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Evaluating the Role of International Humanitarian Law in Protecting Women and Girls from Sexual Violence in the Boko Haram Conflict in Northeast Nigeria

By Adebola Adeoti

Introduction

The Boko Haram insurgency in Northeast Nigeria has inflicted severe harm on civilians, particularly women and girls, through gender-based violence like abductions, forced marriages, and sexual enslavement. While International Humanitarian Law (IHL) and human rights frameworks aim to protect vulnerable groups during conflicts, their limitations in addressing the gendered dimensions of violence are evident in this context. Traditional legal approaches often neglect the intersectional nature of harms faced by women, reinforcing patriarchal biases.

I adopt a critical feminist methodology to examine these shortcomings, proposing a feminist approach that centers women's experiences and emphasizes localized, gender-sensitive solutions and explore Boko Haram's use of gender-based violence, critiques the effectiveness of IHL and human rights law through a feminist lens, and offers actionable recommendations based on successful strategies from other conflict zones. By integrating feminist perspectives into international law and human rights, this study seeks to advance justice for women and address gendered harms in conflict more effectively.

1.0 An Overview of the Boko Haram Insurgency and the Use of Gender-Based Violence as a Weapon of War

Since 2002, Boko Haram, an insurgent group with the literal connotation of 'Western education is sinful or prohibited,' has initiated a campaign of Islamic-based conflict within the Northeastern region against the Nigerian government.¹ Boko Haram has employed sexual violence such as rape, sexual slavery and forced marriage against women as one of its tactics in the terror campaign against the Nigerian state.² For the purpose of this discussion, it is essential to define sexual violence. Sexual violence was described in the Akayesu case at the International Criminal Tribunal for Rwanda as 'any act of a sexual nature committed against a person under coercive circumstances.'³ This definition includes a wide range of behaviours, from physical penetration to comments with sexual implications and 'coercion', which provides for physical force, threats, intimidation, and

¹ Tom Batchelor, 'Rape and Sex Slavery: Life as a Girl under Boko Haram Exposed a Year on from Mass Kidnap' (London, 14 April 2015) <https://www.express.co.uk/news/world/570401/Boko-Haram-exposed-yearmass-kidnap>, accessed 20 December 2024.

² Adam Nossiter, *Boko Haram Militants Raped Hundreds of Female Captives in Nigeria* (The New York Times 2014).

³ Prosecutor v Akayesu (Judgment) ICTR-96-4-T, T Ch I (2 September 1998).

other forms of coercion.⁴ This section shall discuss three major types of sexual violence used by Boko Haram to instil fear and intimidation upon women and girls in North-East Nigeria.

First, Boko haram, has engaged in the systematic use of rape as a tool of warfare. Batchelor painted a gruesome picture of a young survivor who asserted that she was raped 15 times each day while in the custody of the Boko Haram faction before her escape.⁵ Another depiction was rendered of Asabe Aliyu, a young mother of four, who was saved from the Sambisa Forest. Aliyu revealed that she was raped daily by members of the Boko Haram group. Subsequently, she became pregnant and was forced into marriage with a group member.⁶ During a hallowing interview by Amnesty International with young girls in the IDP camps in Northeast Nigeria, stories of rape and other sexual violence were mentioned. A 15-year-old girl who managed to escape said, 'After we were declared married, I was ordered to live in his cave, but I always managed to avoid him. He soon began to threaten me with a knife to have sex with him, and when I still refused, he brought out his gun, warning that he would kill me if I shouted. Then he began to rape me every night.'⁷ This narration aligns with the severe nature of rape in conflict.

Secondly, Boko Haram has embraced sexual slavery as a strategy tool of terror and intimidation⁸ with tactics such as kidnapping and hostage-taking.⁹ In 2014, they took 2,000 women and girls for ransom. Several mass abductions have garnered significant attention, such as the abduction of 276 school girls from Chibok in April 2014, the kidnapping of over 300 students from a primary school in Damasak in March 2015, the kidnapping of 111 girls from the Government Girls Science and Technical College in Dapchi during in 2018, and the abduction of 317 girls in Government Girls Secondary School in Jangebe in 2021.¹⁰ Reports also emerged of women locked up in houses subjected to sexual exploitation.¹¹ Unfortunately, these incidents have been underreported due to the culture of silence, stigma, and shame around sexual abuse in Nigeria, especially in the conservative Northern region.¹² <https://www.tandfonline.com/doi/full/10.1080/10246029.2020.1776348?scroll=top&needAccess=true&role=tab> According to Bangura, the Special Representative of the Secretary-General of the United Nations on Sexual Violence in Conflict, hundreds of recently released female captives experienced sexual abuse by Boko Haram militias, and many were compelled into marriage with their captors.¹³

