sudanese government and regularly violate women as Darfur conflict-spread to Chad. Human Rights Watch estimates that thousands of black women and girls have been serially and systematically raped in the last three years. "Often, women are scarred," says Eric Reeves, a Sudan analyst at Smith College in Northampton, Massachusetts. "They have tendons cut, so as to mark them as having been raped. And, thus, unsuitable as brides and compromised as mothers and "wives."<sup>112</sup> Till date rape as a weapon of war continues in Darfur with impunity.<sup>113</sup> Kajtouma Ahmed cried softly as she fled Darfur, armed men in uniforms attacked her village, shooting her 13 year-old son dead, burning her home and stripping and raping her.<sup>114</sup>

In Iraq male prisoners of war may be subject to rape and sexual violence, which some commentators have interpreted as a way for captors to feminize the captive. Sexual violence against male prisoners of war gained wide publicity after graphic photographs documented such abuses on male Iraq prisoners by U.S guards at Abu Ghraib prison in Iraq. The prisoners were forced to humiliate themselves.<sup>115</sup>

In Libya, the then Chief Prosecutor of the International Criminal Court (ICC) Luis Moreno Ocampo claimed that there were evidence that Gaddafi's troop used rape as a weapon during the Libyan civil war. He also said "Apparently" he (Gaddafi) decided to punish using rape" while witnesses confirmed that the Libyan government also purchase a large number of Viagra- like drug.<sup>116</sup> In recent time, several UN Soldiers in Haiti were in 2011 accused and convicted of raping boys as young as 14 years old.<sup>117</sup> In one instance, BBC News reported that Uruguayan soldiers raped a young man.<sup>118</sup> In September 2012, Norwegian foreign Minister Espen Barth Eide at the United Nations said that "what happened during the Bosnian war is repeating itself right now in Syria" in reference to the rape of tens of thousand, of women in Bosnia in the 1990s.<sup>119</sup> As this paper is being written, there are reported cases of rape in the ongoing armed conflict in Syria.

## 6. Effects and Aftermaths of Rape

Women who have been raped suffer from a wide spectrum of debilitating effects in addition to Post Traumatic Stress Disorder (PTSD) and depression which may often go unnoticed.<sup>120</sup> Effects of rape can include both physical trauma as well as deep psychological trauma. Although rape victims commonly report injuries and issues with their reproductive health after the sexual assault. The most common and lasting effects of rape involve mental health concerns and diminished social confidence.<sup>121</sup>

Physical effects of rape can arise from both forced sexual assault and those not involving forcible submission, such as drug assisted date rape. Forced sexual assault frequency causes visible bruising or bleeding in and around the vaginal or anal area and bruises on other parts of the body from coercive violence. Both force and other types of rape can have many other physical consequences such as gynecological,<sup>122</sup> painful intercourse, urinary infections, sexually transmitted disease (STDS) HIV, genital warts, syphilis, gonorrhea, Chlamydia, etc <sup>123</sup> pregnancy,<sup>124</sup> Uterine fibroids -non-cancerous tumors in muscle avail.

<sup>111</sup> See [www.stoprapenow.org](http://www.stoprapenow.org); [www.un.org/en/women/endviolence](http://www.un.org/en/women/endviolence). see UN Action Against Sexual Violence in Conflict.

<sup>112</sup> NBCNews.com 2013, See also, Today.com

<sup>113</sup> DallasNews Option 31 July, 2013@[www.dallasnews.com](http://www.dallasnews.com).

<sup>114</sup> Ibid.

<sup>115</sup> de Brouwer, Anne-Marie (2005) Supranational Criminal Prosecution of Sexual Violence. See also [www.en.wikipedia.com](http://www.en.wikipedia.com)

<sup>116</sup> Ibid.

<sup>117</sup> Ibid.

<sup>118</sup> BBCNEWS.com

<sup>119</sup> [www.en.wikipedia.com](http://www.en.wikipedia.com)

<sup>120</sup> Jessica, S, "Effect of Rape go Beyond Depression" *Health & Medicine* University of Texas, October 15, 2012. @ [www.futurity.org/effects-ofrape-go-beyond-depression/](http://www.futurity.org/effects-ofrape-go-beyond-depression/) assessed 10 September, 2013

<sup>121</sup> HEALTHY PLACE, America's Mental Health Channel available @ [Healthy place.com](http://Healthyplace.com).

<sup>122</sup> See generally <http://www.en.wikipedia.org/wiki/effects-and-aftermath-of-rape>

Eby, K. Campbell, J.C. Sulhvan, CM, Davidson, W.S; 2<sup>nd</sup> ed. (1995) "Health Effect of Experiences of Sexual Violence for Women with Abusive Partner" *Health Care for Women International* 16(6); 563-576.

