

"SCREAMS BEFORE SILENCE"

The Application of Joint Responsibility in the Context of the Atrocities Committed on October 7 in the South of Israel

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Significant evidence has and is being accumulated as to deliberate forms of sexual violence, perpetrated by Hamas terrorists against Israeli women during the October 7 attack.



Conflict-Related Sexual Violence is a different phenomenon than everyday sexual violence. It is a weapon of war, designed to terrorize the whole community.



Attributing responsibility to perpetrators of such offenses, who act within a mob, may rely on the doctrine of joint responsibility.

Contents

1	FOREWORD	2
2	"SCREAMS BEFORE SILENCE"	4
3	CONFLICT-RELATED SEXUAL VIOLENCE	5
4	THE PROBLEM OF ATTRIBUTION	6
5	CONCLUSION	8
6	A PERSONAL NOTE	9
	References	10

1

FOREWORD

In the early morning of October 7, 2023, Hamas, joined by other armed militia groups, led a simultaneous and coordinated attack against Israeli civilian communities and military posts. The attack began when Hamas launched over 5,000 rockets from Gaza into Israel, using these strategic barrages as cover to breach the Gaza perimeter fence at multiple points. The attack claimed the lives of 1,163 people, at least 800 of whom were civilians; among them were 41 children, almost half of them under 13 years old. Whole families were burned alive; over 5,000 people were physically wounded; 255 people, ranging in age from 10 months to 87 years, most of them civilians, were taken hostage. Some 100 of these hostages are women and girls. As of November 4, 2024, 101 hostages remain in captivity; dozens of them are presumed dead.

Over long hours, Hamas terrorists took hold of civilian communities and army posts, as well as the area of the Nova Music Festival and the main local highway (road 232); They perpetrated heinous and despicable atrocities, such as mutilation of intimate organs, decapitation, and burning people alive. Since 7/10, significant evidence – direct and circumstantial – has been and is continuing to be accumulated regarding the sexual violence that occurred in different sites of the attack.

Ms. Pramila Patten, Under Secretary-General and Special Representative of the Secretary-General on Sexual Violence in Conflict (SRSV-SVC), led a comprehensive fact-finding mission to the region, conducted by a team of UN experts, and published her conclusions and observations in an official report released on March 4, 2024. Ms. Patten and her team found that people had been shot, often

at close range; burned alive in their homes as they tried to hide in their safe rooms; gunned down or killed by grenades in bomb shelters where they had sought refuge; and hunted down on the Nova music festival site as well as in the fields and roads adjacent to the festival ground (UN 2024 a).

With respect to their specific mandate of gathering, analyzing and verifying information on conflict-related sexual violence (CRSV) in the context of the atrocities of 7/10 and their aftermath, the team found clear and convincing evidence that severe acts of sexual violence, including rape, were perpetrated against female captives. Furthermore, they found, there is reason to believe that this violence continues to be inflicted on the female hostages who remain in captivity. Since the publication of the report, a number of female hostages have been released and have indeed reported incidents of severe sexual violence. One of them, Amit Soussana, courageously shared her ordeal in an interview to Sandberg, in the documentary "Screams Before Silence" (Kastina Communications 2024).

The UN experts also concluded that similar patterns were found at several locations of the attack, where victims, mostly women, were found partially or fully naked and with gunshot wounds. While this is circumstantial evidence, they concluded that it points to deliberate forms of sexual violence, including sexually motivated torture and cruel and inhuman treatment. Since the report was issued, accumulating evidence strengthens the conclusion that the sexual torture of murdered victims (mostly female), at various locations of the 7/10 attack, was not sporadic.

The Independent International Commission of

Inquiry on Occupied Palestinian Territory, including East Jerusalem and Israel (COI), presented to the Human Rights Council on June 19th, 2024, arrived at the same conclusions:

“The Commission identified patterns indicative of sexual violence in several locations and concludes that Israeli women were disproportionately subjected to these crimes. The attack on 7 October enabled perpetrators to commit SGBV [Sexual and Gender Based Violence] and this violence was not isolated but perpetrated in similar ways in several locations and by multiple Palestinian perpetrators.” (UN 2024b: para. 95).

These conclusions are based, among other things, on the testimony of witnesses such as Rami Davidian, a farmer who lives near the Nova site. When he heard the gunshots, he rushed to the scene, joined by the others he had called for help. Together, they saved the lives of hundreds of people. In the documentary, he describes what he saw: dozens of young women had been tied to trees by their hands, their legs spread in a way that strongly suggests that they were raped and then murdered. In his words: *“Everyone who sees this knows right away that the girls were abused. Someone stripped them, someone raped them. They inserted all kinds of things into their intimate organs... Over 30 girls were murdered and raped here”* (Kastina Communications 2024: 32:26-33:34).

