

Claremont McKenna College

**Rape and Sexual Violence Used as a Weapon of War and Genocide: An
Examination of Historical and Contemporary Cases of Genocidal Rape and
Prosecution of Rape in International Courts**

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Abstract

Rape and other forms of sexual violence have been used against civilian populations since the advent of armed conflict. However, recent scholarship within the last few decades proves that rape is not a byproduct of war or a result of transgressions by a few “bad apples,” rather, rape and sexual violence are used as strategic, systematic, and calculated tools of war, ethnic cleansing, and genocide. Rape has also been used as a means of preventing future generations of children of “undesirable” groups from being born. Rape and sexual violence are also used with the purpose of intimidating women and their communities, destroying the social fabric and cohesion of specific groups, and even as a final act of humiliation before killing the victim. In each conflict that is examined in this thesis, sexual violence is used against civilian populations for the specific purpose of genocide.

This study will begin by examining the recent scholarship that has emerged on sexual violence used against women during the Holocaust. Jewish, Roma and Sinti women, and others were targeted for forced prostitution, sexual humiliation, and rape by SS soldiers and other inmates in ghettos and concentration camps and rape was used as an excursion of power and dehumanization by Nazi forces. During the Cambodian genocide, the Khmer Rouge established an ultra-Communist state which installed forced marriages and forced copulation as state policies and rape and sexual violence as a form of punishment within prisons, forced labor, and re-education camps. The Guatemalan genocide mirrored that of the Spanish campaign of colonization 500 years earlier in which soldiers used rape to physically eliminate the Mayan bloodline, both through the forced impregnation of Mayan women, and the rendering of Mayan women infertile, and in the effort to intimidate Mayan communities into submission. The Bosnian and Rwandan genocides occurred within only two years of each other and rape was a strategic weapon used by both the Serbs and Hutus. In the case of Bosnia, Serbian men sought to eliminate the Bosnian Muslim (Bosniak) bloodline (through forced impregnation and gang rapes) and established “rape camps” to achieve this objective. Likewise, radical Rwandan Hutus used rape to render Tutsi women infertile, intentionally spread HIV and other sexually transmitted infections to victims. Lastly rape is currently being used against Rohingya and Yazidi populations. Burmese authorities use sexual violence against Rohingya women and girls in an effort to force them to flee from the Rakhine State. In the case of the Yazidi, Islamic State

militants have targeted ethnic and religious minorities for genocide and force Yazidi women into sexual slavery where they are repeatedly raped and abused.

Lastly, by utilizing historical data, legal procedures and proceedings, and several interviews with international trial lawyers and experts, this thesis attempts to show the failures and shortcomings in the way international courts prosecute rape as a crime. These failures include: the crime of rape as an afterthought in court proceedings, the overall lack of political will to try rape cases, the exclusion of rape victims and other women from the trial process, poorly executed investigations, improper care of rape victims, and impunity for perpetrators of genocidal rape. This thesis will also make the following recommendations: including more women and rape victims in the entire trial process, encouragement of appeals for acquittals of rape charges, ensuring proper physical and psychological care for rape victims, and ensuring financial reparations for victims.

Key Words: Rape, Sexual Violence, War, Genocide, Ethnic Cleansing, International Criminal Court

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Most of all, I would like to dedicate this thesis and overall, my degree from Claremont McKenna College, to my mother, Bonnie Abaunza. When I was five years old, she became a single mother, working 7 days a week to provide me with the life she always wanted but her parents, immigrants from Nicaragua and Ecuador, could not provide her. When she became a Director for Amnesty International, I would visit her office every day after school. There I developed a passion for human rights and social justice and learned grassroots activism. Mami, you have taught me what true strength is. You have inspired me each and every day of my life, and have taught me what it means to be a strong and proud woman, activist, and advocate. I owe all of my successes to you. You are my constant inspiration, role model, and hero and I could not have ever imagined a better mother, friend, or support system. Estoy muy orgullosa de ser tu hija y de venir de una larga linea de mujeres fuertes.

Chapter 1: Introduction

*"I wish he had killed me instead of doing that to me. The fear inside you feel cannot be described with words - when it is night, when he is armed, you do not know who he is, and he makes you take off your clothes."*¹

- Bosnian Rape Survivor, 45 years old at the time of her rape

Rape and other forms of sexual violence, have been (and continue to be) committed against women and girls in every country around the world. It is perpetrated behind closed doors as domestic violence and in open conflicts as an act of warfare. In the United States, one in five women are victims of sexual violence.² In many countries, the risk of rape and sexual assault is much higher: according to the World Bank, one in three women around the world are victims of gender-based violence.³ In developing countries where political instability, suppression of human rights, gender bias, inequality and discrimination are commonplace, cases of sexual violence perpetrated against women are exponentially higher, with figures ranging from 35–70% in some countries.⁴ Mass rape and sexual violence occur as part of warfare and genocidal campaigns. Throughout history, wartime rape of women was accepted as a by-product of conflict. It was treated as a spoil of war: soldiers who raided a village or conquered lands rewarded themselves with women from the enemy camp. This, however, is an extremely dangerous

¹ Albina Sorguc, "Srebrenica Anniversary: The Rape Victims' Testimonies," *Balkan Transitional Justice*, July 11, 2014, <http://www.balkaninsight.com/en/article/srebrenica-anniversary-the-rape-victims-testimonies>.

² Roni Caryn Rabin, "Nearly 1 in 5 Women in US Survey Report Sexual Assault," *New York Times*, December 14, 2011. <https://www.nytimes.com/2011/12/15/health/nearly-1-in-5-women-in-us-survey-report-sexual-assault.html?mtrref=www.google.com&gwh=FFE7FD02338C3E47C671E1AD3241C335&gwt=pay>.

³ World Bank, "Violence against Women and Girls," April 4, 2018, <http://www.worldbank.org/en/topic/socialdevelopment/brief/violence-against-women-and-girls>.

⁴ Ibid.

misconception as it removes the responsibility from the international community to take action if rape during wartime is considered accidental and not calculated and intentional. Rape is inherently about power: as both a way to exert and gain power and instill fear in victims and their communities. The relationship between all forms of sexual violence and power cannot be ignored. Rape, and other forms of sexual violence, have been used and implemented as a strategic tool, tactic, and weapon in wars, ethnic cleansing campaigns, and genocides.

The traditional definition of rape includes the lack of consent to sexual activity; however, this definition is not the standard used when discussing rape implemented as a method and weapon of war. A report by the United Nations asserts, “Rape committed during war is often intended to terrorize the population, break up families, destroy communities, and, in some instances, change the ethnic makeup of the next generation. Sometimes it is also used to deliberately infect women with HIV or render women from the targeted community incapable of bearing children.”⁵ Rape has been used as a weapon—arguably the most brutal weapon—in order to exert power and dominance over women, ethnically cleanse a region, and undermine the fabric of society. It is a method of physical and psychological torture, both for the victim and the victim’s community. It is also a crime closely associated with murder as women can literally be “raped to death.” The statistics are always daunting and shocking: In Rwanda, between 100,000 and 250,000 women were raped during the three months of the genocide in 1994; more than 60,000 women were raped during the civil war in Sierra Leone (1991-2002); over 40,000

⁵ United Nations, “Background Information on Sexual Violence Used as a Tool of War,” *Outreach Programme on the Rwanda genocide and the United Nations*, accessed on September 15, 2017.

in Liberia (1989-2003); up to 60,000 in the former Yugoslavia (1992-1995); and at least 200,000 in the Democratic Republic of the Congo since 1998.⁶

Rape and other forms of sexual violence against women are not being addressed or prosecuted as other crimes under international laws and accords. We can examine the few tribunals and trials that have resulted from outrage at the atrocity of rape. One of the most prominent cases, which played out on the global stage, took place in the former Yugoslavia. Established in 1993, the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia includes a founding statute on rape, and encourages priority cases for abuse of women and children. While this was a groundbreaking victory and precedent for prosecution of cases of rape and sexual violence, there have been few others that have given special attention to survivors of genocidal rape. Despite rape and sexual violence being implemented as a tactic of war and genocides for centuries, it has only been criminalized and prosecuted in recent years. After the Second World War, violence against women was officially recognized under international law.⁷ International laws have not done nearly enough to bring justice for victims of wartime rape. This thesis will examine how sexual violence has been used in genocidal campaigns to undermine communal ties, destroy bloodlines, dominate and control enemy populations, and ethnically cleanse undesired minority groups. Additionally, this thesis will explore the ways in which international courts have

⁶ Ibid.

⁷ Dr. Denis Mukwege Foundation, "What Does the Law Say?" accessed on September 16, 2017. <http://www.mukwegefoundation.org/rape-as-a-weapon-of-war/what-does-the-law-say/>.

prosecuted genocidal rape, critiques of the process of rape prosecution and recommendations on how to better prosecute genocidal rape.

Definitions

For the purposes of this thesis, the following definitions will be applied to the case studies and analysis.

Rape: defined as physically forced or otherwise coerced penetration – even if slight – of the vulva or anus, using a penis, other body parts or an object. The attempt to do so is known as attempted rape. Rape of a person by two or more perpetrators is known as gang rape.⁸

Sexual Violence: any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work.⁹

Conflict related sexual violence: “conflict-related sexual violence...’refers to rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage, and any other form of sexual violence of comparable gravity perpetrated against women, men, girls or boys that is directly or indirectly linked to a conflict. This link may be evident in the profile of the perpetrator (often affiliated with a State or non-State armed group, including a terrorist entity or network), the profile of the victim (who is frequently an actual or perceived member of a persecuted political,

⁸ Krug et al., “Chapter 6: Sexual Violence,” in *World Report on Violence and Health*, World Health Organization, 2002. 149.

http://www.who.int/violence_injury_prevention/violence/global_campaign/en/chap6.pdf.

⁹ Krug et al., 149.

ethnic or religious minority, or is targeted on the basis of actual or perceived sexual orientation and gender identity), the climate of impunity (which is generally associated with State collapse), cross-border consequences (such as displacement or trafficking in persons) and/ or violations of the provisions of a ceasefire agreement. The term also encompasses trafficking in persons when committed in situations of conflict for the purpose of sexual violence/exploitation.¹⁰

Genocide: “the criminal intent to destroy or to cripple permanently a human group. The acts are directed against groups, as such, and individuals are selected for destruction only because they belong to these groups.” While this definition has since been expanded by the United Nations, the definition of genocide often overlooks certain important features of genocidal campaigns. For the purposes of this thesis, the definition of genocide by sociologist and pioneering scholar of genocide theory Helen Fein will be used:

“Sustained purposeful action by perpetrator to physically destroy a collectivity directly or through interdiction of the biological and social reproduction of group members, sustained regardless of the surrender or lack of threat offered by the victims. Genocide is most often a strategy that ruling elites use to resolve real solidarity and legitimacy conflicts or challenges to their interests against victims decreed outside their universe of obligation in situations in which a crisis or opportunity is caused by or blamed on the victim (or the victim impedes taking advantage of an opportunity), and the perpetrators believe they can get away with it.”¹¹ Lastly, Willimann and Dobkowski’s (1987)

¹⁰ United Nations. Report of the Secretary General on Conflict Related Sexual Violence.” Accessed September 25, 2017. <http://www.un.org/en/events/elimination-of-sexual-violence-in-conflict/pdf/1494280398.pdf>.

¹¹ Helen Fein, “Genocide: A Sociological Perspective, 1993/1990,” (June 2013) in Adam Jones, *Genocide: A Comprehensive Introduction* (New York: Routledge Taylor and Francis Group, 2006).

definition includes the use of rape: “Genocide is the deliberate, organized destruction, in whole or in large part, of racial or ethnic groups by a government or its agents. It can involve not only mass murder, but also forced deportation (ethnic cleansing), systematic rape, and economic and biological subjugation.”¹²

War (aggression): The definition of “aggression” is meant to signify what the general public refers to as ‘war’ and is defined by the United Nations as: “Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition.”¹³ “Any of the following acts, regardless of a declaration of war, shall, subject to and in accordance with the provisions of article two, qualify as an act of aggression:

- (a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof,
- (b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;
- (c) The blockade of the ports or coasts of a State by the armed forces of another State;
- (d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;
- (e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;

¹² Jones, “Genocide: A Comprehensive Introduction.” 17.

¹³ UN Documents, “Definition of Aggression,” <http://www.un-documents.net/a29r3314.htm>.

(f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;

(g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.”

Ethnic Cleansing: As ethnic cleansing has not been recognized as an independent crime under international law, there is no precise definition of this concept or the exact acts to be qualified as ethnic cleansing. A United Nations Commission of Experts mandated to look into violations of international humanitarian law committed in the territory of the former Yugoslavia defined ethnic cleansing in its interim report S/25274 as "... rendering an area ethnically homogeneous by using force or intimidation to remove persons of given groups from the area." In its final report S/1994/674, the same Commission described ethnic cleansing as "... a purposeful policy designed by one ethnic or religious group to remove by violent and terror-inspiring means the civilian population of another ethnic or religious group from certain geographic areas.”¹⁴

Methodology

It is important to understand several distinctions and parameters of the following discussion. First, this thesis will examine historical cases beginning with the Holocaust and ending with the rape of Rohingya and Yazidi women. This is for several reasons. Raphael Lemkin coined the term genocide in 1944. Eminent scholars such as Ben Kiernans have applied the term genocide as a historical paradigm for studying mass

¹⁴United Nations, "Definitions: Ethnic Cleansing," <http://www.un.org/en/genocideprevention/ethnic-cleansing.html>.

atrocities that have occurred since history was recorded, but this thesis will only examine genocides after the creation of the term. Additionally, before WWII, there was significantly scarce information on rape and sexual violence as many survivors did not tell their stories for fear of ostracization or humiliation and in many cases, victims felt that they could not receive justice in the legal system. Second, the victims who will be discussed a length here comprise only female victims and survivors of rape. While in many cases men also have been raped or sexually violated during genocidal campaigns, women have made up the majority of the victims while men have been disproportionately the perpetrators of sexual violence. Lastly, the case studies presented are generally accepted by scholars and the international community as genocides or campaigns of ethnic cleansing.¹⁵ Each case offers a clear and undisputed aggressor, perpetrator or group committing genocide against another group/victim.

A variety of sources will be used in this thesis including primary sources, personal testimonies, and accounts of victims of genocidal rape, as well as interviews from genocide scholars and researchers, professors of human rights courses, and experts in the field of wartime rape. This thesis will also use a variety of secondary sources including newspaper articles highlighting the way genocidal conflicts are discussed, speeches from international officials calling for condemnation of rape and sexual violence, reports by the United Nations and other governing bodies, as well as NGOs, nonprofits, and other organizations.

¹⁵ This thesis will make the point to use cases that have been generally accepted as genocides or genocidal campaigns. While rape and sexual violence has been present in nearly every armed conflict since the advent of war, this essay will not examine traditional war or civil war or other states of conflicts.

Strategies of Rape: Intents and Explanations

Perpetrators who commit mass rape and sexual violence as acts of war and genocide do so for different reasons and motivations. Understanding the strategic reasons behind rape is essential in the struggle for justice for victims of genocidal and wartime rape. The reasons why soldiers, governments, and states employ campaigns of rape and sexual violence necessitates the understanding that rape and sexual violence are inherently about power and control, rather than sexual urges and desires. As referenced earlier, rape is not an innocent byproduct of war or a result of a transgression committed by some “bad apples.” Events of the 20th & 21st centuries have shown us that rape can be used as a calculated method of genocidal campaigns and happens on a massive scale. Genocidal rape is often a direct attack on the ethnic makeup of a people, targets specific communities and constitutes ethnic cleansing: the mass expulsion or killing of the members of a specific and unwanted ethnic or cultural group. The killing of an undesired ethnic population is seen as the most *effective* way to ethnically cleanse an area, and rape is another tool utilized to accomplish a similar objective. Forced impregnation, forced sterilization, and using sexual violence in order to destroy or weaken a community are the most prominent strategies soldiers have used to achieve their military and genocidal objectives. The following are some distinctions of how rape is strategically implemented, which differs in each case and is dependent on a variety of factors.

Rape with the Purpose of Forced Impregnation

In many cases, rape is used as a way to forcibly impregnate the women of the enemy group. This form of rape and sexual violence has been used historically in a variety of campaigns of conquest and ethnic cleansing. The case of Spanish colonization

proved one of the most widespread uses of rape for forced impregnation in history. Spanish conquistadors colonized the new world with the objective of cementing Spanish power and influence over what is now North, Central, and South America. In order to most effectively control native peoples and ensure lasting power in these regions, Spanish soldiers raped indigenous women in an effort to impregnate them. The Spanish implemented a racial and social hierarchy that placed individuals with more European blood higher than those without white blood. This ethnic cleansing campaign, which placed emphasis on forced impregnation of indigenous women, has left a dramatic legacy in the Americas. Forced impregnation, which is sometimes accompanied by forced marriage, serves as an important goal in ethnic cleansing and genocidal campaigns. It is at its core a way to control women, men, and entire communities, as well as the fastest way to ethnically cleanse a population. Each child that is born from genocidal rape is genetically “less” of a particular race or ethnicity. Each mestizo child that was born in the Americas was more European and less indigenous. Eventually, a majority of children born during the century of colonization had European/Spanish blood.

Soldiers and governments have continued to use this strategy in order to achieve political, social, and economic objectives. For example, in the case of Bosnia, Serbian men mass raped Bosniak Muslim women to breed the ethnic out of them by having them give birth to half mixed Serbian child. Forced impregnation is often a particular and calculated tactic and goal in times of war, ethnic cleansing, and genocide. It is a strategy that is two-fold: one that physically alters the genes of a specific group and creates a future generation of children born of rape, and one that leaves a traumatic and long-lasting impact on women, children, and entire communities. Victims of genocidal rape

are often ostracized, cast out of their homes, or shamed by their families or communities due to the rape they suffered. This shame is further heightened if a rape results in pregnancy. Women are forced to care for their rapists' child, often without the help of their families or communities. Forced impregnation through rape affects both married and non-married women. For married women, in many cases they are cast out of their homes, and in more patriarchal cultures, a husband may no longer have a desire to stay married to his wife due to the shame he feels having failed in his role as "protector." The impact of rape on non-married women is just as severe: often single women are labeled as "dirty" or "unclean" and are unable to find a partner to marry them. The burden of caring for a child born of rape is almost universal: in poor communities or in societies that are rebuilding from the destruction of war, if a rape victim is not exiled from her community, she will always feel the weight of having to care for her child, a child that serves as a daily reminder for her and her community of the pain she/it endured. From an economic standpoint, forced impregnation places a heavy financial burden for women and their communities in order to care for these children—a responsibility many communities cannot afford.

Rape with the Purpose of Rendering a Women Infertile

By raping a woman, perpetrators are able to render her unable to conceive or bear children in the future. This is used during genocidal campaigns for the purpose of ethnic cleansing. Rape itself is an extremely violent act and a manifestation of physical aggression, often having little to do with sexual desire. Often victims are raped so violently, including with objects and weapons, which inflicts extreme physical trauma to the body. Along with psychological and emotional trauma, rape and sexual violence leave

lasting physical ailments to the female body including, but not limited, to incontinence, sexually transmitted diseases and infections, inability to sit or stand, and infertility. By using sexual violence against an entire population of women, perpetrators impact birth rates thus ensuring that the race and ethnicity, as well as the culture and customs of a particular group or community, cannot be passed down to another generation. This tactic was evident in the cases of Guatemala and Bosnia, and was deliberate in creating a new ethnic and racial identity, replacing the undesired one: "[convinced that this heinous practice [rape and abuse of women] constitutes a deliberate weapon of war in fulfilling the policy of ethnic cleansing carried out by Serbian forces in Bosnia and Herzegovina, and...that the abhorrent policy of ethnic cleansing was a form of genocide."¹⁶

Often associated with this strategy, perpetrators forcibly sterilize women or force abortions of women of an undesired social group. Often times, this takes in camps and prisons as with the case of Nazi Germany and the sterilization of Jewish, Roma, and other women. Forced sterilization and forced abortions in the context of armed conflict is an act of sexual violence, even if the act of rape has not been committed. Another prominent tactic that has emerged most recently in the genocides in Rwanda and the Congo is the intentional spreading of HIV/AIDS during rape in order to eliminate enemy populations. In many cases, rapists who have contracted HIV/AIDS purposefully spread the disease to their victims, essentially providing a death sentence for the victim and any children born of rape. The spread of HIV/AIDS not only impacts the victim and her child but also her community.