⁴ *Ibid.*

⁵ Theresa U Akpoghome, Ufuoma V Awhefeada, 'Challenges in Prosecuting Sexual Violence in Armed Conflict under Nigerian Law' (2020) 11 Beijing Law Review 262. <https://doi.org/10.4236/blr.2020.111018>.

⁶ Afolabi Sotunde, 'Nigerian Women Captured by Boko Haram 'Stoned, Starved by Militants' (3 May 2015) ABC News <https://www.abc.net.au/news/2015-05-04/boko-haram-captives-speak-of-ordeal-for-firsttime/6441528>, accessed 23 August 2023.

⁷ Amnesty International Report 'We dried our tears: Addressing The Toll on Children of Northeast Nigeria 's Conflict' (May 2020) chp4.

⁸ Jacob Zenn and Elizabeth Pearson, 'Women, Gender and the Evolving Tactics of Boko Haram' (2014) Journal of Terrorism Research 48.

⁹ Hilary Matfess, *Women and the War on Boko Haram: wives, weapons, witnesses*. London: (Zed Books 2017, Cambridge University Press 270).

¹⁰ Amnesty International Report (n7).

¹¹ Conflict-Related Sexual Violence Report of the United Nations Secretary-General 'Condemning Use of Sexual Violence' (2023 S/2023/413) assessed 17th November 2024 <tps://www.un.org/sexualviolenceinconflict/wp-content/uploads/2023/07/SG-REPORT-2023SPREAD-1.pdf>.

¹² Bugaje, Ogunrinde, and Faruk, 'Child Sexual Abuse in Zaria, Northwestern Nigeria (2012) Nigerian Journal of Paediatrics 23.

¹³ Conflict-Related Sexual Violence Report (n12) 5.

These narratives underscore the urgency of addressing sexual violence as a weapon of war, and the pressing need to examine the adequacy of IHL in protecting women and girls in conflict zones which the next section shall do.

2.0 A Feminist Critique of International Humanitarian Law: Evaluating Its Adequacy in Protecting Women and Girls in Conflict Zones

Sexual violence in armed conflict is a pervasive problem affecting countless people, especially women and girls. Given the gravity of this issue, international humanitarian law has emerged as a pivotal instrument in addressing and mitigating the impact of sexual violence in the context of armed conflict.¹⁴ This section shall examine the theoretical debates within feminist legal spheres regarding the adequacy of International Humanitarian Law in addressing sexual violence in conflict.

2.1 Feminist Critique of International Humanitarian Law in Armed Conflict

The provisions of International Humanitarian Law (IHL) about women in armed conflict have sparked debates within feminist legal spheres. This discourse has highlighted two principal viewpoints concerning the adequacy of the IHL framework in addressing the specific experiences of women in conflict.¹⁵ The first school of thought proposed by Lindsey argues that women are subjected to tragic effects of armed conflict not primarily due to shortcomings in the rules protecting them but because these rules are often not observed.¹⁶ This view, referred to as the 'enforcement' school by Oosterveld, advocates that the main obstacle to protecting female civilians during hostilities is the lack of observance of IHL. The United Nations' work on the issue of women and conflict also reflects this view, as exemplified by Security Council resolution 1325 on women, peace and security, which calls upon all parties to armed conflict to fully respect IHL as it applies to the rights and protection of women and girls.¹⁷ However, it does not question the suitability and adequacy of IHL in addressing women needs.¹⁸

The second school of thought posits that the failure to question the efficacy of International Humanitarian Law is a fallacy. While adherents of this position concur that more consistent enforcement of IHL would benefit civilian women, they contend that the absence of provisions in IHL that effectively address women's experience is the main issue rather than enforcement.¹⁹ Consequently, a fundamental overhaul of IHL

¹⁴Drishti Sagar, 'Sexual Violence against Women in Nigerian Armed Conflicts' (2023) 5 Indian J.L. & Legal'.

