

The African Union's Response to Gender-based Violence

Veleska Langeveldt

Introduction

The past 40 years have witnessed a continued scourge of violent conflict, civil war and human rights abuses across the African continent. The most recent examples include the conflicts in Mali, the Central African Republic (CAR) and South Sudan. These conflicts have undermined the social, political and economic prosperity of African citizens, with women and children significantly bearing the burden of conflict. This Policy Brief will analyse the response of the African Union (AU) to the gender-based sexual violence that has been committed on an epidemic scale in the conflicts across the continent. These incidents of gender-based violence have witnessed innocent women and girls falling prey to rape, sexual slavery and genital mutilation. This Policy Brief will assess the AU's policy framework relating to the issue of gender-based violence and analyse its limitations, and presents some concrete policy recommendations to key decision-making institutions and stakeholders on the continent.

Manifestations of Sexual Violence in Conflict

Recent times have shown a noticeable shift in the nature of conflict, from primarily inter-state conflicts (which are characterised by highly organised methods of warfare and weapons) to intra-state conflicts (which are characterised by random acts of violence).¹ Rape is increasingly being used as a primary tool in intra-state conflicts, due to its 'low cost'.

The sexual abuse of women acquires a specific meaning and it is often used as a weapon during conflicts. It is meant to represent the defiling and dishonouring of a nation or group. It is meant to signify victory and subjugation over a particular nation or community, or the feminisation of one group of men by another.² Rape may also be used to terrorise communities in order to gain access to their economic resources, or to create a sense of camaraderie amongst combatants.

There are incidents where military leaders or rebels have instructed soldiers to rape civilian women, or 'turn a blind eye' when their combatants rape.³ Thus rape is used as a strategic and meaningful weapon to instil fear, destroy and dehumanise communities. It is used to cause injury just as a gun, knife or machete does. Examples of conflicts during which rape has been used for strategic ends include the civil wars in Rwanda, Liberia, Uganda, the conflict in the Democratic Republic of the Congo (DRC), Mali and South Sudan.

Historically, however, rape has been regarded as an unavoidable or expected occurrence during conflicts. It has even been described as an 'inevitable' and 'integral' by-product of warfare, or simply collateral damage.⁴ Rape is ascribed to the breakdown of societal values during conflict. Soldiers and combatants may even rape for recreational purposes, to satisfy their sexual 'needs', or due to a lack of discipline or a weak

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POLICY RECOMMENDATIONS

To the African Union

- The AU needs to raise the severity of rape, so that it is understood to be a weapon of war. Strategic rape should be considered with the same disdain as unconstitutional changes in government, especially in instances where AU member states are implicated in the use of this weapon.
- The AU needs to make a distinction between the various constructions and uses of rape during armed conflicts. Failing to do this will result in rape continuing to be treated as an unfortunate by-product of conflict, when it is in fact used for deliberate and strategic purposes. The explicit rejection and condemnation of strategic rape, articulated with the same force as the rejection and condemnation of landmines and the proliferation of light and small arms, would demonstrate the seriousness with which the AU regards this weapon.
- The AU should be less hesitant to use its right to intervene in grave circumstances, such as war crimes, genocide and crimes against humanity – as strategic rape constitutes all of these.
- The AU needs to develop a specific protocol or narrative which explicitly delegitimises rape as a weapon of war. This narrative should be similar to that used in international instruments such as the *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction*, and the *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction*. These documents are characterised by stern narratives and strong international campaigns, which have successfully delegitimised these weapons as inhumane.

To the AU Peace and Security Council

- The PSC should establish a Sexual Violence Unit (SVU), in the Peace and Security Department (PSD), which addresses the use of landmines, trafficking of small arms and light weapons, the non-proliferation of weapons of mass destruction, counter-terrorism efforts, and disarmament,

demoralisation and reintegration programmes.

This unit should specifically promote the cessation of rape and sexual violence during conflicts.

To the AU Women, Gender and Development Directorate

- The African Women's Decade (AWD) should include a strategy for addressing the widespread sexual violence and use of strategic rape during conflicts, as this is a daily reality for many African women, not to mention a persistent impediment to the attainment of gender equality on the continent.

