

Certain Aspects in International Law and Policy on Women, Children, Peace and Security

by

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Greetings

Your Eminence,

Your Excellencies,

Brothers and Sisters in Christ,

I would like to express my sincere gratitude and appreciation to the organizers of the prayer vigil for peace dedicated to the Democratic Republic of Congo (DRC) and South Sudan, held 23 November 2017, and now this roundtable on “Building Peace Together.” The two pronged initiative is designed, in the words of Pope Francis, to “sow seeds of peace in the lands of South Sudan and the Democratic Republic of Congo and in all lands devastated by war.”¹

I am honored to be here, among all of you, especially those who have worked, or are working on the frontlines, serving victims or survivors through various initiatives, including those devoted to ensuring domestic application of international law and policy, especially regarding women and children. Others have been involved in mediation efforts. Needless to say, many who have selflessly assisted, comforted, healed and consoled victims of atrocities are no longer with us having been killed during their service. They are gone, but not forgotten.

Introduction

Weighing heavy upon the heart of Pope Francis is the particular suffering of women and children in armed conflict. In His homily for the vigil held 23 November 2017, Pope Francis prayed:

“May the risen Lord break down the walls of hostility that today divide brothers and sisters, especially in South Sudan and the Democratic Republic of Congo. May he comfort those women who are the victims of violence in war zones and throughout the world. May he protect children who suffer from conflicts in which they have no part, but which rob them of their childhood and at times of life itself.”²

My presentation today offers some reflections on the topic of women, children, peace and security within the United Nations system through the lens of international law and policy. To this end, the presentation is divided into two parts. Part I considers women and children as victims or survivors of violence in international law, while Part II deals with women as peacemakers and peacebuilders in international policy.

The decision to divide my presentation in this way stems from an intervention of the Holy See within the United Nations system. The Holy See supports every effort to establish juridical structures for safeguarding the inherent dignity and fundamental rights of individuals,

understanding that mechanisms are never enough. Consequently, it promotes a moral commitment to dialogue, solidarity and reconciliation, as well as “an openness to transcendent truth, the guarantee of human freedom and dignity.”³ Along these lines, the Holy See, during the 2017 “UN Security Council Open Debate on Women, Peace, Security (WPS),” emphasized that women are, on the one hand, proven agents of peace, and on the other hand, proven victims of violence.

“The experience of the Catholic Church in conflict resolution, peacemaking and peacebuilding at the grassroots level...has amply demonstrated that women...are peacemakers. They generally disarm the violent with their multiple capacities to comprehend and empathize, dissuade and convince, forgive and rebuild lives, families and entire communities.”⁴

The Holy See went on to emphasize the tragedy that many of today’s armed conflicts demonstrate that women and children are primary targets and victims of all forms of violence.⁵ The crime of sexual violence against women and girls, in particular, has reached horrific proportions, not only driven by the violent disorder within certain individuals, but by those responsible for developing systematic plans of war and terror.⁶ In regard to the latter, sexual violence against women and children is used to emasculate the males, especially the soldiers called upon to protect them, all with the ultimate goal of destroying the very fabric of societies and nations. Why are women and girls targets? Because women and girls, due to their special capacities, are viewed as bearers of an ethno-national identity based on their ability to beget, nurture and transmit moral, religious and cultural traditions.

In specific regard to the DRC and South Sudan, plagued by ongoing armed conflicts, in 2017, Pope Francis encouraged “every effort on the local and international level to renew peaceful civil coexistence” urging all to work “diligently to pursue reconciliation and dialogue between all elements of civil society.”⁷ Let us turn now to Part I.

I. International Law: Women and Children as Victims or Survivors of Violence

The Rome Statute of the International Criminal Court (ICC or the Rome Statute) was adopted in 1998. During the negotiations, several issues were the subject matter of debate, namely the crime of “forced pregnancy” and the term “gender”.⁸ A group of States, one of which was the Holy See, expressed concerns that the former could be used to promote abortion, while the latter could be employed to advance gender ideology. The debate was resolved when both terms were defined within the Statute. The Rome Statute provides for a treaty-based criminal court to try individuals for specific atrocity offenses committed after the treaty entered into force in 2002. The court, located in The Hague, the Netherlands, is an independent and permanent court, not a body of the United Nations.

