

Abstract: The use of command responsibility in the prosecution of sexual and gender-based crimes in non-international armed conflict

In its simplest form command responsibility involves holding superiors liable for the crimes committed by their subordinates. This mode of individual criminal liability is significant, not only as it provides incentive for commanders to ensure compliance with international humanitarian law, but also because it reinforces the role of responsible command in the suppression of sexual and gender-based violence (SGBV) in non-international armed conflict. A comparative examination of recent decisions before the ICC and the OLG Stuttgart demonstrates there are still issues relating to the legal, practical, and to some extent moral, tenability of prosecutions made on the basis of command responsibility, particularly with respect to its scope of application to sexual and gender-based crimes. Such questions are crucial in identifying the extent to which a commander is able to shield himself from liability for crimes committed by subordinates as well as for determining in what circumstances a commander may be held responsible for broader acts of sexual violence. This paper traces the historical development of command responsibility as a mode of liability in international law generally, as well as in relation to sexual and gender-based crimes. It re-examines the specific challenges arising from this unique legal relationship in the context of two recent cases in order to determine the extent to which command responsibility represents a concrete strategy for ending impunity for sexual and gender-based crimes in non-international armed conflict.

Key words:

Command responsibility, Bemba, OLG Stuttgart, sexual and gender-based crimes, international criminal law, ICC, Rome Statute, VStGB