¹⁵Valeire Oosterveld, 'Feminist Debates on Civilian Women and International Humanitarian Law', (2009) Windsor Yearbook of Access to Justice 27, 385-402.

¹⁶Charlotte Lindsey, 'Women and War - An Overview' (2000) 839 Int'l Rev. Red Cross 561 at 579 This is also the view of the International Committee of the Red Cross: "On the whole, public international law (in particular IHL, human rights law and refugee law) adequately addresses the needs of women in all of these situations. The challenge lies in translating the law into practice by ensuring implementation of and respect for the existing rules." International Committee of the Red Cross, "Addressing the Needs of Women Affected by Armed Conflict: An ICRC Guidance Document" (Geneva: ICRC, 2004) at 9.

¹⁷Judith Gardam, 'Women and Armed Conflict: The Response of International Humanitarian Law' in Helen Durham and Tracey Gurd, eds., *Listening to the Silences: Women and War* (Netherlands: Martinus Nijhoff Publishers, 2005) at 114-116.

¹⁸Women and Peace and Security, UN SCOR, 4213'h Mtg., UN Doc. S/RES/1325 (2000) at para 5.

¹⁹Gardam (n18) 115.

is necessary to improve protection for civilian women by reconceptualisation and revision of IHL.²⁰ They assert that IHL's current form reflects masculine assumptions disregarding global systematic gender inequality.²¹ This school of thought, referred to as the 'revision', argues that the current IHL framework fails to account for the pervasive gender inequalities that exist at a global scale, with scholars such as O'Rourke who argue that while international humanitarian law is an essential framework for addressing sexual violence in conflict, it has not given much consideration to the root cause of sexual violence such as; underlying social and economic factors in the development of legal frameworks.²² Similarly, Gardam notes that 'IHL treaties have sometimes been criticised because they allegedly do not take 'the needs of women in armed conflicts appropriately and do not prohibit and criminalise sexual violence' sufficiently.²³

Though O'Rourke emphasises that historical documents shaping international humanitarian law have indeed extended protection to women as victims of sexual violence, such as The Lieber Code of 1863, the Second Hague Convention of 1899, and the Fourth Hague Convention of 1907, have either explicitly or implicitly prohibited acts like the rape of women and various forms of sexual assault against them; The Fourth Geneva Convention, specifically Article 27, explicitly safeguards women from assaults on their honour, encompassing acts like rape, forced prostitution, and indecent assaults.²⁴ It is noteworthy, however, that Article 3 of the Convention, while prohibiting 'attacks on physical integrity and human dignity, including humiliating and degrading treatment,' does not explicitly address sexual violence.²⁵ O'Rourke outlines two primary criticisms. Firstly, O'Rourke highlights that these provisions seem to primarily safeguard women's honour and dignity within a patriarchal framework, potentially subordinating women to the extent that the dishonour of a woman undermines the standing of males within her family. Secondly, these measures fall short of recognising the distinctive experiences of people in armed conflict, particularly regarding sexual violence, a notable and differentiating facet of women's experiences.²⁶

²⁰For example, UNIFEM has called upon the United Nations Secretary-General to "appoint a panel of experts to assess the gaps in international and national laws and standards pertaining to the protection of women in conflict and post-conflict situations and women's role in peacebuilding;" Elisabeth Rehn and Ellen Johnson Sirleaf, *Women, War & Peace: The Independent Experts' Assessment on the Impact of Armed Conflict on Women and Women's Role in Peacebuilding* (New York: UNIFEM, 2002) at 140.

²¹ Judith Gardam and Michelle. Jarvis, *Women, Armed Conflict and International Law* (Boston: Kluwer Law International, 2001) 93.

²²Catherine O'Rourke, *Women Rights In Armed Conflict* (Cambridge University Press 2020) 200.

²³ Judith Gardam, 'Women, Human Rights and International Humanitarian Law' (1998) *International Review of the Red Cross*, 324, 421-432.

²⁴*Lieber Code: Instructions for the Government of Armies of the United States in the Field*, General Order No. 100, 24 April 1863, Art. 44, available at: www.icrc.org/ihl/INTRO/110.

²⁵ Article 3, Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949, 75 UNTS 31, 6 ILM 35 (1947).

²⁶Tachou-Sipowo Alain-Guy, 'The Security Council on women in war: between peacebuilding and humanitarian protection' (2010) *International Review of the Red Cross* 92, 197-219.

