

# WITH IMPUNITY:

## *Explaining conflict-related sexual violence*

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*Note to reader and revised abstract:* This paper is a work in progress. It is the foundation of a doctoral research project which will investigate why some armed groups commit sexual violence during the post-peace agreement phase of a conflict. The paper is a sketch of elements that will fit into the introductory chapter of my dissertation. It will be revised significantly, in whole and in parts, and enhanced with additional theory and empirics. I have left out particular sections on amnesty regimes and in my conclusion, as these are under significant development at this time. Comments that address the main ideas, interpretation of literature and gaps in concept-formation or theoretical arguments are particularly useful at this time.

The paper focuses on the causal relationship between impunity and conflict-related sexual violence. An understudied concept, impunity has been attributed to why some armed groups commit sexual violence. The paper provides three impunity-based theses, customary exemption, amnesty regimes and group sanctions. These explanations express the inferences made by other scholars within previous research on the causes of sexual violence in conflict. Through a micro-conceptual framework, I argue that the study of amnesty regimes is a novel, but useful impunity explanation.

## I. Introduction

In early 2011, thousands of Ivoirians fled to eastern Liberia to escape the armed conflict in their country. The International Rescue Committee met hundreds of women fleeing the violence, and spoke to 26 survivors of sexual violence. A woman and her sister reported their rapists saying: “You are going to Liberia to let Liberian men have you? We are going to enjoy you first” (Pender, 2011).

Nearly two decades ago sexual violence was used as a weapon of war in Rwanda and Bosnia-Herzegovina. The International Criminal Tribunal of Rwanda (ICTR) found Jean Paul Akeyesu guilty of rape, as a crime against humanity. The 1997 judgment concludes that Akeyesu actively encouraged the *Interhamwe* militia, who systematically perpetuated sexual violence in order to destroy the Tutsi ethnic group and punish its members. Again in 1997, the International Criminal Tribunal of Yugoslavia (ICTY) found Dusko Tadic guilty of persecution and beatings, as a required element of crimes against humanity. Tadic was convicted because he had simply witnessed and permitted sexual violence. In these landmark cases, the archetype of sexualized armed violence, deployed to intimidate, control or harm civilians, became clear. But the way to prevent these acts from taking place did not. Impunity – an inexact dynamic that could influence

armed groups' use of these tactics – has become a target for international political and legal reform.

The drive to stop sexual violence during conflict has coalesced in the claim that states must hold armed groups accountable for these acts. United Nations (UN) Security Council resolutions 1325 (2000); 1820 (2008); 1888 (2009); and 1960 (2010) have gradually established political and legal norms that armed actors (state and non-state) who have committed sexual violence should be excluded from amnesty provisions during peace settlement processes. The UN Secretary General's report on the topic in 2010 noted that "any amnesty ordinance reached at the end of a conflict must, as a matter of consistent United Nations policy, exclude international crimes and gross breaches of human rights. This helps to ensure that parties who commit acts of sexual violence cannot escape liability and that there is no impunity for such conduct. (UN Secretary General, 2010: 2)". This corresponds to the decision taken by the UN after the 1999 Lomé Accord to exclude crimes under international law from amnesty laws in UN-supported peace agreements. (Mallinder, 2008:122) Finally, resolution 1960 firmly establishes an international process of 'naming and shaming' by assigning the UN Secretary-General with the task of listing "parties to armed conflict that are credibly suspected" of carrying-out rape and other forms of sexual violence. Starting in 2011, a list of these alleged perpetrators will be presented to the Security Council.

## II. Overview

There is a prevalent belief that crimes gone unpunished lead to excessive disregard for the rule of law, and to continued violence. Put more simply, to impunity. The "culture of impunity" is a catchphrase for an absence of working democratic institutions or legitimate rule of law, whereby perpetrators have in the past been free of accusation, punishment or atonement. It has been described as contributing to ongoing conflict recurrence, widespread sexual violence, and a range of human rights abuses including genocide. Impunity is thus widely credited with why some societies undergo cycles of pervasive human rights abuses, and in conflict settings, why sexual violence, among other types of violence, is widespread.

Yet, impunity is an understudied concept. As with sexual violence in conflict, impunity's contribution to human rights violence, in particular has received a great deal of attention. Yet the concept has remained untested through realistic empirical application. There are no studies, for instance, which examine how impunity may result in various outcomes, or if there are degrees of impunity which might lead to specific types of violence, by some and not all actors. Is impunity a direct cause, or sufficient condition for rebels and other groups to operate with disregard for values that underpin human rights norms? Outside of studies which address regime authority, rule of law or governance and thus very indirectly touch upon impunity, I have not found any systematic findings showing robust correlation or causation between impunity and organised armed violence. Rather, scholars have pointed to larger institutional deficits in the judiciary, military oversight and other state failure problems as the contributing factors to

impunity – and to continued instability or insecurity. These linkages while valuable, only describe impunity. They do not address the causal steps between impunity and group violence.