To AU Member States

- AU Member States need to demonstrate the political will to end rape in conflicts, as well as post-conflict societies. States also need to commit themselves to ensuring that they never under any circumstance use rape for strategic or any other purposes.
- This political will can be demonstrated by instituting tough anti-rape laws and specialised women's police units and courts dedicated to rape cases, as Liberian President Ellen Johnson Sirleaf has done.
- Male and female leaders need to be willing to interrogate patriarchal traditions which continue to marginalise and victimise women and girls.
- Member States should support the international campaigns and summits to end rape and sexual violence during conflicts.

To Civil Society

- African civil society should continue to play an important role in ensuring that women enjoy equal rights to men, and are not subjected to practices such as strategic rape.
- African civil society should continue to participate in and contribute to international efforts to end sexual violence, such as the *UN Stop Rape Now Campaign*, the *International Campaign to Stop Rape and Gender Violence in Conflict* and the *Global Justice Centre's Weapons Discrimination Project*. These campaigns all seek to see rape delegitimised as a weapon of war.

ideological basis within their group.⁵ War-time sexual violence is nevertheless more complex than this. Although rape *may* occur as a by-product of conflict, it is not *always* a by-product of conflict.

Strategic Rape

Rape is often used as a deliberately planned strategy or policy during conflict. It is often used for strategic purposes in post-conflict societies too. The goal of strategic rape 'is not to maim or kill one person, but to control an entire social-political process by crippling it'.⁶ Rape can thus be said to comprise two distinct constructions:

- i) as a by-product or consequence of conflict and ill-discipline; and
- ii) as a socially-constructed and strategic weapon.

Framing rape only as a by-product of violence is not only a limited, but also a dishonest account of how it is employed in conflict and what it represents. This limited framing is insufficient to address the problem. The AU's policy response to sexual violence should thus encompass both these constructions.

The AU's Response to Gender Inequality and Sexual Violence

Upon the establishment of the AU in 2002, Member States expressed their commitment to promote gender equality and end sexual violence. Member States subsequently implemented gender mainstreaming mechanisms, which have to date have underperformed in terms of implementation of initiatives. Due to the lack of funding and political will, the gains that have been made are the exception rather than the norm. Two of the critical areas that remain particularly resistant to the integration of women and their perspectives are economic policy and conflict resolution.⁷

Furthermore, only a limited number of women have gained access to key decision-making positions within the AU.⁸ The African continent has had three female presidents, namely Liberian President Ellen Johnson-Sirleaf, former Malawian President Joyce Hilda Banda, and the Central African Republic's Interim President Catherine Samba-Panza. In addition, the AU, for the first time since its formation, has a female Chairperson, the South African Dr Nkosazana Dlamini-Zuma. In spite of the inclusion of these women in high-ranking positions within their states and the AU, the AU continues to pay lip-service to the issue of gender inequality. Furthermore, civilian women and girls continue to be the targets of strategic rape during conflicts.

The following are some of the AU's key policy responses to this persistent sexual violence and gender inequality. Although the various regional economic communities (RECs) have their own gender-related policies, this Policy Brief will only consider the continental policy responses.

The AU Policy Framework on Gender-Based Violence

The AU has pronounced its responsibility to prevent and resolve conflict and address human rights abuses across the continent. Some of the key policy responses from the AU and its related institutions to the use of sexual violence during conflicts include the:

- i) *Solemn Declaration of Gender Equality in Africa* (SDGEA) (2003);
- ii) *Protocol relating to the Establishing of the Peace and Security Council of the African Union* (2002); and
- iii) *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa* (ACHPRWA) (2004).

The implementation of these instruments and protocols, however, remains the primary challenge faced by the AU. Specifically, the AU has failed to meaningfully recognise or address the use of rape as a weapon of war in these documents. It is useful to undertake closer scrutiny of these policy frameworks.

The Solemn Declaration on Gender Equality in Africa

In July 2004, AU Heads of State and Government Ministers adopted the *Solemn Declaration on Gender Equality in Africa* (SDGEA). The Declaration is a reaffirmation of the AU's commitment to expanding and accelerating efforts promoting gender equality and gender parity at national, regional and continental levels. It is an expression of the AU's determination to address issues that are of major concern to the women of Africa.

Member States who ratified the Declaration agreed to:

- i) ensure that women effectively participate and are represented in conflict prevention, resolution and management, as well as post-conflict reconstruction initiatives;
- ii) systematically prohibit the trafficking and recruitment of women and girls as sex slaves; and
- iii) initiate public campaigns to address gender-based violence, and reinforce legal mechanisms to protect women and end impunity of crimes committed against women.

