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**SEXUAL CRIME AGAINST MIGRANT/REFUGEE WOMEN AND ITS
PROSECUTION UNDER INTERNATIONAL CRIMINAL JUSTICE: A
CRITICAL ANALYSIS**

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Abbreviations:

- ICL- International Criminal Law
- ICTR- International Criminal Tribunal for Rwanda
- ICTY- International Criminal Tribunal for former Yugoslavia
- ICC- International Criminal Court
- SCSL- Special Court for Sierra Leone
- ECCC- Extraordinary Chambers in the Courts of Cambodia
- ECHR- European Court of Human Rights
- UNHCR- United Nations High commissioner for Refugees
- IHL- International Humanitarian Law
- ECCC- Extraordinary Court Chambers for Cambodia
- SPSC- Special Panels for Serious Crimes
- EXCOM- Executive Committee of the UNHCR

"Sexual violence in conflict needs to be treated as the war crime that it is; it can no longer be treated as an unfortunate collateral damage of war." - UN Special Representative on Sexual Violence in Conflict, Ms. Zainab Hawa Bangura

1. Introduction

Displaced people are created as the aftereffect of an assortment of social, financial, and political changes, including-however not constrained to-ethnic wars, monetary destruction, natural fiascoes, and wide-scale human rights manhandle. One of the striking qualities of the world's outcast populace is the noteworthy overrepresentation of ladies and kids amongst its positions. In fact, it is estimated that eighty percent of refugees and displaced persons worldwide are women and children.¹

Sexual violence has been exacerbated by unequal gender relations inside groups of concern; it has been utilized as a weapon of war and as a method for practicing power; it has been both a reason for forced displacement and a horrible result of the breakdown of family and community structures that goes with uprooting. Evacuees confront an essentially expanded danger of sexual brutality when in detainment or detention-like situations. Refugee women are more affected by violence against women than any other women's population in the world.²Such savagery has also been executed by a portion of the very individuals who have been depended with the errand of ensuring evacuees and dislodged persons. Exiles are influenced by it both as victims of war-related assault violations, furthermore as victims of expanded residential misuse that happens amid struggle. Additionally, evidence shows that domestic violence may even intensify post-conflict.³They are defenseless and for each situation, the mental and physical injury that outcomes from such brutality can just add to the torment of relocation and the intensity of outcast. The sexual abuse of women amid struggle is not new, but rather it has remained an under-scrutinized and under-archived issue. Sexual brutality has turned into a vital weapon of war used to destabilize, rebuff, pressure, and ingrain dread in displaced person populaces, and it has been regulated in numerous nations by security powers and places of assumed "refuge."

¹Susan Forbes, *Women Refugees*, 2 (2003)

² L. Craig Johnstone, *UNHCR backs 16 days of opposition to violence against women* (21st July, 2016), www.unhcr.org

³Refugee Council, *The Vulnerable Women's Project: Refugee and Asylum Seeking Women Affected by Rape or Sexual Violence* (2009)

In November 2010, UNHCR launched a series of Dialogues in seven locations around the world with over 1,000 refugees, asylum-seeking and internally displaced women and girls revealed that gender-based risks and challenges affect almost all aspects of life for displaced women and girls.⁴ The household explanations given for rapes in the context of war are that they are a natural occurrence to be attributed to a male anthropology or acts of hordes run wild, this has prevented a deeper probing into the meanings and functions of collective sexual violence against women.⁵

Countries across the world have domestic laws governing sexual violence but domestic laws of a specific country, unlike international laws, govern the behavior and actions of individuals within that country. So what happens when sexual violence takes place in forced displacement? This paper will first look into the definition of “sexual violence” as recognized internationally, then it will proceed to talk about various international laws on it and then finally critically analyze those laws and try to find out the solution to the problem of sexual violence prevailing worldwide.

2. Definition

The definition of sexual violence was first given in the *Prosecutor v. Akayesu*⁶, Judgment. It was held:

“The Tribunal considers sexual violence, which includes rape, as any act of a sexual nature which is committed on a person under circumstances which are coercive. Sexual violence is not limited to physical invasion of the body and may include acts that do not involve penetration or physical contact.”