2

"SCREAMS BEFORE SILENCE"

The documentary is based primarily on interviews with survivors and first responders. The interviewer is Sheryl Sandberg, formerly chief operator officer (COO) of Meta Platforms. The strength of the documentary lies in Sandberg's approach: She listens attentively, rarely asking questions, evoking a strong emotional response without exposing viewers to shocking images from the sites. These slow, quiet and dignified interviews build credibility. The silence between the measured words of both the interviewer and interviewees becomes a powerful scream.

As I will demonstrate, Sandberg – perhaps unintentionally and unknowingly – brings two crucially important insights, the one concerns conflict-related sexual violence while the other addresses the phenomenon of mass perpetrators and the issue of attribution.

3

CONFLICT-RELATED SEXUAL VIOLENCE

Tali Binner, whose words inspired the title of the documentary, is a survivor of the Nova music festival. In her interview, she describes the hours she spent hiding in a trailer, hearing screams of women who were undoubtedly sexually tortured. The screams ended only when they were shot -- "and then silence" (Kastina Communications 2024: 21:25). Regarding the sexual violence, Binner says: "when you hear this chaos for like 20 minutes or 15 minutes, you understand that something much worse is happening right over there. And it's not ... it doesn't stop. That was the time when I started to be afraid ... I am going to be raped".. (Kastina Communications 2024: 19:38-19:50).

Her words -- "something much worse is happening" -- convey the sheer terror of conflict-related sexual violence. It is worse than being shot. In the words of the feminist scholar Catherine MacKinnon:

"Rape in genocide is anything but rape out of control. It is rape under control ...It happens on purpose, not just with the function of harming people, or having sex, ... but to destroy peoples as such on the designated bases. The destruction of peoples on the group basis is not a by-product of the rape. It is its point" (MacKinnon 2005: 329).

This is why Conflict-Related Sexual Violence usually occurs in public, as opposed to "everyday" sex offences, which typically occur in private. In wartime, women are raped in front of their families or members of their community. This extends beyond the violation of the individual victim's autonomy and human dignity; it also impacts the community at large. It is a crime against humanity.

4

THE PROBLEM OF ATTRIBUTION

Kant's moral philosophy forms the foundation of the modern concept of criminal responsibility. As autonomous individuals, we possess the capacity to think and reflect upon our actions. Accountability arises from these capacities. This leads to the fundamental conclusion that a person cannot be held accountable for actions they did not commit, as they have no autonomy over the actions of others.

At the same time, however, it is well understood that perpetrators can be held accountable for the acts of others under the doctrine of joint responsibility.

Attributing accountability, particularly for sexual offenses, can be very complex when dealing with perpetrators who act within a mob or large group, especially when there is no evidence that such offenses were part of the original plan. It may be impossible to identify specific individuals responsible for particular crimes against specific victims. Under these circumstances, can we assign criminal responsibility to all the perpetrators held in custody in Israel, even when we do not know who participated in the sexual violence or at least witnessed it and failed to intervene?

An answer may be inferred from the words of Raz Cohen, another interviewee in Sandberg's documentary (Kastina Communications 2024: 21:45 - 23:48). While he was hiding and waiting for rescue, Cohen was an eyewitness to a gang rape of a young woman.. The woman was eventually shot. In his words, the attackers "*did whatever they wanted. There were no rules*". Cohen's sense of lawlessness corresponds very clearly to the phenomenon of masses participating in a criminal scheme.

Analyzing Raz Cohen's intuition in legal terms leads to the application of the doctrine of joint responsibility from the moment each perpetrator willingly joined the terrorist group that openly declares its goal as the destruction and annihilation of Israel. As we have seen, sexual violence in wartime is intended to achieve the goal of destroying the ethnic group under attack. This entails an agreement to participate in every act aimed at fulfilling this goal. Moreover, sexual violence in an attack conducted by militias is a cheap and readily-available, high-impact weapon. Therefore, it is to be expected that a militia not equipped with highly sophisticated and destructive arms would resort to this kind of weapon, which serves its goals quite effectively.

Furthermore, there is in fact evidence that the terrorists were specifically directed to "terrorize" the Israelis. Using sexual violence is a sure way to achieve this goal, as they were undoubtedly aware¹. Moreover, there is also evidence that, as part of the preparations for the attack, Hamas terrorists participated in workshops designed to achieve "emotional detachment" (Bohbot Walla News, 20/7/2024) In other words, they were psychologically trained to erase any human emotions or values.

People who join such a cruel and brutal organization

¹ The instructions to terrorize the civilian population can be inferred from the fact that Nuchba terrorists were supplied with GoPro cameras, enabling them to document in detail the extreme cruelty inflicted on the Israeli population, including children, babies, the elderly, men, and women. Parts of this footage were published, revealing horrific scenes of mutilated bodies and terrified individuals, including very young children, being dragged—some half-naked—into Gaza as hostages. These images sent a chilling message to the Israeli people. The use of GoPro cameras was neither coincidental nor sporadic; hundreds of terrorists carried them as part of their attack equipment. The inevitable conclusion is that terrorizing the civilian population by disseminating the footage was an integral part of the plan.

agree, therefore, to leave behind any basic human values and to treat the ethnic group they set out to destroy as if its members are not human beings. They willfully enter a world in which there is no moral code, just pure evil. The organization supplies those who join it with an "alternative" morality. They all become a "support group" and a source of encouragement for each other, leaving behind their humanity.