The SDGEA expresses the AU's concern that women and children are those most affected by conflicts and internal displacement, as well as rapes and killings. It is especially concerned that women remain largely excluded from conflict prevention and peace negotiation processes, despite their experience in peacebuilding.

Member States were expected to submit a baseline report on the SDGEA by January 2007.⁹ To date, 41 Member States have submitted reports on the progress made in their countries.¹⁰ Amongst the states that have not yet ratified the SDGEA are the DRC, Sudan and Somalia. This is significant, considering that these states have had the highest incidences of conflict-related rape and sexual violence.¹¹

The Protocol to the African Charter on Human and People's Rights on the Rights of Women

The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (ACHPRWA) was drafted in 1995. However, it only came into force ten years later, in October 2005, when Togo became the fifteenth country to ratify it. This Protocol, known as the AU Women's Protocol or the Maputo Protocol, is premised on Article 18 of the African Charter, which calls on Member States to eliminate all forms of discrimination against women and ensure the protection of their human rights.

The Protocol seeks to promote gender equality and encourage all Member States to ensure the full participation of women as equal partners in the development of Africa. It expresses the AU's concern that, despite the ratification of various international human rights instruments, women continue to be victims of discriminatory and harmful practices. The Protocol acknowledges that such practices hinder and endanger the normal physical and psychological growth and development of women and girls. States that have ratified the Protocol thus agree to combat all forms of discrimination by enshrining women's rights in their constitutions, clearly stipulating that women and men are equal.

Article 3 of the Protocol provides for African women's right to dignity. The Protocol states that all African women have the right to be respected and protected as human beings, which includes respect for their bodies and personalities. Women thus have the right not to be sexually harassed, beaten, raped, have their genitals removed or be used for prostitution.

Article 11 of this Protocol speaks specifically to the rights of women in armed conflicts. The Protocol demands that member states respect and conform to international humanitarian law. It declares that State Parties should

protect civilians, particularly asylum-seeking women, refugees, returnees and internally displaced persons. These vulnerable women should be protected against all forms of violence, including rape and sexual exploitation. Finally, this Article charges Member States with the responsibility to punish perpetrators of genocide, war crimes and crimes against humanity.

The Protocol relating to the Establishment of the Peace and Security Council of the AU

The Peace and Security Council (PSC) Protocol was adopted in July 2002, in recognition of the AU Constitutive Act, the Universal Declaration of Human Rights, and the UN Charter. The Protocol declares the AU's concern over the continued prevalence of armed conflicts in Africa, stating that these conflicts not only undermine the economic, social and political development of the continent, but deprive millions of civilians of their human dignity.

The Protocol further expresses concern regarding the scourge of landmines and the illicit proliferation, circulation and trafficking of small arms and light weapons. It states that such practices constitute a serious impediment to the development of the continent. The Protocol declares that these impediments can only be overcome by well-coordinated continental cooperation and the development of strong democratic institutions. Thus the PSC is intended to work towards enforcing the observance of human rights and the rule of law, in an effort to end to the scourge of armed conflicts on the continent.

Article 4 of the Protocol states that the PSC will:

- i) promote the peaceful settlement of conflicts; respond to disputes speedily to prevent them from becoming full-blown conflicts;
- ii) endorse respect for the sanctity of life; and
- iii) promote respect for the sovereignty of AU member states and the borders of these states.

The AU hence reserves the right to intervene in the affairs of Member States in the event of grave circumstances such as genocide, when conflicts threaten regional stability, and when unconstitutional changes in government occur.¹²

The PSC further aims to work with civil society organisations, such as non-governmental and community-based organisations, to gain their insights on matters pertaining to peace and security. Article 20 of the Protocol expresses the PSC's desire to work particularly with women's groups, and have them address the Council on security matters which affect their daily lives.

Since 2010, the PSC has held five Open Sessions focusing specifically on the theme of 'women, children and other vulnerable groups in armed conflicts', through which it reaffirmed its commitment to mainstreaming gender issues, empowering women and promoting the overall protection of vulnerable groups.¹³ Further developments include the adoption of the *AU Gender Training Manual for AU Peace Support Operations* and the appointment of Ms. Bineta Diop as the AU Special Representative on violence against women and children in armed conflicts.¹⁴ These efforts are aimed at increasing the AU's involvement in mitigating the sexual abuse women and children experience during conflicts.

