

# Legal Protection for Victims of Violence against Women in the South Sudan Conflict from the Perspective of Humanitarian Law

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**Abstract:** The conflict in South Sudan has taken a toll. Not only that, the conflict also caused a very massive violence against women. The occurrence of sexual violence during the conflict in South Sudan increased due to weak state oversight. Not only women, but sexual violence also affects children. Violence against women in situations of armed conflict is generally based on the traditional view that women are property rights, and are often regarded as sexual objects. Humanitarian law represents a balance between the humanitarian needs and military needs of the States. International Law is recognized as a truly universal legal system. States and governments are obliged and responsible to respect and guarantee the human rights of each child regardless of ethnicity, race, religion, gender, and ethnicity, culture, and language, legal status, order of birth and physical or mental condition. The state and the government are also obliged and responsible for providing support for facilities and infrastructure in the implementation of child protection. Therefore this study uses a descriptive qualitative method with data collection in a literature review and will go deeper into the Implementation of Humanitarian Law on the protection of Women in the Sudanese Conflict.

**Keywords:** Legal Protection, Humanitarian Law, Violence, Women, South Sudan

## I. INTRODUCTION

Every country likely experience conflicts between other countries and internal conflicts. However, what is of particular concern is when the conflict ended in war and resulted in many casualties. The problem of conflict and war becomes a contemporary issue in International Law, even more so when there are human casualties as a result of these events. The problem of human casualties due to conflict and war includes victims from the civilian side as well as from the military. So far, in armed conflicts, military casualties are considered a logical consequence of these events. The fall of civilian casualties is considered as something that should not have happened. Normatively, civilians who are unarmed and not involved in an armed conflict should be the free party and their safety is protected. A matter of concern is if in a conflict the existence of civil society is used for strategic and political purposes by ignoring their rights and safety. [1]

Not only that, the occurrence of conflict in the country has an impact on the safety of civil society. Armed conflicts that have occurred in various parts of the world have taken advantage of and have had a negative impact on civil society, especially women and children. Since World War II, women

have been involved in participation by including them in the regular armed forces. Be it international armed conflict or non-international armed conflict, international armed conflict is a dispute or conflict that occurs between one country and another or more countries, while non-international armed conflict is a dispute or conflict that occurs within a country that is be it between the government and the organized rebels or Belligerent.

The chances of sexual violence occurring in times of conflict increase due to weak state oversight. As happened in Sudan. In recent years, it is known that there have been sexual violence against women and children, as happened in South Sudan. South Sudan is officially the weakest country in the world according to the *Fragile States Index* 2014 [2] As a new country, South Sudan must be faced with the problem of civil conflict that has been going on since 2013 due to disappointment with the government of South Sudan. *Sudan People's Liberation Movement* resulted in the separation of the SPLM into two parts, namely the SPLM which sided with the government of South Sudan and the SPLM/-IO *Sudan People's Liberation Movement-In Opposition* which sided with Riek Machar as the leader of the rebel forces. Despite its status as the newest country in the African region, even the world, South Sudan, which is located in East Africa, does not escape being a terrible place for women. Although it has become independent after breaking away from the Republic of Sudan on July 9, 2011 ago through various dynamics and upheavals. [3]

Two years after independence, on December 15, 2013, civil conflict began. The conflict started with the dismissal of the entire government cabinet, including Riek Machar as Vice President by President Salva Kiir on 24 July 2013. The conflict occurred between the two largest ethnic groups in the region; Dinka and Nuer. Troops from the Dinka tribe allied with President Kiir, while Riek Machar was supported by troops from the Nuer. The violent conflict in December 2013 resulted in the United Nations Mission in South Sudan (UNMISS) taking a step unprecedented in the history of civil protection. The conflict was the culmination of rising tensions within the ruling party, the SPLM. It started with a meeting of the National Liberation party council, on December 14, between President Salva Kiir who is from the Dinka tribe, former Vice President Riek Machar who is from the Nuer

tribe, and other senior party leaders which resulted in a dispute. Riek Machar and other council leaders did not return the next day, when important decisions had to be made (Report of the Secretary-General on South Sudan S/2014/158, 2014). [4]

Since the outbreak of the conflict, the armed groups involved have targeted their attacks on civilians. Civilians by committing violence and sexual violence, violating citizens' property, looting, and attacking children as troops in their group. Women are the main victims of various inhumane acts that occur in Sudan. There have been many cases of rape up to *Gang Rope* carried out by armed group soldiers. The women there said that rape was considered a common thing in the area [5].