The Hamas militias set out on their mission with the intent to destroy Israeli society. Given the numerous incidents of sexual violence in multiple locations, there can be no doubt that these acts were perpetrated as part of a genocidal scheme. Responsibility therefore rests with each and every person who participated in this scheme, regardless of their specific contribution. The opposite conclusion is absurd and would result in impunity. It would mean that if the attackers are unidentifiable because the attack was swift and most of the victims were murdered after being sexually abused, justice cannot be not be served. In Sandberg's words, towards the end of the documentary, we will slide back *"to a place where we would start accepting the unacceptable."* (*Kastina Communications 2024: 53:34*).

5 CONCLUSION

The Hamas-initiated attack on October 7, carried out by thousands of terrorists driven by extreme hatred and religious fundamentalism, claimed the lives of hundreds of innocent civilians. Many victims were subjected to sexual torture, most of whom were murdered and even mutilated in their intimate parts before or after their death. This incident highlights a recurring phenomenon in conflict areas: the weaponization of individuals, especially women, through acts of sexual violence.

Some urgent lessons should be learned. Sexual violence in conflict zones is inherently different from everyday sexual offenses; its aims are distinct and, therefore, it demands a unique approach. It should be regarded as a tool of terror directed at civilians, aiming destruction of the enemy's nation, through transforming the symbol of life into a symbol of death (Schott 2015). Understanding sexual violence in this context requires a paradigm shift in defining crimes against humanity committed through sexual violence. The definition should be expanded to include any acts aimed at erasing sexuality and violating human dignity, such as forced nudity, genital mutilation, and the desecration of bodies in this setting.

Governments must amend their domestic criminal codes accordingly. They should also update laws to facilitate the prosecution of mass perpetrators, addressing both issues of attribution and the challenges of gathering evidence when victims are either deceased or too traumatized to testify.

6

A PERSONAL NOTE

My late father was born in 1922, in Gelsenkirchen, Germany. In 1933, after Hitler's rise to power, he emigrated to Israel with his immediate family. Many members of his extended family perished in the Holocaust. As a high-ranking official in the Aliyah department (the Hebrew word for immigration to Israel) of the Jewish Agency, my father dedicated his professional life to encouraging and enabling Jews to immigrate to Israel, believing that this is the natural place for us, Jews, to live and thrive. He also believed that in order to survive as a Jewish state, Israel should be a peace-seeking, liberal democracy, and should strive for a two-state solution.

The abhorrent events of 7/10 have caused a deep fracture in Israeli society; for many, it has shattered the belief that peace is even possible. This, in turn, has led to the Israeli attack on Hamas and other terrorist groups in Gaza, claiming thousands of innocent lives. The healing process, which I hope is still possible, will take years. The responsibility for its success lies with both sides of this long and bloody conflict.

I dedicate this article to the memory of my father, whose strong convictions taught me that every human being is responsible for their moral choices.

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She is a co-founder of the [“Dinah Project”](#), composed of internationally recognized academics, legal experts and former high-ranking civil service officials. The Dinah Project was created in response to the sexual violence and gender crimes committed by Hamas on October 7th 2023, and is a leading voice in Israel and the world in the call for justice for the victims.

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Since the Hamas attack on October 7, 2023, significant evidence – direct and indirect – is being accumulated, as to sexual violence in different sites of the attack. A comprehensive fact-finding mission to the region, conducted by a team of UN experts led by Ms. Pramila Patten, the Under Secretary-General and Special Representative of the Secretary-General on Sexual Violence in Conflict, concluded that circumstantial evidence points to deliberate forms of sexual violence, including sexually motivated torture and cruel and inhuman treatment. The team also concluded that there is clear and convincing evidence that severe acts of sexual violence were perpetrated against female captives and continues to be inflicted on female captives who remain in captivity.



Conflict-Related Sexual Violence is an act of terror, directed not only towards the immediate victim but extends beyond the violation of her autonomy and human dignity. It also impacts the community at large. It is a crime against humanity. Attributing accountability, particularly for sexual offences, can be very complex when dealing with perpetrators who act within a mob, especially when there is no evidence that such offenses were part of the original plan. It may be impossible to identify specific individuals responsible for particular crimes against specific victims. Such circumstances may call for the application of the doctrine of joint responsibility: from the moment each perpetrator willingly joined such a cruel and brutal terrorist group, which openly declares its goal as the destruction and annihilation of Israel, he agrees to leave behind any basic human values and can be held responsible.



The survivors and other witnesses who are interviewed by Sharyl Sandberg, in the Documentary Screams Before Silence, intuitively express the uniqueness of Conflict-Related Sexual Violence and the meaning of joint responsibility.