Notwithstanding the ongoing debate about the wisdom and effectiveness of the ICC,⁹ taking into consideration that not all States have ratified the Rome Statute, including the Holy See, the Statute embodies crimes of relevance for women and children in armed conflict. Designed to prosecute the worst of crimes and the worst of offenders, not every crime, not every offender, it is a beacon to those States Parties, which are unable or unwilling to prosecute such crimes on the local level since the jurisdiction of the ICC is complementary to those of national

courts. Persons may be prosecuted before the ICC if they have committed genocide, crimes against humanity, and war crimes on the territory of a State that has ratified the Rome Statute or if they have the nationality of a State Party. Otherwise, the State concerned would need to accept the ICC jurisdiction by filing a declaration or the UN Security Council would need to refer a specific case to the ICC for investigation, as in the matter regarding Darfur pursuant to SCR 1593 (2005).

Notwithstanding the paucity of certain convictions,¹⁰ the Office of Prosecutor for the ICC acknowledges that crimes of sexual violence are amongst the severest under the Statute and should be given importance in all stages of its the work.¹¹ The Rome Statute explicitly acknowledges various forms of sexual violence as types of war crimes or, in other words, grave breaches of the Geneva Conventions or serious violations of common article 3 of the Geneva Conventions, committed during international and non-international armed conflicts, respectively. Rape is specifically mentioned as a war crime as well as “sexual slavery, enforced prostitution, forced pregnancy...enforced sterilization, and any other form of sexual violence.”¹² Moreover, the crime of rape, along with other acts of sexual violence, may constitute an act of genocide when, among other things, such acts are “committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group.”¹³ In addition, when it forms part of a systematic or widespread attack against a civilian population, the crime of rape is a distinct type of crime against humanity. Other crimes include “sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity” (Rome Statute, art. 71.1.g) as well as any “[o]ther inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.” (Rome Statute, art. 71.1.k). In a 2016 decision of the ICC Pre-Trial Chamber II, “forced marriage” was held to be an independent crime against humanity falling under art. 71.I.k; in this decision it was treated as a separate and distinct crime from that of sexual slavery.¹⁴

Last, but not least, “conscripting or enlisting children under the age of 15 and using them to participate actively in hostilities” is a war crime.¹⁵ It is noteworthy that the 2000 Optional Protocol to the Convention on the Rights of the Child (CRC) on the Involvement of Children in Armed Conflict (OPAC) aims to protect children under the age of 18 from recruitment, conscription and use in hostilities and demobilize any such children and provide physical and psychological services and assist in their social reintegration. It requires States Parties to criminalize such conduct in national laws. The Holy See has ratified both the CRC and the OPAC and sends periodic reports to the Committee on the Rights of the Child, the treaty body established under the treaties. During reporting process non-governmental organizations file their own reports critiquing the State party report and meet privately with the Committee to assist it in drafting a list of questions for the State party. The Holy See implements these treaties within Vatican City State. Congo, on the other hand, has not ratified OPAC, but could be encouraged to do so and should be held accountable for the implementation of the human rights treaties that it has ratified, including the CRC, as well as other treaties within international humanitarian law. South Sudan has also ratified the CRC and other human rights treaties as well as treaties within the field of international humanitarian law.

In further regard to the ICC, the DRC, ratified the Rome Statute in 2002 and then, in 2004, referred the situation in its entire territory as of 1 July 2002 to the ICC.¹⁶ Back in 2002, a press release acknowledged reports of an alleged pattern of rape, torture, forced displacement and the illegal use of child soldiers.¹⁷ Some of the first cases prosecuted by the ICC were those

from the DRC and prosecution of various offenders continues today, including crimes of sexual violence against women and children and crimes associated with the use of child soldiers.¹⁸ Sadly, the crimes of atrocity continue, and the recent death toll includes two UN officials who were in the DRC for investigative purposes. In the case of South Sudan, it has not ratified the ICC and it might view the court more negatively since arrest warrants were issued in 2009 and 2010, but not enforced for the President of the Republic of Sudan, Omar Hassan Ahmad Al Bashir. He is alleged of committing a number of offenses, including crimes against humanity, war crimes, and genocide between 2003 and 2008 in Darfur, Sudan.¹⁹ Once again, such crimes continue to be perpetrated in a civil war that has entered its fifth year.