In response to the question, *why do some armed groups commit sexual violence in a post-peace agreement phase of a conflict*, I present a micro-conceptual framework. The paper focuses on impunity and its observable implications. Based on previous research and experience, rooted within the positivist/empiricist tradition, I see the conceptual work in this paper as the beginning of a more specific theoretical tool (King, Keohane and Verba, 1995; Shields and Tajalli, 2006). The paper is divided into three parts: 1) Concepts, definitions and referents; 2) Theoretical explanations; and the 3) Micro-conceptual Framework. First, I present the central concepts, definitions and referents under study. I begin with the wider term of ‘human rights violence’ and the larger-order concept ‘impunity’. I follow my discussion by outlining the more observable sub-concept ‘*conflict-related sexual violence*’ and explore ways to strengthen the concept of impunity (Gerring 2001:40).

The paper provides three impunity-based theses which theoretically explain widespread conflict-related sexual violence. These explanations express the inferences made by other scholars within previous research on the causes of sexual violence in conflict. The first explanatory thesis, *customary exemption* is a fuzzy typology of temporal and horizontal events and processes that create an expectation that perpetrators will not be held accountable for sexual violence in war and peacetime. Customary exemption can be measured by reviewing the country’s record of arrests, trials and punishment for criminal acts and the treatment of victimised groups and individuals throughout a country’s history. The second theoretical thesis, *group sanction* is derived from the behaviours, interests, motivations, leadership and agency of and by armed groups. The argument is that endorsement of sexual violence; and/or a lack of self-regulating accountability by group leaders increases the chances of sexual violence incidents. Group sanction helps to explain the variation among armed groups in their use of sexual violence. Some scholars have found that certain types of armed group regulation and internal structures have strong correlations with sexual violence. Group sanction can be measured by internal codes and accountability structures. The third thesis emerges from claims about *amnesty regimes*, which are ‘de facto’ and ‘de jure’ immunity from past crimes. Amnesty regimes can be measured through documentation of amnesty law and practice in a peace process, as well as the record of prosecutions for sexual violence war crimes that are punishable by international and national human rights law.

The amnesty regime thesis is more precise than the customary exemption explanation. Amnesty regimes are specific to conflict process and outcomes of negotiated settlements. They are limited temporally to peace processes or political transitions. Amnesty regimes also promise to highlight the interaction between combatants and followers, and the leaders, who often sit at the negotiation table. In this way, as an explanatory variable, amnesty regimes may illuminate the causal links between peace talks, group dynamics, impunity and the commission of conflict-related sexual violence after war.

The final part of the paper is devoted to the micro-conceptual framework.

### III. Central concepts, definitions and referents

This project is driven by the research problem of why some armed groups carry-out sexual violence in the post-peace agreement phase of a conflict. In order to arrive at hypothetical explanations, and test these, it is important to develop a clear understanding of which concepts can help us enter this problem

#### **Armed conflict and armed group**

The dissertation borrows from the Uppsala Conflict Data Programme (UCDP) to define the terms armed conflict and armed group, which are respectively, the context and the unit-level of analysis. Thus, an *armed conflict*, whether state-based or a non-state conflict, is a “contested incompatibility that concerns government and/or territory where the use of armed force between two parties, of which at least one is the government of a state, results in at least 25 battle-related deaths in one calendar year” (UCDP, 2010). Armed conflicts, may be inter or intrastate, and include more than one “dyad” or two armed and opposing actors (UCDP, 2010).

Following the UCDP terminology, I define an *armed group* as an organised actor using arms (material means) to carryout violence in a demonstrable pattern of incidents or through advance planning. Armed groups may pursue their objective through violence before, during or after the termination of an armed conflict. As such, armed groups may include ex-combatant communities, as defined by Nilsson in his 2008 dissertation (Nilsson, 2008).

#### **Human rights violence**

The term ‘human rights violence’ is a collection of acts committed by armed groups, using force or the threat of force and resulting in the loss of civil, political or socio-economic freedom from fear and want. The definition is derived from the International Bill of Rights<sup>1</sup> and the international jurisprudence. Nevertheless, it is not a legal definition. Rather, it binds together a range of acts or referents that are deemed inhumane particularly in the context of war. These referents include forced disappearance and kidnapping, torture, slavery, sexual violence, deliberate starvation, hate speech and systematic discrimination, and genocide. They are singly, or in part capable - under the use of force, the threat of use of force or coercion - of stripping human rights entitlements to life, liberty and freedom, from their victims. The referents of human rights violence are distinguishable from other types of human rights breaches in the way they a) take place during political conflict, b) are underpinned by the use of, or threat of force, and c) are targeted on civilians. Civilians are generally the main victims of human rights violence, but unarmed combatants can be as well, particularly if acts of violence contravene the Geneva Conventions and the rules of “*jus in bello* (justice in war)” (Maiese, 2003).

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<sup>1</sup> The International Bill of Rights is the normative assignation to the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966).

### *Conflict-related sexual violence*

A sub-concept of human rights violence is *conflict-related sexual violence*. Frequently considered as synonymous with rape, the term ‘sexual violence’ actually covers a range of actions. In this paper, *sexual violence* is defined as a sexual act, by force or the threat of force or coercion, which includes rape, sexual slavery, enforced prostitution, forced pregnancy and enforced sterilization. *Conflict-related sexual violence* in this paper is sexual violence which takes place under certain conflict criteria (see below).

Victims and perpetrators of sexual violence can be female or male. Sexual violence is the general category of violence, while forced pregnancy or rape are specific components under this broader class. This is similar to distinctions between other classifications of particular forms of violence. For example, torture can be identified as a general category, with sensory or sleep deprivation, beating, stress positioning are specific torture acts.