¹⁶ Todd A., Salzman, "Rape Camps as a Means of Ethnic Cleansing: Religious, Cultural, and Ethical Responses to Rape Victims in the Former Yugoslavia," *Human Rights Quarterly* 20, no., 2 (May 1998).

Rape with the Purpose of Breaking Social and Communal Ties

The effects of rape go beyond just that of the victim or the victim's family. Rape and sexual violence affects an entire village and community as a whole. The effects a victim feels often includes shame and guilt, physical and psychological ailments, and in many cases, victims are often shunned from their communities or marked as unclean and unlikely to be married, furthering isolating the victim. "Rape, as with all terror-warfare, is not exclusively an attack on the body--it is an attack on the 'body-politic.' Its goal is not to maim or kill one person but to control an entire socio-political process by crippling it. It is an attack directed equally against personal identity and cultural integrity."¹⁷

Rape is considered "an attack on the culture and safety of the community and is accompanied by other acts of terror that disrupt basic services such as education, farming, commerce and access to healthcare. The threat of rape restricts core activities, such as collecting water and firewood and working on the family farms. This results in fewer cooked meals and endangers family nutrition."¹⁸ By disrupting daily life for a particular community, rape is used as a way to break apart that community. The effects of rape are devastating on a community. Women are often viewed as the caretakers of their communities, responsible for the cultural education of younger generations, and the providers for the cultural and religious life of their families. When these caretakers are raped and targeted with sexual violence, this not only renders the victims as damaged, but also leaves the entire community vulnerable and at risk of collapse. Women and their

¹⁷ Cassandra Clifford, "Rape as a Weapon of War and its Long Effects on Victims and Society." The Foreign Policy Association, New York, NY. 2008. 3.

¹⁸ Charlotte Lindsey-Curtet, Florence Tercier Holst-Roness, Leticia Anderson, "Addressing the Needs of Women Affected by Armed Conflict," *International Committee of the Red Cross*, March 2004. https://www.unicef.org/emerg/files/ICRC_women_war.pdf.

communal ties are often essential for the survival of that community and rape, femicide, and sexual violence perpetrated against them constitutes a particularly brutal form of ethnic cleansing. Rape purposefully destroys a community, tearing it apart at the seams, with the deliberate elimination of culture and denial of individual and communal rights to exist. According to scholars John Roth and Carol Rittner, in the case of the genocide in Guatemala, rape was used to “[wreck] the social fabric [of a community], most notably through the extreme violation and profound humiliation of the women, these genocidal acts systematically sought to eliminate the Maya and insurgents alike.”¹⁹ The United Nations recognizes the use of rape as one of the most egregious forms of human rights violations and a weapon used in war, ethnic cleansing campaigns, and genocide.²⁰

This thesis will describe and compare cases in which rape and sexual violence were used as weapons of genocide and ethnic cleansing in the Holocaust, Cambodia, Guatemala, the former Yugoslavia, Rwanda, and in the ongoing ethnic cleansing campaigns against the Yazidi and Rohingya people. These cases span four continents and more than 70 years. Sexual violence is a global phenomenon and a historical plague that continues to inflict massive suffering on innocent people, primarily women and girls, and therefore needs to be taken seriously in the scholarship on genocide and in the prosecution of genocide in national and international courts. Thus this historical analysis will hopefully shed light on the current challenges victims of genocidal rape face in trying to achieve justice and how the international law and tribunals can implement changes on how these crimes are prosecuted.

¹⁹ Carol Rittner and John K. Roth. *Rape: Weapon of War and Genocide*, (Minnesota: Paragon House, 2012).

²⁰ Ibid.

Chapter 2: The Holocaust

“I was raped, at the beginning of it. Must have been in either ’42 or ’43, wasn't very long after we were there. Yeah, the young girls who were young and pretty, so to speak, in those days, they were taken to different barracks. And sometimes right in front of the barracks, where everybody can see.”¹

- Helen Shiver, Survivor of Auschwitz Concentration Camp

Background

Raphael Lemkin, introduced the concept of “genocide” in 1944 after studying the horrors that took place during the Armenian genocide and witnessing the Holocaust, the most systematic genocide on record. Lemkin, a Polish Jewish lawyer, first used the term “genocide” in a book documenting Nazi occupation policies that sought to “Aryanize” Europe. Of the groups that were targeted during the Holocaust, European Jews were the primary targets and victims, as well as the mentally and physically disabled, Communists, Soviet POWs, Roma and Sinti (commonly referred to as gypsies), Slavs, homosexuals, Jehovah’s witnesses, among others.

Germany’s humiliating defeat in WWI played an important role in Hitler’s rise to power and the rise of fascism in Eastern Europe. According to the Treaty of Versailles, the victors of the Great War declared Germany responsible, forced Germany to pay heavy reparations, reduced Germany’s territory by 13 percent, and left the country with little military power. German citizens were left impoverished, without jobs and without food. What soon followed was a turbulent economic period which worsened with Germany’s Great Depression in 1930. Adolf Hitler, who was arrested in 1923 for attempts to

¹ Monica J. Flaschka, “Only Pretty Women were Raped: The Effect of Sexual Violence on Gender Identities in Concentration Camps.” In *Sexual Violence against Jewish Women during the Holocaust*, edited by Sonja M. Hedgepeth, and Rochelle G. Saidel, Brandeis University Press, 2010.

overthrow the German government, gained a significant number of followers around during the Depression in 1930 who began to regard him as the person who could restore Germany's rightful place in the world. Hitler's ideological goals could be summed up into three main points: territorial expansion, consolidation of a racially pure "German" state, and the extermination of European Jews and other "enemies of the state." The Nazi party recruited, organized, and began spreading its message by exploiting people's fears and frustrations, and offering solutions to Germany's problems. In 1933, President Paul von Hindenburg, fearing that radical leftist parties would prove far more dangerous, offered Hitler the position of Chancellor of a coalition government. Hitler and his Nazi party exploited this new position by targeting political opponents, including leaders of trade unions, opposition parties, leftist party members, and others. After Hindenburg's death in 1934, Hitler abolished the Office of the President and appointed himself Führer and Reich Chancellor. For the most part, German citizens went along with the reforms under the guise of order and security, believing that Hitler would make Germany great again.

One important feature of Hitler's campaign was the pervasive propaganda machine used to gain political power and create a culture of fear, particularly against perceived enemies of the state. Reich Minister for Public Enlightenment and Propaganda, Joseph Goebbels stated, "One must govern well, and for good government one must also practice good propaganda. They work together. A good government without propaganda is not more possible than good propaganda without a good government."² The good

² United States Holocaust Memorial Museum, "Aftermath of World War I and the Rise of Nazism: 1918-1933," accessed September 19, 2017, <https://www.ushmm.org/learn/introduction-to-the-holocaust/path-to-nazi-genocide/chapter-1/aftermath-of-world-war-i-and-the-rise-of-nazism-1918-1933>.

propaganda Goebbels refers to is that which targeted Jews and other minorities. The primary goal of these propaganda campaigns was to demonize Jews by encouraging German citizens to see them as dangerous outsiders, greedy and stealing wealth from other deserving Germans, and preventing Germany from being the powerful state it once was. Part of this propaganda strategy included the dehumanization of Jews, comparing them to animals, insects, and parasites.³ Propaganda proved to be one of most dangerous tools the Nazi party used to garner support for their cause.

Despite extensive scholarship on the Holocaust, the topic of sexual violence and rape perpetrated by the Nazis is decidedly understudied. There are several reasons for the lack of research. The first of these reasons is that it is often considered taboo or inappropriate to discuss the rape and sexual violence committed in the ghettos and concentration camps, often because of the shame and guilt associated with these crimes. Many of the sexual abuses women faced during the Holocaust were not initially investigated and only came to light on a larger scale years after the end of WWII. Stories of Jewish prostitutes and other women that began “affairs” with German soldiers emerged after the end of the war. Yet many scholars underestimated them or minimized them by pointing to the Nazi concept of *Rassenschande*, “racial shame” and the Nuremberg Laws which prohibited sexual intercourse between Aryans and non-Aryans. The argument that followed was that because German men had much to lose by breaking these laws, women must have persuaded them to engage in sexual relationships for their own selfish gains. The logic of this assumption was that if the Germans were Nazis, then

³ United States Holocaust Memorial Museum, “Nazi Propaganda,” accessed September 19, 2017, <https://www.ushmm.org/wlc/en/article.php?ModuleId=10005202>.

they were avid racial antisemites and would not have betrayed their Aryan race by having sexual intercourse with inferior racial Jewish women. Another factor that led to the suppression of this history were the sources: the testimonies of survivors were not taken seriously, and often German men who raped “inferiors” murdered them afterwards to conceal the violations. Wartime brothel workers and Jewish women forced into sexual slavery, who had no choice but to trade their bodies for their survival or the survival of their families, were incorrectly labeled as collaborators or traitors to their people. As will be discussed later in this chapter, this was not the case, although this belief continued to be accepted by people. In addition to the lack of initial investigations into sexual violence perpetrated by the Nazis, an equally difficult challenge arose over victim shaming and guilt for being forced to engage in sexual acts with German soldiers. As Nomi Levenkorn explains:

Survivors’ feeling of shame and their sense of guilt that they survived, especially if they survived through the use of their sexuality, created a veil of silence on the topic that lasted for many years before being breached—especially when the topic was the use of the body in exchange for a portion of food...a woman who provided sexual favors for food was defined one dimensionally as a prostitute rather than a person who struggled for survival...therefore, those who were suspected of being guilty suffered from being treated with contempt and disgrace, scorn in which even survivors were at times complicit, criticizing the women harshly and self-righteously.⁴

The guilt and shame that survivors felt, coupled with the possibility of being further marginalized or ostracized by admitting to sexual abuse, caused a culture of silence that is still being challenged today. Comparatively speaking, the minority of Holocaust survivors who shared their stories of being rape survivors or of having witnessed sexual

⁴ Katarzyna Person, “Sexual Violence during the Holocaust—the Case of Forced Prostitution in the Warsaw Ghetto,” *Shofar* 33, no. 2 (2015): 105.

violence at the hands of the Nazis, told similar tales: sexual abuse was not only common but was also used against Jewish and Roma populations as both a form of submission and subjugation.

Another reason that makes it difficult for scholars to study sexual abuse by German forces was that the writing and recording of the history of the Holocaust was, for the most part, dominated by men: male survivors and male scholars. While testimonies and narrative accounts are powerful and meticulously researched, few told the stories of the crimes of gender violence committed against women. There are numerous theories and assumptions about this: perhaps many male survivors did not know the horrors that their mothers, daughters, wives, and sisters experienced due to the culture of shame and silence that existed. Many survivors may not have felt comfortable discussing the rape or abuse they heard about or saw. And finally, many survivors did not know the extent to which sexual violence was used against Jewish and Roma women. Katarzyna Person argues that the most prevalent image of the female Holocaust survivor was seen through the prism of a “male-oriented master narrative...defined in relation to men: as mothers or wives.” She continues, “In the first one, women were portrayed,” as Sara Horowitz identifies, as “peripheral, helpless and fragile; as morally deficient in their victimization” and in the other image, women were seen as a “homogenous group of homemakers, the embodiment of traditional values centering on motherhood.”⁵ Victims often felt that they could not recount the abuses they experienced partly due to shame and partly due to perceived accepted gender roles. These attitudes were reinforced by researchers, argues

⁵ Person, 105.

Person, who did not, or did not want to ask survivors directly about rape or sexual abuse.⁶

These stories were initially discounted, discredited, or lost within the stories of other atrocities which occurred during the Holocaust. It was not until the second wave feminist movement of the 1960s and the rise of gender studies that these stories began to reemerge. While many critics saw gender as irrelevant to the study of the Holocaust, gender analysis became incredibly important in understanding different experiences men and women faced during the Holocaust, and in removing the shame and silence associated with being a victim of sexual violence.

Another significant obstacle for those who have tried to study this topic is the concern about “differentiating” among victims, and inferring a hierarchy of suffering. Some argue that there is no real “need” to highlight differences between the sufferings of Holocaust victims: every person suffered, every person witnessed extreme horrors, and every person knew someone who died. Holocaust victims are a part of a collective peoples, a collective identity, and the struggle for justice after the Holocaust is a collective one. Others argue that differentiating between victims and their experiences may be dangerous. According to Dalia Ofer and Lenore Weitzman, “one concern that was expressed was that any differentiation of the victims of the Holocaust by gender could distract us from the fact that the Nazis defined their targets as Jews—not as men or women or children—and systematically planned to murder all of them.”⁷ Many scholars, and even some survivors fear that a focus on gender, and gendered experiences, may diminish the importance of the Holocaust and may lead to a trivialization and

⁶ Ibid.

⁷ Dalia Ofer and Lenore J Weitzman, *Women in the Holocaust*, (New Haven: Yale University Press, 1998), 12.

banalization of it. Furthermore, this emphasis on gender, and any perceived distinctions between the victims—even the biological sexes —detracts from the overall suffering of the victims of the Holocaust and would deflect attention from Nazi policies which targeted the Jewish population as a whole. For many, the violence, suffering, torture, and extermination of six million Jews was more critical to emphasize than the differences in the experiences of men and women during the Holocaust. These arguments against the importance of studying the Holocaust through a gender studies lens arrive at the core of why it is essential to study gender and the Holocaust, especially to give voice to the women who have suffered in silence for decades.

Lastly, when many people heard about rape during and immediately following WWII, the first event that comes to mind is the widespread rape of women committed by the Red Army during the occupation of Germany and liberation of several concentration camps. As Allied forces entered and occupied Germany, mass rapes took place against German, Jewish, and Roma women by Soviet servicemen. Many of these rapes were out of retaliation and anger against Germany while others were rapes in “payment” for liberation. It is estimated that Soviet forces raped up to two million women during the Soviet occupation of Germany.⁸ There is no doubt that Russian soldier’s committed rape and sexualized violence on a massive scale, however, many scholars cite these atrocities as the only, or most widespread, sexual violence that occurred during this time period. The wide scale rapes perpetrated by the Red Army targeted all women regardless of ethnicity, nationality, or religion and these rapes re-victimized women that had already

⁸ Elizabeth Heineman “The Hour of the Woman: Memories of Germany’s ‘Crisis Years’ and West German National Identity,” *American Historical Review* 101 no., 2 (1996): 354-395.

experienced extreme cruelty during WWII. Despite the atrocities committed by Soviet forces against German, Jewish, Roma, and other women, scholars must be careful not to view these as the only cases of sexual violence that occurred during the war.

Despite the lack of scholarship on this topic, it is essential to understand the differences between the experiences of male and female victims and the role sexual violence played in the subjugation and degradation of Jewish, Roma, and other men and women. Sexualized violence occurred against both men and women during the Holocaust; however, this chapter will focus on the sexual abuse perpetrated against women by German men, including, but not limited, to SS soldiers and guards, civilians, and doctors. Likewise, this discussion will also highlight the rape and abuse in ghettos and camps during the Third Reich but will not discuss the widespread rape that occurred by the Soviet Red Army. Due to limited first hand survivor testimony (for the reasons mentioned above) much of this chapter will rely on the works of Holocaust scholars and theorists and will utilize survivor and witness testimonies in an effort to make the case that sexual violence, though not a specific policy of the Third Reich, was used strategically by German men against Jewish and Roma women. This chapter will explore the ways in which rape and sexual abuse were used to dehumanize these women and to force their submission as a way to control female reproductive capacity. It will also examine “entitlement rape” more commonly known as “sex for survival” or “barter sex.”

Sexual Violence as Dehumanization Tactic and Exertion of Power

Though not a specific policy of the Third Reich, SS soldiers utilized sexual violence and rape as a form of dehumanization and degradation, primarily through the sexual humiliation of Jewish women in camps and ghettos. Reports and testimonies by

survivors have included stories of women and girls forced to stand naked in front of soldiers, shaving of hair and pubic hair, and invasive physical examinations.⁹ According to Sonja Hedgepeth and Rochelle Saidel, women in the concentration camps and ghettos were often

...forced to strip in front of soldiers, to stand naked for many hours, even days, in an endless parade, to wait naked in line for their turn to be disinfected. They were whipped naked and made to dance naked. When the Jews of Zyrardow, Poland, were driven into the ghetto in February 1941, Jewish women were humiliated in the street, an event described in the underground newspaper *Bulletin*: “From two in the afternoon until two at night they kept the women in Spokovina Street, they threatened them with shaving off their hair and extorted money from them. For long hours they stood naked and were objects of shame and disgrace. As for their clothes, these were ‘well cared for.’”¹⁰

Sexual humiliation of Jewish and other women was abusive and traumatic. Other Holocaust survivors reported daily sexual insults directed at them by Germans, as well as “cavity searches” on both living and dead women. One survivor recalls a story of Jewish men who were forced to rape Jewish girls: “There's also a story that was told of the Germans taking Jewish boys and girls, forcing them to get undressed, and forcing them to have sex with each other while they were watching. The girls, I was told, were screaming, “Kill me! Don't do this to me!” But that wouldn't have helped.”¹¹ This form of sexual violence transformed these Jews into sexualized objects meant solely for the

⁹ Stacy Banwell, “Rassenschande, Genocide, and the Reproductive Jewish Body: Examining the Use of Rape and Sexualized Violence against Jewish Women during the Holocaust,” *Journal of Modern Jewish Studies* 15, no., 2 (2016): 214.

¹⁰ Sonja M Hedgepeth and Rochelle G Saidel, *Violence against Jewish Women during the Holocaust*, (Waltham: Brandeis University Press, 2010), 9.

¹¹ Peretz Milbauer, interview with Linda G. Kuzmack and the United States Holocaust Memorial Museum, February 20, 1990.

pleasure of German men. This form of humiliation sought to dehumanize Jewish women, eventually making them easier to kill.

Sexual humiliation also held racial aspects that, particularly, targeted Jewish women. One of the most significant ways in which Jewish women were targeted for degrading treatment was removal of head and pubic hair. “Shaving of body hair illustrates to what extent differently categorized groups of women prisoners were subjected to different forms of sexualized violence,”¹² according to Hedgepeth and Saidel. “Hair was supposedly shaved off primarily for hygienic reasons, such as fighting the spread of head lice. However, for certain groups of women this shaving, regardless of actual lice infestation, was also meant to humiliate.”¹³ Some women, who were reported to have darker or thicker hair were shaved multiple times during their time in the camps, an act that was meant to inflict multiple traumas on the victim. Shaving women that had a stereotypically “Jewish appearance” according to Holocaust scholars served as a symbolic stigmatization and a racially motivated act of violence. One survivor recalls her experience with being examined for lice: “What was humiliating was that we had to undergo an examination for lice. They told us to stand on a stool, but they were male deportees who had to look and see if we had lice, even in hidden places.” This act, though not physically violent can be regarded as a violation of the female bodily integrity and the forcible removal of a woman’s feminine identity and reproductive power. In several survivor testimonies, when discussing their appearances without hair, the women referred to themselves as indistinguishable from one another, as a “monolithic mass,” as

¹² Hedgepeth and Saidel, 36.

¹³ Hedgepeth and Saidel, 36.

“animals,” or as “subhuman.”¹⁴ This act is one that is both demoralizing and dehumanizing, especially for women, as not only did their perpetrators see them as less than human but they also began to see themselves as subhuman.