The UN Declaration on the Elimination of Violence Against Women defines violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women.”⁷

World Health Organization defines sexual violence as:⁸

“Any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person’s sexuality using coercion, by

⁴ United Nations High Commissioner for Refugees, *UNHCR’s Dialogues with Refugee Women*, 7 (2013)

⁵ Ruth Seifert, The second front: The logic of sexual violence in wars, 19 *Women's Stud. Intn'l F.*, 35 (1996)

⁶ Case no ICTR-96-4-T

⁷ Article 1

⁸ World Health Organization, *World report on violence and health*, 149 (2002)

any person regardless of their relationship to the victim, in any setting, including but not limited to home and work.”

The term "sexual violence" covers all forms of sexual threat, assault, interference and exploitation, including "statutory rape" and molestation without physical harm or penetration.⁹It also encompasses: sexual slavery; enforced prostitution; forced pregnancy; enforced sterilization; or any other form of sexual violence of comparable gravity, which may include indecent assault; trafficking; inappropriate medical examinations; and strip searches.

3. Recognition of Sexual Violence under International Humanitarian, International Refugee and Criminal Law and other guidelines and policies:

Assault and sexual viciousness are violations that soldiers and noncombatants have regularly dedicated all through the historical backdrop of fighting. In 1998, a noteworthy advancement was the assertion of the International Criminal Court (ICC) statute's definition of ‘crime against humanity and war crimes.’ The definition includes rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity.

However, prosecutors have not traditionally prosecuted these crimes as war crimes.¹⁰A lot of exploration, backing, political organizing, and lawful change has occurred throughout the last numerous years trying to handle the issue of violence against women at the domestic and global levels. Regardless of a lot of state activity on this massive social problem in at least some countries, it stays, all things considered, successfully past the scope of state intercession. All things considered, there have been additions in the acknowledgment sexual brutality and assault under universal law and in the settling of sexual savagery sought after in the recently created criminal jurisdictions of international courts, tribunals, special mixed courts and panels.

3.1 International Humanitarian Law

International Humanitarian Law (IHL), generally known by the expression the laws of armed conflict alludes to the guidelines, directions and laws that represent individuals from the military and certain regular people amid times of armed conflict. It is along these lines the primary spot

⁹United Nations High Commissioner for Refugee, *Guidelines on prevention and response*, 4 (1995)

¹⁰Kelly D. Askin, *Prosecuting Wartime Rape and Other Gender-Related Crimes Under International Law: Extraordinary Advances, Enduring Obstacles*, 21 Berkeley J. Int'l L. 288 (2003)

that we ought to swing to check whether women are adequately ensured against violence in international law.

The post-war codification of IHL cumulated with the signing of the four Geneva Conventions of 1949. A striking oversight is an express preclusion of rape as an express preclusion was just verbalized, in Article 27 of the Fourth Geneva Convention Relative to Civilians under the forbiddances meant to secure regular citizens who were under foe occupation. Article 27 expressed, inter alia, that, "women shall be especially protected against any attack on their honor, in particular against rape, enforced prostitution, or any form of indecent assault." Nevertheless, common articles 12 of the First and Second Geneva Convention and article 14 of the Third Geneva Convention, repeat the dialect of the Article 3 prohibition found in the 1929 Geneva Convention, to be specific, that "women should be treated with all consideration due to their sex." above all, Article 3, common to the First, Second, Third and Fourth Geneva Conventions of 1949, managed strife of a non-international character and utilized the expression "outrages upon personal dignity, in particular humiliating and degrading treatment". This was Victorian code dialect that suggested sexual violations and reproductive experiments. It was deliberately drafted with adaptable wording to cover whatever future acts could be incited by the brutal impulses of torturers. In particular, additional Protocol I regulates jus in bello¹¹ amid international armed conflict. It perceived in Article 75(2)(b), entitled the Fundamental Guarantees that civilians and military agents are prohibited from inflicting, "outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault". In Article 76(1), women are particularly shielded from "rape, forced prostitution and any other form of assault", and in Article 77 (1) children, including the girl child, are secured against "indecent assault". Additional Protocol I, in its entirety, forms part of international customary law that is binding on all States.¹²

The Second Additional Protocol of 1977 to the Geneva Conventions is in respect to non-international armed conflict. Article 4, entitled the Fundamental Guarantees, records preclusions including "outrages against personal dignity, rape, enforced prostitution and any form of indecent assault" whenever and wherever when committed against persons who "do not take a direct part or have ceased to take part in hostilities". Article 4, an outgrowth of Common Article 3, augmented the restricted acts that extend to internal armed conflict. Unfortunately, Additional

¹¹The law that governs the way in which warfare is conducted.