This definition combines a number of crimes of a sexual nature, as constituted through the 1998 Rome Statute of the International Criminal Court (ICC). It is the most approximate, universal definition of this phenomenon and is used by the UN as well as victims groups, scholars and legal advocates. The Rome Statute defines as a crime of humanity “rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, *or any other form* [emphasis mine] of sexual violence of comparable gravity” (Rome Statute, 1998; Article 7 Para 1 (g). By 2010, sexual violence had been well documented in a wide range of armed conflicts. Judgments made by the ICTY in 1997 and the ICTR in 1998 against perpetrators of sexual violence set important legal precedents in international law (IT, 1997; ICTR, 1998).

Forced sterilisation or pregnancy, can be used as a form of ethnic cleansing or pollution, and has been documented in conflicts with strong ethnic divisions such as the Rwandan genocide, the Bosnian conflict in the 1990s, Nazi-Germany and German South-West Africa (now Namibia). Across a range of conflicts such as Liberia, Sierra Leone or Burundi, both the woman who was raped by soldiers and her husband, who was forced at gunpoint to watch, would be victims of sexual violence. In prisons and at roadblocks, sexual humiliation, whereby a family member is made to witness a forced sexual act is common. This type of sexual violence was commonly reported in asymmetric conflicts, between an authoritarian state and a nonstate actor or rebel group, such as in El Salvador, Cambodia or apartheid South Africa. Comfort women in Japan, war-brides from the DRC who followed their so-called ‘husbands’ to Uganda, and girls sexually trafficked to peacekeepers in Darfur, Liberia and Thailand all have been victims of some form of sexual violence. In most contexts, one aspect of sexual violence may be more widely reported, despite evidence of other forms. Finally, organisers of sexual violence have been convicted by the ICTY and ICTR for implicitly or explicitly permitting these acts to take place, and not simply for their active participation.

A practice among some researchers is to limit their observations to ‘wartime rape’ – which also coincides with the preference of many other investigators such as journalists and policymakers. Important empirical data on sexual violence emanates from collections of rape events in conflicts (Butler et al, 2007; WomenStats, 2010.) However, limiting observations to

rape is problematic. Rape is more often reported by female victims, due to gender norms that discourage men and boys from speaking out if they have been violated. Although increasingly male victims are reported in such conflicts as the DRC, the tendency has been to frame this type of violence as between males (as the main perpetrators) and females (as the primary victims).

It seems practical to limit scientific inquiry to wartime rape. But observations of wartime rape are difficult to verify, even if they might seem particularly simple to measure. In conflicts and in peacetime, rape is underreported. National ministries of health, parliaments and gender bureaus in governments, may use different definitions, or change the definition of rape over time. In many instances, reliable data can be impossible to corroborate or compare. Also, restricting this dissertation to wartime rape would limit our understanding of the texture and depth, and in some respects, the variation in sexual violence. Nevertheless, the broader definition denotes a need for systematic social inquiry through a quantitative study over time, which is not possible due to the limits in verifiable data. An alternative course of inquiry is a detailed case study, designed to illicit descriptive inferences about sexual violence's causes, but also, at an advanced stage, to test causal explanations.

When I introduced the term conflict-related sexual violence, I stated that there were certain conflict conditions that bound this concept. I have arrived at four criteria for conflict related sexual violence:

1. The conduct of sexual violence must take place in the context of, or be associated with armed conflict.
2. The act must have been committed by force, or by the threat of force or coercion, with fear of violence, duress, abuse of power or detention a prevalent aspect of the commission of the act.
3. The perpetrator must be aware of the factual circumstances of the existence of the armed conflict.
4. The perpetrator must have membership in, or have a recognisable association with a state or nonstate armed group.

These criteria restrict the investigation of sexual violence to armed conflict, and the perpetrator to someone with access to instruments of force or coercion. Certain sexual violence acts – domestic rape for example – would fall outside this study. There are substantial reports of sexual violence in post-conflict countries, and implied in these descriptions is a link back to the conflict or to other explanations for sexual violence such as the militarisation of men and boys through war. Implicitly, there is a contention that these crimes are conflict-related, as perpetrators and victims may have been influenced by the war. Moreover, victims can become disenfranchised by conflict, and their resultant powerlessness is often attributed to their vulnerability to sexual violence. Despite these nuances, this paper and my research focuses solely on those acts that are committed in the context of the armed conflict; to combatants or former fighters and their communities; and to perpetrators that are aware of, or retain their associations with armed groups and attendant material or identity resources.

Similarly, to assist the ICC in the interpretation and application of the Rome Statute, the elements of the war crime of sexual violence were established. These elements introduced the use or threat of force or coercion; that the acts were of a gravity comparable to breach of the Geneva Conventions; that the perpetrator was aware of the factual circumstances which would establish the gravity of the conduct; that the conduct took place or was associated with an international armed conflict; and that the perpetrator was aware of the factual circumstances that established the existence of international armed conflict (ICC, Elements of Crimes, 2000: Article 8 (2) (e) (vi)-6). These elements have three underlying important themes. First, that sexual violence must be committed through the use, or threat of force or coercion, in other words there is no informed or voluntary consent on the part of the victim. Second, that the acts of sexual violence must take place in relation to conflict. And third, that the perpetrator was aware of the circumstances, the facts of these acts and of the armed conflict. These themes are part of this my operationalisation of the conflict-related sexual violence.