Many of the rapes that occurred during the Holocaust took the form of what many scholars call “sadistic rape,” out of aggression, power, and dominance. While it is difficult to pinpoint exactly what sparked the aggression by German soldiers, guards, and others, scholars have viewed sexual violence through a similar lens as other forms of violence and sadism during the Holocaust. Sexual violence did not occur out of desire to have sex but rather the desire for control and dominance over a perceived racially inferior group. This power manifested in several ways, especially with the rape of Jewish women. Survivor Sara Moses recalls her traumatic rape by German soldiers:

[T]here were two men and there were some other people in the room I think. I was put on a table. From what I remember, [it was] a table or it could have been a high table. I was very little so it seemed like it was very high up from where I was and I was very violently sexually abused. And I remember being hit, I remember crying and I wanted to get out of there. And I was calling people and screaming and I remember one thing that stands out in my mind that one of them told me that they would stand me on my head and cut me right in half. And they wanted me to stop screaming and I’ve had nightmares about that most of my life.¹⁵

Many of these rapes during this time were accompanied by other extreme acts of violence or threats of violence both in an effort to demoralize the victim but also keep the victim, and all women, in a constant state of fear. Sadistic rape allowed for soldiers, who could

¹⁴ See testimonies from Livia E. Bitton Jackson, “*Coming of Age*,” in *Different Voices: Women and the Holocaust*, ed. Carol Rittner and John K. Roth (St. Paul: Paragon House, 1993), 78–79., Erna F. Rubinstein, *The Survivor in Us All: A Memoir of the Holocaust* (Hamden, Connecticut: Archon Books, 1983), 143., Gisella Perl, *I Was a Doctor in Auschwitz* (New York: International Universities Press, 1948), 46–47.

¹⁵ Banwell, 213.

have felt simply as “cogs in a machine’ to exert their masculine power over their victims.¹⁶ Equally as important to keeping victims in submission and subjugation, German soldiers used rape as a way to express their dominance and “added to the already-increased bravado of being an [SS] officer.”¹⁷ Another survivor reports being raped in an office by a notorious Latvian collaborator recruited by the SS: “In his office he raped me. He humiliated me. He tortured me sexually...When I was crying and weeping and asking for mercy, he said: ‘You bitch. Don’t you know who I am? I am Viktors Arajs, the boss of this place.”¹⁸ Here we see how rape occurred in a closed setting of an office. But Soldiers also used rape and sexual violence as a form of punishment and to intimidate women who were interned in prisons, the camps system, and in the ghettos. Often the violence occurred in open settings as a public spectacle against inmates, prisoners, and within ghettos. Survivor Dora Goldstein Roth recalls the time when several female inmates were called to assemble after two women had escaped the camp:

And we were punished, twelve hours naked in cold weather, and the additional punishment was they took out four or five, and I don't remember how many women, and in front of all that, of the women that--we stood in a row, you know--they raped in a rape that I have never read or seen it, not in a movie and not on the television, and certainly you can say that we have a terrible television, with all kinds of stories. And to see those young women raped by the men there with sticks, and...and my mother was near me and she took her hand and put it on, on my eyes, [so] I shouldn't see for the first time sexual intercourse. I had never seen sexual intercourse.¹⁹

¹⁶ Banwell, 214.

¹⁷ Banwell, 214.

¹⁸ Rittner and Roth, 15.

¹⁹ Dorokta (Dora) Roth, interview with United States Holocaust Memorial Museum, 1989.

This account is not uncommon. SS guards would inflict cruel and unusual punishments on all prisoners, though the punishments female inmates received were sexualized in nature. In the open setting of a ghetto, survivor Renee Pritchard witnessed the rape of a teenage girl by drunk German soldiers: “The whole town, you know the Germans used to drink, have a bottle in one hand, drink and shoot and take a girl, a young girl, 14 or 15, rape her underneath the eyes of their parents because their whole village was on the town, had been put on the town, and they raped her, they raped them and then they shot them.”²⁰ This rape, and others that occurred in ghettos, were not committed out of sexual desire for Jewish women but to terrorize the entire population. Though not necessarily a specific goal of German soldiers, this culture of fear often worked to dissuade resistance against Nazi occupiers: if an individual’s wife, mother, daughter, sister was at risk of being raped and sexually abused as punishment, an individual is less likely to engage in acts that could be “punished.”

Sex for Survival / Entitlement Rape²¹

Often left with few options, women engaged in what scholars call sex for survival, including engaging in prostitution and prostitutional transactions. The perceptions of women who engaged in these transactions were (and in many cases still are) hostile. Many regarded these women as traitors to their people and communities, as Nazi collaborators, or women lacking morals. Though only relatively few accounts of prostitution by Jewish and Roma and Sinti women exist, these accounts paint a very

²⁰ Renee Pritchard, interview Diane Plotkin and the United States Holocaust Memorial Museum, March 18, 1994.

²¹ For the purposes of this chapter, “entitlement rape” will be considered the acts of prostitution, both forced and “voluntary,” coerced sexual activities, and sex for survival.

different picture of women desperate to survive, or forced by German soldiers to become prostitutes or engage in these sexual transactions with no choice.²² Brothels²³ were established within ghettos and camps and most often non-Jewish, Roma women were forced to “work” in them servicing a variety of “clients.” According to Hedgepeth and Sidel,

Official brothels were also created in Auschwitz, Buchenwald, Mauthausen, DoraMittelbau, and Dachau. Many of the women sent to the brothels were non-Jewish prisoners from the women's camp in Ravensbrück. The “clients” were prisoners with special privileges, and their visits were either a reward given to the most efficient workers or an incentive to induce more efficient work.²⁴

Non-Jewish women were often recruited for this type of work within the camps, primarily Roma and Sinti women. Survivor Natan Gierowitz recalls that in his labor camp, Roma (often referred to as gypsies) worked in brothels and bordellos: “All the gypsies—a lot prostitutes are between gypsies, a lot. There was some beautiful women.”²⁵ Another survivor, Eve Gabori remembers that “very, very good-looking and pretty young women were taken to a certain house where they were used as prostitutes.”²⁶ This in part was due to the racial purity laws, primarily Rassenschande, which prohibited sexual activity between Jews and non-Jews. As noted in several places in this chapter, many German soldiers ignored this law, though in camps it appeared to be more strictly

²² In this chapter, it will be argued that even seemingly “willing” or “voluntary” prostitutional relations were in fact forced or coerced. Under occupation and threat of deportation, torture, or death there was no choice women could have made. Even if seemingly “consensual” relationships between Jewish, Roma, and other women and German soldiers or police, under threat of death, consent is revoked and therefore equates to rape/non-consensual sexual acts.

²³ The names of 174 forced sex workers were identified by SS documents, although according to survivor testimonies along with SS documents, the number of forced prostitutes could be as high as 210 or more. Robert Sommer, “Sexual Exploitation of Women in Nazi Concentration Camp Brothels” in Hedgepeth and Sidel.

²⁴ Hedgepeth and Sidel, 7.

²⁵ Natan Gierowitz, interview with the United States Holocaust Memorial Museum, July 27, 1995.

²⁶ Hedgepeth and Sidel, 7.

enforced. However, according to many testimonies, survivors recall that the forced prostitutes were Polish, German, and Jewish girls selected to perform these tasks.²⁷ Despite German laws prohibiting prostitution, SS soldiers established brothels in ghettos and concentration camps in an effort to “boost morale” among soldiers, degrade and humiliate female prisoners, and provide special privileges to non-Jewish prisoners. Even in cases when it appeared that women were entering into these relationships “consensually,” in times of war, the choice between starvation, torture, death or prostitution often led women to work in these brothels. Prostitution was one way to survive and many women found themselves in a situation of choice less choices.

Jewish, Roma, and other women were often targeted and forced into “relationships” or “affairs” with German soldiers that was nothing short of sexual violence and in many cases, sexual slavery. Women in ghettos and camps were selected to perform services for German soldiers and police including domestic work, sexual services, and other tasks. Today, many of these tasks would be considered sexual slavery:

On the other hand, we do know of cases of private sexual slavery perpetrated by German officers. In parts of Galicia in Poland and elsewhere, Jewish women were kept as sex slaves, and sometimes the most beautiful women from deportations to the camps were chosen to work in the homes of camp officers. Most were murdered later, and some were pregnant when they were sent to their deaths.²⁸

The testimony by Olga Astor tells a very similar story. Women, particularly beautiful women, were chosen by German men, without consent, for household work: “[S]ome of the SS selected women for the soldiers, and there were two girls from our barrack, who were the selected ones... they were well fed, they had clothes, they had their hair

²⁷ Antonin Hilavacek, interview with United States Holocaust Memorial Museum, June 20, 1997.

²⁸ Hedgepeth and Saidel, 7.

grow...and it was shiny.”²⁹ Previous perceptions of these “relationships” between Jewish women and German soldiers advanced a narrative that placed blame on the woman as a traitor to her community; however, recent scholarship argues that even in seemingly consensual relationships, women were still victims of sexual violence and rape by men in positions of power. Another dynamic that existed in many of these situations was the lack of autonomy and lack of choice women had entering into relationships with German men. Bella Rosenblum recounts:

I believe that if Germans were not restricted by their laws of racial purity, the fate of many Jewish women would have been much worse. In our camp we saw how one of the German engineers took two Jewish girls into his room. Whenever he had the inclination, he took one of them for himself exclusively. Every one of these girls had a family in the camp. They at least tried to sweeten the bitter pill by requesting, or sometimes by threatening suicide, clemency for their families. The German could not always refuse. So it worked out that under the circumstances families did not oppose the actions that were forcibly taken against the girls of the family.³⁰

While even still stigmatized, it is important to understand that relationships between Jewish women and non-Jewish men, particularly powerful German men, were not only forced but often occurred under threat of starvation, deportation, or death. Women did not have a choice in “affairs” with powerful men which makes the trading of sex for safety inherently a crime of sexual violence against women.

Throughout history, women have been forced to survive as sex slaves and concubines. The economy of sexual barter also occurred during the Holocaust, especially in settings such as ghettos and camps where hard currency was less valuable than objects,

²⁹ Olga Astor, interview with USC Shoah Foundation, November 20, 1997.

³⁰ Hedgepeth and Saidel, 8.

and in this case, women's bodies. Among the various forms of sexual abuse which took place during the Holocaust was the highly stigmatized act of trading sex for survival.

Historian Anna Hajkova argued that sexual bartering for survival included the exchange of sex as well as the exchange of physical company:

For one, many of the forms of sexual barter did not include sex or sexual activities. For instance, counter value could consist in flirting or spending time together. In other cases, sex took place, but within the context of a relationship. And then there was the direct repeated exchange of food for coitus. This last item is indeed prostitution, but it is simultaneously sexual barter.³¹

Conditions in the ghettos, and especially in concentration camps, were extremely difficult and many women turned to using any means necessary to survive—this often meant engaging in sexual acts with soldiers, police, and wealthy men in exchange for food, medicine, water, shelter, and other basic necessities. According to Levenkron, “The practice of sex for food took place between Jewish men who had managed to keep some of their possessions in the ghetto and Jewish women, between German soldiers and Jewish women, and between concentration camp inmates with special privileges and Jewish women.”³² Many women, likewise, entered into sexual relationships with German officials, policemen, soldiers, or camp guards in the hopes that they or their families would be guaranteed physical safety.³³ Of course, in most instances this was not the case. Men, once they tired of the sexual relationship, would have the woman killed partly out of cruelty but also to cover up any evidence of miscegenation and the public humiliation of *Rassenschande*. This exchange for sex also took the form of trading sex for

³¹ Anna Hajkova, “Sexual barter in the Times of Genocide: Negotiating the Sexual Economy of the Theresienstadt Ghetto,” *Signs: Journal of Women in Culture and Society* 38, no., 3 (2013): 505.

³² Nomi Levenkron, “Death and the Maidens, ‘Prostitution,’ Rape, and Sexual Slavery during World War II” in Hedgepeth and Saidel.

³³ Person, 115.

employment in ghettos. In order to provide for their families, women often had to turn to finding employment through sexual favors.³⁴ As Rosenblum concluded, “one cannot judge a person in these circumstances. I only tell about this special circumstance and unique situation in which people found themselves trapped. And these were not the only two girls. As I mentioned earlier, there were also special relations between Germans and Jewish women.”³⁵ These girls found themselves trapped, tried to pursue a path to survive with whatever means they had, including their sexuality, and therefore were vulnerable to rape.

Targeting Female Reproductive Capacity

As in many other armed conflicts, “women’s bodies are regarded as the vessels through which national, racial, ethnic and religious identities are reproduced—” the Holocaust was no different. Jewish women were targeted for both their ethnic identities as Jews and for their reproductive capacities. Even if these women survived the death camps, German officials wanted a way to ensure that the Jewish bloodline would end and sought to conduct experiments, abortions, and sterilizations of women’s bodies. However, unlike other genocides and campaigns of ethnic cleansing, the main goal of using sexual violence against women was not to ethnically cleanse. As in many other conflicts, women become targets for rape in the effort to destroy the bloodline: either through raping a woman to render her infertile and unable to have children, intentionally spreading HIV/AIDs to ensure a slow and painful death for both the mother and future children, or forcibly impregnate the woman so that her offspring would be “less” of a

³⁴ Person, 111.

³⁵ Hedgepeth and Saidel, 21.

certain race. Jewish women were targeted primarily through medical experimentation on the reproductive system. Sexual violence often served as not only an individual attack but also “an assault on the collective Jewish body.”³⁶

Forced sterilization served as both a form of sexual violence, which can create lifelong physical and psychological trauma, and as a part of the Third Reich’s specific policy objectives of selective breeding.³⁷ Sterilizations were given to Jewish, Roma, Sinti, and the mentally and physically handicapped in an effort to prevent future births of “undesirable” ethnic or social groups. Banwell argues that women were particularly vulnerable to “abuse in a number of ways: rape, forced abortion, forced sterilization, sexual abuse, pregnancy, childbirth and the killing of their newborns.”³⁸ These experiences are uniquely female ones as they target women’s reproductive capacity: a specific Nazi policy objective. A Polish survivor recalls her mother’s sterilization while they were under German occupation: “My mother [was] in the camp, she was sterilized so she would never have – the way they put it to her—so there would be no more Polish bastards born in the world. That’s what they told her.”³⁹ By 1937, German authorities had sterilized an estimated 225,000 people—half of whom were reported to be mentally disabled.⁴⁰ Jacob Presser observed the rates of sterilization in the Westerbork transit

³⁶ Banwell, 214.

³⁷ Forced abortions were also an important part of these policy objectives. “Ethnically impure” women were often forced to undergo abortions in ghettos and concentration camps despite the practice being illegal in Germany. Abortions during this time could also be considered lifesaving as pregnancy was almost certainly a death sentence, especially in death camps. Pregnant women were almost always the first group sent to the gas chambers, therefore, women sought clandestine abortions, many potentially lifesaving. This section will discuss the widespread forced sterilization of women as a clear policy objective of the Third Reich.

³⁸ Banwell, 211.

³⁹ Bozena Gilbride, interview with Antohony Dilorio and the United States Holocaust Memorial Museum, April 15, 1992.

⁴⁰ Henry P. David, “Abortion and Eugenics in Nazi Germany,” *Population and Development Review* 14, no., 1 (1988): 92.

camp in German occupied Netherlands: “Sterilization is perhaps the clearest illustration of how the Germans tormented the Jews before destroying them altogether, until their victims, ground down and crushed in mind and spirit, would bow to the inevitable. . . .”⁴¹ Often, these sterilizations came in the form of vaccinations: “I was a very, very sick girl. I must mention to you that among other atrocities, the Germans before they sent us out for forced labor, vaccinated us to sterilize every Jewish woman so we should not have a chance to have children in case we should survive this ordeal.”⁴² Sterilizations removed women from the “People’s Community” and had a profound impact on their procreative roles. It robbed them of their perceived social and actual self-worth, halting their family bloodline, and ending their family’s history.

The final element of Nazi sexual violence came in the form of eugenics and experiments on female inmates and prisoners in several concentration camps. This targeted women’s bodies, particularly their reproductive capacities. While Nazi medical and scientific experimentation affected both men and women, women experienced particularly violent experimentation due to their roles of reproducers. In addition to sterilization and forced abortions, other types of experiments were also carried out on women and pregnant women. Survivor Magda Blau explains fearing being taken for experiments: “But then, naturally, they made also a very bad experiments. Brutal experiments, without any anesthetic. Terrible! And the girls suffered. And the radiation they made. And I tell you, it's terrible. And when they finished with the experiments, they send them to Birkenau where they didn't last long.”⁴³ Several reports emerged years after

⁴¹ Hedgepeth and Saidel, 184.

⁴² Alice Adler, interview with the United States Holocaust Memorial Museum, April 11, 1986.

⁴³ Magda Blau, interview with the United States Holocaust Memorial Museum, January 28, 1990.

the liberation of concentration camps that highlighted the ways in which SS doctors would practice surgery and other procedures on prisoners in the camps, particularly women. Holocaust survivor Antonin Hilavacek recounted that even after the liquidation of the Buchenwald camp, many Germans still stayed in the camp because there was an experimental hospital there: “they stayed because there was this experimental hospital there. For example they might have operated on women’s breasts. German doctors were teaching themselves in this way.”⁴⁴ These forms of experiments, particularly targeting the female reproductive system caused not only physical pain but extreme psychological trauma. During this time period, childbearing was of particular importance and fundamental to a woman’s life—removing or somehow limiting these capabilities was a form of violence and shame that persisted with real scars and loss of biological power.

Women of reproductive age were in particular danger of sexual violence due to their roles as reproducers, not only of children, but also of Jewish culture and tradition. “The reproductive body of the Jewish woman became a biological danger,” argues Banwell, “as their wombs would bear future generations of Jews. To create a superior Aryan race, Nazi race-hygiene policies demanded the elimination of inferior races.”⁴⁵ In many instances of sexual violence, German soldiers targeted the reproductive features of women’s bodies. Survivor Doris Roe recalls being gang raped by 12 SS soldiers in a doctor’s examination room, and after they were “finished,” the officers bit off her nipples so that she could not breastfeed her child.⁴⁶ Sexual violence against ethnically and racially “undesirable” women stemmed from extreme racist ideology espoused by

⁴⁴ Hilavacek, interview.

⁴⁵ Banwell 214.

⁴⁶ Ibid.

national Nazi ideology. Despite sexual relations between Aryans and non-Aryans being illegal, racially “inferior” women were targeted as an expression of hate against their ethnic identity rather than their sexuality or gender identity. The specific targeting of the female reproductive system proves that racial violence and sexual violence went hand in hand.

Aftermath and the Nuremberg Trials

The toll of human suffering and deaths in the Second World War reached into the hundreds of millions worldwide. After six long years in Europe, the War finally came to an end in May 1945 as Allied powers closed in on Germany, liberating concentration camps, and discovering piles of corpses, bones, and human ashes, mutilated and tortured bodies, victims suffering from starvation and malnutrition, and diseases and infections. Many survivors, having nowhere to go, were placed in displaced persons camps while others immigrated to other parts of the world in an effort to rebuild the lives that they had lost.

In 1942, the Allied powers announced their determination to prosecute Nazi war criminals and issued a joint declaration officially identifying the mass murder of European Jews, what would in a few short years be called, genocide.⁴⁷ The Nuremberg Trials, arguably the most well-known genocide trial in history, brought several war criminals to justice and set a precedent for future post-genocide legal framework. The trials began in 1945 and continued through 1946 and judges from the Allied powers—Great Britain, France, the Soviet Union, and the United States presided over the hearings.

⁴⁷ United States Holocaust Memorial Museum, “War Crimes Trials,” accessed September 20, 2017. <https://www.ushmm.org/wlc/en/article.php?ModuleId=10005140>.