Despite some differences between the schools of thought, 'both views express frustration at the lack of action' to alleviate 'women's violation during armed conflict and acknowledge the various' atrocities experienced 'by women during and after armed conflict'.²⁷ While this section provides insight into the theoretical debates within feminist legal spheres regarding the adequacy of International Humanitarian Law (IHL) provisions in the protection of women in armed conflicts generally, it is essential to note that neither of these perspectives has been applied to the analysis of sexual abuse against women and girls in the context of the Boko Haram. Therefore, this essay aims to fill this lacuna by assessing the issue.

3.0 Feminist Critique of International Humanitarian Law in Addressing Sexual Violence in the Boko Haram Armed Conflict

To evaluate the adequacy of International Humanitarian Law, it is essential to first classify the Boko Haram conflict to determine the applicable legal framework. According to Ibezim, the first difficulty the Boko Haram Insurgency presents in implementing IHL in Nigeria is its classification.²⁸ The primary regulations of International Humanitarian Law that govern Non-International Armed Conflicts (NIAC) are encapsulated in Common Article 3 of the Geneva Conventions of 1949 and Additional Protocol II to the Geneva Conventions.²⁹ These provisions establish the criteria to be satisfied to classify a conflict as a non-international armed conflict under IHL, which Boko Haram conflict falls under.

First, one of the requirements is that the Armed Conflict must be between Contracting Party Armed Forces or other Organised Armed Groups; the Nigerian army is currently engaged in a battle against a dangerous armed group, which has prompted the deployment of armed forces and the establishment of Regional joint forces. It can be argued that Boko Haram does qualify as an organised armed group.³⁰

Secondly, there is a clear requirement that a specific threshold of intensity must be surpassed before a situation can be classified as non-international armed conflict. Protocol I mandate that its applicability depends upon a certain level of intense violence. Moreover, Article 1, Paragraph 2 of Protocol I³¹ exclude situations characterised by internal disturbances, tensions, sporadic acts of violence. Boko Haram has been responsible for numerous acts of violence and terrorism, including the protracted nature of their conflict and territorial control

²⁷ Valerie Oosterveld, 'Gender and the Interpretation and Application of International Humanitarian Law' (2014) 46 *International Review of the Red Cross* 125.

²⁸ E C Ibezim, A S Amaramiro and M E Nwocha, 'Boko Haram Insurgency and Challenges to Implementation and Enforcement of International Humanitarian Law in Nigeria' (2020) 25(6) *IOSR Journal of Humanities and Social Science* 36-53, DOI: 10.9790/0837-2506043653.

²⁹ Geneva Conventions of 12 August 1949, *Common Article 3*, 75 UNTS 31, Additional Protocol II to the Geneva Conventions, 8 June 1977, 1125 UNTS 609.

³⁰ Ibezim (n 29) 16.

³¹ Article 1 Paragraph 2 of Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I).

in the northern regions; the conflict's intensity has reached the critical level required for classification as an armed conflict under international humanitarian law.³²

Having categorised the conflict as a non-international armed conflict, it is essential to explore the key regulations governing non-international armed conflict. These regulations comprise of Common Article 3 of the 1949 Geneva Conventions³³, the 1977 Additional Protocol II and Customary International Law, for the purpose of this research, I shall examine the Common Article 3 of the 1949 Geneva Conventions and the 1977 Additional Protocol II.

First, in Common Article 3 of the GC, it is fundamental to note that Common Article 3 is seen as a 'minimum yardstick' for NIACs because of its conciseness in structure.³⁴ The article stipulates that:

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

Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness... shall in all circumstances be treated humanely, without any adverse distinction. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever concerning the above-mentioned persons:

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

(b) Taking of hostages.

(c) Outrages upon personal dignity, particularly humiliating and degrading treatment...

From this definition, the Principle of Humane Treatment was drawn out; the principle governs the treatment of persons in the custody of an enemy party in IHL, whether civilians or combatants who are incapacitated.³⁵ Also, the revised Commentary on Common Article 3 interpret the definition of 'humane treatment' and the provisions in the (a) and (b) part.³⁶

Standard Article 3 serves as a basis for addressing sexual violence in non-international armed conflict. Nevertheless, revisionist feminists have pointed out that some laws do not expressly prohibit sexual violence; this aligns with Article 3.³⁷ They raise significant concerns about this omission, as it only implies but does not expressly

³² Ibezim(n29)18.