## Impunity

‘Impunity’ is the expectation, *de jure* or *de facto*, that perpetrators of violations will not be held accountable to criminal, civil, administrative or disciplinary proceedings and prosecution and if found guilty, to punishment or reparation.<sup>2</sup> I have stated elsewhere that impunity, as a concept, is understudied. While legal precedents are often undertaken to avoid impunity, to act as a form of deterrence against future crimes, everyday usage of the term is not particularly clear. Because much of contemporary international law and norms are rooted in Western political philosophy, the debates about impunity often relate closely with deliberations about justice.

It is beyond the scope of this paper to present a debate on theories of justice, but it is necessary to acknowledge pre-existing theories of justice. Plato’s political philosophy through *The Republic*, stands out as the quintessential Western thesis on political order and justice. The main arguments in the fourth book of *The Republic* are preoccupied with the ideal order for managing and mitigating conflicting interests and ambitions within a polity and thus ensuring peace. In *The Laws*, Plato introduces what has become Western liberalism’s fundamental theories about law and its uses. Similarly, the profile presented of Solon in *Plutarch’s Lives* resonates with the ideal type of the just ruler. Athenian leader Solon is credited with introducing a system of laws that realigned the class system, undue burden on the indebted and excessive greed of debtors; and with political reforms that expanded the franchise and restrained the political licence of the nobility. Solon ended ‘Draconian Law’, introduced by that leader earlier. Solon’s famous description of the perfect city is a polity “... in which those who are not wronged espouse the cause of those who are, and punish their oppressors.” (Plutarch, XVII). Subsequent scholarship –Kant, Rousseau, Locke, and Hobbes, Rawls and even Amartya Sen – built on this ideal.

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<sup>2</sup> This definition is based on the UN’s own characterisation of impunity – as “the impossibility, *de jure* or *de facto*, of bringing the perpetrators of violations to account - whether in criminal, civil, administrative or disciplinary proceedings - since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims” (UNGA, 2005).

Equal accountability to the law of the land is a useful entry-point for the concept of impunity. If justice is an orderly, rule-based system or process of protecting the rights of all, and thus ensuring harmony among the divided, impunity is a collection of unfair practices which privilege some and not others, and results in some experiencing unmitigated freedom from accountability. Table 1 illustrates the conceptual dualism between justice and impunity as the concepts are framed through Western philosophical traditions, signified in discourse and utilised in news reports.

**Table 1: Justice and Impunity**

|                 | <i>Political philosophy associations</i>  | <i>Discursive associations</i>   | <i>News citations</i>   |
|-----------------|---|--|---|
| <b>Justice</b>  | Equal rights, balance of individual and group rights; fairness before the law; legal protection against violation of rights; harmony and balance. | Upholding; impartial; and supreme.<br><br>Giving each person her/his due; and adherence to the rule of law through social, political and legal procedures and systems. | “The landmark case in which the Supreme Court justices will define <b>the meaning of a miscarriage of justice</b> ...” <sup>3</sup><br><br>“Waikato man Rob Hamill is <b>battling on for justice after his brother was killed</b> by the Cambodian Khmer Rouge regime...” <sup>4</sup><br><br>“Murder or <b>justice</b> ? That was the debate on Twitter yesterday after an alleged hijacker was shot dead at a shopping centre in Birnam, Joburg.” <sup>5</sup>  |
| <b>Impunity</b> | Bias toward one group in power; inequality before the law; and excess within society.   | Atrocities; inhuman; and perpetrators.<br><br>Unfairness and bias in social, political legal systems, resulting in leniency for some and not others.                   | “Afghan police have been accused of <b>committing crimes with impunity</b> ...” <sup>6</sup><br><br>“The Indian government empowers its military ... <b>granting them sweeping impunity for acts carried out under these laws.</b> ” <sup>7</sup><br><br><b>Impunity, or exemption from punishment, has been correctly called a culture</b> , a way of doing things... It is almost inevitably mentioned as the primary reason why journalists and political activists continue to be killed in the Philippines. <sup>8</sup> |

If we want to observe impunity, we must look for those words or terms that most often depict it. Impunity is often described as unfairness, leniency and bias. It is exemption, immunity, excess and abuse of power and privilege. But how do we know impunity when we see it? Arguably, the concept is still difficult to bind, but certain indicators are observable. Here, King, Keohane and Verba’s explication of causal effects and how we can observe them is important. Gerring’s discussion of concept formation is also helpful. The average, or mean effect of impunity can be hypothesised as the mean number of accusations, provocations, laws, regulations, methods and

<sup>3</sup> Gibb, France. 2011. “Supreme Court to Define Miscarriage of Justice”, *The Times UK*, 10 May.

<sup>4</sup> Reporter, *Waikato Times*. 2011. “Time to Speak Up”, 10 May.

<sup>5</sup> Jones, Zenaide. 2011. “Twitter Debates ‘Justice’”, *The Star*. 9 May.

<sup>6</sup> Harding, Thomas. 2011. “Oxfam Accuses Afghan Police of Torture and Child Sex Abuse”, *The Daily Telegraph*, 10 May.

<sup>7</sup> Essa, Azzad. 2011. “The Impunity of the Armed Forces”, *Kashmir Monitor*, 27 April.