The establishment of the International Military Tribunal, held in Nuremberg, Germany, marked the beginning of decades' long hunt to bring Nazi war criminals to justice. In these trials, "major" war criminals were tried, individuals whose crimes could not be limited to a particular geographic area. Despite the large number of Nazis who were responsible for the deaths of twelve million people, only 22 major war criminals were tried at Nuremberg. The defendants were tried for having committed:

...crimes against peace—defined as participation in the planning and waging of a war of aggression in violation of numerous international treaties; war crimes—defined as violations of the internationally agreed upon rules for waging war; and...crimes against humanity—"namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecution on political, racial, or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of domestic law of the country where perpetrated.⁴⁸

Of these 22 criminals, nineteen were found guilty of one or more of these crimes. Twelve were sentenced to death, three defendants were sentenced to life imprisonment, four sentenced to prison terms ranging from 10 to 20 years and 3 defendants were acquitted.⁴⁹

In addition to the trials held at Nuremberg, which tried major perpetrators of crimes, an overwhelming majority of post-1945 war crimes trials prosecuted lower level SS officers.⁵⁰ Initially, allied powers occupying Germany and Austria began trials against individuals that were responsible for the capture and murder of Allied troops and personnel and later expanded their efforts to hold trials for concentration camp guards

⁴⁸ United States Holocaust Memorial Museum, "The Nuremberg Trials," accessed September 30, 2017. <https://www.ushmm.org/outreach/en/article.php?ModuleId=10007722>.

⁴⁹ USHMM, "War Crimes Trials."

⁵⁰ Ibid.

and others who had committed war crimes against Jews during the Holocaust.⁵¹ Germany itself, guided by Allied powers, began trying Nazi-era war crimes: “To date, the Federal Republic (in its old manifestation as West Germany and in its current status as a united Germany) has held a total of 925 proceedings trying defendants of National Socialist era crimes.”⁵² Additionally, many nations that Germany occupied have also held tribunals and trials for SS soldiers and national collaborators. The long list of countries that have tried Nazi-era crimes include, Poland, the former Czechoslovakia, the Soviet Union, Hungary, Romania, and France.⁵³ One of the most famous trials was that of Adolf Eichmann, the chief architect in the deportation of European Jews, who was tried in Jerusalem. Despite numerous trials, most of the high level Nazis were tried, but the vast majority of lower level perpetrators have not been brought to justice. And it is this population of soldiers, policeman, SS officials who operated on the ground in the killing fields, camps and ghettos who committed the most rampant and flagrant acts of rape and sexual abuse.

The question many have been left with since the end of the Nuremberg trials is, did they bring justice to the victims? The answer to this question will depend on a variety of factors. However, most would agree that Nuremberg was both precedent setting, while others would also argue that not enough was done to bring justice for the millions of victims of the Holocaust. Women were a particular group that did not receive the justice they deserved at these trials. Nuremberg became essential in a new world order, one that

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid.

tries (and convicts) those who have committed the most egregious human rights violations. It brought a new and revolutionary understanding of law, holding that:

War is essentially an evil thing. Its consequences are not confined to the belligerent states alone, but affect the whole world. To initiate a war of aggression, therefore, is not only an international crime; it is the supreme international crime, differing only from other war crimes in that it contains within itself the accumulated evil of the whole.⁵⁴

According to Professor Leila Sadat, “Nuremberg taught us to re-conceptualize the notion of war and its worst consequences, as well as to reframe our response to it.” This is of significant importance to the international community today as the trials provided groundbreaking new ways to try (what would later be known as) genocide and those that perpetrated crimes against humanity. The Nuremberg principles have made their way into international human rights law and set the standard for prosecution of genocidal acts.

However, while looking at the impressive successes of Nuremberg, it is also important to look at the failures of the trials. Unfortunately, for many reasons, rape and sexual violence as crimes against women and their communities went unacknowledged at the trials. This particular oversight is not necessarily a condemnation of Nuremberg and its impact on international human rights law, but rather a failure of society to view crimes of a sexual nature as not just “women’s issues” but crimes against humanity, with lasting impact not only on the victims but the victims’ families, communities, and nations as a whole. Victims of rape and sexual abuse at the hands of Nazi perpetrators remained in

⁵⁴ Leila Nadya Sadat, “The Nuremberg Trial, Seventy Years Later,” Keynote Address delivered at the International Nuremberg Principles Academy for “The Nuremberg Principles 70 Years Later: Contemporary Challenges” conference commemorating the 70th anniversary of the Nuremberg Trial. November 20, 2015, 4.

silence, with their shame not allowing them to speak up. Though survivors witnessed the convictions of several men responsible for genocide, at that time, women did not have the option to seek justice from their attackers and rapists. They were forced, until only recently, to conceal what had happened to them. It haunts them that their rapists were never caught. The Nuremberg trials were trailblazing, and since then, most other international tribunals have been modeled after Nuremberg. Had sexual violence and wartime rape been included in the original trials, perhaps more women would have come forward with their own stories, and perhaps the way the international community addresses genocidal rape today would be different.

Chapter 3: Cambodia and the Khmer Rouge

“Some [women] were brought [to prison] because they had refused to marry...they raped those women...I have no idea how many people raped me per night, they raped women in front of us and I just closed my eyes. My body was shaking. I cried day and night...there was one girl, she was so beautiful but she died after one night because they raped her to death.”¹

- “CP,” Cambodian Rape Survivor

Background

The Communist Party of Kampuchea (CPK), more commonly known as the Khmer Rouge, took control of Cambodia’s capital, Phnom Penh, and the rest of the country on April 8, 1975. During the three years and eight months that the Khmer, led by Pol Pot, controlled Cambodia, an estimated 1.5 million people were killed through execution, starvation, and forced labor.² The Khmer Rouge was an extreme radical Maoist party that established Cambodia as a Communist state. Immediately after seizing power, the Khmer Rouge began eliminating any seemingly capitalist entity, commodity, or system. Based on the notion of taking Cambodia to “year zero,” or a complete “re-birth” of the country, the Communist party abolished the monetary system and banks, schools and universities, religious institutions, postal networks, and private property. They destroyed phone lines and other public infrastructures and turned schools, religious and government buildings and shops into prisons, stables, re-education camps, and granaries.³ They destroyed any and all remnants of what they deemed as “capitalist

¹ Theresa de Langis et al., “Like Ghost Changed the Body: A Study on the Impact of Forced Marriage under the Khmer Rouge Regime,” *Transcultural Psychological Organization Cambodia*, (October 2014): 86.

² Nakagawa Kasumi, “Gender-Based Violence During the Khmer Rouge Regime: Stories of Survivors from the Democratic Kampuchea (1975-1979),” *Asian Pacific Year Book of International Humanitarian Law* 2, (2006): 9.

³ Kasumi, “Gender-Based Violence,” 20.

pleasures.” In a short period of time, the Khmer Rouge swiftly took control of all aspects of family and social life and imposed a governing system known as the Angkar (literally translating to “the organization”) that dictated every aspect of daily life.⁴ The Angkar operated as the all-knowing, all-seeing system that instructed its people to “contribute to the achievement of the revolution” through any means necessary.⁵ It served as “master of the waters, master of the earth” according to an official slogan during the Khmer Rouge regime that encouraged all people to lay down their lives for the Communist revolution.⁶

No aspect of Cambodian society was safe from the Communist cause—including family and social structures. Citizens living in the country’s capital, Phnom Penh, were forcibly “transferred” to the countryside where they would pay their debts (for having capitalist inclinations) through forced labor. A drastic change that took place during Pol Pot’s regime focused on the abandonment of the traditional family unit which had once been the center of social and communal life in the country. This change had a lasting effect on the population. Before the Khmer Rouge took power, Cambodian families were often strong and unified, with mutual trust and respect between family members and their communities.⁷ One of the policies of the Angkar was the total destruction of these familial traditions and values. Husbands and wives were separated and often never reunited, infants were removed from their mothers while still breastfeeding and older children were removed from their homes in order to work in mobile groups or as child soldiers. Family members and neighbors were forced to spy on each other and report any

⁴ Rochelle Braaf, “Sexual Violence Against Ethnic Minorities during the Khmer Rouge Regime,” *Cambodian Defenders Project*, (March 2004): 5.

⁵ Kasumi, “Gender Based Violence,” 11.

⁶ Ibid, 11.

⁷ de Langis et al., 24-25.

“anti-government” sentiments or actions back to the Angkar.⁸ This tactic effectively dissolved the ties between parents and children, neighbors and friends. Every action was meant to contribute to the revolutionary cause. Forced labor and the rise of labor and re-education camps, widespread starvation and poverty, beatings, torture, murder and other crimes against humanity characterized the Khmer Rouge regime.

Rape and sexual violence were widespread during this time. The Khmer Rouge employed this kind of violence as a strategy to: control and intimidate communities, both politically and socially, eradicate ethnic minorities,⁹ reward loyal soldiers, and create an ultra-communist/rural agrarian state. Traditional familial structures and marriage customs were replaced with forced marriage¹⁰ and spousal rape. No marriage could occur without the approval of the Angkar. Women were also “given” to soldiers and loyal members of the government as “gifts,” wives or as sex slaves. Because women were forced into these marriages, the sex that occurred within these unions constituted rape.¹¹ Likewise, sexual violence, including sexual mutilation, rape with foreign objects, sexual humiliation and gang rape, was perpetrated on a massive scale against ethnic minority women. Another

⁸ Kasumi.

⁹ Ethnic minorities targetted by the Khmer Rouge include the following: ethnic Vietnamese, Khmer Krom, Khmer Islam and Cham. See Braaf, xi.

¹⁰ The definition of forced marriage that will be used in this chapter, and specifically in the case of Cambodia will be based off of the study, “Like Ghost Changes Body: a study on the impact of forced marriage under the Khmer Rouge regime” by the Transcultural Psychological Organization Cambodia.”

¹¹ It is important to clarify what consent means in this context. Consent cannot be given in war, genocide and other contexts that are characterized by domination of one group over another. The members of the subjugated group cannot freely give consent. Scholar Rebecca Whisnant offers essential insight into this understanding of consent: ““since it is to be expected that in a patriarchal society men frequently hold positions of social, legal, and/or institutional power over women and are thus positioned to withhold important benefits from women who refuse them sexual access, in addition to threatening harms and penalties. Viewing at least certain kinds of nonviolent coercive pressures as incompatible with meaningful consent may yield the conclusion that some quid pro quo sexual harassment is also rape.” For more information see Rebecca Whisnant, "Feminist Perspectives on Rape", The Stanford Encyclopedia of Philosophy, Stanford University (Fall 2017 Edition) <https://plato.stanford.edu/cgi-bin/encyclopedia/archinfo.cgi?entry=feminism-rape>.

tragic outcome of Khmer Rouge policies were food shortages that resulted in women trading sex for survival or to feed their families. With the hope of receiving more food, clothing, special treatment, or medicine, Cambodian women engaged in sex with soldiers and other government officials. Each of these is an example of the strategic campaign of sexual violence employed by the Khmer Rouge.

Forced Marriage/Marital Rape

The Khmer Rouge regime used sexual violence in the form of forced marriages and (en)forced conjugal relations as a strategy to help establish and maintain an ultra-nationalist military state. Throughout the country, the Angkar established efficient and pervasive forced marriage procedures that, Morton Sklar, International Criminal Court attorney, said were “organized, systematic, and widespread.”¹² Forced marriages served as a calculated tool for the Maoist state for the purpose of establishing long-lasting control over the country. The Angkar believed that marriage was not to be a private union between two people; rather, marriage (and procreation) served to benefit the state. The widespread policy of forced marriages left a serious and long-lasting impact on the victims, their children, and the country as a whole, which are still visible today.

Marriages prior to the Khmer Rouge Regime

Marriage in Cambodia changed drastically following the establishment of the Khmer Rouge regime in 1975. Before the regime took power, marriage was regarded to be highly religious and spiritual and often included familial and community involvement.

¹² Morton Sklar, Interview with Larissa Peltola, February 22, 2018.

Traditional marriages in Cambodia between men and women were most often arranged, *with consent*, by parents for their children. With the help of their parents, men initiated proposals to their future wives. While family members were closely involved throughout the process, marriages were not coercive and required the consent of both parties involved. Mothers mostly arranged marriages and in most cases “the child’s own inclinations and desires were taken into consideration and he/she [was] not forced into doing something distasteful.”¹³ For centuries, this practice created strong alliances (out of necessity and convenience) between whole families rather than just individuals, and facilitated solid and interconnected family units. “The cohesive family unit,” according to a study of the effects of forced marriage in Cambodia, “was considered the foundation of a harmonious society.”¹⁴ Family and community members, living and dead, were incorporated into the marriage process from beginning to end. Cultural and Buddhist religious practices were observed in the marriage ceremony, including making offerings to the “collective ancestral realm.”¹⁵

In a majority of cases, the karmic importance of weddings and marriages, including choosing the “right” spouse, and the overall success of a union served as a sign of merit in past and future lives. Similar marriage practices took place within non-Buddhist Khmer Cham (Muslim) communities as well. Marriages and strong unions also indicated the overall achievement and health of a community. Once a couple married, they returned to live in their community and would contribute to its overall success and

¹³ De Langis et al., 24.

¹⁴ Ibid, 24.

¹⁵ Ibid, 25.

the success of each of their families. As an institution, marriage served a purpose and came with particular rights and responsibilities for each spouse. As in many other cultures, these roles and responsibilities were gendered, and women were placed in relatively subordinate positions. Men were tasked with earning wages while women were typically in charge of the household economy. The idealized woman was tasked with serving as the dutiful wife and daughter, responsible for her family's honor. Women were expected to be chaste until marriage and could not engage in sexual relations outside of marriage. These acts would significantly impact a woman's status in society and the reputation of her family. Lifelong marriages signaled positive "karma" for families and communities, which explains the importance of arranged marriages in Cambodian culture and why it was such a destructive aspect of the genocide that impacted women.

Forced Marriage during the Khmer Rouge Regime

The new practice of marriage became one without karmic importance and one that ensured the overall achievement of the state rather than that of the family or community. This brutal campaign also aimed to control sexuality, thereby ensuring that couples would not be emotionally bonded to each other but be loyal only to the revolution. This would guarantee an increase in birth rates and that these children would be indoctrinated into the revolution.¹⁶ In order to maintain control of the population and create a culture of fear, intimidation, and loyalty to the regime, the Angkar destroyed the traditional family unit in Cambodia and replaced traditional family and marriage practices with policies of

¹⁶ Maria Lobato, "Forced Pregnancy During the Khmer Rouge Regime: Acknowledging Forced Pregnancy as a Distinct Crime in the ECCC Proceedings," *Cambodian Human Rights Action Coalition*, (2016): 10-11. https://kh.boell.org/sites/default/files/maria_lobato_forced_pregnancies_during_kr_regime_march2016_spr_ead.pdf.

forced marriage and rape. In an effort to enforce commitment to the revolutionary cause, the Angkar restructured society in the image of a collective and unified “family” headed by the Angkar. Just as before, family success was considered key to the overall health of a community; however, the Angkar believed this form of success would contribute to the revolution and could only be achieved through the state’s control of marriage.¹⁷ In comparison to wedding and marriage traditions, the Angkar took over the role of the parent by coupling spouses by force and without the consent of each. Frequently, couples were complete strangers, often only meeting the day their marriage was supposed to take place. Family members were not allowed to attend weddings and were not consulted on the matches. Neither women nor men had the option of rejecting their match or rejecting the arranged marriage altogether. Traditional family life, as well as individualism, was seen as a threat to the people’s loyalty to the new government and a danger to the Maoist revolution.¹⁸ Forced marriages and the abolition of the family unit facilitated a cultural erasure of pre-Khmer Cambodia. Religion, which before 1975 was an important component to marriage practices, was abolished, resulting in the marriages of Khmer Buddhists and Khmer Muslims and the near complete destruction of cultural practices and religious traditions.

Forced marriages by the Khmer Rouge brought significant changes to Cambodian culture. In addition to destroying traditional wedding and marriage ceremonies and customs, the implementation of forced marriage also included widespread rape and sexual violence. While sexual violence affected both women and men, women

¹⁷ Lobato, 10.

¹⁸ Lobato, 9.

disproportionately experienced more of this violence because of the husbands forced upon them by the Angkar. Rape within these marriages was not only extremely common but was encouraged and perpetrated with impunity.¹⁹ The goal of these forced marriages was not to unite families and communities, but to produce children for the future of the revolution. After the wedding ceremony, the married couple, despite being strangers, was forced to stay together for several days in order to consummate the marriage. Often, soldiers or *chhlob*, Khmer Rouge spies, stayed with the newly married couple to ensure that consummation had occurred:²⁰ “People who were married at that time were treated like animals. We could not protect our bodies [genitals], like our parents had protected our bodies. I was raped and they stayed there to watch...We were forced to mate like dogs and cats.”²¹ In many cases, wives refused to marry or consummate their marriages, thereby resulting in punishments of beatings, torture, forced labor, and rape by husbands or soldiers. Many of these rapes resulted in pregnancies, a strategic objective of the Khmer Rouge. In addition to forced marriages and forced pregnancies, the Khmer Rouge also used rape and sexual violence on a massive scale to achieve other goals.

Rape/Sexual Violence in Prisons and Re-education Camps

The Khmer Rouge established prisons and “re-education” camps, as well as forced labor camps, throughout the country for the purposes of punishing and controlling “non-revolutionary” citizens. The prisoners sent to these prisons and camps were those deemed as “lazy:” people who lived in large cities, anyone who expressed capitalist

¹⁹ de Langis, 102.

²⁰ Ibid, 26.

²¹ Ibid, 98.

interests, people practicing religious traditions, and men and women who refused Angkar-arranged marriages.²² While forced labor camps were created to serve the needs of the state and to teach citizens discipline, re-education camps were created in an effort to either indoctrinate or punish those individuals deemed as counter-revolutionary. Many of these re-education camps were well known places where soldiers raped and sexually abused female inmates.²³ Many of the inmates were women who refused to marry or engage in sexual acts with the spouses the Angkar chose for them.²⁴ The culture of rape that the Khmer Rouge established extended to punishments within and outside of the prisons and camps. Women and men were raped as a punishment for disobedience and defiance of the state. Those who could no longer prove useful to the state as laborers, or those who were labeled as counter revolutionary, were killed. Through torture, rape and abuse, re-education camps taught respect and compliance to the revolution. Rape and sexual violence against women and men in prisons and camps were viewed as effective tools for re-educating subversives to be loyal to the government.

In an effort to seek out and eliminate enemies of the state, the Angkar actively sought out anyone that was suspected to have capitalist or non-communist sympathies. Political purges became common, even within the Khmer Rouge itself. S-21 was established in 1976 and became known as the most notorious execution center/prison of the Khmer Rouge. Located in a former high school in Phnom Penh, as many as 20,000 people were killed within this facility. Many more were beaten, raped, and tortured by

²² Karasumi, 20.

²³ Ibid, 20

²⁴ De Langis, 84.

soldiers in the S-21. Angkar officials used this site as a death camp for those who were labeled as “enemies of the people—” including officials from the previous Lon Nol government, educated professionals from the capital, students, monks who refused to abandon their religious beliefs, and others. They were sentenced to torture and execution. No one was exempt, not even Angkar officials or soldiers. Officials within the party who were accused of being enemies of the state were targeted for execution and were placed in S-21 to await their sentences. The political purging within the party likewise impacted their families and associates—a Khmer Rouge policy stated: “to kill the poison you must dig up the root” and as a result, an enemy’s spouse, children, and extended family were guilty by association and also detained, tortured, or killed.²⁵ Women, especially the wives and daughters of accused enemies, were specifically targeted for rape and sexual violence within the prisons. One testimony by a 16 year old girl (at the time of her arrest), Nam Mon, whose father was a Angkar soldier and then prisoner, attempted to hide her identity for fear that she would be raped and killed because of the actions of her father. “After the time they killed my parents, I was raped. They ordered my brother to kill my parents. After that they killed my brother. At that time, I didn’t tell them [the Khmer Rouge] I was my parents’ daughter. If I revealed I was their daughter, maybe I would be killed, since my father was a high government officer.”²⁶ During her imprisonment at S-21, Nan Mon was repeatedly tortured and interrogated to obtain her family affiliation and “enemy secrets.” Once guards discovered who her father was, she was raped: “[the guard] put

²⁵ Nam Mon, interview by Theresa de Langis, *Cambodian Women’s Oral History Project: Life Stories of Survival Under the Khmer Rouge Regime*, March 5, 2013. <http://cambodianwomensoralhistory.com/#/nam-mon-52-kampong-cham/>.