³³ *Ibid.*

³⁴ Article 3 of GC n (26).

³⁵ Marco Milanovic 'End of Application of International Humanitarian Law' (2014) International Review of the Red Cross 16, 45.

³⁶ ICRC, Commentary to Article 3 of 2020 to the Convention (III) relative to the Treatment of Prisoners of War of Geneva, 12 August 1949, <https://ihldatabases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=31FCB9705FF00261C1258585002FB096> (accessed 23 December 2023) 2020 Commentary to GC III), para. 587.

³⁷ Judith Gardam and Hilary Charlesworth, 'Protection of Women in Armed Conflict' (2000) Human Rights Quarterly 22(1) 149.

mention sexual violence.³⁸ In their view, these laws are insufficient to address these issues.³⁹ Revisionist feminists further expressed apprehensions regarding the phrasing of specific provisions addressing sexual violence, particularly those about the concept of 'dignity'. Rather than acknowledging the profound physical damage inflicted upon women and girls by sexual violence, these provisions focus on dignity. Copelon posits that while the notion of dignity may encompass broader concerns, it conceals that rape fundamentally constitutes violence directed towards women. On the other hand, the feminist enforcement school argue that notwithstanding this, the notion of dignity remains an integral component of a legally binding norm that affords protection to women in civilian capacities.⁴⁰ Essentially, the current words inadequately convey the magnitude of harm experienced by victims of sexual violence in the Boko Haram conflict, nor do they reflect the seriousness of sexual violence as a criminal act, and as such, these laws are inadequate.

Second, regarding Additional Protocol II, intending to complement standard Article 3, Article 4 (2) of the Additional Protocol II contains a comprehensive list of prohibited acts in its obligation of humane treatment.⁴¹

Persons who do not take a direct part or have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honour, convictions, and religious practices. They shall, in all circumstances, be treated humanely, without any adverse distinction. It is prohibited to order that there shall be no survivors. Without prejudice to the generality of the preceding, the following acts against the persons referred to in paragraph 1 are and shall remain prohibited at any time and in any place whatsoever: (a) violence to the life, health and physical or mental well-being of persons, in particular, murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;.....(c) taking of hostages;(d) acts of terrorism; e) outrages upon personal dignity, particularly humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault ;f) slavery and the slave trade in all their forms;...

While the provisions of Additional Protocol II do acknowledge sexual violence, such as 'outrages upon personal dignity, in particular humiliating and degrading treatment', 'rape', 'enforced prostitution, and 'indecent assault.' This acknowledgement aligns with the feminist perspective earlier discussed.⁴² However, the revisionist feminist perspective expresses that this provision maintains a formal equality approach, treating all civilians equally in its prohibitions and that formal equality may not necessarily lead to substantive equality⁴³; while the law prohibits these acts, it does not explicitly address the underlying systemic gender inequalities that contribute to such abuses such as in the Boko Haram conflict, this omission could limit the law's effectiveness in addressing these violations. On the other hand, the feminist enforcement school have argued that the expectations of the revision school

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ Lindsey n(17)40.

⁴¹ ICRC *Commentary of 1987 to the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, https://hndatabases.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=AAoC5BCBAB5C4A85C12563CDo_02D6Do9&action=openDocument (accessed 23 April 2024) (1987 Commentary to AP II), paras. 4517, 4530, 4539.

⁴² See section 3.0.

⁴³ Judith G. Gardam and Michelle J. Jarvis, *Women, Armed Conflict and International Law* (Boston: Kluwer Law International, 2001) at 93 [Gardam and Jarvis, *Women*]. 7 Helen Durham, Review of *Women, Armed Conflict and International*.

regarding IHL are excessively high.⁴⁴ According to this viewpoint, IHL, as a specialised legal framework, is inherently limited in its objectives, primarily aimed at ensuring the survival of as many individuals as possible in a society's direst circumstances.⁴⁵

However, Oosterveld reiterated the argument put forth by the enforcement school, which posits that if the narrow scope of IHL cannot adequately address issues of systematic gender inequality, then it raises concerns about the potential hindrance, rather than enhancement, of the law's fundamental objective of improving the chances of survival for those impacted by armed conflicts.⁴⁶ Also, it is argued that such concerns are unwarranted, as the analytical approach advocated by the revision school resembles a more comprehensive and profound rendition of the vulnerability analysis conducted by the International Committee of the Red Cross.⁴⁷ This approach has proven valuable in identifying the specific requirements of numerous female civilians during conflict.⁴⁸ While this provision might be adequate to a certain extent in combatting sexual violence in the Boko Haram conflict, However, it may not sufficiently be, it without addressing the underlying systemic gender inequality, such as the entrenched patriarchal cultural society in North-Eastern Nigeria. The next section shall discuss International Human Rights Law and Sexual Violence in Conflict.