Apart from rape, various forms of violence are also directed against women in South Sudan. Based on Human Rights Watch's observations, women who were spared rape could be said to be 'lucky' because they were only beaten with sticks or ropes. This violence is experienced by women of all ages, including women who are elderly, even those who are pregnant. The soldiers also kidnapped women and children. Those kidnapped were forced to work and serve in the army, such as transporting loot and stolen livestock from their villages to their destination, which could take days. The women who were victims were also forced to cook for the soldiers, while being beaten while doing their jobs.

Violence against women in situations of armed conflict is generally based on the traditional view that women are *property*, and are often regarded as sexual objects. For a long time, women have been in the role of cultural successors and as symbols of the nation or community. Because violence directed against them is also considered as an attack on the values or honor of a society, then the violence is seen as a potential tool of war. For this reason, in armed conflict, women are often considered as sexual objects, as symbols of the nation or ethnicity, and as female members of a particular ethnic, racial, religious or national group.[6]

Over the last few decades there has been a considerable number of practices that consistently demand the protection of International Humanitarian Law in non-international armed conflicts. This practice has had a significant influence on the formation of the rules of international law. Cases of violence against women and children in war and armed conflict are often seen as excesses of war. The atmosphere of war which is full of masculinity jargons, such as courage, valor, might, and others, drowns women as helpless creatures so that their existence is often ignored. In every war that arises, facts emerge about women, including children, including the following, women in wars and riots are often victims of murder, violence, and sexual harassment. Similar events in the past also show the same pattern of acts of violence against women (enemies) as a war strategy and even used as a kind *Psywar* against the opposing party. [7]

In the history of international humanitarian law can be found in the rules of religion and culture around the world. The

modern development of humanitarian law only began in the 19th century. Since then, States have agreed to develop rules of thumb, based on the bitter experiences of modern warfare. The humanitarian law represents a balance between the humanitarian needs and the military needs of States. Along with the development of the international community, a number of countries around the world have contributed to the development of international humanitarian law. Today international law is recognized as a truly universal legal system. [8] The state and government are obliged and responsible for respecting and guaranteeing the human rights of every member of the civilian population regardless of ethnicity, race, religion, gender and ethnicity, culture and language, legal status, birth order and physical or mental condition. The state and government are also obliged and responsible for providing support for facilities and infrastructure in the implementation of child protection. Meanwhile, the obligations and responsibilities of the community are carried out through community role activities in the implementation of woman protection. Therefore, this article will discuss more deeply about the implementation of humanitarian law on the protection of women in the Sudan conflict.

## II. RESEARCH METHODS

The research method in this writing is by the method of collecting library data, read and take notes, as well as manage research materials. research conducted by researchers by collecting a number of books, magazines and other literature related to problems and research objectives. Literature Studies are also carried out as an effort to solve problems by tracing sources of writings that have been made before. In other words, this term of literature study is also very familiar with the term literature study. In a study that wants to

run, of course a researcher must have a broad insight regarding the object to which Researched. As Nana Syaodih revealed, Types of library research, which is a series of studies related to the method of collecting library data, or research whose research object is unearthed through various literature information (books, encyclopedias, scientific journals, newspapers, magazines and documents). [9]

## III. RESULTS AND DISCUSSIONS

### 3.1 Cases of Harassment of Women in South Sudan

The conflict that occurred in South Sudan resulted in high cases of sexual violence against women. A new report released by Amnesty International shows sexual abuse took place on a "mass scale" during South Sudan's four-year civil war. Thousands of women, children and a number of men kept their mouths shut about what they were facing, while dealing with the mental problems they suffered. Some of them even now suffer from HIV.[10] The report is based on interviews with 168 victims of sexual abuse in South Sudan and in refugee camps in Uganda, the country experiencing the fastest increase in the number of refugee camps in the world.