¹² Theodore Meron, *Human Rights and Humanitarian Norms as Customary Law*, (1989)

Protocol II of 1977 to the Geneva Conventions 1949, has not, completely, been acknowledged as standard universal law by all States. Nevertheless, amid the previous decade the Common Article 3 provisions that cover gender-based violence may surely be contended to have achieved the status of standard law.

In this way, by the mid 1990s, IHL disallowed the punishment of sexual brutality, upon enemy civilians, members of the armed forces and persons accompanying them, prisoners of war, during international armed conflict, and upon persons no more occupied with battle during non-international armed conflict.

Additionally, since World War II, a modest bunch of prosecutions condemning wartime rape under national military codes and domestic laws, similar to John Schultz case wherein it was held that assault was a wrongdoing generally perceived as legitimately culpable under the law of war. Likewise, different national military codes like military manuals of Argentina, Australia and Canada, among others, and national enactment fused provisions of IHL that protected against sexual assaults. These prohibitions against wartime violations of sexual integrity, based upon the IHL principle of humane treatment, continue to reside in both treaty and customary international law.¹³

3.2 International Criminal Law

Parallel to the post World War II developments of IHL, rape also incrementally picked up acknowledgment as an international crime, including as a crime against humanity. The international crime of crimes against humanity never created a different and particular worldwide law bargain on a standard with international law treaty on a par with other international crimes such as genocide or apartheid. Rape was acknowledged as an express form of crimes against humanity through the joining of international crimes into national military codes and national legislation. All the more as of late, the acknowledgment of Rape as a international crime was tied down by its posting in the statutes of global courts and tribunals and their cutting edge legal elucidation.

Without a doubt, the revelations, resolutions, reports, commissions, preliminary gatherings and different antecedents of the extraordinarily commanded universal criminal courts and tribunals made in the 1990s and early years of the twenty-first century, predicted that the locale

¹³ Theodore Meron, *Human Rights and Humanitarian Norms as Customary Law*, 2-5(1989)

summoned by these international bodies would certainly include crimes of sexual violence, as central violations to IHL and international criminal law, including crimes against humanity. The constitutive instruments of these international judicial bodies, in shifting degrees, substantiated that forecast. For instance, in thought of the formation of the Yugoslav Tribunal, Security Council Resolution 820 of 17 April 1993 censured:

“All violations of international humanitarian law, including in particular, the practice of “ethnic cleansing” and the massive, organized and systematic detention and rape of women, and reaffirms that those who committed or who have committed or order or ordered the commission of such acts will be held individually responsible in respect of such acts.”

The Statute of the International Criminal Tribunal for the former Yugoslavia, Statute of the International Criminal Tribunal for Rwanda, Statute of the Special Panels for Serious Crimes Statute of the Special Court for Sierra Leone, Rome Statute of the ICC and the Extraordinary Court Chambers for Cambodia list the crime of rape, together with other expressly named sex crimes such as trafficking and slavery, that are, on their face not of a sexual nature, but crimes whose *actus reus* could certainly include acts of sexual violence.¹⁴

To recount briefly, provisions of these constitutive instruments that established the subject-matter jurisdiction of these international bodies, mandated that the following sexual assaults crimes could be the basis for criminal charges:

- a) The Statute of the ICTY – Article 5 (g) lists rape as a crime against humanity;
- b) The Statute of the ICTR – Article 3 (g) lists rape as a crime against humanity, and Article 4 lists rape, enforced prostitution and indecent assault of any kind as a serious violation of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977;
- c) The SPSC – Section 6(1)(b)(xxii) and 6 (1)(e)(vi) lists rape, sexual slavery, enforced prostitution, forced pregnancy ... enforced sterilization or any other form of sexual violence as constituting a grave breach of the Geneva Conventions, and serious violations of Article 3 common to the four Geneva Conventions;

¹⁴Article 7(2) (c) of the Rome Statute states that enslavement entails the “right to ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children.”

d) The Statute of the SCSL – Article 2 (g) lists rape, sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual violence as a crime against humanity, and Article 3(e) lists outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault as serious violations of article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977;

e) The Statute of the ECCC – Article 9 lists crimes against humanity, as defined in the 1998 Rome Statute;

f) The Rome Statute of the ICC – Article 7 (1)(g) lists rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity as a crime against humanity; Article 8(2)(b)(xxii) lists rape, sexual slavery, enforced prostitution, forced pregnancy... enforced sterilization or any other form of sexual violence as serious violations of the laws and customs applicable in international armed conflict; and Article 8(e)(vi) lists rape, sexual slavery, enforced prostitution, forced pregnancy... enforced sterilization or any other form of sexual violence as a serious violation of article 3 common to the four Geneva Conventions armed conflict not of an international character.