3.1 International Human Rights Law and Sexual Violence in Conflict

According to Donnelly, International Human Rights Law are the rights held by individuals simply because they are human beings.⁴⁹ They provide frameworks for protecting the dignity of individuals, even during armed conflicts.⁵⁰ Instruments such as the Universal Declaration of Human Rights (UDHR), and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) emphasize the need to protect the rights of women and girls.⁵¹ However, the application of these instruments in conflict zones such as Northeast Nigeria remains limited.

Boko Haram's use of sexual violence as a weapon of war indicates the inadequacy of existing human rights provisions in conflict situations. The sexual violence discussed in section 3.0 committed by them violate core human rights principles, including the rights to freedom, security, and dignity (UDHR, Articles 1, 3, and 5).⁵² Furthermore, these actions contravene CEDAW's mandate to eradicate gender-based discrimination and violence

⁴⁴ Helen Durham, 'International Humanitarian Law and the Protection of Women' in Helen Durham and Tracey Gurd, eds., *supra* note 2 at 97 [Durham, 'Protection']. See also International Committee of the Red Cross, *Women and War* (Geneva: ICRC, 2008) at 2: "Women benefit from the general protection afforded by IHL. Along with the rest of the protected population, they must be able to live free from intimidation and abuse." [ICRC, *Women and War*].

⁴⁵ *Ibid.*

⁴⁶ Oosterveld (n27).

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ Jack Donnelly, *International Human Rights* (5th edn, Westview Press 2013).

⁵⁰ *Ibid.*

⁵¹ UN General Assembly, *Universal Declaration of Human Rights* (adopted 10 December 1948 UNGA Res 217 A(III)), and UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women* (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13.

⁵² Donnelly (n50).

UN General Assembly, *Universal Declaration of Human Rights* (adopted 10 December 1948 UNGA Res 217 A(III)) arts 1, 3, and 5. UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women* (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13, art 2.

against women (CEDAW, Article 2). Despite these provisions, the enforcement mechanisms for human rights law remain weak, particularly in regions with fragile state institutions.

A notable gap in IHRL is its insufficient attention to the intersection of gender and systemic violence. Traditional human rights frameworks often focus on state accountability while failing to address non-state actors like Boko Haram. This limitation is compounded by cultural and structural barriers that hinder the implementation of gender-sensitive protections. For instance, cultural stigmatization of survivors of sexual violence often silences women and prevents them from seeking justice or accessing support services.⁵³

Feminist critiques of human rights law highlight the need for a more inclusive approach that prioritizes women's lived experiences and addresses the patriarchal biases embedded within legal systems.⁵⁴ Feminist scholars argue that existing frameworks often marginalize gendered harms, treating them as secondary to other violations.⁵⁵ A feminist approach to human rights law calls for recognizing and addressing the specific vulnerabilities of women in conflict zones, advocating for survivor-centered interventions and greater accountability for non-state actors.

In the context of Northeast Nigeria, a feminist human rights framework could complement International Humanitarian Law by emphasizing localized solutions. For example, integrating community-led initiatives to support survivors to reduce stigmatization and strengthen the enforcement of women's rights.

4.0 Proposing Gender-Sensitive Solutions to Address Sexual Violence in Conflict Zones

Given the constraints of International Humanitarian Law (IHL) in addressing gender-specific harms in cultural contexts such as Northeast Nigeria, there exists an urgent necessity to implement innovative and localised approaches. This section outlines key strategies that have proved effective in similar conflict-affected regions and advocates for their adaptation to the Boko Haram conflict.