<sup>123</sup> Jenny, C, Hooton, T.M etal (1990) "Sexually Transmitted Disease in Victims of Rape" *New England Journal of Medicine* 322 (11) 713-716.

<sup>124</sup> Holmes, MM; Resnik, H.S, etal (1996) "Rape-Related Pregnancy; Estimates and Descriptive Characteristics from a National Sample of

Psychological effects of rape also occur. Victims of rape experience both short and long-term psychological effects of rape. One of the most common psychological consequences of rapes is self-blame. Victims use self-blame as an avoidance-based coping tool. Self-blame shows or, in many cases, stops the healing process. Other common emotional or psychological effects of rape include; Post-Traumatic Stress Disorder (PTSD)<sup>125</sup> feelings of severe anxiety and stress, depression,<sup>126</sup> flash-backs (memories of rape as if it is taking place again), borderline personality disorder, sleep disorders, eating disorders, dissociative identity disorder,<sup>127</sup> guilt, distrust of others-uneasy in everyday social situations, anger, feelings of personal powerlessness – victims feel the rapist robbed them of control over their bodies, erratic mood swing.

Another effect of rape is that can lead to suicide. Children and adult victims of rape are more likely to attempt or commit suicide. They feel embarrassed to talk about what happened to them and find it difficult to cope with the shame or guilt.<sup>128</sup> Rape victims also suffer social victimization or stigmatization especially in cultures with strong customs and taboos regarding sex and sexuality. Hence, a rape victim who was previously a virgin may be viewed by the society as being “damage.” Victims in these cultures may suffer isolation, be disowned by friends and family, be prohibited from marrying, be divorced if already married, or even killed.<sup>129</sup> Secondary victimization is the re-traumatization of rape victim through the responses of individuals and institutions. Rape also can lead to death. Rape especially gang rape have resulted into death of several victims. The Indian woman who died after a horrific rape by a gang of men told her family as she lay dying in the hospital that she tried as hard as she could to fight off her attackers.<sup>130</sup> The 23 year old said; “I thrashed and kicked .... But they were boiling in anger and murmuring kill.”<sup>131</sup> A 20 years old man Chijioke Nwakor from Aniocha Local Government of Anambra State of Nigeria raped a nine years old girl to death in July, 2013.<sup>132</sup> A girl 18 years old was raped to death in Otuoke, Bayelsa State of Nigeria on 6 September, 2013.<sup>133</sup>

It is apparently clear from the foregoing that effect of rapes can really be very devastating both from the individual and from the society perspectives. Rape is therefore about the crullest cancer attacking mankind today.

## 7. Concluding Remarks and Way Forward

Rape either in peace time or war time is certainly a terrible crime and there is indeed no justification for it. With particular reference to war rape, there is absolutely no justification for leaving the battlefield and engage in any form of sexual assault including rape knowing fully well that in rape cases emotional issues are really involved. The issue of rape has further shown the inadequacy /weakness of the law in stopping criminality in our society. There is no country in the world without a law forbidding rape in all its forms. What is lacking is the will to enforce or implement these laws to the letter by the society, the law enforcement agents and the government put together. To this end the following suggestions are made:

Women” *American Journal of Obstetrics and Gynecology* 175 (2): 320-324

<sup>125</sup>Wisdom, C.S (1999) “Post Traumatic Stress Disorder (PTSD) in Abused and Neglected Children Grown up” (*American Journal of psychiatry Association*) 40 (15); 34.

<sup>126</sup> Roosa, M.W etal (1999) “The Relation of Child Sexual Abuse and Depression in Young Women: Comparisms across four Ethnic Groups” *Journal of Abnormal Child Psychology*” 27 (1) 65-76; Wisdom S; etal (2007) “ A Prospective Investigation of Major Depressive Disorder and Comorbidity in Abused and Negleted Children Group Up” *Archives of General Psychology* 64 (1) 49.

<sup>127</sup>Arnow, B. (2004) “Relationship between Childhood Maltreatment, Adult Health and Psychiatric outcomes and Medical Utilization” *Journal of Clinical Psychiatry* 65 (Suppl.12) 10-5

<sup>128</sup> Mulugeta, E; et-al (1998) “Prevalence and Outcomes of Sexual Violence among High School Students” *Ethiopian Medical Journal* 36 (3): 167-174; Julia-Whealin, (2007) “Child Sexual Abuse ” National Center for Posttraumatic Stress Disorder, US Department of Veterans Affairs.