Past Beyond the latter explicit references to rape and other forms of sexual violence, ensuing legal translations of the ICTY, the ICTR, the SCSL, the SPSC and in addition logical sections of the ICC Statute, further give that procurements other than express rape violations can likewise be the premise for mediation of sexual brutality. The list of sexual violations inside the topic purview of the international and mixed international forum has subsequently logically extended, particularly after the drafting of the multilateral Rome Statute of the ICC. In addition, the crime “sexual violence” found in the Rome Statute, the Statute of the SCSL, and the ECCC, probably works as a lingering condition permitting the courts to exercise jurisdiction over whatever other, un-listed genuine rapes of similar gravity to the named sex based violations. Sexual mutilation, for case, may constitute sexual assault conduct covered by the residual crime of sexual violation. The augmented posting of particular wrongdoings ought to empower more extensive scope of all genuine sexually damaging behavior.

Moreover, the Rome Statute is supplemented with the Elements of the Crime Document, that sets out the settled upon components, to be specific, the mensrea and the actusreus, of every wrongdoing contained in the ICC topic ward, including the sex-based violations. Dissimilar to respondents who at early trials in the ICTY, ICTR or SCSL just took in the judges' profession about the exact components of the charged violations upon their conviction or vindication, under the ICC purview, litigants will be completely mindful of the legitimate components of every charge at the issuance of the charging records.

Eventually, notwithstanding the development of the crime of rape under IHL and worldwide criminal law, rape exists sub-silencio as a kind of criminal conduct that supports other universal violations, for example, trafficking or slavery, the slave trade or subjection like practices.

3.3 International Refugee Law

International refugee law is dominated by the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. The Convention contains a well-known definition of the refugee, applicable to an individual who:

'owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.' (Article 1A(2))

The Convention's most significant protection is contained in Article 33(1):

'No Contracting State shall expel or return (*'refouler'*) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion'.

In spite of the fact that this is not a boundless commitment, as for example Article 3 of the European Convention on Human Rights it is the foundation of this specific administration of 'international protection'. It particularly forbids a state from giving back a displaced person in the recorded circumstances. The principle has gained such widespread international recognition that it is now regarded by some as a norm of customary international law, even though its precise scope outside the 1951 Convention is uncertain.¹⁵

¹⁵ G. Goodwin-Gill, *The Refugee in International Law*, 117-171, 2 (1996)

International Refugee Law also ensures the rights of refugees who have fled a nation to look for asylum in another in the event that they have an all around established fear of persecution should they be return to the nation they have fled. The worldwide group perceives that sexual orientation related mistreatment is a premise for refuge. The UNHCR has interpreted the refugee definition to consider women asylum seekers with gender-related claims as members of a “particular social group”.¹⁶Two broad categories of gender-related have been identified: those in which the persecutor constitutes a type of harm that particular to applicant’s gender, such rape or genital mutilation; and those in which the persecution may be imposed because of applicant’s gender, for example, because a woman has violated societal norms regarding women’s proper conduct.¹⁷

Many Countries have taken actions that have contributed to the developing acknowledgment of gender-related persecution as a ground for refuge/asylum. Both Canada and the Unites States have guidelines rules to their immigration authorities to help them distinguish women who ought to be granted asylum in situations where gender-specific forms of abuse have been utilized for political abuse in their countries. Their guidelines instruct asylum adjudicators to identify gender-specific forms of violence and furnish them with methods and techniques to better assess whether singular cases meet the refugee standard.

4. Guidelines and Policies:

United Nations High Commission for Refugees (UNHCR) is responsible for ensuring the protection of refugees from violence. The Executive Committee of the UNHCR (EXCOM) states in its conclusion no. 73that ‘it strongly condemns persecution through sexual violence, which not only constitutes a gross violation of human right, as well as, when committed in the context of armed conflict, a grave breach of humanitarian law, but is also a particularly serious offence to human dignity.’