²⁶ Nam Mon, interview.

electric sock near my legs and arms, and I thought at first he would just interrogate me, but then he started to abuse me. I dared not to shout since I was afraid he would shoot me dead. I couldn't move. He had a gun with him. I was young, a virgin, I did not understand what was happening.”²⁷

Rape was not the only form of sexual violence women experienced at the hands of Khmer Rouge soldiers both in and out of the prisons and re-education camps. Soldiers used mutilation, sexual humiliation, and forced nudity with the intent to forcibly indoctrinate, intimidate, and inflict terror on “enemy” groups. Several interviews conducted with female and male survivors of the genocide mentioned the rape of female subversives with objects, typically wood and bamboo, which was often followed by further mutilation of the female body including the cutting off of a woman's breasts or buttocks, and more.²⁸ Mutilated bodies of women and men were often left in public places in an effort to intimidate or terrorize entire communities. Sexual humiliation was also common during the genocide. In a report by the Cambodian Defender's Project, one respondent recalls being shown graphic images of the Cambodian actress, Som Van Sodany, naked and mutilated in an effort to humiliate and intimidate the victim being shown the photos.²⁹ Other victims reported being shown photographs and videos of naked men and women. Soldiers targeted Khmer Cham—Cambodian Muslims—for sexual humiliation. Cham women were forced to cut their hair and forced to not wear traditional modest headscarves.³⁰ Cham women in many cases were also forced to marry

²⁷ Nam Mon, interview.

²⁸ Kasumi, 26.

²⁹ Kasumi, 26.

³⁰ Braaf, 13.

non-Muslim Cambodians and abandon their religious practices altogether. While forced nudity affected many women during the genocide, Cham women were disproportionately singled out for this specific form of humiliation. Because Cham culture encouraged female modesty, soldiers forced Cham women to undress and stand in front of soldiers, other men and women in their own communities or in prisons and camps. One Cham respondent in the same report recalls having to strip in front of Khmer soldiers holding rifles: "...Then we took out clothes off and sat down...At that time we cried so much and were terribly afraid about whether they would rape, torture, or kill us. [The soldiers] said to us 'do not cry, no one kill you. We love you.' They walked around us many times and touched out cheeks while saying 'your skin is very beautiful.'"³¹

Sex for Survival

During their reign of terror, the Khmer Rouge regulated distribution of food, which led to high rates of starvation and malnutrition in the country. Anyone that sought to obtain food outside of what was provided by the government, by either stealing or foraging for food in the forests or rivers, would be beaten, tortured, or killed. Medicine and other necessities were also scarce and inaccessible. Due to the closure of all hospitals and individual-owned businesses, and with little to no external trade, Cambodians depended on their government for food, medicine, medical services, and goods. Desperation and extreme poverty forced many women to exchange sex for food, medicine and more. One Khmer Krom woman forced to marry a soldier explains her decision to exchange sex with her husband for food:

³¹ Kasumi, 27.

Even though I myself had difficulty in living, I had to try to survive. To receive enough food, I was willing to have sex with him. If I did not agree to have sex with my husband, he would not bring food to me when he returned home from work. If I had sex with him, he brought fish, meat and corn to me. I was willing to have sex with my husband to receive enough food to eat, even though I felt very tired.³²

The decision to exchange sex for survival is a particularly brutal one for Cambodian women as Khmer women were valued for their chastity and sexual purity. Women risked their own honor, the honor of their families, and in many cases risked potential execution or imprisonment if they were discovered committing these “crimes.”³³

Survival sex primarily affected young women and single mothers/widows. Many soldiers sought out young and beautiful women for rape and exploitation. A Khmer Cham survivor recalls:

[A Khmer Rouge cadre] rode the horse to meet me, he tried to persuade me but I never agreed [had sex] with him, I would rather die. I was still a child. He asked me some questions about this and that. He told me that if I agreed to go with him, I would get foods to eat and foods for my family, and my family would not live in hardship anymore. I was about 17 or 18 years old.³⁴

In Cambodian tradition, daughters were expected to take care of their parents and families. This was true in many cases under the Khmer Rouge regime: daughters were expected to sacrifice themselves, their bodies, and their honor for the sake of their families.³⁵ This resulted in the brutal rapes and sexual abuse of women exchanging their bodies for their survival and the survival of their children/parents/families. In this case, survival sex is also categorized by the lack of physical resistance by rape victims. A common belief among the Cambodian people during the Khmer regime was that, in order

³² Braaf, 35

³³ Ibid, 36

³⁴ Ibid, 35.

³⁵ Kasumi, 25.

to cover up their crimes, the soldiers would kill the women they had raped.³⁶ This belief, reinforced by Cambodian culture, pressured victims of sexual violence to remain silent, but also established a culture of fear that rape and murder went hand in hand. Women that were propositioned or forcibly taken by soldiers feared that their attackers would kill them if they resisted. Instead, many Cambodian women did not attempt to fight off their rapists and surrendered their bodies in exchange for survival. A survivor who was raped by two soldiers when she was twelve years old recounts the consequences of resisting her attackers:

I tried to protect myself by keeping my legs next to each other, but they forced open them. So I dared not move because I was afraid they would break my legs. I just let them do whatever they wanted to. Only one of them could put his penis inside me. The first man could not because his sexual organ was so big that he could not insert it. The first man said, “Today I couldn’t succeed, but next time I will make the vagina wider open.” Then, he let the other man have sex with me. After the rape, they said, “If you tell anybody about this story, your whole family will be killed because all of you have been classified as the Angkar’s enemies already.”³⁷

Another victim, Leang Korn, recounted that she had experienced multiple gang rapes during the Khmer regime. During her first rape, she resisted her attackers and tried to escape, clawing at them with her nails, which resulted in a beating so brutal that she lost consciousness and woke up with no memory of how many men had raped her. During her second rape by soldiers, she did not fight back: “I was pulled into the forest, and I prayed for my parents’ virtue to save me. I thought, again I will be raped. I decided not to fight back this time, and they may have mercy on me to keep my life. I dared not say a word or

³⁶ Ibid, 9.

³⁷ Ibid, 3.

move.”³⁸ The testimonies of these women highlight the horrific, compromised and untenable positions women were put in during the genocide: whether to resist and fight back, which could result in beatings, torture, starvation, or death, or trade sex for survival.

Extraordinary Chambers in the Courts of Cambodia Trials

The Khmer Rouge regime ended on January 6, 1979 after four years, 1.5 million deaths, and a countless number of rapes, sexual violence, and torture. After numerous attempts over a 30-year period to bring Khmer Rouge officials to justice, it was not until 2006, 27 years after the fall of the communist regime, when the Extraordinary Chambers in the Courts of Cambodia (ECCC) was established. In 1997, the United Nations agreed to hold a hearing on the genocide, yet it took three more years for judges in the ECCC to be sworn in. The ECCC was not fully operational and able to begin trials until June 2007. The purpose of the ECCC was to “bring to trial senior leaders of Democratic Kampuchea and those who were most responsible for the crimes and serious violations of Cambodian penal law, international humanitarian law and custom, and international conventions recognized by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979.”³⁹ However, the ECCC’s jurisdiction was limited to: homicide, torture, and religious persecution. Under Cambodia’s 1954 Penal Code, the crime of genocide as defined in the Convention on the Prevention and Punishment of the Crime of Genocide (1948), crimes against humanity, grave breaches of the Geneva Convention of 1949,

³⁸ Leang Korn, Interview with Theresa de Langis, *Cambodian Women’s Oral History Project: Life Stories of Survival Under the Khmer Rouge Regime*, March 15, 2013, <http://cambodianwomensoralhistory.com/#/leang-korn-60-koh-kong/>.

³⁹ Jarvis, 21.

destruction of cultural property by the Hague Convention of 1954, and crimes against internationally protected persons pursuant to the Vienna Convention of 1961.⁴⁰ Article 29 of the ECCC specifies that:

Any suspect who planned, instigated, ordered, aided and abetted, or committed the crimes shall be individually responsible for the crime, regardless of [their] position or rank...The fact that any of the acts were committed by a subordinate does not relieve the superior of personal criminal responsibility if the superior had effective command and control or authority and control over the subordinate, and the superior knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators...The fact that a suspect acted pursuant to an order of the Government of Democratic Kampuchea or of a superior shall not relieve the Suspect of individual criminal responsibility.⁴¹

While the ECCC brought to trial several officials connected to the genocidal campaign of the Khmer Rouge, many victims feel that not all those who were responsible for genocide were brought to justice, particularly those who committed sexual violence. Despite prosecutors trying forced marriage in the ECCC proceedings, the trials, and the international community as a whole, did not do enough to prosecute rape and other forms of sexual violence committed by the Khmer Rouge. Rape itself was not considered its own crime in these proceedings. According to the Extraordinary Chambers in the Courts of Cambodia's briefing on the Khmer Rouge trials (in partnership with the United Nations), rape was considered a crime against humanity along with other crimes like mass murder, extermination, enslavement, deportation, torture, imprisonment,

⁴⁰ Ibid, 22.

⁴¹ Ibid.

persecution on political, racial and religious grounds, rape and other crimes of sexual violence.⁴² None of the defendants were tried specifically for rape or sexual violence.

The ECCC charged five high-ranking members of the Khmer Rouge with genocide, crimes against humanity, grave breaches of the Geneva Convention, and other crimes under Cambodian law. Since the trials began in 2006, they have cost over 300 million dollars, and have secured three convictions: life sentences for Kaing Guek Eav, the man responsible for overseeing an interrogation center, Nuon Chea and Mhieu Samphan, for crimes against humanity.⁴³ Pol Pot died in 1998 and two of the original defendants have passed away since the trial began. The ECCC was originally positioned to be the “largest reckoning since the Nuremberg trials for particularly heinous acts”⁴⁴ however the truth is very different. Since the trials began, only five defendants have been convicted in the courts. Allegations of corruption and politicization have plagued the ECCC’s long and grueling progress. “Many established figures in Cambodian politics today previously had positions of influence within the Khmer Rouge,” according to Time magazine, “Cambodia’s strongman Prime Minister Hun Sen was himself a former Khmer Rouge battalion commander, and lost an eye in battle before fleeing to Vietnam to escape an internal purge. (In 1975, his battalion oversaw a brutal crackdown against the Muslim Cham minority group, although Hun Sen claims to have been recovering in hospital at the time.)”⁴⁵ Morton Sklar argues that the failures

⁴² United Nations, “An introduction to the Khmer Rouge Trials,” *Secretariat of the Royal Government Task Force* 4, (2004).

⁴³ Seth Mydans, “Khmer Rouge Trials, Perhaps the Last, Nears End in Cambodia,” *New York Times*, June 23, 2017, <https://www.nytimes.com/2017/06/23/world/asia/cambodia-khmer-rouge-vietnam.html>.

⁴⁴ Charlie Campbell, “Cambodia’s Khmer Rouge Trials are a Shocking Failure,” *Time*, February 13, 2014. <http://time.com/6997/cambodias-khmer-rouge-trials-are-a-shocking-failure/>.

⁴⁵ Campbell, “Cambodia’s Khmer Rouge Trials are a Shocking Failure.”

of the ECCC stem directly from the Prime Minister's unwillingness to prosecute former Khmer forces: "the reason why the Tribunal never reached these issues and cases was that Prime Minister Hun Sen did not want to allow investigation of cases that might reflect on his own activities and the atrocities of those now in high level positions with his government (the Foreign Minister for example), during the Khmer Rouge regime. His concern was not particularly focused on the sexual abuse issues, but rather on protecting his government from investigation and accountability on a more general basis." Even beyond Prime Minister Hun Sen's unwillingness to cooperate, Sklar believes that the Prime Minister played an active role in preventing justice by bribing Cambodian judges, dismissing several international judges, and even covering up certain abuses by the Khmer.⁴⁶ Likewise, Khmer Rouge officials close to the Hun Sen administration have been barred from testifying. Furthermore, only a handful of officials have been tried in the proceedings while countless others (typically lower-ranking officers and soldiers) responsible for murder, rape, and ethnic cleansing, have not been placed on trial and still reside in the communities in which they carried out mass killing, forced labor and other abuses. Activist groups, advocates for survivors and many Cambodians do not feel that the ECCC has provided true justice for the survivors of this genocide.

While the ECCC heard testimonies on forced marriages, many within the international community felt that the proceedings grossly overlooked the crimes of rape and sexual violence perpetrated against so many women. Today, the legacy of sexual

⁴⁶ Morton Sklar, interview.

violence still resonates throughout Cambodia. Many women are still married to their rapists and have raised their attacker's children. These women still carry the emotional and physical scars in their hearts and on their bodies. Forty years after the genocide, victims still experience nightmares, PTSD, and other physical and psychological manifestations due to the trauma they experienced. Though the ECCC proved a step in the right direction for the prosecution of genocide, victims and survivors of genocidal rape have not, and may never, receive the justice they deserve.

Chapter 4: Guatemala

“I was twelve when I was taken to the army base with other women. The soldiers tied my feet and hands...They put a rag in my mouth...and started raping me...I do not even know how many soldiers there had a turn...I lost consciousness and blood ran from my body. When I came to, I was unable to stand.”¹

-Elena de Paz Santiago, Mayan Rape Survivor

Background

Guatemala's long and unique history of civil war, wide scale human rights violations, and genocide cannot be examined without first surveying the colonial context and history of the country beginning in the sixteenth century. The roots of Guatemala's genocide lay in the violent conquest of the country by the Spanish. Beginning in the sixteenth century, Spanish *Conquistadores* took over the country, establishing a colonial social, political, and economic system that exploited indigenous labor, land, and resources. Spanish colonizers subjugated indigenous communities, castigating native populations as racially and politically inferior. Spanish soldiers raped, mutilated, and committed genocide against indigenous women, men, and children. The colonial system, many indigenous activists argue, lasted for over 500 years.² The racial hierarchies, among other exploitative systems the Spanish established in the sixteenth century, formed the context and foundation that allowed for the twentieth century genocide against indigenous populations to take place.

¹ Victoria Sanford, Sophia Duyos Alvarez-Arenas, and Kathleen Dill, *Women and Genocide: Survivors, Victims, Perpetrators*, (Bloomington: Indiana University Press, 2018), 208.

² *500 Years*, directed by Pamela Yates, (2017, Guatemala: Skylight), Documentary Film.

The long and violent colonial legacy left a lasting impact on the country, including misogyny, cultural oppression, and a divide between *indios sucios*—dirty Indians—and “real” *Guatemaltecos*, non-Indian descendants of Spanish colonizers. Despite gaining independence from Spain in 1821, Guatemala was never a unified nation, too riven by social class divisions and racial hierarchies to have developed a national identity or unity.³ Little changed after independence—light-skinned descendants of the Spanish inherited lands and established massive plantations and businesses making them extremely wealthy, while exploiting peasant and indigenous slave labor. The most recent census in Guatemala recorded that nearly 70 percent of the population consisted of indigenous peoples, though experts believe these numbers were significantly higher before the genocide.⁴ Of the over 16 million person population, almost 90 percent of the country’s businesses were owned and controlled by only eight families.⁵

A shift toward agrarian reform took place when Jacobo Arbenz-Guzman was elected as President of Guatemala in 1951. Arbenz severely limited the power of the United Fruit Company—a US corporation that stole and exploited large amounts of land from poor communities—by giving money and land back to peasants and members of the working class.⁶ For the first time in centuries, racial and economic reform seemed possible. The perceived anti-capitalist reforms enacted by the Arbenz government infuriated the United States government, leading to a CIA backed coup which overthrew Arbenz and sparked a 36 year civil war between the conservatives who had historically

³ Nicole Rafter, *The Crime of All Crimes* (New York: New York University Press, 2016), 189.

⁴ Dr. Irma Alicia Vazquez Nimatuj, “Activism and Social Change in Postwar Guatemala” (Presentation, Scripps College, Claremont, CA, October 4, 2017).

⁵ Nimatuj, “Activism and Social change.”

⁶ Rafter, 189

controlled the country and oppressed its citizens, and the leftists who fought for land reform, better labor conditions, and indigenous rights. The civil war soon turned into genocide, characterized by a series of government sponsored human rights violations against indigenous (primarily Mayan) communities and a “scorched earth policy” which included a state-led initiative that resulted in more than 626 massacres of Mayan villages from 1978 to 1984.⁷ It is estimated that over 200,000 Mayan people died during these massacres.⁸

The genocidal campaign in Guatemala had several differences compared to other twentieth century genocides and campaigns of ethnic cleansing—it was one that was closely modeled after the Spanish colonial campaigns centuries earlier. The genocide against indigenous populations was not one that centered on political or economic power; rather, it was a modern day *Conquista*, a colonial campaign mirroring the one that had pitted Spanish colonizers against indigenous Mayans in the sixteenth century. Guatemalan soldiers, descendants of Spanish *Conquistadores*, viewed themselves as “modern-day conquistadores,” working toward the goal that their ancestors held 500 years before: the complete elimination of “savage” Indians. According to anthropologists, Victoria Sanford, Sofia Duyos Alvarez-Arenas, and Kathleen Dill, “Power in Guatemala is a *racialized* phenomenon and the symbolic superiority of white and ladino men over the Maya was a catalyst for genocidal violence.”⁹ In the same way, genocidal rape during this time period stemmed from the legacy of “colonizing” women’s bodies and

⁷ Nimatuj, “Activism and Social Change.”

⁸ Ibid.

⁹ Sanford et al, 208.

patriarchal ideology. Both were established by the Spanish and fueled by the misogynistic and gender based violence perpetrated against Mayan women.

Like their descendants centuries later, Spanish *Conquistadores* used rape and sexual violence against Mayan women during the colonization of what is now Central America. The Spanish sought to control Maya lands, territories, and resources and subjected the populations to a foreign religion, culture, and customs. According to scholar John Chuchiak, Spanish soldiers “took native women as their concubines and lovers. Some Spaniards were given women as gifts, and others took them by force. In fact, the first conflicts during the military conquest resulted from the Maya’s anger when the Spaniards raided their villages for the prettiest girls.”¹⁰ Sexual violence and the targeting of indigenous women intimidated communities, disrupted social organizations, and served as a weapon of genocide. In the Chumayel, seventeenth century books written by Mayan author and historian Chilam Balam, the author notes that the arrival of the Spanish also brought the destruction of traditional Mayan communities:

When the Spaniards arrived, they brought shameful things...The black sickness...The coveting of the beauty of girls...Whore-mongering came with them...The prostitution of the village girls came with them...Before they came, Oh brothers, there was not, there was not envy...Before the strangers came there was no suffering, nor was there robbing of men’s wives...With them came shameful things...With them came the selling of the women and the unclean things...With them came the end of the flower people.¹¹

Spanish soldiers abducted Mayan women for forced prostitution, forced concubinage, forced servitude, and for “improving morale” of the soldiers. Spanish conquistadores

¹⁰ John F. Chuchiak IV, “The Sins of the Fathers: Franciscan Friars, Parish Priests, and the Sexual Conquest of the Yucatec Maya, 1545-1808.” *Ethnohistory* 54, no. 1 (Winter 2007): 81.

¹¹ Chuchiak, 81.

sought to control and subjugate indigenous populations all over the Americas in an effort to gain economic and political control of the regions as well as “civilize” native peoples. Sexual violence was a prominent way in which the Spanish achieved these objectives.