<sup>8</sup> Teodoro, Luis V. 2010. “Impunity's Roots”, *Vantage Point*, 16 July.



punishments for an act deemed to be a violation of the rules of a state and society. This is observable in the number of convictions and trials, and of whom; the effect of these convictions and trials in terms of the average type and length of punishment; and the social censure prosecution and conviction holds.

A society that systematically prosecutes bribery, at all levels of class, education or across an ethnic, racial, political or religious spectrum would have low impunity for corruption. A society that ignores or even rewards through promotion, workplace sexual molestation or pestering of one type of gender, can probably be viewed as having a high level of impunity for sexual harassment. In both cases, there may be outlier effects – that particularly special case that goes unpunished or another that is excessively prosecuted – but the average tendency observed through identifying patterns depicts the extent of impunity. Being able to assess a mean effect is important in terms of understanding the explanatory value of impunity. Outlier outcomes are unrewarding – they say more about that single particular case, and less about the causal link between impunity and certain types of acts. In assessing the causal effect of impunity on conflict-related sexual violence, knowing the average effect is essential. Impunity as an explanatory variable of conflict-related sexual violence requires rigorous scientific inquiry.

## IV. Theoretical explanations

This paper is concerned with a specific type of violence – sexual violence – but as discussed above, it is focused within the context of armed conflict. Until recently, civil wars were very much observed through what Kalyvas describes as ‘master cleavages’, or single driving causes. However, individuals often act within, as well as outside master cleavages in order to meet their own needs and interests. According to Kalyvas, they may band together with other local cohorts; abandon strategic direction from above in pursuit of meeting their own personal agendas; and take on or shed alternative or complementary central and local cleavages of their own (Kalyvas, 2003). In the context of sexual violence acts, master cleavages can be attributed to ethnic divisions, for example. The genocide in Rwanda and ethnic cleansing in former Yugoslavia are cases of rape used as a tactic of war. Scholars have established that the ethnic division/competition in these cases could be characterised as the cause of sexual violence. Yet, subsequent research on other conflicts has found that the dynamics at the micro-level were much more complex, and were driven by a range of survival strategies. The Rwandan priest who collaborates with combatants and permits members of his flock to be exposed to systematic sexual assaults may act less out of ethnic affinities or loyalties and more out of his own survival strategy or interests in gaining political advantage. For this reason, the impunity theses described below pertain to the dynamic between local and supra-local levels.

There are a wide and diverse range of studies that find that sexual violence is driven by a multiplicity of causes. The most enduring type of explanation argues for causal origins in gender inequality and discrimination. While this paper does not deal with the gender inequality explanation – it is worth mentioning that inequalities that are systematic, historic and all encompassing do have a causal effect. But it is very difficult to gauge with any certainty, how large this effect is in the context of conflict-related sexual violence. Certainly, if gender inequality caused conflict-related sexual violence, we would observe this in most major conflicts. And

indeed, sexual violence, of some extent has featured in most intrastate and interstate wars historically as well as contemporaneously. Nevertheless, the presence of gender inequality does not explain the variation in scale, degree, level of brutality, type(s) or extent of sexual violence. Other explanations, such as the type of conflict, its ‘master cleavages’ and the interests and motivations of armed groups have been traced as more direct causes. At most, the deployment of militarist ideologies, combined with patriarchal power structures, misogyny and discrimination are *part of* the cause of conflict-related sexual violence.

A systematic study of the question *why do some armed groups commit sexual violence during the post-peace agreement phase of a conflict* warrants theoretical modelling, if only to help researchers identify what to describe and explain. This paper mainly presents a framework for future research, and in that process covers three impunity-based theses for research. The explanations express the inferences made by other scholars within previous research on the causes of sexual violence in conflict.

### **Customary exemption**

The customary exemption impunity thesis is the broadest form of immunity. In war-torn societies where there has been a historical absence of arrests, trials and punishments for human rights violence, there are also fewer records of action taken against sexual violence. Customary exemption can be embodied through gender inequality but also an absence of respect for international and national human rights law. In such settings, we can trace back and find that various groups have enjoyed special privileges, or through their control of state judiciary and security forces, absolved themselves and their group members from accountability. Impunity may thus be maintained by custom – a confluence over time and across society. Customary exemption can be measured by reviewing the country’s record of arrests, trials and punishment for criminal acts and the treatment of victimised groups and individuals throughout a country’s history.

The customary exemption thesis covers explanations whereby conflict-related sexual violence is described as rooted in a sense that rape and other forced sexual acts are a reward; part of the culture; and the right of the powerful (Siefert, 1992; Eriksson Baaz and Stern, 2008). Customary exemption also fuels the deployment of sexual violence as a rape strategy – which has been attributed to the conflict-related sexual violence in genocide and other types of organized armed violence.

Customary exemption however, is difficult to trace without running into problems of multiple causality. This impunity theses must necessarily include a range of intervening causes at the level of the armed group, its ideology and organisation and its access to and relationship with civilians. It also fails to account to the problem of why some armed groups may commit sexual violence, while others do not – even if they are similarly conditioned through history, politics and society that they will be exempt from accountability.