Some of these sexual assaults did not occur in the conflict but in the camps for millions of people as a result of the conflict. In 2016 the United Nations reported an increase in acts of violence based on gender by 60% in South Sudan, where 70% of women in UN camps in the capital Juba have been raped since the civil war in December 2013.[11] The UN Commission on Human Rights in South Sudan and several other countries others in Africa say government and opposition forces alike use rape as a weapon of war because based on their culture it creates a very bad stigma.

In June 2016, there was a female humanitarian worker who was sexually abused by local soldiers. The woman had no choice because a soldier held her head with an AK47 to her head. Until that night she had been raped by 15 South Sudanese soldiers. As quoted by *Al Arabiya*, on June 11, South Sudanese managed to win the battle in the capital Juba against the opposition. They then raided an inn in which there were foreigners.[12] The attack on humanitarian workers at the Terrain Hotel was the worst since the civil war began three years ago. Witnesses said soldiers shot local journalists and raped foreign women, including Americans. They also robbed, beat and executed a number of other people. Ironically, UN troops who were asked for assistance refused to respond. So are embassies, including the US Embassy.[13] In reality, in armed conflicts, sexual violence, especially rape, is used as a way of torture to third parties in terms of extracting information/cruel interrogation, such as torture, rape is also violence against human dignity and is inhumane. The high rate of Sexual Violence in South Sudan because Sexual Violence is a weapon used by the troops involved in the conflict to intimidate their opponents. Although men are also victims of sexual violence, women are the main targets. According to Muthoni Wanyeki, Amnesty International's Director for East Africa, in some cases, this was done with the aim that the opposing party could no longer have children.[13]

Internationally, violence against women has a high profile if it is correlated with conflicts that occur in a region. This makes sense to explain, as Wanyeki said, that it is one of the strategies used to defeat opponents in other ways.[14]

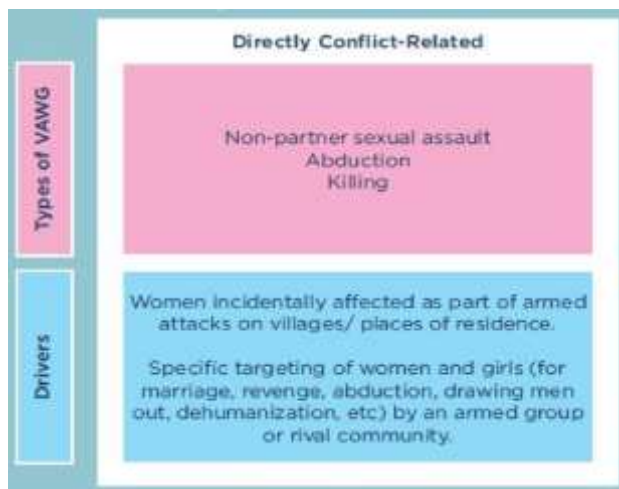


Figure 3.1 Direct Impact of South Sudan's Conflict on Women's Violence

In the figure, the scheme describes the direct impact of the conflict in South Sudan on violence against women, namely that women are affected as part of attacks and are specific targets for revenge, kidnapping, dehumanization and others. by the armed forces involved or the opposing party. Since the outbreak of the Conflict in South Sudan in December 2013, there have been many reports of violence against women in Equatoria Jonglei, Upper Nile and Unity. The Gender-Based Violence Information Management Service (GBVIMS) reports on any forms of violence found in South Sudan against women. [15]