Within this colonial mentality, white and ladino Guatemalans viewed indigenous communities, especially women¹² as the antithesis of a civilized society. During the most brutal period of the genocide, between the years 1981 and 1983, General and de facto President, Efraín Ríos Montt waged a wide scale ethnic cleaning campaign that resulted in the murders of hundreds of thousands of Mayan civilians and the wide spread rape of indigenous women. During the war, army soldiers were responsible for over 94 percent of all sexual violence against women; a third of the victims were minors and young girls.¹³ Ríos Montt initiated the genocide, beginning with a propaganda campaign against indigenous Mayan communities, and began targeting any indigenous or non-indigenous Guatemalans who questioned and fought against the repression, ethnic cleansing, and genocidal acts against indigenous communities.¹⁴ The systemic rapes and general sexual violence committed against Mayan women were not merely a byproduct of the genocide, but a strategic and systematic tool used to control the reproductive capacities of Mayan women, intimidate and suppress political uprising within Mayan communities, and to destroy the fabric of those communities.¹⁵

¹² Part of this stems from the role of women in society, treated and considered inferior to men. Mayan women were especially viewed as “uncivilized” through their customs of wearing traditional Mayan dress.” See Irma Alicia Velázquez Nimatuj, “Transnationalism and Mayan Dress,” in *The Guatemala Reader: History, Culture, Politics*, ed. Greg Grandin et al (Durham: Duke University Press, 2011).

¹³ Sanford et al., 208.

¹⁴ Ibid, 210.

¹⁵ Sanford, Alvarez-Arenas and Dill argue that sexual violence against Mayan communities was not just a tool used by soldiers but a direct military strategy, under the direction of General Ríos Montt. They explain that soldiers were trained on the most “effective” ways to rape Mayan women: “Psychological operations

Eliminating the Mayan Bloodline

Paradoxically, Guatemalan soldiers raped women in an effort to re-establish a “civilized” Guatemala, one without the indigenous bloodline. One strategy the Guatemalan military used to ethnically cleanse the country was through forced impregnation. Mayan women were recognized as “reproducers” both biologically and culturally. By forcibly impregnating Mayan women, Guatemalan soldiers could take part in creating a generation of “more Guatemalan” (whiter) children. In part, this mentality derived from the colonial legacy that remained prevalent in Guatemala even centuries after initial contact with Spanish conquerors. By impregnating a Mayan woman, her child, and each generation after that, would have less indigenous blood and become more “Guatemalan.” This was a particularly effective tool both in ethnically cleansing Mayan communities and in demoralizing indigenous populations as a whole. In Guatemala, like in other countries in Latin America, the ethnic identity often comes through the father. Rapes which result in pregnancy prove an effective way to replace indigenous communities. According to criminal law professor Bernardo Feijoo Sanchez, “Finally, in societies where group membership is determined by the identity of the father, sexual aggressions and forced pregnancies can be a means to convey to children a new ethnic identity and in this way avoid the reproduction of the group.”¹⁶ Forced impregnation

for the troops included ‘recreation zones designed to maintain the soldier’s fighting spirit,’ which included ‘contact with the female sex.’” Sexual contact was a part of as soldier’s rest and recreation during training for the purpose of normalizing rape.” 211.

¹⁶ “Finalmente, en las sociedades donde la pertenencia al grupo es determinada por la identidad del padre, las agresiones sexuales y los embarazos forzados pueden ser un medio para transmitirles a los niños una nueva identidad étnica y de esta manera evitar la reproducción del grupo (Bernardo José Feijoo Sánchez, citado en Paz y Paz, 2005: pp..)” in Unión Nacional de Mujeres Guatemaltecas (UNAMG), “Tejidos Que Lleva el Alma,” *Equipos de Estudios Comentarios y Acción Psicosocial (ECAP)* no. 2 (Febrero 2011): 184.

proved a serious danger for Mayan women and was implemented strategically in an effort to destroy the Mayan bloodline.

Soldiers were given the orders to eliminate the Mayan bloodline, through any means necessary; this did not only manifest in the form of forced pregnancies but also in raping a woman as to render her infertile and unable to carry on her indigenous bloodline. In many cases, soldiers committed sexual violence and rape against Mayan women in an effort to make them physically unable to bear children. The International Federation for Human Rights reported that many of the victim and witness reports used during the Rios Montt trial proved that “pregnant women in their communities had their bellies slit open and were abandoned to their fate, and others lost their babies as a result of successive rapes. The destruction of unborn babies was documented in the expert reports, as the physical consequences of such tactics on the body are easily identifiable.”¹⁷ Many of these rapes were brutal in nature, involved using objects such as guns and other weapons to penetrate women’s vaginas, as well as violent gang rapes that were used to physically damage a woman’s reproductive system.¹⁸ The Comisión Para el Esclarecimiento Histórico (CEH),¹⁹ reports that women’s reproductive organs were violated with the purpose of rendering infertility: “...the bodies of the women were mutilated. It was

¹⁷ “Genocide in Guatemala: Rios Montt Guilty,” *International Federation for Human Rights (FIDH)*, (October 2013): 18.

¹⁸ Nimatuj, “Activism and Social Change”

¹⁹ Translates to the “Historical Clarification Commission.” The commission was established in response to reports of human rights violations during the Genocide.

objects in the vagina and anus such as splinters, knives or broken bottles.”²⁰ The trauma to the female body often proved unbearable.

In addition to physically attempting to render Mayan women infertile, many soldiers purposefully raped Mayan women in order to spread a sexually transmitted disease or infection, such as gonorrhea, syphilis, or HIV/AIDS in order to prevent her from having children or passing on the diseases to her future children. Though this was not the most common narrative among victim’s testimonies,²¹ several survivors report their experiences with soldiers raping them with these specific intentions in mind. One officer in the Guatemalan army reported that his superior used gang rape as a way to reduce the spread of sexually transmitted diseases among the troops while simultaneously passing diseases to Mayan women. Another military officer explained “There were some soldiers who were sick with gonorrhea and syphilis, so the lieutenant ordered them to pass last after the rest of us were done.”²² While there is no way to estimate how many women were exposed to sexually transmitted diseases and infections, and how many were infected or died due to complications from these diseases, there is little question of the culpability of the Guatemalan army in spreading these diseases and raping Mayan women in an effort to render them infertile and unable to bear children.

²⁰ “Los cuerpos de las mujeres eran mutilados. Se introducía objetos en la vagina y ano como astillas encendidas, cuchillos o botellas quebradas.” Comisión del Esclarecimiento Histórico CEH, *Memoria del Silencio. Las violaciones de los derechos humanos y los hechos de violencia*, Guatemala, 2005 in “Tejidos Que Lleva el Alma,” 193.

²¹ Is it believed that while the intentional spread of STDs to Mayan women was a strategy of the Guatemalan army, few reports exist proving this, partly because of victims’ shame in admitting to having at STD/STI’s and partly because few victims had access to medical services that could be used to diagnose and treat these diseases following their rapes.

²² REMHI, *Guatemala: Nunca Mas*, 2 (213-214,) in Sanford et al, 213.

Another pattern that emerged during the genocide was the rape and sexual violence committed against pregnant Mayan women. Violence against pregnant women was a method by which soldiers attempted to ethnically cleanse the Mayan community: many soldiers gang raped pregnant women with the hopes that the trauma would cause a miscarriage of the fetus. Because women, especially indigenous women, were viewed as reproducers responsible for carrying the indigenous bloodline, soldiers used extreme methods as an effective form of ethnically cleansing the population. Just as their ancestors had done, Guatemalan soldiers targeted pregnant women in the hopes that the trauma would render them unable to bear future children.²³ Dr. Irma Alicia Velazquez Nimatuj, expert witness during the Rios Montt trial in 2013, described the case of two pregnant Mayan women, along with other members of their community, who were gathered in order to be raped: the army “ordered all the neighbors, including women and children to meet at the school, where too [the army] had men detained and at the same time [the two women] were taken by six soldiers and were raped. [One woman] was eight months pregnant and even then was raped by six soldiers.”²⁴ In addition to rape, soldiers also used other violent means against pregnant women—primarily in the form of mutilating pregnant women’s bodies through the physical removal of the fetus from the body.²⁵ One survivor reported the common trend of soldiers to target pregnant women in

²³ Dr. Irma Alicia Velazquez Nimatuj served as an expert witness in the trial of General Efraín Ríos Montt in 2013. Her witness testimony involved several cases of rape and sexual violence against Mayan women as a result of direct order from General Ríos Montt. While much of the information that was used to inform this chapter came from the transcript of her testimony, Director Pamela Yates filmed a short documentary focusing specifically on Dr. Nimatuj’s testimony during the trial. The film can be found here: <https://www.youtube.com/watch?v=215Nz0Vqps0>. Future references of Dr. Nimatuj’s testimony will be cited as “Nimatuj, Witness Testimony.”

²⁴ Nimatuj, “Witness Testimony.”

²⁵ Nimatuj, “Witness Testimony.”

indigenous communities: “You could see how [soldiers] beat them in the stomach with their weapons, or they put them to bed and the soldiers jumped on them again and again until the child died.”²⁶ Soldiers would tie up and detain pregnant Mayan women, according to the CEH, and would rape and beat them until the fetus had died. Other reports include cases of soldiers shooting women in the vagina and inserting other sharp objects in a women’s body in an effort to abort/kill the fetus.²⁷ The particular cruelty pregnant women endured during the genocide is unique to the case of Guatemala, and arguably stems from the long legacy of oppression and colonization. Because women are the carriers and reproducers of Mayan life and culture, their bodies were perceived as a threat to state desires to rid Guatemala of indigenous peoples.

Sexual Violence to Intimidate Communities

Sexual violence and rape were used against Mayan women in an effort to control communities and prevent any potential Mayan insurgency or rebellion. The army, especially during the Rios Montt regime, prepared its soldiers for genocidal actions by subjugating them to brutality and torture, training them to dehumanize indigenous people, and indoctrinating them to believe that indigenous communities were breeding grounds for subversives.²⁸ Soldiers were told to use any means necessary to suppress uprisings, even carrying out abhorrent attacks on civilian men, women, and children. Soldiers used

²⁶ “Se podía ver cómo las golpeaban en el vientre con las armas, o las acostaban y los soldados les brincaban encima una y otra vez hasta que el niño salía malogrado” (CEH, Tomo VI: 401), in “Tejidos Que Lleva el Alma,” 194.

²⁷ “It relates the cruelty with which they put their weapons in the vagina to rape and kill the fetus, how they planted a stick in the belly with the head of a man they had just murdered, and set fire to the body (AV4-300506)” translated from Spanish: “Relata la crueldad con la que le introducían sus armas en la vagina para violarla y matar al feto, cómo le plantaron un palo en el vientre con la cabeza de un hombre que acababan de asesinar encima, y le echaron fuego al cuerpo” in “Tejidos Que Lleva el Alma,” 193.

²⁸ Sanford et al., 213.

rape against Mayan women and girls in an effort to prevent subversives from fighting back against the regime. Much of this thinking came from women's traditional roles as reproducers, the vessels in which *subversives* were born. According to Sanford et al. "women's bodies were transformed into targets."²⁹ Women were raped, and also mutilated, tortured, and subjected to other forms of cruelty in an effort to prevent Mayan men from joining militarized indigenous groups. If men feared that their wives, mothers, sisters, and daughters would be raped or killed, few would take the risk of fighting against state sponsored repression or join rebel groups.

One of the ways the Guatemalan military spread fear in an effort to prevent insurgency from within Mayan communities was through the rape and mutilation of Mayan women. Women and girls were often abducted from their villages and brutalized: some victims were returned to their communities where they would face the shame and humiliation that came with being a rape survivor, while others' mutilated bodies would be left in public areas. Jean Franco recalls the widespread mutilation of Mayan women during the Rios Montt regime, "...In one case, a woman's breasts were cut off after the rape and her eyes were pulled out. Her body was left hanging on a pole with a stick in her vagina."³⁰ Franco continues by stating that soldiers achieved their objectives through the extreme dehumanization of Mayan men and women. "The very postures forced on raped women, argues Franco, "were designed to maximize their abjection."³¹ Sanford et al explains that in several army documents, Ixil Mayan women were designated the term,

²⁹ Sanford et al., 213.

³⁰ Jean Franco, "Rape: a Weapon of War," *Social Text*, 2 no. 91 (June 2007): 27

³¹ Ibid.

“cockroach” while Ixil Mayan children were referred to as “chocolates.”³² According to the CEH, soldiers put “women on all fours and then shot them, placing the gun in the anus or vagina.”³³ Franco explains, “The women were systematically mutilated beyond recognition, reduced to animal-like postures, their bodies defiled and dumped, reduced to inhuman objects.”³⁴ The CEH reports a number of exhumations of unmarked graves where many indigenous bodies were buried. The bodies of these corpses showed extreme cruelty and brutality, the “...cut throats, mutilated corpses, pregnant women with their bellies cut open with bayonets or machetes,”³⁵ in addition to these exhumations, survivors of the genocide remember “bodies strewn...on stakes, the smell of burnt flesh of those burned alive and dogs devouring abandoned bodies that could not be buried.”³⁶ Sexual mutilation of women’s and girls’ bodies served as an effective tool used to intimidate, and spread fear within indigenous Mayan communities.

Rape and sexual violence were also used as a form of punishment for “leftist” or “communist” guerilla groups. The female family members of those suspected of being revolutionaries or guerilla fighters were often raped and brutalized as a consequence of male relatives’ crimes against the state. Soldiers sought out the mothers, daughters, sisters, and wives of suspected soldiers to rape as part of an effort to prevent political uprisings in the community and discourage other Mayan men and women from joining guerilla groups. Sexual violence in this case served to “weaken the opposition even when committed on a more limited and targeted scale, to punish or eliminate specific ‘enemies

³² Ibid, 211.

³³ Franco, 28.

³⁴ Ibid.

³⁵ CEH, 3:49 – 50 in Franco, 26.

³⁶ Franco, 26.

of the state.”³⁷ By targeting individuals for their participation in rebel organizations, the army effectively signaled to potential recruits their fate if they behave similarly. The army sought to induce some subversives to either abandon or betray the opposition.³⁸ In this pattern of political violence, sexual violence would not be limited to particular ethnic or religious communities, as this would suggest a different intent. Although limited and narrower in scope, the effect of the violence is the same—undermining the ability of the rebels to recruit and retain members or supporters. This type of repression, by targeting the women of the communities, inherently undermines the ability of rebel forces to recruit members and retain supporters—men are less likely to take up arms against the state if rape and sexualized violence is the punishment for their actions.

In an attempt to intimidate, terrorize, and demoralize communities, soldiers made efforts to gang rape Mayan women. Gang rapes were a part of a campaign to dehumanize Mayan women and create a sense of comradeship among the soldiers. “Gang rapes consolidated the rapists as a group who mingled their seed in a single body” according to Franco. Soldiers that refused to participate in gang rapes were considered “Indian lovers,” were insulted by fellow soldiers or faced consequences for not following military orders.³⁹ Guatemalan soldiers were trained to think of gang rape as a bonding exercise and one that creates an environment of fear and terror. One soldier remembers being told about two Mayan girls that were captured as prisoners, and gang raped. When the soldier got to where the women were being held, he remembers a line of thirty-five or so soldiers

³⁷ Michele L. Leiby, “Wartime Sexual Violence in Guatemala and Peru,” *International Studies Quarterly*, 53 (2000): 450.

³⁸ Nimatuj, “Activism and Social Change.”

³⁹ Franco, 28.

waiting their turn. “They were surrounding them and raping them. One got up and another passed on...I calculate that those poor women were raped by three hundred soldiers or maybe even more.”⁴⁰ Even though the soldier knew the women were believed to be guerillas and were going to be killed anyway, the gang rapes the women were subjected to became a bonding exercise for the soldiers at the army base. Gang rape was also considered an effective tool of exterminating the Mayan “cockroaches” and destroying the indigenous bloodline. Gang rapes were often so brutal and barbaric that they served as a way to desensitize the soldiers, turning them into weapons themselves, and making it easier to kill and not feel remorse for the Mayan enemy. The soldiers viewed them as animals, thereby making them easier to kill. For example, a soldier could watch the gang rape of an innocent young girl and that soldier would then be prepared to commit the most egregious human rights violations.

Sexual Violence to Destroy Fabric of Indigenous Communities

In order to understand why women were the targets of the Guatemalan genocide, we must examine the role that Mayan women play in their communities. As mentioned earlier, Mayan women have traditionally been seen as reproducers, both in a biological and socioeconomic sense, but they also are seen as the centers of their communities, responsible for the cultural cohesion of the community and the well-being of the members of the community. To rape a Mayan woman does not only impact the individual but also her entire community. John Roth and Carol Rittner argue that the rape of Mayan women had several ramifications for themselves and their communities:

⁴⁰ Sanford et al., 213.

To rape, torture, and kill a woman especially in front of her family or community, dishonors not only the woman but also her family, community, and ethnic identity. Being raped in Hispanic Roman Catholic or traditional Maya cultures creates profound and traumatic shame and guilt. Such violence destroys a woman's emotional, physical, and mental health; it irrevocably damages familial and communal cohesiveness.⁴¹

Mayan women are essential parts of their communities and instrumental in defending their lands, traditions, and culture. The rape, murder, and torture of indigenous women was symbolic of the rape, murder, and torture of the entire community, therefore, the state began raping Mayan women as an effective tool to destroy the very communities themselves and reintegrate those that no longer had communal ties to the Mayan identity: Rittner and Roth maintain that "The aim was not only to destroy indigenous traditions and to disrupt communities but also to integrate survivors as citizens now severed from communal ties, as Spanish speakers, and even as evangelical Christians, into a regenerated nation."⁴²

Rape and sexual violence was used as a means to shame and humiliate Mayan women and their communities. Part of this took the form of dehumanization of women and girls, often treating them as wild animals needing to be *tamed*. An unnamed Mayan rape survivor recalls this treatment: "They treated us like animals. They gave us nothing to eat except for three tortillas. They carried big sticks and hit us all as if we were just dogs, and they came in to interrogate while kicking us. At night the soldiers came to rape the girls, the youngest. And those who did not give in were beaten badly."⁴³ When women were captured and often brought to army bases for repeated rapes, soldiers

⁴¹ Rittner, 121.

⁴² Franco, 30.

⁴³ Franco, 28.

announced, “*hay carne*” (there’s meat).⁴⁴ Women were also used for the *entertainment* of soldiers, in addition to rape and sexual violence, “...women were forced to dance, to cook for the army, and raped to the music of the marimba. The troops even had a hymn, ‘*Himno al Macho Patrullero*,⁴⁵’ that grotesquely proclaimed macho solidarity.”⁴⁶ This not only served to humiliate Mayan women but was also used as a strategy to “break” them. If the women were not killed, they would return to their villages, broken, shamed, and often ostracized from their families or communities. A witness to the genocide remembers a woman who lost consciousness and was raped by twenty soldiers: “she was in a pool of urine, semen and blood; it was really humiliating, a mixture of hatred, frustration and impotence.”⁴⁷ The horrors inflicted upon Mayan women were not done solely for the pleasure of the soldiers but as a strategy to humiliate, violate her community and weaken communal ties and cohesion of the community.

Two forms of sexual violence and degradation used against Mayan women included sexual slavery and domestic servitude. Soldiers abducted and forced women into slavery and servitude on army bases and camps in an effort to humiliate women and men within the communities as well as remove the women from their communities, thereby breaking the social fabric of Mayan communities. The most prominent case in which sexual slavery occurred on a massive scale was in the case of Sepur Zarco.⁴⁸ In July of

⁴⁴ Franco, 27.

⁴⁵ Loosely translates to “Hymn to the Brave/Manly Patrolman.”

⁴⁶ Franco, 28.

⁴⁷ Franco, 26.

⁴⁸ While sexual slavery and domestic servitude occurred throughout the country during the genocide, this chapter will look closely at the case of Sepur Zarco, arguably the most brutal and most evidenced cases of sexual slavery. The Sepur Zarco case was of particular focus in the Guatemala Human Rights Commission and other reports on the genocide.