## **Amnesty regimes**

Amnesty regimes are ‘de facto’ and ‘de jure’ immunity from past crimes. Amnesty regimes can be measured through documentation of amnesty law and the record of prosecutions for sexual violence war crimes that are punishable by international and national human rights law. Amnesty regimes are more specific than customary exemption as they are specific to conflict and thus limited temporally to peace processes or political transitions (Mallinder, 2008). Amnesty laws emanate from political settlements in peace agreements that are either blanket and conditional amnesties in one category, or linked to truth-recovery mechanisms or human rights commissions as another category (Mallinder, 2008). The amnesty regime impunity thesis is novel and largely found in policy literature. It claims that allowing armed groups that have committed sexual violence to benefit from amnesty laws or remain immune from prosecution and conviction after a peace agreement, conveys impunity, and thus fuels continued commission of sexual violence.

Several authorities on amnesties and peace processes point to gaps in our theoretical and empirical knowledge about the causal pathway between amnesties and impunity in peace processes. As with other international human rights crimes, armed actors that carryout sexual violence are supposed to be excluded from amnesty regimes. Yet, these tools may in turn provide incentives to actors to buy into peace processes. Separate chapters by Sisk and Bell briefly discuss the dilemma of using peace processes to correct past injustices. Sisk explains that addressing human rights comprehensively is not usually possible in the context of negotiations, except in terms of containing immediate violence. (Darby and MacGinty, 2003). Moreover, in terms of managing the transition to peace, power sharing devices which by their nature may include some previous groups that have committed violence against civilians, are often offered as short-term solutions (Darby and MacGinty, 2003: 197). Walter has also demonstrated through her empirical findings that third-party security guarantees and power sharing pacts significantly influence the outcome of civil wars. The correlation between these guarantees and pacts illicit confidence or willingness in armed actors (Walter, 2002).

Melander’s paper of 2010 examines the statistical relationship between amnesty provisions, reconciliation provisions in peace agreements and the duration of peace in the first three years after an accord is signed. He shows that amnesties in peace agreements can contribute to peace, while reconciliation provisions have no effect on the risk of renewed fighting. Specifically, this effect is strongest in cases where there is a strong central political authority in place during negotiations (Melander, 2010). Are peace processes, therefore, conducive to dealing with the problem of sexual violence in terms of meting out justice? While amnesty and impunity is a common concern for international justice, states must also navigate the challenges of political transition after civil war or armed conflict (Carter, 2010; Mendez, 2001; Noworjee 2005; Mallinder 2008).

## **Group sanction**

Group sanction is a positive form of impunity. The thesis claims that endorsement of sexual violence; and/or a lack of self-regulating accountability by group leaders increases the chances of sexual violence incidents. It is derived from much of the current literature about sexual violence in armed conflict.

Certain types of armed group regulation and internal structures have strong correlations with sexual violence. Group sanction can be measured by internal codes and accountability structures. Recruitment methods, hierarchies in leadership in responsibility, strategic imperatives and group dynamics may deter or encourage sexual violence. Cohen points to evidence that recruitment mechanisms have a strong relationship to the types and severity of sexual violence. She finds that ethnic or religious factionalism and gender inequality do not predict wartime rape. Rather, those cases where combatants are forcibly recruited to fight have a greater correlation to the commission of sexual violence, which is used to achieve unit cohesion (Cohen, 2009). Wood argues that variation would be more evident if researchers examined sexual violence through various units of analysis (at the level of the armed group or at that of the individual perpetrator), as well as by distinguishing between strategic sexual violence against a targeted group, widespread violence or even, opportunistic violence that is unsanctioned by leaders of an armed group. Other important variables for studying sexual violence would include the presence of group sanctions and prohibitions, and group dynamics (Wood, 2006). Indeed, through subsequent research, Wood found that the Liberation Tigers of Tamil Eelam of Sri Lanka (LTTE) was able, through a robust hierarchy of internal leadership, with checks, rules and discipline, to prevent its members from committing sexual violence on the civilian population (Wood, 2009). Wood's findings in particular are important for this dissertation. Although the LTTE is one case, it illustrates the relationship between internal order and discipline of a conflict actor, and that groups participation in sexual violence, perhaps establishing a theoretical link between the controls on armed actors, and their behaviour when it comes to sexual violence during conflict.

The group sanction thesis focuses on impunity within an armed group. Importantly, this particular level of impunity can be positive, whereas customary exemption or amnesty regimes are negative. A former or current commander who carries out sexual violence and faces no punishment reinforces the sense of impunity among his or her officers, foot soldiers or comrades in arms. Yet, if that commander actually orders the commission of sexual violence, this is not necessarily impunity – but a war strategy. In this regard group sanction is not a cohesive impunity thesis. It is a more general explanation for conflict-related sexual violence which falls outside of the scope of the impunity argument. Hypothetically, if an armed group's structures and methods promote sexual violence, accountability within the larger, wider society and within the peace process could act as a deterrent.

In conclusion, three impunity theses have been presented: customary exemption, amnesty regimes and group sanctions. These theses are used to explain sexual violence in armed conflicts within the current academic and policy literature. Yet, they vary in utility in terms of explaining the sufficient conditions for conflict-related sexual violence.

First, customary exemption is a very wide explanation – it reaches back in time and across society – that captures immunity from accountability through the absence of norms, rules and laws, or their repeated and biased abrogation by powerful members of social groups. Customary exemption is difficult to measure, because it is beyond the conflict and peace processes. Moreover, customary exemption does not explain the variation among different armed groups, who may be exposed to the same customs and practices and view sexual violence as acts that will go unpunished, but yet act differently.