- a. Physical attacks (50%). This form of attack was most extensive and widespread, and occurred both inside the refugee camps, and outside. The reported cases included mutilating a woman's body, burning her alive, or injuring her vital organs with a blunt object.
- b. Sexual harassment (4%). Although the percentage is relatively small, this form of violence is a concern, especially for women who are outside the Protection of Civilians (PoC) camp, looking for firewood or going to the market. This form of violence is often perpetrated in the bush, bushes or in latrines that are not maintained and are no longer used. 19% of reported violence in this form involved children under the age of 18 as victims.[16]
- c. Rape (21%) . This form of violence with the second largest percentage is the most concerning and frightening for women and girls during wartime. Most of the known perpetrators are members of the armed forces involved in this conflict. During the conflict that lasted until this report was published, at least 1,300 women and girls have been raped, and 1,600 women and girls have been abducted. Rape is often carried out by one person or in a group (*gang rape*). [16]
- d. Denial of access to resources (8%). The culture of discrimination against women in South Sudan is the reason women are denied access to family planning, women's health and hygiene or sanitation equipment, and education.
- e. Emotional violence (13%). Generally this happens in the household or partner, because it returns to culture, where women are considered natural to accept violence from their husbands.
- f. Forced marriages (4%). This form of violence also occurs both inside and outside the refugee camps. This often occurs because of the economic demands of the family, of which 40% are girls. In addition, victims of conflict-based violence are often forced to marry the perpetrator, to avoid negative social stigma.

UNMISS, in its 2014 report, described several series of violence against women that occurred in this conflict. One of them was eleven incidents of sexual violence in Jonglei area, of which five were rape, four incidents were *gang rape*, one incident was kidnapping and sexual slavery, and another

incident was kidnapping and threatened with rape.[17] It is suspected the victims came from two ethnic groups, Dinka and Nuer. In six incidents, the perpetrators were government troops, three incidents were from the opposition, and the other two incidents did not identify the perpetrators. Another case found by UNMISS was that 25 incidents of sexual violence occurred in Unity, consisting of 14 rapes, nine incidents of *gang rape*, and two other cases of sexual harassment. The victims included foreign nationals and people from Equatoria and ethnic Nuer. The perpetrators were all parties involved in the conflict. [18]

Violence against women in the South Sudan conflict is increasing and inhumane. One of the victims of violence revealed that the only way for women to be safe (not to experience sexual violence) was to die. Because there is no hope of feeling safe as long as they are alive.[19] This indicates how bad the situation and conditions for women in South Sudan are.

### 3.2 International Humanitarian Law on the Protection of Women Victims of Violence

In international humanitarian law, the civil conflict that started in 2013 in South Sudan between the government's armed forces and the armed opposition forces is included in non-international armed conflicts. South Sudan has ratified four Geneva Conventions in 1949, as well as three Additional Protocols in 2013.[20] The Government and the opposition are bound by Additional Protocol II to the Geneva Conventions to be responsible for controlling conflict areas so that it is possible to carry out integrated military operations. International humanitarian law is binding on every party to a conflict, regardless of whether the other party fails to comply. Each party to the conflict, especially armed forces or groups acting on instructions must respect all rules of international humanitarian law. This is because, in non-international armed conflicts such as in South Sudan, the potential for involvement of non-state armed groups is very high.

It is explicitly described that the meaning of international law is a set of international provisions that protect victims of armed conflict and prevent armed conflict itself from do not use the means and methods of war indiscriminately. These provisions stipulate that attacks are aimed only at military objects and not against civilian objects. From this understanding, the basic principles of international law emerge, namely the principle of distinction (*distinction principle*), the prohibition of attacks on those who have laid down weapons (*hors de combat*), the prohibition of carrying out actions that cause unnecessary harm (unnecessary suffering), the principle of usefulness. (*necessity principle*), and the principle of proportionality (*proportionality principle*). One of the principles which is the main basis of international law is the division of the population of a country that is at war, is hostile, or is involved in armed conflict into two categories, namely combatants and civilians (non-combatant or civilians). Women and children are included in the category of the civilian population, but women who are

members of the Armed Forces Unit and are armed remain in the category of combatants.[21]