Lucretia the legendary heroine of Rome was raped in 509 BCE by Sextus Tarquinius, son of Lucius Tarquinius Super-bus, the tyrannical Etruscan king of Rome. Lucretia consequently committed suicide. The event lead to the overthrow of monarchy and the establishment of the Roman Republic. See en.wikipedia.org/wiki/the-Rape-of-Lucretia. When asked if they ever thought seriously about committing suicide, 33% of the rape victims and 8% of the non-victims of crime said yes- see www.musc.edu/vaw prevention/research/mentalimpact.shtm/-Retrieved 9-9-2013. Hundreds protested against Montana judge in rape-suicide case see Las-Angeles Times 29 August, 2013. Rape victims are prone to suicide. See Suicide.org

<sup>129</sup> See Alliance Factsheets: Trauma of Victimsation. Nycagainstrapes.org; Campell.R; Raja, S. (1999) “ Secondary Victimization of Rape Victims: Insights from Mental Health Professionals who treat Survivors of v Violence” *Violence Vict.* 14 (3) 261-75.

<sup>130</sup> Mailonline 30 December, 2012 assess 14 September, 2013

<sup>131</sup> Ibid.

<sup>132</sup> Vanguard Newspaper 18 July, 2013.

<sup>133</sup> Sahararporter.com

First, the countries whose domestic statutes, legislations, and laws are still grossly underdeveloped or outdated on this hot topic of rape and sexual assault should speedily update their laws by borrowing leaves from the plethora of case-laws shunned out by the international tribunals which have offered comprehensive definition for rape and sexual assault as well as an effective and less cumbersome rules of procedure and evidence for result-oriented prosecution.

Second, the punishment for the offence of rape whether committed in peacetime or war time should be made death sentence.<sup>134</sup> Rapist are like cancer who should be crushed with the cruelest punishment. Rapists are not fit to live. In addition to making rape to attract death sentence, the prosecutorial machineries should be strengthened with competent and skilled personnel in the criminal justice sector so as to reduce the rate at which perpetrators escape conviction. Also, it is not enough to have a whole world of statutes and case-laws prohibiting rape, there must be will-power by the governments and again government must be proactive in their prevention and or fight against rape.

Third, a specialized court. (fast-track court) should also be established with less cumbersome rules of procedure and evidence in order to fast track the prosecution of rape suspects.

Fourth, rape has attained the status of a jus-cogens under international law such that all nations have a duty to prosecute under universality jurisdiction, therefore all states should co-operate, fish out and prosecute any rapist hiding in their territory or extradite such to any willing state.

Fifth, the problem of rape cannot be solved by measure taken within the criminal justice sector alone.<sup>135</sup> Rape and what would seem to be its growing incidence have to do with the type of society (global society) in which the we live in, and the attitude it fosters towards violence, women and relationship between the sexes. Tackling the problem of rape therefore requires a broad-based-strategy. It must entail an examination of those factors which promote violence, including the role of pornography, it must include projects of all kinds to render women less unreliable, it must involve education and re-education of children and adults to combat the sexism which underlies and ultimately promotes rape. The following factors are responsible for occurrence of rape: poverty, physical and social environment, laws and policies, social norms, global trends and economic factors, disasters, crisis war, lack of institutions or infrastructure, feminist theory, evolutionary explanations. Other factors include anger, power, sadism and psychopathy. Therefore, to reduce or eliminate rape the causes ought to be aggressively tackled first and foremost.<sup>136</sup>

Sixth, rape victims must be supported by the society and be given psychological support, counseling, protection and reparation (adequate compensation). Non-Governmental Organizations (NGOs) should synergized and form a network to help create more awareness and campaigns both locally and internationally on the evils of rape and why it should roundly condemned. Campaign against rape should also be taken into our educational institutions by including same in academic curriculum. Hotlines for distress calls must be provided in addition to elaborate on education preventive tips via mass media and social media.

Finally, at the international plane, power politics is adversely militating against the maximization of international justice. Therefore, International Criminal Court and other ad-hoc international tribunals must be given the required cooperation for further expansion of the jurisprudential frontiers of the crime of rape and to keep impunity permanent at bay.

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<sup>134</sup> The punishment for rape is death sentence in the following countries Iran, Saudi Arabia, Pakistan (for gang rape), India approved death sentence in December 2012 following the Crudest gang rape of a medical student who subsequently died from the injuries sustained. Canada provides for death or life imprisonment, America England, Scotland provide for life jail maximum. All countries should amend their laws so that rape perpetrators can bag death sentence on conviction. See generally Punishment Against Rape in Different Countries [www.yugworld.in/2013](http://www.yugworld.in/2013) In Nigeria, the maximum punishment for rape under the federal law is life while attempt to commit rape attracts 14 years imprisonment. See Sections 357-359 Criminal Code Act LFN 2004.

<sup>135</sup> Yakubu, J.A (1990) op. Cit. the causes of rape are many, some of them are: a total disrespect for womanhood, vulgar films and T.V series are arousing sexual desires and anxiety. finding no way to satisfy this anxiety rapes are committed; Delayed marriage, pornography and semi-nude pictures of celebrities, vulgar dress; acquittal of accused of rapes due to non-availability of evidence and on technical grounds.

<sup>136</sup> [en.wikipedia.org](http://en.wikipedia.org).

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