The African Women's Decade

In 2008, the AU Ministers of Women Affairs urged the AU to declare 2010 to 2020 as the African Women's Decade (AWD). According to the Women, Gender & Development Directorate (WGDD), this framework presents the AU with a new opportunity to work towards the improvement of women's participation in continental affairs.¹⁵ The WGDD believes that the increased participation of women in decision-making and gender-related matters is imperative to achieving gender equality and the cessation of sexual violence in Africa.

This AWD initiative is meant to find best practices for enforcing existing protocols, developing ways to track the performance of gender departments or mechanisms and ensuring that Member States report on the implementation of policies and protocols. This AWD initiative is also informed by the AU Gender Policy and the Constitutive Act. The AU Gender Policy 'aims to achieve an African society founded on democracy, gender equality, human rights and dignity and recognises the equal status of women and men, girls and boys, with both sexes thriving together harmoniously, in a peaceful and secure environment'.¹⁶ The Constitutive Act in Article 4(l) similarly provides that the AU will work towards 'the promotion of gender equality'.

The AWD is thus centred around ten specific themes: fighting poverty and promoting economic empowerment of women entrepreneurship; agriculture and food security; health, maternal mortality and HIV/AIDS; education, science and technology; environment, climate change and sustainable development; governance and legal protection; finance and gender budgeting; women and decision-making; mentoring youth (men and women) to be champions of gender equality and women's empowerment; and peace, security and violence against women and girls.

Each Member State is expected to set up national committees, including individuals drawn from all

sectors of society. These committees are to propose one good practice project per year, relating to one of the focus topics of the AWD framework. With 53 projects being carried out annually over the period of 10 years, it will result in 530 projects being undertaken by the end of the decade. At a regional level, a ministerial working committee should be established, comprising ten members who will work closely with regional economic communities (RECs). Finally, at a continental level, a working group of 30 people will be established, comprising one person per region in the AU. The AWD initiative, however, does not state what the consequences for non-compliance by Member States will be.

Limitations of AU Policy Initiatives and Protocols

Although these AU documents address gender inequality and broadly acknowledge conflict-related rape, they fail to recognise that rape is often used as a strategic weapon. This is problematic as it suggests that rape is perceived as an unfortunate, perhaps inconsequential, by-product of conflict. Thus rape is continually treated as a symptom of conflict, and this is an inadequate response to this problem.

The PSC Protocol, for example, is vague regarding sexual violence during conflict. It does not highlight the urgency of addressing widespread rape, as it does the use of landmines and the trafficking of light weapons. During 2010 the PSC for the first time recognised the need to consider the gender dimension of armed conflict.¹⁷ The PSC is only now seeking to establish the root causes of gender-based sexual abuse during conflict and ways to mitigate the risks faced by women.

The African Women's Decade also fails to address the use of strategic rape. This is significant, as this framework is currently the AU's official plan for improving the conditions which African women face on a daily basis. As rape has become a daily reality for many African women, it is imperative that a planned strategy for addressing this issue be included in the AWD initiative.

This vague narrative is continued in the SDGEA and ACHPRWA which uses phrases such as 'issues that are of major concern to women', 'discrimination against women' and 'harmful gender practices', never speaking of violent or strategically-intended rape.¹⁸ It is worthwhile noting that Article 11(3) of the ACHPRWA does declare that states are responsible for ensuring that practices such as rape are considered acts of genocide.

In Article 4(o) and (p) of its Constitutive Act the AU condemns and rejects impunity, political assassination,

terrorism and unconstitutional changes in government. This may be the most appropriate place to acknowledge the use of rape as a weapon and the AU's condemnation and rejection of this practice. However, strategic rape is not included in the list of crimes the AU declares as gravely offensive. Neither is strategic rape included in Articles 23(1) and 30, which state that the Assembly may sanction or suspend Member States which default on their membership payments or come into power by unconstitutional means. Certainly leaders and governments which are implicated in, or turn a blind eye to, sexual abuse during conflict should be condemned in the same way as persons or groups which promote terrorism, political assassination and unconstitutional changes in government.

These vague and euphemistic narratives may be attributed to policy-makers being cautious not to create documents that contain graphic descriptions of rape which will repulse or shock the wider public. Once put off, people become reluctant to engage in discussions on the issue. Conversely, graphic descriptions or definitions of war-time rape may also incite people and incite further violence against women. These graphic descriptions may be understood as 'warnography' or 'disaster pornography'.¹⁹ The AU is also considerate of the culture of its Member States. When states find policies confrontational or offensive, it is unlikely that they will adopt and implement them.