The arrangement of the principle of population differentiation in war (distinction principle) was for the first time conventionally regulated in the Hague Convention (Hague Regulations/HR) in 1907 which was later refined in the Geneva Conventions. The last amendment contained in Protocol I 1977 really changed it completely. the fundamental provisions that apply previously. Article 43 in this protocol defines only one combatant, namely the so-called armed forces, which means all organized or units led by a responsible commander. The logical consequence is that all those outside the armed forces are civilians or the civilian population, and this group must be protected in war. The principle of distinction in the above provisions requires further elaboration in a number of principles of application in the realization of the protection of the civilian population, namely:

- a. The parties to the dispute must distinguish between combatants and civilians in order to save the civilian population and civilian objects;
- b. Civilians, as well as individual civilians, may not be objects;
- c. Acts or threats of violence whose main purpose is to spread terror against the civilian population are prohibited;
- d. The parties to the dispute must take all possible precautions to save the civilian population or at least to minimize accidental loss and damage;
- e. Only members of the armed forces have the right to attack and detain the enemy.

The protection of the civilian population is regulated in detail in the Geneva Convention IV (Geneva Convention), which is known as the general protection because it regulates the protection of the civilian population as a whole (general principle), and in the 1977 Additional Protocol, especially in part IV. In this section, general protection is regulated, assistance to the civilian population (relief in favor of the civilian population), and treatment of civilians who are under the control of parties to the dispute (treatment of persons in the power of a party to a conflict).

Geneva law provides protection for those who are in dispute, falling into the hands of the enemy, such as prisoners of war, medical personnel, and civilians. This protection is not against the violence of the war itself, but against the arbitrary power exercised by one party to an armed conflict against the other. This type of protection was first granted in 1864, to 'soldiers wounded on the battlefield'. Since 1949 this protection has been extended to all categories of persons mentioned in the Four Geneva Conventions of 1949. The four Geneva Conventions are:

1. Convention I. Wounded the Convention (I) and Sick in Armed Forces in Field (The Geneva Convention or the first of Red Cross Convention));



2. Convention (II) for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea (Geneva Convention or The Geneva Convention or the Second or the second of Sea Red Cross Convention
3. III) concerning the Treatment of Prisoners of War (Convention (III) Relative to the Treatment of Prisoners of War) (Prisoners of War)
4. Convention (IV) Convention (IV) Relative to the Protection of Civilian Persons in the Time of War (The Fourth Convention or Civilians Convention).

Furthermore, the 1977 Additional Protocol is a convention that is considered to complement or complete the content of the 1949 Geneva Conventions and consists of three parts. Related to the protection of women of (sexual) violence in armed conflicts, there are two articles that guarantee the protection of women from violence, namely article 75 (2) letter (f) and article 76 (1). Article 75 Additional Protocol I regulates basic guarantees for those who become victims in armed conflicts, including for women. Article 75 (2) letter (f) prohibits acts of rape against personal honor, especially humiliating and degrading treatment, forced prostitution and every form of indecent attack. The provisions of this article have clearly stated that the form of violence that can also be considered as sexual violence is any treatment that humiliates and demeans women which was previously not explicitly stated in the Geneva Convention IV 1949. The provisions in Article 75 (2) letter (f) emphasize that the actions mentioned above are still prohibited at any time and at any place, whether carried out by civilian or military officers, meaning that women are fully protected from all actions that lead to violence. Sexual violence at any time under any circumstances and these are basic guarantees that cannot be violated by any party without exception. Furthermore, Article 76 of the additional protocol on protection for women, paragraph 1 contains provisions that: women must receive special respect and must be protected especially against rape, forced prostitution and every other form of indecent attack.

Article 76 (1) provides the same guarantees as stated in Article 27 (2) of the Geneva Convention IV 1949. This article states that not only should women be protected from any attack on their personal honor but more than that, women have the right to special respect from any party. Also in Additional Protocol II Article 4 letter f regulates the prohibition of acts of sexual violence against women. This means that the 1977 Additional Protocol and the 1949 Geneva Conventions recognize the position of women who must be treated as best they can in order to maintain personal honor even during armed conflicts. In addition, it can be interpreted that it is actually a big mistake if the parties to the dispute violate the provisions of the convention that protect women from violence, especially sexual violence, so it is appropriate to bear the legal consequences if they do it and cannot be justified by any reason.