Amid its 36th session in 1985, EXCOM adopted conclusion no. 39, entitled Refugee Women and International Protection in which it focused on the requirement for UNHCR and host governments to give specific thoughtfulness regarding the global insurance of refugee women. The UNHCR has set down policy on refugee women which is prefaced on the acknowledgment that turning into an exile influences men and women distinctively and that compelling programming must perceive these distinctions. Briefly, the policy talks about hierarchical

¹⁶Anuradha Kumar, *Human Rights*, 156, 1 (2002)

¹⁷*Id.* at 157

objective with respect to refugee women, policy objectives which support the overall organizational goals and operational objectives which provide the basis for the development of appropriate activities and work plans to support implementation of the policy.

The UNHCR has proclaimed two arrangements of guidelines to manage rape on refugee women. In July, 1991, UNHCR declared the "Guidelines on the Protection of Refugee Women" to help the staff of UNHCR to distinguish and react to the issues, issues, dangers confronting refugee women.

Perceiving the successive, and in a few circumstances, uncontrolled event of assault and rape of refugee women, the UNHCR in 1995 has additionally proclaimed "Sexual Violence Against Refugees: Guidelines on Prevention and Response". These rules take note of that the administrations have a commitment to explore, indict and rebuff perpetrators of sexual violence. They encourage governments to receive a "firm and exceedingly noticeable strategy against all types of sexual violence" by:

- 1) Enacting and implementing national enactment;
- 2) Maintaining cooperative contact with national women's associations;
- 3) Facilitating the examination of grievances of sexual violence;
- 4) Ensuring protection of the victim and any witnesses from backlash;
- 5) Take disciplinary actions in cases involving government authorities;
- 6) Providing satisfactory security at refugee camps, and where suitable, conveying female security strengths and gatekeepers.

Shockingly, these and different rules to enhance refugee security have been conflictingly actualized.

5. Critical Analysis and Suggestions:

Conditions of insecurity together with the breakdown of social norms and networks in refugee camps increase women and girls' vulnerability to violence.¹⁸ The international relief community has been slow to address the issue of rape in refugee camps. Guidelines have been laid down to enhance protection, however while these records reflect upgraded familiarity with the pressing situation of refugee women, they have not been reliably actualized by UNHCR, host nations nongovernmental relief organizations. In spite of some actualizing the guidelines in UNHCR run refugee camp, violence against refugee women is a long way from finished. In many cases,

¹⁸Francine Pickup, Suzanne Williams, Caroline Sweetman, *Ending Violence Against Women: A Challenge for Development and Humanitarian Work*, 165, 1 (2001)

implementation problems from the fact that refugee situations are crisis-driven, with relief workers overwhelmed by a seemingly endless refugee flow.¹⁹ This section critically analyses the international law on refugees and suggests ways through which the condition of refugee women can be improved.

5.1 Critical Analysis

The specific provisions dealing with the protection of women are found in the Geneva Conventions, Article 27, which state that 'women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.' This demonstrates how IHL is a gender-biased law that only sees rape as a challenge to 'honour' rather than a violent attack on women because of their gender.²⁰ By connecting rape to honour, it neglects to perceive the ruthless ambush that occurs on a woman's body and mind. It additionally connects with society's discernments that ladies are disrespected and should be outcaste once they have endured this brutality. Besides, Article 147 of the Fourth Geneva Convention does not portray rape as a 'grave breach' which disproves the genuine and harming impacts of rape and denies that it deserves universal jurisdiction. Nevertheless, some progress has been made with the 1977 Additional Protocols to the Geneva Conventions which prohibit 'outrages upon personal dignity'. This includes rape, forced prostitution and any other degrading treatment.²¹ However, the reference to 'personal dignity' still neglects to perceive the earnestness of rape by giving it a secondary status in IHL. Another issue is that despite the improvements that have been made for women through the Protocols, their protective scope is limited because they are not widely ratified and do not amount to customary international law.²²

Provisions of the Geneva Conventions and their protocols actually deal with women and the effects of armed conflict, yet they still remain inadequate because they only 'deal with women in relation to others and not as individuals in their own right.'²³ Also, IHL looks at the protection of women from a male perspective, which therefore ensures that the laws remain inherently discriminatory and unjust.²⁴ Women's concerns are presented as less important compared to

¹⁹Kumar, supra. At p. 156

²⁰Zara Qurashi, *Violence Against Women During Armed Conflicts*, 1 U.K. Law Students' Rev., 43 (2013)

²¹ Article 75 and 76 Additional Protocol I 1977 and Article 4 Additional Protocol II of the Geneva Conventions