II. International Policy: Women as Peacemakers and Peacebuilders

In 2000, the UN Security Council adopted Resolution 1325, which addresses the unique impact of armed conflict on women and children. It stresses the need for women's full and equal participation in all stages of the peace process, informal and formal.²⁰ Following SCR 1325 (2000), the Security Council has adopted additional resolutions on WPS²¹ each concentrating on a related theme, including sexual violence.²² An article common to many of the latter resolutions emphasizes the need for "effective steps to prevent and respond" to acts of sexual violence. In addition, the UN Security Council has expressed its readiness, when necessary, "to adopt appropriate steps to address widespread or systematic sexual violence."²³ Certain language in some of these resolutions, however, has been the subject matter of much debate, especially terminology promoting abortion (e.g., sexual and reproductive health rights), as opposed to advancing psychological support, medical aid, as well as material and financial assistance, something Catholic institutions and associations are struggling to do on the ground.

One practical initiative is the recommendation that governments develop National Action Plans (NAPs) to implement SCR 1325.²⁴ In 2010, the Democratic Republic of Congo (DRC) developed its NAP based on the following pillars, including:²⁵ 1) participation and representation of women in the field of peace and security; 2) promotion and protection of the rights of women, 3) promotion of transitional justice; 4) security sector reform; and 5) regional and international cooperation. To encourage States to act rightly, non-governmental networks devoted to WPS issues regularly track governmental implementation of NAPs and are actively involved in advocacy. For example, the Women's International League for Peace and Freedom analyzed the DRC NAP and found it wanting, while it was well disposed toward the NAP of South Sudan, which worked closely with UN agencies during the drafting process.²⁶

Within the United Nations system, when countries are especially devastated by poverty, violence, civil strife, political corruption, as well as inadequate infrastructures and limited access to basic health and education,²⁷ implementation of WPS resolutions is often promoted as a necessary part of the security sector reform (e.g., improvements to defense, police, justice, and military).²⁸ However, in 2015, during the fifteen-year anniversary of SCR 1325, the UN Global Study on SCR 1325 recommends that WPS resolutions be viewed through the lens of international human rights law.²⁹ Other points in the Global Study include: 1) support for women peacebuilders and respect for their autonomy as an important way to counter extremism; 2) accountability of perpetrators; 3) localization of approaches, as well as inclusive and participatory processes; 4) support for women's participation as an essential element for sustainable peace; and 5) adequate financial assistance for the WPS agenda.

Another practical initiative can be found in UN SCR 1888 (2009). It is a resolution in a series of resolutions that recognize the detrimental impact of sexual violence in conflict. It requested the Secretary-General to appoint a Special Representative on Sexual Violence in Conflict. An Office was established and the Special Representative now serves as the United Nations' spokesperson and political advocate on conflict-related sexual violence, as well as the chair of the network "UN Action against Sexual Violence in Conflict," comprised of thirteen UN agencies with the goal of ending sexual violence in conflict.³⁰ The DRC and South Sudan are among the Office's eight priority countries.³¹ As noted above, the Holy See has been every vocal about these crimes.

Similarly, a 1997 UN General Assembly Resolution dealing with rights of the child requested the Secretary-General to appoint a Special Representative for Children and Armed Conflict.³² The Office was created and is tasked with raising awareness, promoting the collection of data, fostering international cooperation and reporting annually to UN bodies (e.g., General Assembly, Human Rights Council, Security Council). The Holy See has worked closely with this Special Representative due to the important activities of the Catholic institutions, associations and congregations on the local level. Their work is encouraged by the Holy See, but carried out by them under their own authority in canon and civil law.