1982, the Guatemalan army constructed a military outpost for “rest and relaxation” for soldiers on assignment in and near the pueblo of Sepur Zarco. Over a period of six years, Mayan women from surrounding communities were forced to serve the soldiers in the army base by cleaning, cooking, and washing clothes for the soldiers.⁴⁹ Part of their “service” included sexual services for the soldiers. Soldiers repeatedly raped Mayan women forced to perform domestic duties for the soldiers. Many of these women’s husbands, who were claiming ownership rights to parts of the land and resources (unrecognized by the government), were detained, disappeared, or killed, leaving communities, virtually without men. One survivor recounts her “service” to the soldiers after they kidnapped her husband: “When they took my husband, I stayed in their hands. So, we were grinding their food, we were keeping them here in the detachment, we cooked their meals, the tortillas, and there they raped us. They raped us because they told us, ‘how are you going to pay for the land you are living on?’”⁵⁰ If the women were returned to their communities, often the communities would reject them or ostracize them, thereby weakening the social cohesion of the entire community. This strategy is particularly reminiscent of Spanish colonization. Conquistadores subjugated indigenous men and women, forcing them into servitude and slavery, in order to divide and conquer their lands. By physically oppressing communities and creating forms of physical bondage, communities are demoralized and often unable to fight back.

⁴⁹ “Sepur Zarco Sexual Slavery Case,” Guatemala Human Rights Commission, last modified, June 2015, <https://www.ghrc-usa.org/our-work/important-cases/sepur-zarco/>

⁵⁰ “Cuando se llevaron a mi esposo, me quedé en manos de ellos. Entonces, estuvimos moliéndoles la alimentación, estuvimos manteniéndolos aquí en el destacamento, les cocíamos sus comidas, las tortillas, y allí fue que nos violaron. Nos violaron porque nos decían ¿cómo van a pagar la tierra en donde están viviendo?” In “Tejidos Que Lleva el Alma,” 172.

Lastly, sexual violence against indigenous communities proved to have a dramatic impact both on the cohesion of the community as a whole, but also on the indigenous men of the community. Most indigenous communities in Guatemala had subscribed to the patriarchal archetypes of men and women: women were inherently weaker, needing protection and men were stronger, tasked with the protection of their women and their families. Radika Coommarawamy, Special Rapporteur of the United Nations stated: “Plus that the honor of the victims, the target of sexual violence against women is what is perceived as the honor of the enemy... It is a message from castration and mutilation at the same time. It’s a battle between men that is fought in the bodies of women.”⁵¹ Much of the sexual violence that occurred against Mayan women also directly impacted the men in the communities. Sexual violence and rape of Mayan women were used as a way to demoralize and emasculate Mayan men. Soldiers raped wives, mothers, daughters, and sisters of indigenous men in the effort to demonstrate that these men failed in their responsibilities of protecting their women. Guatemalan soldiers, understanding the role of men and women in most Latin American societies, recognized the impact that sexual violence would have on Mayan communities.⁵² The cultural, social, and economic impact that sexual violence had on indigenous communities proved profoundly detrimental. Decades after the official end of the genocide, these indigenous communities are still struggling with the trauma and legacy of this sexual violence.

⁵¹ “Más que el honor de las víctimas, el blanco de la violencia sexual contra las mujeres es lo que se percibe como el honor del enemigo... Es un mensaje de castración y mutilación al mismo tiempo. Es una batalla entre hombres que se libra en los cuerpos de las mujeres” in “Tejidos Que Lleva el Alma,” 152.

⁵² “Tejidos Que Lleva el Alma,” 152.

Aftermath and the Rios Montt Trial

The widespread rape and sexual violence against indigenous communities during the genocide has left a lasting impact on the victims' communities as well as on the country as a whole. Today, the Guatemalan government still refuses to acknowledge the genocide that occurred against the Mayan population and resulted in the deaths of over 200,000 civilians, the rape and mutilation of over 100,000 women and children, and the social, political, and economic disenfranchisement of the (remaining) indigenous population. There has been little justice for the victims and survivors of the genocide. Although the trial of Efraín Ríos Montt made history within Guatemala and in the international community, the guilty verdict against General Ríos Montt as the principle architect of the genocide, was overturned by the Constitutional Court nearly ten days after the conviction.

In 2013, almost twenty years after the official end of the genocide, General Efraín Ríos Montt was brought to trial on charges of genocide and crimes against humanity. Although the genocide began following the coup against President Arbenz in the 1960s, it reached its peak between the years of 1981 and 1983 when General Ríos Montt was in power. Many attorneys argued that while rape had occurred before this time period, the years Ríos Montt was in power were the most brutal, violent and widespread, and that the soldiers had been given orders from the top down to rape and commit acts of genocide against indigenous communities, particularly against Mayan women. Beginning on March 19, 2013, the Guatemalan court, overseen by Judge Yasmin Barrios, heard 102

witnesses and 68 expert testimonies.⁵³ One of the expert witness testimonies came from Dr. Irma Alicia Velazquez Nimatuj, a Guatemalan and Mayan anthropologist that collected victim and survivor testimonies. Dr. Velazquez Nimatuj brought several accounts of rape and sexual violence before the court, recounting the stories of several victims who faced extreme sexual brutality from the soldiers. She was the principle expert that helped bring the crime of rape to the forefront of the trial. Though the trial was a significant step in the right direction, justice for the victims of the genocide has been painfully slow, “For a number of reasons, the country has been slow to try and convict those that were responsible for the genocide” said Pamela Yates, director of a trilogy of documentary films that documented the genocide and genocide trials. “For many years, even when we were filming, it was very difficult to get the women to speak about the horrors they had faced...the genocide ripped the fabric of those communities apart. I mean it was tragedy compounded with trauma” she continued, “even today you can see the lasting effects of these crimes on the women and their communities which are still suffering a collective trauma...I don’t think they have fully recovered.”⁵⁴

The trial was nothing short of historic—it was the first time in Guatemalan history that a former head of state was found guilty of crimes against humanity or genocide. It was also the first instance in which a major Guatemalan court acknowledged and condemned the use of systemic rape used during military campaigns. It was also precedent setting because Rios Montt was the first head of state to be charged with the

⁵³ Sanford et al., 207-208.

⁵⁴ Pamela Yates, interview by Larissa Peltola, February 18, 2018.

crime of rape.⁵⁵ On May 10th, 2013, the tribunal announced its guilty verdict against General Rios Montt. For the first time in the history of the country, the courts had ruled in favor of justice for indigenous communities. People flooded the streets in celebration of the eighty-year prison sentence and of a new era in Guatemala—one that respects the lives and rights of indigenous communities and peoples. Celebrations came to a halt ten days later when the Constitutional Court of Guatemala overturned the guilty verdict on “technical grounds.”⁵⁶ A new trial began in October 2017.

Despite efforts to retry General Rios Montt in 2017, the former dictator passed away at the age of 91 on April 1, 2018. His death was met with frustration as victims and activists believed that the former General deserved imprisonment for his role in ordering the genocide (and mass rapes) of Mayan civilians. Instead, Rios Montt died at his home surrounded by family and loved ones, a luxury that was not afforded to the over 200,000 innocent men, women, and children that were senselessly murdered during the genocide. “There have been several justice initiatives since the trial” said Yates. Many of these initiatives include demanding reparations, an end to a culture and history of impunity and protections for genocide and human rights violations, and an overall swell of activism by and for indigenous populations. Despite the devastating ruling that overturned the verdict passed in 2013, and the death of Rios Montt in 2018, activists have only just begun their fight for justice, “we have seen a groundswell of justice initiatives after the genocide,” according to Yates, “the [2013] trial opened the floodgates to try violence of the

⁵⁵ Sanford et al., 207.

⁵⁶ For more information on the trial and the order from the Constitutional Court, see, Kate Doyle, “Guatemala’s Genocide on Trial, *The Nation* (May 22, 2013).

past...[the courts] can't stop justice. It is only a matter of time until we see a real change in Guatemala.”⁵⁷ Activists remain committed to demanding justice and reparations from the state and will continue to put pressure on the Guatemalan government for the rights that they have been denied for over 500 years.

⁵⁷ Pamela Yates, Interview.

Chapter 5: Bosnia-Herzegovina

"Then they started torturing me. I lost consciousness. When I woke up, I was totally naked and covered in blood, and my sister-in-law was also naked and covered in blood. ... I knew I had been raped, and my sister-in-law, too...Every day we were raped. Not only in the house—would they also take us to the front line for the soldiers to torture us. Then again in the house, in front of the children."¹

-Jasmina, Bosnian rape survivor, raped at age 19

Background

In 1943, Josip Broz Tito declared the establishment of the Socialist Federation of Yugoslavia, which included six republics (Serbia, Montenegro, Slovenia, Macedonia, and Bosnia-Herzegovina). Tito founded the Federation under the concept of “brotherhood and unity,” an idea that envisioned a way to transcend ethno-national loyalties.² To some effect, this worked with a particular brand of socialism and Cold War neutrality, and Yugoslavia became largely prosperous and stable under Tito’s rule. However, Tito’s death in 1980 created instability and a political vacuum with no clear leader to take his place. Following Tito’s death, and a severe economic crisis, fears and insecurities emerged amongst the different ethnic groups. Exploiting growing concerns about the nation, Slobodan Milosevic rose to power in Serbia, blaming Yugoslavia’s fall on the “ethnic other” (primarily Bosnian Muslims) and called for “Serbian unity” against those responsible for the economic and political troubles plaguing the region. War broke out in 1992 pitting three ethnic groups against each other: Bosnian Serbs, supported by Milosevic and his brutal regime, Bosnian Croats, backed by Croatian President Franjo

¹ Rachel Clarke, “Sex Slave: ‘Every day we were Raped,’” *CNN International*, July 22, 2008. <http://edition.cnn.com/2008/WORLD/europe/07/22/sarajevo.rape/index.html>.

² Rittner and Roth, 45.

Tudjman, and Bosnian Muslims known as Bosniaks. What resulted was a brutal ethnic cleansing and genocidal campaign against Bosniak men and women. Bosnian Muslim women, in particular, were targeted for rape and sexual violence.

Before delving into the ways in which Bosniak women were sexually abused during the Bosnian genocide, it is first essential to examine the particular reasons on how women were targeted by Serbian forces, primarily through state sponsored propaganda. As demonstrated in many other conflicts, propaganda can be harnessed as a powerful weapon to spread hateful messages, fear, and to promote violence against others. This was a particularly effective tool in disseminating hateful messages about Bosniak populations. Milosevic blamed all economic and political crises on the presence of the Bosnian Muslim population, and one of his first acts in office was to take control of Serbian television and radio programming—these actions resulted in a dangerous propaganda campaign which encouraged Serbs to turn on their non-Serbian neighbors. According to journalist Mark Danner, “For much of 1990-1991, Yugoslavia was a powder keg on the verge of explosion. However, wars do not just break out of their own accord. They have to be started. Yugoslavia required a detonator to set it off and push it over the edge. And a key element of that detonator was the media.”³ Basic propaganda and promotion of Serbian supremacy began as early as 1981 when media exploited Serbian nationalism through its one-sided depictions of the uprisings of the Kosovo

³ Mark Danner, “The Horrors of a Camp called Omarska and the Serb Strategy.” PBS Frontline, online. Accessed January 25, 2018.
<https://www.pbs.org/wgbh/pages/frontline/shows/karadzic/atrocities/omarska2.html>.

Albanians.⁴ Word quickly spread of the widespread rape of Serbian women and the torture of Serbian men by Albanian forces. But this was propaganda promoted by Serbian news outlets. When Milosevic came to power, he reignited the ethnic hatred of Albanians and quickly turned his attentions to Bosnian Muslims. Campaigns of state sponsored propaganda went into full force following Bosnia-Herzegovina's Declaration of Independence from Yugoslavia in 1992. Following this, national television aired what appeared to be the rapes of Serbian women by Muslims and other violent acts by what appeared to be Muslim traitors.⁵ The government encouraged loyal Serbs to defend their women, and their country from Bosniaks.

Fueled by racial hatred, Milosevic launched a violent campaign against Bosnian Muslims, which included specific and direct orders to rape and sexually abuse Bosnian women. As war broke out in 1992, the targeting of Muslim women became a direct strategy of the Milosevic regime. Several factors support this claim. The first is the RAM plan, documentation that historian Todd Salzman argues "[substantiates] the claim of a Serbian military policy to ethnically cleanse Bosnia-Herzegovina, and designating rape as a specific means of attaining this goal."⁶ Serb army officers wrote the RAM plan in 1991 in an effort to regain territory in Croatia and Bosnia that Serbs felt were rightfully theirs.⁷ RAM encouraged Serbian soldiers to use any means necessary, including the targeting of women and children, which would force Croatians and Bosnians to retreat from

⁴ Todd A. Salzman, "Rape Camps as a Means of Ethnic Cleansing: Religious, Cultural, and Ethical Responses to Rape Victims in the Former Yugoslavia," *Human Rights Quarterly* 20, no., 2 (May 1998): 352.

⁵ Salzman, 353.

⁶ Danner, "The Horrors of a Camp called Omarska."

⁷ Ibid.

designated lands. The second factor that proves Serbian intent to mass rape Bosnian women came with direct orders from military superiors within camps and other occupied areas of Bosnia. According to the Commission of Experts appointed by the United Nations, which investigated allegations of rape and sexual violence, camp commanders and Serb soldiers had direct authority over those who committed rapes against Bosniak women, indicating that they could have halted the rapes or punished perpetrators.⁸ The fact that they did not is indicative that soldiers were under direct orders to rape Muslim women; the UN Commission speculated “commanders could control the alleged perpetrators if they wanted to. This could lead to the conclusion that there was an overriding policy advocating the use of rape as a method of ‘ethnic cleansing,’ rather than a policy of omission, tolerating the widespread commission of rape.”⁹

While rape and sexual violence were clear directives of Milosevic’s genocidal campaign against Bosnian Muslims, there are certain difficulties in researching and confirming the sexual abuse that occurred during this conflict. The first of these limitations is that it is impossible to know the full extent of how many women were raped during this period of time. While estimates range from 20,000 to 50,000 victims, in reality, the number could have been exponentially higher. There are a number of reasons for the difficulty in ascertaining accurate numbers. Many Bosnian women did not feel comfortable to share their stories, many victims were killed after their rapes, and others felt that the sexual abuse they experienced was not the worst treatment they faced as Bosniaks and therefore did not report it. Another factor to be considered is that many of

⁸ Salzman, 357.

⁹ Salzman, 357.

the perpetrators of sexual violence were neighbors, or even friends of the victims, which made reporting these crimes all the more traumatizing. Shame and stigmatization impact victims of sexual violence in nearly every community and this fear causes women (and men) to not report these crimes. Lastly, and arguably the most important reason for the difficulty in gathering testimony from Bosnian survivors, is the shame victims feel, particularly as Muslims. Relatively few survivor testimonies exist and those women that did come forward overwhelmingly chose to stay anonymous, due to their feelings of shame and fear of re-victimization. Bosnian Muslim culture encouraged traditional femininity and female modesty, therefore, the sexual violence and rape of Bosniak women was not only shameful for the victim, but also destroyed the victim's family honor.

Rape for Retaliation and Intimidation

Serbs, widely influenced by the propaganda campaign against Bosniaks, targeted women for retaliation rapes. Slobodan Milosevic led a successful propaganda campaign against Bosniaks that included false images showing Bosnian rape of Serbian women.¹⁰ Furthermore, released documents and statements from the Serbian government show that the leadership called for Serbs to protect their women from Muslim men that were attempting to "impregnate [Serbian women] by undesirable seeds."¹¹ Therefore, Serbian men sought to take revenge on Bosniak men primarily through the rape of Bosniak women. According to a report by Amnesty International, "In almost all reported or alleged cases the victims are of different nationality from the perpetrator, that is, women

¹⁰ Salzman, 352-535.

¹¹ Salzman, 353.

have been singled out for humiliation on account of their nationality and sometimes as a form of retribution because of the perpetrators' presumptions of the actions or intentions of the women's male relatives.”¹² Likewise, the United Nations concluded that: “Serbians have a variety of goals in mind when they systematically rape Bosnian women.’ The factual accounts support the assertion that rape in the Serb-Bosnian war is a display of the conquest of Bosnian women, acts as a tool of terror and humiliation, serves as form of revenge against other men, and facilitates genocide.”¹³ Sexual violence against Bosniak women came from a place of racialized anger and as a form of punishment and cruelty for their “crimes,” particularly the crime of being Muslim.

The soldiers left me at the side of the road. They told me not to run, or they would find me and kill me. They started killing the men in front of the women and children. There was so much hate towards us Muslims. They were even killing children – looking for the youngest males to kill. Some of the soldiers were Serbian paramilitaries – Arkan and Seselj’s men. Others were our own Serb neighbours. Even women joined in on the killing. I saw two women kill a man in a wheelchair – they wanted to kill a baby too, just because he was crying.¹⁴

Propaganda also encouraged Serbs to retaliate against Bosnians for the economic and political problems Serbs were facing. Both men and women were taught to view Bosniaks as a roadblock to an ethnically pure and economically stable nation. Milosevic developed a calculated plan to manipulate the media in order to foster support for his campaign against the “ethnic other” which resulted in retaliation rape and sexual abuse against Bosniak women, specifically for their belonging to an ethnically “inferior” group.

¹² Amnesty International, “Bosnia-Herzegovina: Rape and Sexual Abuse by Armed Forces,” January 1993. 8. <https://www.amnesty.org/download/Documents/188000/eur630011993en.pdf>

¹³ United Nations, “Concluding comments of the Committee on the Elimination of Discrimination Against Women: Bosnia and Herzegovina,” February 1994. 4. http://www.un.org/womenwatch/daw/cedaw/cedaw25years/content/english/CONCLUDING_COMMENTS/Bosnia_and_Herzegovina/Bosnia_and_Herzegovina-Special_report.pdf.

¹⁴ “Breaking the Silence—Fatima,” *Remembering Srebrenica*, accessed January 25, 2018. <https://www.srebrenica.org.uk/survivor-stories/breaking-the-silence-fatima/>.

Serbs also utilized rape as a weapon to intimidate and terrorize Bosnian communities. Sexual violence is one of the worst forms of torture that could be inflicted on a woman and her community and is an effective tool used to subjugate and intimidate communities. Journalist Alexandra Stiglmayer, who covered the Bosnian war for German and US media outlets explains: “Rapes spread fear and induce the flight of refugees; rapes humiliate, demoralize, and destroy not only the victim but also her family and community; and rapes stifle any wish to return. A rape is a “surefire weapon that doesn’t need any fuel or ammunition,” as the Zagreb feminist Asija Armanda once said. This was the goal of the widespread rape of Bosnian women. Testimonies from survivors tell a similar story. One survivor who chose to remain anonymous recalls the horrors she witnessed as Serbian forces entered her village and began targeting Bosniak women and men:

We were rounded up on the playing field. The men were locked up in the school. They burned a few men in trash bins in front of the windows, so that the smoke and stink of the burned flesh would drift into the school. We saw them rape the hodja’s daughter- one after the other, they raped her. The hodja, the village’s Muslim teacher, had to watch too. When they were done, they rammed a knife into his throat.¹⁵

The actions described above are not unique. They were strategic methods that Serbs employed in order to spread fear and terror to entire communities. Serbian policies specifically targeted the most vulnerable populations in an effort to demoralize and terrorize communities. A variation of the RAM plan written by Serbian army special services offered a sociological rationale for ethnic cleansing and rape:

¹⁵ “The Rapes in Bosnia-Herzegovina—Alexandra Stiglmayer,” *Remembering Srebrenica*, accessed January 26, 2018. <http://www.srebrenica.org.uk/what-happened/the-rape-in-bosnia-herzegovina-alexandra-stiglmayer/>.