### *3.3 Implementation of Humanitarian Law on the protection of Women in South Sudan*

Every violation of the law under any circumstances is always subject to sanctions. The same applies to violations that occurred during armed conflict. Humanitarian Law has provided written rules regarding the parties who violate those stipulated in the Geneva Conventions and Additional Protocols. The sanctions imposed under the Geneva Conventions of 1949 and the additional protocol of 1977 as identified in Article 1 of the 1977 Geneva Conventions provide an obligation for the major parties to respect and ensure respect for the convention. Respect means that the state must implement the provisions contained in the convention while guaranteeing respect means that the state must take the necessary actions in the event of a violation, including imposing sanctions as written in article 49 paragraphs.

Based on the provisions of the article above, the state that has ratified the Convention Geneva is required to issue a national law providing effective criminal sanctions for any person who commits or orders to commit a grave violation of the Convention. The mechanism contained in this provision is a mechanism whereby the enforcement of IHL is carried out based on a national judicial process. This means that if a case of violation of humanitarian law occurs, the perpetrator will be prosecuted and punished based on national laws and regulations and using the relevant national judicial mechanism. And the arrangement is contained in article 117 of Geneva Convention IV 1949 regarding the need to impose disciplinary sanctions or criminal penalties on those who violate the Convention and this Protocol.

The 1949 Geneva Conventions and the 1977 Additional Protocols as previously described are one of the main sources of law in humanitarian law regarding the rules that exist in war and the protection of war victims, South Sudan has ratified Geneva Conventions I-IV and its Additional Protocols I-II.[22] The above-described violations, the sanctions imposed are based on the Geneva Conventions and its Additional Protocols, as contained in the Geneva Conventions I, which is contained in article 49, namely 10: The High Contracting Parties undertake to enact the necessary laws to provide effective criminal sanctions against persons a person who commits or orders to commit one of the grave breaches of this Convention as defined in the following Article.

In the next section, Article 50, which describes serious violations of this Convention, namely: Serious offenses referred to in the previous article are offenses which include the following acts, when committed against persons or property protected by the Convention: murder intentional, ill-treatment or inhumane treatment, including biological experiments, intentionally causing great suffering or serious injury to body or health, as well as extensive destruction and confiscation of property which is not justified by military interests and carried out unlawfully and arbitrarily.

As well as in Additional Protocol II regarding Non-International armed conflicts in article 4 letter f explains that

there is a prohibition on acts of sexual violence against women. Therefore, the application of disciplinary sanctions against the state of South Sudan has not been carried out against elements/soldiers who are suspected of being suspects for acts of sexual violence against women in South Sudan. The author assumes that the reason the disciplinary sanctions have not been implemented is because the president is the one who holds power over a country, and in the case of the civil war in South Sudan, one of the conflict parties is the president himself, namely Salva Kiir. So the disciplinary sanctions that should have been imposed on the soldiers have not yet been implemented.

#### IV. CONCLUSION

The occurrence of conflict in South Sudan has an impact on the emergence of sexual violence against women starting in 2013. Cases of sexual violence are increasing and are considered normal. This was done by the soldiers as a way to intimidate the enemy to get information from the victim. Humanitarian law has provided for the protection of women who have been victims of sexual violence during war, in the 1949 Geneva Conventions concerning the Protection of War Victims and the 1977 Additional Protocol II on Non-International Armed Conflicts. Specifically, the protection arrangements are contained in the *Common Articles* of the Geneva Conventions I in Articles 49 to 50 and Geneva Conventions IV Article 27 paragraph (2) of 1949, and in Additional Protocol II of 1977 Article 4 letter f. Article 49 basically regulates the prohibition of committing serious violations, while Article 50 regulates other forms of serious violations, one of which is acts of sexual violence against women. Article 27 paragraph (2) regulates the protection of women from any form of attack against them. Meanwhile, Article 4 letter f regulates the prohibition of acts of sexual violence against women.

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