Most African societies are characterised by deep-rooted cultural patriarchy. Even where matriarchy is practised, men still wield significant power and influence in society. This persistent culture of patriarchy may contribute to the gap between what AU protocols state, and the rights and privileges it attempts to provide to women, and what happens in practice in terms of the apparent lack of implementation.

The AU is certainly cognisant of the impact that culture has on the implementation of its policies and protocols, as culture is specifically and repeatedly addressed in documents such as the ACHPRWA and the AWD. Article 1(g) of the ACHPRWA, for example, refers to 'attitudes and/or practices' that may be harmful to women and negatively affect their right to life, health, dignity and education. Article 4(d) also addresses culture, declaring that AU Member States are to 'actively promote peace education through curricula and social communication in order to eradicate elements in traditional and cultural beliefs, practices and stereotypes which legitimise and exacerbate the persistence and tolerance of violence against women'.²⁰

The AWD seeks to support the rights provided to women in the ACHPRWA by influencing 'cultural stereotypes'

and 'unfavourable gender power structures'.²¹ However, gender equality remains largely under-achieved in Africa due to persistent stereotypes and tokenisms.

AU member states do not always demonstrate the political will to eliminate patriarchal traditions or promote gender equality and the cessation of sexual violence. This is evidenced by the slow pace of ratification of the ACHPRWA. Meetings to discuss this document were frequently cancelled or postponed, suggesting that Member States considered other matters more pressing.²² The process was hence primarily driven by civil society organisations.

The leaders of Member States may also be reluctant to engage in discussion on rape because they regard it as anti-patriotic and anti-African. They believe it reinforces stereotypes about black men being hyper-sexual and barbaric. Talk about rape statistics is hence seen as an attack on African men and their hyper-masculinity, which is a racist and biased position. Thus, African leaders simply do not acknowledge rape, much less strategic rape, as a problem.²³

African states also present a history of neglecting their responsibilities and perpetrating sexual violence against women. Examples include the Rwandan and Burundi genocide, the civil wars in Liberia and Sierra Leone, chronically unstable Somalia and Sudan, as well as the ongoing conflict in the DRC. Some of the AU Member States continue to use or ignore rape and violence against women in order to pursue their political and economic agendas. It seems that even African leaders see rape as a 'justified weapon' when seeking to defeat their enemy or win the war. States which do not regard the AU protocols and policies with much seriousness will continually fail to meet their responsibility to promote gender equality and to create respect for the sanctity of human life. Thus an environment is sustained in which gender-based sexual violence, particularly strategic rape, is allowed to persist.

A culture of 'non-interference' by the AU may also be said to impede efforts to promote gender equality and end conflict-related rape. This culture of non-interference often slows down the response of the AU during armed conflicts, as demonstrated by the AU's response to the conflict in Mali and the CAR. This would suggest that the AU, despite its recognition of culture, places greater value on state security and sovereignty than it does on human security. Moreover, it gives the impression that the AU is only paying lip-service to the international community; that the AU regards it as 'good enough' to simply have these documents, while the implementation thereof remains slow.

The AU's work methods may be another impediment to attaining gender equality and the cessation of sexual violence. These work methods are old and deeply entrenched.²⁴ The men and women who work within the AU may themselves have grown up in patriarchal societies and may, consciously or unconsciously, hold to patriarchal traditions and notions. These traditions and values may consequently influence the manner in which they approach the task of promoting gender equality on the continent, as well as the manner in which war-time rape is perceived. Unless men and women, particularly those in positions of power, transform the way they think about women and their relation to men, and truly commit themselves to the attainment of gender equality, women will remain susceptible to practices such as strategic rape.

Conclusion

During 2008 the United Nations Security Council (UNSC), in Resolution 1820, for the first time made a distinction between the widespread sexual violence during conflict and the use of rape as a tactic of war that is used to 'humiliate, dominate, instil fear in, disperse and/or forcibly relocate civilian members of a community or ethnic group'.²⁵ The AU, however, is yet to make this distinction. This Policy Brief has argued that when this distinction is made between these two constructions or uses of rape, meaningful efforts can be made towards ending sexual violence and the use of rape as a weapon. Although rape is a complex issue, failing to make this distinction will see rape continually treated as an unfortunate by-product of conflict. Unless the use of rape as a weapon of war is deliberately and systematically addressed it will continue to be abused.

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