The UN Security Council has introduced several practical initiatives. One, the "Monitoring and Reporting Mechanism, on Grave Violations of Children's Rights in Situations of Armed Conflicts" gathers information about six violations pursuant to SCR 1612 (2005). The violations are the following: 1) killing and maiming; 2) recruitment or use as soldiers; 3) sexual violence; 4) abduction; 5) attacks against schools and hospitals; and 6) denial of humanitarian access. Two, the Secretary-General attaches an annex listing parties to a conflict in breach of international law in the annual report on children and armed conflict in accordance with SCR 1379 (2001). Three, the Security Council Working Group on Children and Armed Conflict reviews reports on the situation of children in certain countries and provides guidance pursuant to SCR 1612 (2005). Finally, under Chapter VII of the Charter of the United Nations, the Security Council may impose sanctions including arms embargoes, freezing of assets, travel bans, and financial or diplomatic restrictions. Sanctions regarding situations in DRC and South Sudan were extended in SCR 2360 (2017) and SCR 2353 (2017), respectively. Of course there are pros and cons to imposing any sort of sanctions. According to the Holy See, the employment of sanctions requires great discernment. It "has always opposed the use of indiscriminate coercive economic sanctions against a nation when they affect the basic human development of its people."³³ Along these lines, it is worth noting that the Holy See has provided financial aid to both the DRC and South Sudan.

Conclusion

When one considers the ongoing violence in both the DRC and South Sudan, despite the development of certain mechanisms in international law and policy to prevent, protect, prohibit and prosecute, the words of the Holy See come to mind: authentic peace is not found in the transformation of structures *per se* but rather in the conversion of hearts.³⁴ We need to be educated in the ways of peace, to have our minds and hearts opened to embrace the pillars of a peaceful society: truth, justice, charity and freedom. Women are an invaluable part of this

educational process. They have been called “teachers of peace,” because God has entrusted the human being to women in a special way.³⁵ Accordingly, education in the ways of peace begins, first and foremost, during the informal peace process, that is, within the family, the fundamental school of social living. It extends to all sectors of society, where women participate including in the formal peace processes on the local, national and international levels.

Educational initiatives have been developed by various congregations of religious sisters working on the local levels and these initiatives put into action the principles the Holy See has proposed to every person of good will. Efforts on the local level also include initiatives promoting dialogue, mediation and reconciliation, while others regard raising awareness about the illegal sale of arms and corporate greed for primary resources. In the end, we need to remember that international juridical and policy mechanisms are developed by human persons, created for them and implemented by them. The generous service of those in this room and many others brings much hope.

Thank you for your attention.

¹ Pope Francis, Homily, Prayer Service for Peace in South Sudan and the Democratic Republic of Congo, 23 November 2017.

² *Ibid.*

³ Intervention of the Holy See delegation at the “Diplomatic Conference for the establishment of an International Criminal Court” held from 15 June to 17 July 1998 at the Rome headquarters of the UN Food and Agriculture Organization, 16 June 1998.

⁴ Statement of Permanent Observer Mission of the Holy See to the United Nations, *Security Council Open Debate on Women, Peace, and Security*, Security Council Chamber, New York, 27 October 2017.

⁵ *Ibid.*

⁶ Jane Adolphe, “Sexual Violence as a Tactic of Terror: The Plight of Christian Women and Girls” in RON J. RYCHLAK, JANE F. ADOLPHE, *PERSECUTION OF CHRISTIANS IN THE MIDDLE EAST* (Angelico Press: 2017), p. 142 (Sexual violence is a term that can refer to different types of crimes including rape, sexual enslavement, forced prostitution and so forth.)

⁷ Pope Francis, Annual address to the Diplomatic Corps accredited to the Holy See, 9 January 2017; See also Pope Francis World Day of Peace Message: Nonviolence: A Style of Politics for Peace, 1 January 2017.