²²J. Gardam and H. Charlesworth, *Protection of women in armed conflict*, 22 Hum. Rts.Q., 159(2000)

²³*Id.* At 159

²⁴*Id.* At 67

those of men because the language of 'protection' is used rather than 'prohibition'.²⁵ It is suggested that a new protocol to protect women in times of armed conflict is fundamental and is an achievable objective. Nonetheless, another more believable alternative would be to concentrate on reconceptualising the principles that as of now exist by mainstreaming sexual orientation issues within them. Whatever strategy is utilized, it is clear that IHL should be changed so it perceives rape as an unmistakable form of warfare that is utilized to abuse women in view of their gender.

5.2 Access to Justice

On account of sexual assault, it is important to respond legitimately and empower access to equity, lawful cures and reparation. In any case, women in camps have less opportunities to get to equity than men in societies where a women's status is subjected or attached to a man's. Constrained relocation can build victimization ladies and exacerbate the open doors for fulfilling their lawful cases, leaving casualties with no reparation. The UN Convention relating to the Status of Refugees has unmistakably stipulated that refugees will have free access to the courtrooms on the region of all Contracting States. One ought to hold up under as a top priority that international conventions and agreements once adopted by the state becomes a piece of its legitimate framework and regularly have a priority contrasted with local laws. Along these lines, formally, there are no lawful deterrents for the effective execution of this standard.

Notwithstanding household laws of the hosting nation, refugees are likewise subjected to standards of the camp, which can be developed by or together with the camp's occupants. These guidelines exhibit a blend of traditions adjusted to the camp setting, and have a basic part in IDP camps inside the nations with fizzled legitimate frameworks. As a for example, the camps in Sierra Leone apply a comparable arrangement of guidelines. Moreover, UN standards and rules likewise have a critical spot in dispute resolution in camps, as they give measures that ought to be taken after, in spite of the fact that they are not legally binding.

The utilization of various lawful sources in the camp, however, further confuses the way toward securing productive legal protection to women. With camps lacking managerial staff devoted to giving counseling and legal backing, the victims are crippled in addressing their lawful cases.

Universal Human Rights oblige governments to guarantee that all persons inside their territories, paying little respect to citizenship, appreciate break even with insurance of the law. Despite

²⁵*Id.* at 159

human rights standards, host governments regularly indicate little sympathy toward the brutality experienced by refugees, including rape of refugee women. Their indifference is demonstrated by ineffective security arrangements in the camps and by inadequate investigation and prosecution of rape and other forms of sexual violence against refugee women, even when the perpetrators are state agents tasked with refugee protection.²⁶

The ICC has jurisdiction over nationals of states that are parties to it and over those of non-party states it has jurisdiction in three circumstances. First, on the referral from UN Security Council. Second, when non-party nationals have committed a crime on the territory of the state that is a party to ICC statute or has accepted the jurisdiction with respect to that crime. Third, where the non-party has consented to the exercise of jurisdiction with respect to a particular crime. Despite the fact that ICC has jurisdiction over nationals of non-parties when those nationals are accused of committing crimes on the territory of consenting states, the power to exercise this jurisdiction in specific circumstances is limited.

It has come to be acknowledged that a refinement must be made between those immunities which connect to a specific office (immunity *ratione personae*), and the immunities which append as an aftereffect of the way that a man is practicing official capacities (immunity *ratione materiae*). Since the latter type of immunity attaches to the official act, it benefits all state officials, whether serving or out of office, in relation to the exercise of their official functions.²⁷

By contrast, immunity *ratione personae* is restricted to a small group of senior state authority, for example, the head of state, head of government, foreign ministers and diplomats. This kind of immunity is for all intents and purposes outright in criminal cases. This keeps different states from capturing and prosecuting this limited group of senior authorities to be subject to the jurisdiction of foreign states whilst they are in office.