Second, amnesty regimes fit the puzzle of impunity within peace and conflict – they are part of negotiations or settlement of armed conflict and thus bounded by distinct time periods. Amnesty regimes may also be used as incentives for good behaviour and induce parties to negotiate and agree on ceasefires, territorial boundaries, humanitarian corridors, demobilisation, disarmament, power-sharing, elections and other nonviolent conflict measures. As such, even when human rights violence has taken place, it may be that armed groups still enjoy immunity, at least for some time after the peace process. But even this time period can be traced more clearly to the peace accords of the conflict. Amnesty regimes are methodically suited to scientific inquiry, but do they add anything to the impunity argument? While customary exemption is too broad, amnesty regimes are more specific. These regimes can also be offered to some armed groups, and not all, further helping to illicit a distinct comparison between those that have impunity and those that do not.

Finally, group sanction as an impunity thesis helps illuminate the dynamics within an armed group, and between the microlevel (footsoldiers) and the macrolevel (commanders). The group sanction thesis is, however, not limited to impunity. Or rather, impunity or accountability and justice from outside the group may have an equal or significant effect on the armed group's commission of conflict-related sexual violence.

## V. Micro-conceptual framework

### *The Impunity Theses*

Based on the previous presentation, Table 2 presents the operationalisation of customary exemption, amnesty regimes and group sanction. It shows the working hypotheses, the causal relationship and limits of each thesis.

**Table 2: Why some armed groups commit sexual violence in the aftermath of war**

| Working hypotheses  | Causal relationship  | Limits   |
|---|--|--|
| Societies with unaddressed records of human rights violence will experience higher levels of sexual violence after war. | Mean effort to address human rights violence is the explanatory variable (x).<br><br>Conflict-related sexual violence by armed groups or former fighter communities is the outcome variable (y).   | Beyond the scope of conflict and peace processes.<br><br>Necessary but not sufficient condition.<br><br>Part of a multi-causal explanation.<br><br>May have a number of intervening variables. |
| Peace processes with amnesty regimes result in higher levels of sexual violence after war.                              | Amnesty law or rewards in a peace agreement is the explanatory variable (x).<br><br>Conflict-related sexual violence by armed groups or former fighter communities is the outcome variable (y).  | May have a number of intervening variables.  |
| Groups that endorse or ignore sexual violence will be more likely to commit these acts after war.                       | Combined record of recruitment, discipline and leadership in setting norms and standards is the explanatory variable (x).<br><br>Conflict-related sexual violence by armed groups or former fighter communities is the outcome variable (y). | May be a necessary, but not a sufficient condition.  |

## VI. Conclusions

This paper has explored the role of impunity in the commission of sexual violence in the aftermath of war. Three impunity theses – customary exemption, amnesty regimes and group sanction – were derived from previous research. Customary exemption is one explanation for why armed groups carryout sexual violence – but it is difficult to measure since it extends beyond peace processes and is entwined with other causes. It cannot explain why some groups

commit these acts and others do not – since all would be ‘treated’ to the same effect through a shared history and exposure to societal and political norms. The group sanction thesis has been used by many to explain why some armed groups carryout sexual violence. But it does not address situations after a peace agreement, or how accords may encourage or discourage armed groups from carrying out sexual violence. In situations where one group is part of a settlement and enjoys some immunity, other groups may continue or desist from committing sexual violence. Group sanction may be necessary, but even in instances where commanders encourage sexual violence, it may be more of a war strategy or motivated by organisational needs, rather than a sense of immunity from future punishment. Finally, amnesty regimes provide a fruitful avenue for study of the problem of conflict-related sexual violence. The amnesty thesis captures the impunity argument – showing exemption, immunity and the promise of pardon. Even in instances where there is conditional amnesty, in exchange for truth, amnesty regimes provide a de facto assurance of impunity. They are suited to scientific inquiry because there may be a control group and a treatment group – with one armed group part of a negotiated settlement and another remaining outside of it. Finally, amnesty regimes are specific to peace and conflict processes.