⁸ Some States believed that “forced pregnancy” could be used as a vehicle to promote an international right to abortion and that “gender” could be used to promote gender ideology. To resolve both debates, States agreed to the definition of the terms as they are found in the Rome Statute.

⁹ See, e.g., Ron J. Rychlak, *Persecution of Christians of the Middle East: The Failed Promise of the International Criminal Court*, in RON J. RYCHLAK, JANE F. ADOLPHE, *PERSECUTION OF CHRISTIANS IN THE MIDDLE EAST* (Angelico Press: 2017).

¹⁰ See, for example, Blake Evans-Pritchard, “ICC Restates Commitment on Crimes of Sexual Violence, Hague Court Says It Is Serious about Gender-based Crimes. But It Is Yet to Secure a Conviction,” in *ACR Issue 392*, June 10, 2014.

¹¹ International Criminal Court, The Office of Prosecutor, “Policy on Sexual and Gender-based Crimes,” (June 2014) available at <https://www.icc-cpi.int/iccdocs/otp/OTP-Policy-Paper-on-Sexual-and-Gender-Based-Crimes--June-2014.pdf> (last accessed 01.15.2018).

¹² Arts. 8.2.b.xxii and 8.2.e.vi of the Rome Statute of the International Criminal Court (hereinafter the “Rome Statute”) originally circulated as document A/CONF.183/9 of 17 July 1998 and corrected by procès-verbaux of 10 November 1998, 12 July 1999, 30 November 1999, 8 May 2000, 17 January 2001 and 16 January 2002 entered into force July 1, 2002.

¹³ Rome Statute, art. 6.

¹⁴ *Prosecutor v. Ongwen*, ICC Pre-Trial Chamber, II, Decision on the confirmation of charges (n.3), para. 95. ICC-02/04-01/15-422-Red, 23 March 2016 (“the so-called ‘marriage’ is factually imposed on the victim, with the consequent social stigma. The element of exclusivity of this forced conjugal union imposed on the victim is the characteristic aspect of forced marriage...unlike sexual slavery, forced marriage implies a relationship of exclusivity between the ‘husband’ and ‘wife’, which could lead to disciplinary consequences for breach of this exclusive arrangement and, therefore, is ‘not predominantly a sexual crime’...the victims of forced marriage suffer separate and additional harm to those of the crime of sexual slavery, or other crimes under the Statute. Indeed, forced marriage as defined above violates the independently recognised basic right to consensually marry and establish a family. This basic right is indeed the value (distinct from e.g. physical or sexual integrity, or personal liberty”).

¹⁵ Rome Statute, arts. 8(2)(b)(xxvi), 8(2)(e)(vii); See also *Prosecutor v. Thomas Lubanga Dyilo*, “Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction” (“Lubanga Appeals Judgment on Conviction”), ICC-01/04-01/06-3121-Red, 1 December 2014, para. 276; See also INTERNATIONAL CRIMINAL COURT, OFFICE OF PROSECUTOR, “POLICY ON CHILDREN,” (November 2016) available at https://www.icc-cpi.int/iccdocs/otp/20161115_OTP_ICC_Policy-on-Children_Eng.PDF (last accessed 01.15.2018).

¹⁶ Pascal Kambale, Anna Rotman, “The International Criminal Court and Congo,” in Global Policy Forum, October 2004 available at <https://www.globalpolicy.org/component/content/article/164-icc/28474.html> (last accessed 01.15.2018).

¹⁷ *Ibid.*

¹⁸ *Ibid.* (See also the Lubanga case supra in footnote 15. He was found guilty of crimes involving the recruitment of child soldiers and using them to participate actively in hostilities).

¹⁹ *Prosecutor v. Omar Hassan Ahmad Al Bashir*, ICC-02/05-01/09 available at <https://www.icc-cpi.int/darfur/albashir> (last accessed 01.15.2018).