ICTR's conviction of Jean-Paul Akayesu was the first case in which sexual violence is perceived as an integral part of genocide as defined in the Convention on the Prevention and Punishment of the Crime of Genocide. Jean-Paul Akayesu served as mayor of Taba commune from April 1993 until June 1994. As mayor, Akayesu was responsible for performing executive functions and maintaining order in Taba, meaning he had command of the communal police and any gendarmes assigned to the commune. He was basically prosecuted for failing to prevent the

²⁶Kumar, *Supra*. At 155

²⁷Dapo Akande, *The Jurisdiction of the International Criminal Court over Nationals of Non-Parties: Legal Basis and Limits*, 1 JICJ, 618, 641 (2003)

violence and other forms of hatred that took place in Rwanda. Due to a large number of persecutors prosecution becomes difficult and so the only mode of preventing such horrifying crimes that is left with the ICC is to compel the state to take measures to avoid such acts as much as possible. But due to the immunity discussed above, the ICC may not request the ICC parties to arrest and surrender those senior officials of non-parties possessing immunity *ratione personae* and this leads to grave miscarriage of justice as far as refugees are concerned.

However, there is no immunity *ratione materiae* in relation to acts which constitute international crimes and in respect of which there is universal jurisdiction. Thus the ICC may request the arrest and surrender of serving state officials that are not entitled to immunity *ratione personae*, and former officials where the crime they are alleged to have committed is one of universal jurisdiction.

Also, Rule 96 of Procedures and Evidence for the ICTY on sexual assault illustrates, evidentiary technique affirms the woman's affirmation. Rule 96 characterizes assault and rape in terms of the force applied as opposed to the resistance offered by the victim; it requires no corroboration and the victim's sexual history is inadmissible.

Moreover, the refugee situation can be enhanced if governments guarantee that national laws against sexual violence are constantly upheld in refugee camps in their domains, as per the significant universal legitimate commitments. Government ought to likewise vivaciously examine all accusations of misuse of force by government workers and expeditiously rebuff the individuals who are responsible. Additionally, the idea of global security must be widened to give more prominent protection to internally displaced as well. The UNHCR and other U.N. organizations must work and guarantee that benchmarks are created for the security of internally displaced persons, particularly women. These norms ought to incorporate assurance to guarantee that refugee women are not the object of sexual brutality.

5.3 Condition of Camps

Despite being provided shelter and protection in the short-term as emergency responses, the refugees fail to be relieved as the conditions in which they are forced to live are very poor. For example, the problem with camp design in Macedonia is that there are no specific areas for women on their own with children, or for young girls separated from their families, neither it is known how many there are; the camps are very overcrowded, with little space between tents; there are no lightings in toilets or near water outlets or on the access roads or paths through the camp, these are very unsafe areas for women and there have been reports of harassment by

soldiers in camps; food is easily diverted if not distributed directly to women, and women may have to trade sex for food if the food is not getting to them and their families; sanitation has little privacy and no protection, and somewhere bathroom are not installed; and there is a lack of fencing.²⁸

The following can be done to improve the living condition of refugees in refugee camps:

- Alternatives to refugee camps must be identified and promoted.
- Physical security should be ensured in camps.
- The UNHCR could organize inter-agency meetings with other relief organizations and relevant government agencies, as well as the refugees themselves, to develop a plan of action to prevent sexual violence.
- Appropriate medical care and psychological counseling could be provided to refugee women, girls and female sexual violent survivors.
- Employees and staff of private agencies under contract to the UNHCR must trained and made aware about the widespread sexual violence against refugee women so that they become capable fo working with refugee women and understanding their concerns.
- Community education can be included in refugee protection programmes. This would help protect survivors from further stigmatization, ostracism or punishment by their own communities.
- More female protection officers, interpreters, health workers and counselors must be assigned.
- Relief provisions could be provided directly to women to reduce potential for sexual extortion.

6. Conclusion

This paper has exhibited the worries that exist for ladies in conflict zones due to the mass violence that they are subjected to in view of their gender. Current insufficiencies in IHL and the late enhancements that have been made for women in international law have likewise been looked into uncover how slow advancement is occurring to take into account more noteworthy protection for women; yet numerous inadequacies still exist that should be determined. Regardless, a slight change of focus is vital by taking a gander at the gender-based violence that women face in clashes.

²⁸Francine Pickup, Suzanne Williams, Caroline , supra. At 169

There still remains a noteworthy crevice between the laws that have been set up and the political will of Member States to uphold these laws. Violence against women is the most effective indication of the degree to which gender imbalance exists throughout every society across the world.. It is a type of biased power that is utilized to corrupt ladies by upholding male strength inside residential and social settings. In spite of this paper focusing on armed conflict settings, it must be recalled that women are similarly helpless in times of peace and in times of conflict since every single social background have empowered men to apply self-assertive control over women. Just when complete gender equality exists in each general public over the world, will violence against women never again be a noteworthy worldwide concern.