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## Working Bibliography

- Butler, Christopher K., Tali Gluch and Neil J. Mitchell. 2007. "Security Forces and Sexual Violence: A Cross-National Analysis of a Principal-Agent Argument" *Journal of Peace Research*, Vol. 44, No. 6: 669-687.
- Carter, K.R. 2010. "Should International Relations Consider Rape a Weapon of War?," *Politics and Gender*, 6:343–371.
- Cohen, Dara Kay. 2009. *The Causes of Sexual Violence by Insurgents During Civil War: Cross-National Evidence (1980-1999)*, University of Minnesota, November 10, unpublished paper.
- Darby, John and Roger MacGinty. 2008. *Contemporary Peacemaking: Conflict, Peace Processes and Post-War Reconstruction*. New York: Palgrave MacMillan.
- Economist, 2011. "War's Overlooked Victims", Goma, 13 January.
- Eriksson Baaz, Maria and Stern, Maria. 2008. "Making Sense of Violence: Voices of Soldiers in the DRC", in *Journal of Modern African Studies* 46(1). Cambridge University Press.
- \_\_\_\_\_. 2009. "Why do Soldiers Rape? Masculinity, Violence and Sexuality in the Armed Forces in the Congo", in *International Studies Quarterly*. (2009) 53, 495-518
- Heineman, Elizabeth. 2008. 'The History of Sexual Violence in Conflict Zones: Conference Report, *Radical History Review*. Spring: 5-21.
- Henry, Nicola, Tony Ward and Matt Hirshberg. 2004. A Multifactorial Model of Wartime Rape, *Aggression and Violent Behavior*, 9:535–562
- Isikozlu, Elvan and Ananda S. Millard. 2010. *Towards a Typology of Wartime Rape*, Bonn International Centre for Conversion (BICC) Brief 43.
- International Criminal Court (ICC). 2000. *Rome Statute, Elements of Crimes*, ICC-ASP/1/3.
- International Tribunal (IT), 1997. Prosecutor v. Tadic, Case No. IT-94-1-T, Sentencing Judgment (July 14).
- International Criminal Tribunal for Rwanda. 1998. Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment, (September. 2).
- King, Gary, Robert O Keohane and Sidney Verba. 1994. *Designing Social Inquiry: Scientific Inference in Qualitative Research*, Princeton: Princeton University Press.
- Kalyvas, Stathis. 2006. *The Logic of Violence in Civil War*, Cambridge University Press.
- \_\_\_\_\_. 2005. "Warfare in Civil Wars", in Isabelle Duyvesteyn and Jan Angstrom (eds.), *Rethinking the Nature of War*. Abingdon: Frank Cass, 88-108.
- \_\_\_\_\_. 2003. "The Ontology of "Political Violence:" Action and Identity in Civil Wars", *Perspectives on Politics*, 1:3, 475-494.
- Maiese, Michelle. 2003. "Human Rights Violations", *Beyond Intractability*. Ed. Guy Burgess and Heidi Burgess. July. Conflict Research Consortium, University of Colorado, Boulder. (Date of retrieval: 09 May 2011, Accessed at: <http://www.beyondintractability.org/about/citations.jsp?nid=5298>).
- Mallinder, Louise. 2008. *Amnesty, Human Rights and Political Transitions: Bridging the Peace and Justice Divide*, Oxford: Hart Publishing.
- Melander, Erik. 2010. "Amnesty, Reconciliation and Peace Agreement Success in Ending Civil Wars," Unpublished paper.
- Nilsson, R. Anders. 2008. *Dangerous Liaisons. Why Ex-Combatants Return to Violence. Cases from the Republic of Congo and Sierra Leone*, Department of Peace and Conflict Research. Uppsala University.



- Nordås, Ragnihld. 2011. *Sexual Violence in Armed Conflicts*, Centre for the Study of Civil War, Policy Brief, January.
- Nowrojee, Binaifer. 2005. "Making the Invisible War Crime Visible: Post-Conflict Justice for Sierra Leone's Rape Victims," *Harvard Human Rights Journal*, 85.
- Plutarch et.al. *Plutarch's Lives*, Volume I (of 4), Translated by Aubrey Stewart and George Long, 1894. (Retrieved from: [http://www.gutenberg.org/files/14033/14033-h/14033-h.htm#LIFE\\_OF\\_SOLON](http://www.gutenberg.org/files/14033/14033-h/14033-h.htm#LIFE_OF_SOLON), accessed 21 May 2011).
- Rome Statute of the International Criminal Court, art. 7(1)(g), July 17, 1998, 2187 U.N.T.S. 3.
- Seifert, Ruth. 1992. *War and Rape. Analytical Approaches*. Women's International League for Peace and Freedom.
- Shields, Patricia M. and Hassan Tajalli. 2006. "Intermediate Theory: The Missing Link to Successful Student Scholarship", *Faculty Publications-Political Science*. Paper 39. (Retrieval: 15 May 2011, Accessed: <http://ecommons.txstate.edu/polsfacp/39>).
- United Nations General Assembly (UNGA). 2005. *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*, E/CN.4/2005/102/Add.1, 8 February, Commission on Human Rights, Sixty-first session, Item 17 of the Provisional Agenda.
- UN Office for the Coordination of Humanitarian Affairs (OCHA). 2008. "Discussion Paper 1, Sexual Violence in Armed Conflict: Understanding the Motivations", Use of Sexual Violence in Armed Conflict: Identifying Gaps in Research to Inform More Effective Interventions, Research Meeting, 26 June.
- United Nations (UN) Secretary General. 2010. Report of the Secretary-General on the Implementation of Security Council resolutions 1820 (2008) and 1888 (2009), A/65/592–S/2010/604, New York.
- UN Security Council. 2011. S/RES/1960, New York.
- \_\_\_\_\_. 2009. S/RES/1888, New York.
- \_\_\_\_\_. 2009b. S/RES/1889, New York.
- \_\_\_\_\_. 2008. S/RES/1820, New York.
- \_\_\_\_\_. 2000. S/RES/1325, New York.
- Uppsala Conflict Data Programme (Date of retrieval: 11 April 2011, Accessed at: <http://www.pcr.uu.se/research/ucdp/definitions/#Active>), Department of Peace and Conflict Research.
- Walter, Barbara F. 2002. *Committing to Peace: The Successful Settlement of Civil Wars*. Princeton and Oxford: Princeton University Press.
- Wood, Elizabeth Jean. 2009. "Armed Groups and Sexual Violence: When Is Wartime Rape Rare?", *Politics and Society*, 37:1, March: 131-162
- \_\_\_\_\_. 2006. "Variations in Sexual Violence during War", *Politics and Society*, 34:3, September: 307-341.