4.1 Community-Based Interventions

According to Heise, societies where women occupy relatively subordinate positions to men, the prevalence of sexual violence tends to be significantly higher. This dynamic is pronounced in conflict zones, such as Northeast Nigeria, where rigid gender roles and cultural expectations of masculinity create an environment conducive to gender-based violence.⁵⁶ Sierra Leone implemented community-based interventions following its civil war. The country's approach involved engaging traditional leaders and community groups to address stigma and provide support to survivors of gender-based violence. These efforts helped rebuild trust and facilitated the reintegration of survivors into their communities,⁵⁷ Nigeria can also adopt this method.

⁵³ Amnesty International, *Our Job is to Shoot, Slaughter and Kill: Boko Haram's Reign of Terror in North-East Nigeria* (Amnesty International 2015).

⁵⁴ Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester University Press 2000).

⁵⁵ *Ibid.*

⁵⁶ Lori L. Heise, 'Violence Against Women' 277-280.

⁵⁷ Askin, Kelly D. *War Crimes Against Women: Prosecution in International War Crimes Tribunals*. The Hague: Martinus Nijhoff Publishers, 1997.

4. 2 Strengthening Legal Frameworks and Enforcement Mechanisms

Though IHL provides a foundation for protecting women and girls during armed conflict, its enforcement must be strengthened through integration with domestic legal systems. This includes enacting national laws that criminalize all forms of gender-based violence, establishing specialized courts to handle cases of sexual violence in conflict zones, training law enforcement, and judiciary members on gender-sensitive practices to ensure survivor-centered legal proceedings and to monitor compliance and hold perpetrators accountable through both domestic and international tribunals.⁵⁸ With respect to Sierra Leone, the country established the Special Court for Sierra Leone included a mandate to prosecute crimes of sexual violence, setting a precedent for integrating gender-sensitive legal reforms in post-conflict settings, this can also be replicated in Nigeria.⁵⁹

4.3 Integrating Global Constitutionalism into Gender-Sensitive Interventions

Global constitutionalism offers a valuable framework for addressing the systemic failures of IHL to adequately protect women and girls from sexual violence in conflict zones. It refers to the development of overarching legal norms and principles that govern the international community, emphasizing the protection of human rights and the rule of law across borders⁶⁰

By adopting a global constitutionalist approach, states can create stronger legal frameworks that prioritize the lived experiences of marginalized groups, particularly women, in conflict settings. This approach aligns with feminist critiques of traditional legal frameworks, which often fail to account for gendered harms.⁶¹ Therefore, incorporating global constitutionalism into the fight against sexual violence in conflict zones would involve strengthening international norms that explicitly address gender-based violence as a serious violation of human rights, ensuring that international legal mechanisms, such as tribunals and human rights courts, recognise and prosecute gender-specific crimes in conflict. Also, the case of Sierra Leone illustrates how global constitutionalism can be applied in practice. The establishment of the Special Court for Sierra Leone was guided by principles of international justice and human rights, demonstrating a commitment to prosecuting gender-based crimes and addressing the long-term impacts of conflict-related sexual violence.⁶² Nigeria can draw on these global constitutionalist principles, the court set a precedent for future interventions that centre the experiences of survivors and promote accountability.

⁵⁸ Christine Chinkin, 'Rape and Sexual Abuse of Women in International Law' (1994) 5 *European Journal of International Law* 326.

⁵⁹ Schabas, William A. *The UN International Criminal Tribunals: The Former Yugoslavia, Rwanda, and Sierra Leone*. Cambridge: Cambridge University Press, 2006.

⁶⁰ Peters, Anne. 'The Merits of Global Constitutionalism' 16 *Ind. J. Global Legal Stud.* 397 (2009).

⁶¹ Hilary Charlesworth and Christine Chinkin n (95).

⁶² Schabas (n 60).

Conclusion

While IHL provides a framework for addressing sexual violence in the Boko Haram conflict, it falls short in tackling the underlying gender inequalities that drive such violence. Feminist critiques highlight that the current laws inadequately address the unique harms faced by women, focusing on dignity rather than the physical and psychological damage caused by sexual violence. To improve protection and accountability, gender-sensitive solutions such as community-based interventions, stronger legal frameworks, and global constitutionalism must be integrated. A more holistic approach is needed to ensure IHL evolves to effectively combat gender-based violence in conflict zones.

Additional Protocol II to the Geneva Conventions, 8 June 1977, 1125 UNTS 609.

Amnesty International. *Our Job is to Shoot, Slaughter and Kill: Boko Haram's Reign of Terror in North-East Nigeria*. Amnesty International, 2015.

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