²⁰ S/RES/1325 (2000) (It consists of ten preamble paragraphs and eighteen operative paragraphs and makes four key points: (1) Difference: women and children are impacted differently than men and boys and have different needs; they constitute the vast majority of those adversely affected by war, as civilian targets, refugees, and internally displaced persons; (2) Protection: women and children must be protected through the full implementation of international humanitarian and human rights law; (3) Participation: women should participate in all aspects of the peace process and ought to have an increased role in decision making; and (4) Promotion: gender mainstreaming should be promoted as the tool to bring about increased participation. In addition, the Resolution points to action five main target groups: the Security Council, the Secretary-General, member states, all parties to armed conflicts, and all actors involved in any other aspect of the peace process.)

²¹ See e.g., S/RES/1820 (2008); S/RES/1888 (2009); S/RES/1889 (2009); S/RES/1960 (2010);, S/RES/2106 (2013); S/RES/2122 (2013); and S/RES/2242 (2015).

²² S/RES/1820 (2008); S/RES/1888 (2009); S/RES/1960 (2010); S/RES/2106 (2013); and S/RES/2242 (2015).

²³ S/RES/1820 (2008); art. 1; S/RES/1888 (2009) art. 1; S/RES/1960 (2010) art. 1; S/RES/2106 (2013) art.1.

²⁴ S/RES/2242 (2015); S/RES/2122 (2013).

²⁵ DRC, Minister of Gender, Family and Child, “The Governments Action Plan of the DRC for the Purposes of the Resolution 1325 of the United Nations Security Council,” (2010), p. 4, available at http://www.peacewomen.org/assets/file/NationalActionPlans/drc_nap_english_2010.pdf (last accessed 01.14.2018).

²⁶ See the website of the Women’s International League for Peace and Freedom as regards DRC available at <http://www.peacewomen.org/nap-drc> (last accessed 01.04.2018) (“Although the document is called a NAP, it is not very specific. The document states on page 4 that it is not conclusive and might be modified upon implementation. It also states that it is currently under review by the involved organizations. It does not deal with information structurally and fails to mention timelines or indicators but emphasizes opportunities implementation of 1325 brings. Nevertheless, it is unique in calling for Local and Provincial Steering Committees in addition to a National Steering Committee to facilitate implementation and coordination (Miller, Pournik, & Swaine, 2014)”; See also the website of the Women’s International League for Peace and Freedom as regards South Sudan available at <http://www.peacewomen.org/action-plan/national-action-plan-s-sudan> (last accessed 01.14.2018).

²⁷ See e.g., Curbing Violence in Nigeria II: The Boko Haram Insurgency, *International Crisis Group*, Africa Report No. 216, 3 April 2014.

²⁸ See e.g., Megan Bastick, Daniel de Torres, *Implementing the Women, Peace and Security Resolutions in Security Sector Reform*, 2010, available at <http://www.osce.org/odihr/75269?download=true>

²⁹ United Nations, UN Women, Global Study on the Implementation of UN Security Council Resolution 1325: Preventing Conflict, Transforming Justice, Securing the Peace available at http://wps.unwomen.org/pdf/en/GlobalStudy_EN_Web.pdf (last accessed 01.14/2018). Conflict prevention must be the priority, not the use of force.

³⁰ See, the website of UN Action against Sexual Violence in Conflict available at <http://www.stoprapenow.org/> (last accessed 01.15.2018).

³¹ See the website of United Nations Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict available at <http://www.un.org/sexualviolenceinconflict/about-us/about-the-office/> (last accessed 01.14.2018).

³² General Assembly, Resolution adopted on the Report of the Third Committee on the Rights of the Child, A/RES/51/77, February 20, 1977.

³³ Intervention of the Permanent Observer Mission to the United Nations, in New York, Fifty Third Session of the UN General Assembly, Second Committee on Item 92a, regarding economic sanctions (2001).

³⁴ Pope John Paul II, XXVIII World Day of Peace Message: Women: Teachers of Peace, 1 January 1995, available at http://w2.vatican.va/content/john-paul-ii/en/messages/peace/documents/hf_jp-ii_mes_08121994_xxviii-world-day-for-peace.html (last accessed 01.14.2018).

³⁵ *Ibid.*