Our analysis of the behavior of the Muslim communities demonstrates that the morale, will, and bellicose nature of their groups can be undermined only if we aim our action at the point where the religious and social structure is most fragile. We refer to the women, especially adolescents, and to the children. Decisive intervention on these social figures would spread confusion..., thus causing first of all fear and then panic, leading to a probable retreat from the territories involved in war activity.¹⁶

Likewise a Ljubljana newspaper, DELO, also reported that the Yugoslav National Army developed a plan to drive Muslims out of what was seen as rightful Serbian territory that showed Muslim soldiers' "...morale, desire for battle and will could be crushed more easily by raping women, especially minors and even children, and by killing members of the Muslim nationality inside their religious facilities."¹⁷ This proves that Serbian soldiers specifically used rape as a way to keep women and men in constant fear of continued rape and sexual violence. Targeting Muslim women and children in their places of worship signaled that nowhere was safe for Bosniaks. Ultimately, Serbs hoped that the constant fear of sexual violence would drive Bosnian Muslims out of their homes and lands, thereby ridding Serbia of ethnically inferior peoples that had "ruined" Yugoslavia. By gaining these newly abandoned lands, Serbs felt that Serbia could be a stronger and more powerful nation.

The United Nations final report on the conflict in the Balkans outlines several patterns of how sexual violence was used as a means of ethnic cleansing. Intimidation rape occurred in two distinct patterns: before widespread fighting broke out and during the war. These two stages are of particular importance as it highlights the impact Serbian propaganda had on relations between Muslim and non-Muslim populations, as well as

¹⁶ Danner, "The Horrors of a Camp Called Omarska."

¹⁷ Salzman, 356.

proving a specific motive by Serbian forces to eliminate ethnic Bosniaks. The first pattern discussed in the United Nations report involves individuals or small groups committing sexual violence “in conjunction with looting and intimidation of the target ethnic group.”¹⁸ This pattern of sexual violence can be best defined as revenge or retaliation. As more individuals began to hear and be influenced by propaganda against Bosniaks, acts of sexual violence against women increased.¹⁹ Reported rapes to authorities were either ignored or not investigated, which added to victims’ fears and created a system of impunity for perpetrators of wartime and genocidal rape that is still present in the region today. The second pattern of sexual violence, as investigated by the United Nations, occurred in conjunction with the outbreak of violence/war. The special report includes accounts of “small groups committing sexual assaults in conjunction with fighting in an area, often including the rape of women in public” and that “some women are raped in their homes as the attacking forces secure the area. Others are selected after the roundup and raped publicly.”²⁰ This is particularly significant in linking the outbreak of fighting and the presence of Serbian soldiers with increased reports of sexual violence, proving that sexual violence was a specific strategy of Serbian forces for the purposes of ethnically cleansing the Bosnian Muslim population.

¹⁸ United Nations, “Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 780,” 1994, section 245.

http://www.icty.org/x/file/About/OTP/un_commission_of_experts_report1994_en.pdf

¹⁹ “Final Report,” section 245.

²⁰ “Final Report,” section 246.

Rape as Ethnic Cleansing: Rape Camps, Gang Rape, and Forced Impregnation

As part of a strategic ethnic cleansing campaign, Serbian forces utilized sexual violence as a weapon against Bosniak populations, establishing “rape” camps to most efficiently rape women. Serbian forces established detention camps throughout the region that served to imprison Muslim communities and sexually violate Muslim women.

According to a United Nations report,

Once the population of a town or village has been rounded up, men are either executed or sent off to camps, while women are generally sent off to separate camps. Soldiers, camp guards, paramilitaries and even civilians may be allowed to enter the camp, pick out women, take them away, rape them and then either kill them or return them to the site. Reports frequently refer to gang rape, while beatings and torture accompany most of the reported rapes.²¹

Both men and women were subjected to torture and imprisonment in these rape and death camps. This, in itself, served as a form of ethnic cleansing. Bosnian men and women were tortured before being killed. The main objective of these camps was to fulfill the Serbian policy of reducing the Bosniak population and increasing the Serbian bloodline. Rape camps accomplished this through forced impregnation, which will be discussed at length in the next section of this chapter, and limiting female reproductive capacity through killings and extremely violent rapes. According to scholar Lynda Boose, Serbs also targeted Muslim women in the hopes that following a rape, they would be unable to bare children and unable to marry or re-marry:

The rape camps of the Bosnian war have been documented as a systematically planned Serb instrument of genocide designed not merely to encourage the evacuation of all non-Serbs but to destroy parent-child and spousal bonds and

²¹ “Final Report,” 247.

render large numbers of the society's child-bearing women contaminated and thus unmarriageable.²²

As in many cultures, the Bosniak Muslim culture encouraged female modesty and sexual “purity” therefore, the rape of a Muslim woman held multiple implications and left a lasting stigma and ostracization of the victim and her family. The Serb army, in addition to the brutal rapes they were committing, frequently encouraged Bosnian Serbs to rape Bosniak women (many of whom had been their neighbors) thereby, “coercing Bosnia’s Serbs into a complicity with Belgrade that lessened both the ability of the different groups to live together in the future.”²³ In short, Serbs raped and encouraged sexual violence against Muslim women with the hope that the shame that came with being raped would prevent these women from ever marrying or bearing future children, as well as creating a long lasting trauma on the community as a whole.

Often in detention camps, women (and men) were selected randomly for sexual abuse. This occurred with frequency in “bordello camps” where women were held for the sole purpose of providing sex for soldiers returning from the front line. These women were generally killed after they fulfilled their “purpose.” Serbian forces committed grave human rights abuses that were sexual in nature in these rape and torture camps.

According to the United Nations, “...there are also many allegations that women are raped in front of other internees, or that other internees are forced to sexually abuse each other. One of the victim-witnesses interviewed saw a woman die after being in a coma for a week as a result of about 100 sadistic rapes by guards.”²⁴ According to Weitzman,

²² Lynda E. Boose, “Crossing the River Drina: Bosnian Rape Camps, Turkish Impalement, and Serb Cultural Memory,” *Signs: Journal of Women in Culture and Society*, 28, no. 1. (2002): 73.

²³ Boose, 74.

²⁴ UN Final Report 247.

men also experienced sexualized violence within these camps: Torture camps, in which men and women were segregated, were set up around the country. Men were subjected to beatings, cannibalism, castrations, and other extreme forms of torture, frequently until death.”²⁵ These acts were done in such a way that “instills terror” in the entire prison population.²⁶ Furthermore, sexual abuse and torture within detention camps served as a method to render both male and female prisoners infertile as well as to ensure that even if the prisoners survived, they would experience extreme psychological trauma. Repeated rapes and sexualized violence not only impacts the victim’s physical health but also leaves intense psychological scars on the individual and the community as a whole. One survivor, Grozdana Cecez, who was raped by multiple Serbs during her detention, recalls her state of mind during one of her many rapes:

I could not do anything. I was lying there and he was raping me. There was -- I had no way of defending myself. I couldn't understand what was going on, what was happening to me... I said: "My God, what have I come to live through?" I was completely beside myself. To trample a woman's pride like that. I come from a good family. It was a large clan. That is the fate.²⁷

Prisoners were subjected to mental and physical abuse that demoralized prisoners and created a culture of fear within the detention camps. However, the most prominent features of these camps were the detention, sexual abuse, and torture of inmates—goals of the ethnic cleansing campaign.

Another key feature of the Serbian ethnic cleansing campaign against Bosnian Muslims were the widespread gang rapes. This form of sexual violence specifically

²⁵ Weitsman 569.

²⁶ UN Final Report p 55.

²⁷ Witness testimony of Grozdana Cecez, Prosecutor vs. Mucic et. Al. Case IT-96-21. 17 and 18 March 1997.

targeted the reproductive capacity of Bosniak women,²⁸ both through likely impregnation (which will be discussed later in this chapter) and through trauma to the reproductive organs that prevent future births. Many survivors who had been gang raped reported having experienced such physical trauma that they could not conceive.²⁹ Serbs targeted women of child-bearing age specifically for rape and gang rape. One survivor recounts the specific targeting of young women in her village:

They had their eyes set on teenage girls,” she says. “Many of the girls wore their father’s big shirts to cover their bodies. If you looked feminine or if they knew you previously and wanted sex they would just take you. Probably 10 were raped every night. They took them to a local empty house. The girls would come back the next morning totally exhausted but no one would talk about it. They were ashamed. We all knew silently what had happened but no one discussed it.”³⁰

The targeting of the reproductive capacities of women fulfills the United Nation’s definition of genocide, actions that are “intended to prevent births within the group.”³¹

Gang rapes were also extremely prevalent within detention/rape camps used both to spread fear within the inmate population as well as to impregnate women and prevent births and reproductive capability. Survivors reported gang rapes committed by three or four men to several dozen Serb men participating. In addition to targeting the reproductive capacity of women, Serbs also exploited ethnic hatred against Bosniak Muslims by using gang rape as a way to brutalize an entire community. Because of Muslim culture and religious values, while rape was considered shameful and carried a stigma, gang rape was the most degrading act committed against a woman’s body,

²⁸ Weitsman and others argue that gang rapes were carried out in an effort to forcibly impregnate Bosniak women: “Women were repeatedly gang raped, sometimes by more than forty men in one day, for months until impregnated.” 569.

²⁹ Salzman, 365.

³⁰ http://www.independent.co.uk/news/long_reads/bosnia-war-rape-survivors-speak-serbian-soldiers-balkans-women-justice-suffering-a7846546.html

³¹ UN Final Report

culture, and community. This tactic served practical uses: if a gang rape did not impact the victim's reproductive capacity, the stigma and shame associated with rape would prevent her from remaining in her community or of getting married and bearing children in the future. Gang rapes were implemented both for the physical destruction of a woman's body as well as the destruction of her immediate community and the greater Bosniak community as a whole.

The trauma women experienced during gang rapes often came from the fact that in many instances, they knew their attackers, who were often their neighbors and members in their communities. Serbian soldiers recruited Bosnian Serbs for their brutal ethnic cleansing campaign. Historically, Bosnian Serbs and Bosniaks lived side by side in relative harmony; however, as Milosevic's message of ethnic hate spread quickly throughout the region, Bosnian Serbs, either willingly or by force, joined Serbian forces to ethnically cleanse Bosnia-Herzegovina of their Muslim population. A rape survivor recalls her gang rape by many men whom she had known throughout her life: "That night I was repeatedly raped by several soldiers. Some of them I knew. Some were strangers to me. It lasted the whole night."³² Another survivor reported being detained by her neighbor (who had become a soldier) for almost six months. Every day she was raped by three or four men, including her neighbor.³³ Others recall being taken by their Serbian neighbors to rape camps or being taken to deserted areas for rape or gang rape.³⁴ These rapes often lasted long periods of time, from days to months, and often accompanied

³² <https://www.srebrenica.org.uk/survivor-stories/the-courage-to-survive-mirsada/>

³³ UN Final Report

³⁴ UN Final Report

beatings and torture.³⁵ The United Nations in their investigations into Serbian war crimes reported that Bosnian Serbs began to turn on their neighbors following increasing ethnic tensions:

Tensions in an area grow and members of the ethnic group controlling the regional government begin to terrorize their neighbours...intimidate the residents, steal their property, beat them and often rape the females. Some of the reported rapes are singular and some multiple. In either case, there is often a gang atmosphere where the abuses are part of the same event and all the attackers participate...³⁶

The UN's conclusion is that these acts are not byproducts of war or conflict, rather a specific goal or strategy of Milosevic's ethnic cleansing campaign against Bosniak Muslims. Ethnic hatred, ignited by Serbia, facilitated extreme acts of violence, and sexual violence, in communities that had once coexisted peacefully. The specific goals of the Serbs included: an effort to limit women's reproductive capacities and also to drive out Bosniak populations from the region, according to Salzman:

Frequently the women recognized their assailants as neighbors, law enforcement personnel, or other members of the community. Recognition seemed an important part of Serbian policy. The persecuted would be less likely to return to their towns and villages if their assailants were local inhabitants rather than from distant territories.³⁷

Recognition was a key element of Serbian rape policy. If victims recognized that their neighbors and even friends were their attackers, they would be less likely to remain in an area where they would see their rapist again, or remain at risk of another rape or act of

³⁵ Ibid.

³⁶ UN Final Report

³⁷ Salzman, 360.

sexual violence. Further supporting this claim, *official* Serbian policy offered safe passage for townspeople who wanted to leave on the promise of never returning.³⁸

The most significant evidence of the Serbian goal of ethnic cleansing is the widespread forced impregnation of Bosniak women. Forced impregnation occurred within rape camps as well as from gang rapes and rapes committed by specific individuals. Serb forces utilized sexual violence as an overall method to intimidate communities, kill Bosniaks, and drive out Bosniak communities from the region. However, the most widespread use of rape occurred in an effort to forcibly impregnate Bosniak women in order to ethnically cleanse the region. The United Nations reported on this specific pattern of sexual violence:

The fourth pattern of rape involves individuals or groups committing sexual assaults against women for the purpose of terrorizing and humiliating them often as part of the policy of "ethnic cleansing"...Some captors also state that they are trying to impregnate the women. Pregnant women are detained until it is too late for them to obtain an abortion. One woman was detained by her neighbour (who was a soldier) near her village for six months. She was raped almost daily by three or four soldiers.³⁹

Many rape camps were established with the specific intention of forcibly impregnating Muslim women with "Serbian seeds"⁴⁰ in an effort to replace the ethnic "other". According to attorney advisor Krishna Patel, "the final and most horrifying aspect is that rape victims are forcibly impregnated and sometimes kept in detention until they have no choice but to give birth to the child."⁴¹ She continues, "In this war the Serbs have a specific purpose to impregnate women; the pregnancies are not incidental, but a desired

³⁸ Salzman, 361.

³⁹ "Final Report."

⁴⁰ Weitsman, 569.

⁴¹ Krishna R. Patel, "Recognizing the Rape of Bosnian Women as Gender-Based Persecution." *Brooklyn Law Review* (March 1, 1994): 943.

result of the rapes.”⁴² The same attacker or several different ones raped women frequently, methodically, and repeatedly: “women in the camps were raped frequently, with an alleged strategy by their captors to impregnate them in an effort to breed Serbian children.”⁴³

Forced impregnation was used as a conscious and systematic weapon of ethnic cleansing.⁴⁴ Bosnian women were targeted specifically for their reproductive capacity and therefore women, and especially young women, were most at risk of being raped due to the likelihood that they would become pregnant from the rape. This is demonstrated in the case of an unidentified rape survivor: “The younger women were held for several nights in a furniture warehouse in the town. Serbian soldiers selected and raped 40 of the women between the ages of 15 and 30.” Young mothers were also targeted for rape, as they were believed to become easily pregnant and have the capability of carrying a fetus to term. Bosnian rape survivor, Jasmina, begged her rapists to kill her though they revealed that their intentions were to impregnate her.

I was in such a bad condition that sometimes I couldn't even recognize my own children. Even though I was in a very bad physical condition they had no mercy at all. They raped me every day. They took me to the soldiers and back to that house... "The only conversation we had was when I was begging them to kill me. That's when they laughed. Their response was 'we don't need you dead.'"⁴⁵

Her rapists did not need her dead; rather, they needed her, as a mother and a woman capable of reproduction, to become pregnant with a Serbian child. Forced pregnancies were a direct objective of the Serbian ethnic cleansing campaign. Women were not only

⁴² Patel, 953.

⁴³ Cindy S. Snyder et al, “On the Battleground of Women’s Bodies: Mass Rape in Bosnia-Herzegovina,” *Affilia: Journal of Women and Social Work* 21 no., 2 (Summer 2006): 190.

⁴⁴ Patel, 953.

⁴⁵ Rachel Clarke, “Sex Slave: ‘Every Day We Were Raped,’”

prevented from getting abortions but were also physically detained in camps and other areas for several months in order to ensure that, by the time they were released, it would be “too late” to terminate the pregnancy. One survivor recalls the traumatic experience of women being raped by multiple men every day to maximize efforts to impregnate the women:

They said that each woman had to serve at least ten men a day. . . . God, what horrible things they did. They just came in and humiliated us, raped us, and later they told you, "Come on now, if you could have Ustasha babies, then you can have a Chetnik baby, too." . . . Women who got pregnant, they had to stay there for seven or eight months so they could give birth to a Serbian kid. They had their gynecologists there to examine the women. The pregnant ones were separated off from us and had special privileges; they got meals, they were better off, they were protected. Only when a woman's in her seventh month, when she can't do anything about it anymore, then she's released. Then they usually take these women to Serbia. . . . They beat the women who didn't get pregnant, especially the younger women; they were supposed to confess what contraceptives they were using.⁴⁶

Forced impregnation of Bosnian women was a direct and strategic form of ethnic cleansing that left a generation of women with the burden of raising their rapists' children. Women were not only reduced to being seen solely for their reproductive capacities, but also their lives often depended on whether they could conceive or not. There is no doubt that rape, with the purpose of impregnating a woman against her will, was a policy objective of the Serbian forces and a direct strategy to ethnically cleanse Yugoslavia of Bosnian Muslims.

In order to understand why forced impregnation proved such an effective strategy by Serbian forces, it is important to first understand how identity was shaped. The

⁴⁶ Alexandra Stiglmayer, *The Rapes in Bosnia-Herzegovina, in Mass Rape: The War against Women in Bosnia-Herzegovina* ed. Alexandra Stiglmayer (Lincoln: University of Nebraska Press, 1994), pp. 82-169.

prevalent mentality at the time assumed that male genes determined ethnicity of the child and therefore, Serbian men raped Muslim women with the intention to create a generation of Serbian children. Despite the fetus being equal parts Serb and non-Serb, there was a prevalent myth spread by Serbs and supported by Muslims and Catholic men and women in Bosnia-Herzegovina.⁴⁷ According to Salzman, “The idea that the male determines a child's ethnic identity is cross-cultural and common, though misinformed,” he continues, “no matter how much one argues against such a perspective, a person's (mis)perceptions often dictate both how he perceives reality and his concrete practices, regardless of the facts.”⁴⁸ In the Balkans, even today, patriarchal society determines a child's ethnicity, particularly through the passing of the family name through the male bloodline.⁴⁹ From a perpetrator's perspective, forced impregnation would not result in a Bosniak baby but a Serbian or “Chetnik” baby, following the ethnic identity of the father (assailant). Several survivors report their rapists telling them that their intention was to impregnate the victim. A UN report gathered testimony from a survivor who was gang raped by several Serbian soldiers who told her “...that she would give birth to a Chetnik boy who would kill Muslims when he grew up. They repeatedly said their President had ordered them to do this.”⁵⁰ The patriarchal notion held by both the victim's communities as well as the rapist—that ethnicity was determined by the father—facilitated the widespread use of forced impregnation as a weapon of ethnic cleansing. Culturally and ethnically, the child

⁴⁷ Salzman, 364.

⁴⁸ Salzman, 364.

⁴⁹ Ibid.

⁵⁰ “Final Report.”

born of rape would always “be considered in some way Serb”⁵¹ leaving a long lasting impact on the victim, child, and entire Bosniak community.

International Criminal Tribunal for the Former Yugoslavia

The International Criminal Tribunal for the Former Yugoslavia (ICTY) was established by the United Nations in 1993 to bring to justice war criminals responsible for ethnic cleansing and genocide during the conflict in the Balkans. The ICTY has set precedents on prosecuting genocide and war crimes as well as individualizing responsibility. This protected communities from being “collectively responsible” and worked to dismantle a culture of impunity in the country. The ICTY was made up of three branches: the Chambers, the Registry, and the Office of the Prosecutor. The ICTY and its sister tribunal, the International Criminal Tribunal for Rwanda (ICTR) marked the first international tribunals that brought genocidal rape to the foreground of international attention, “First, suspects could be charged with rape as a crime against humanity, war crime, and genocide. Second, women were appointed as policymakers”⁵² according to King and Greening. While there were important strides made in the advancement of women’s rights and in the prosecution of genocidal rape, many critics argue that the ICTY did not do enough to secure justice for victims of wartime sexual violence.

⁵¹ World Council of Churches,” Rape of Women in War: Report of the Ecumenical Women’s Team Visit-Zagreb (December 1992) 9, in Salzman, 365.

⁵² Kimi Lynn King and Megan Greening, “Gender Justice or Just Gender? The Role of Gender in Sexual Assault Decisions at the International Criminal Tribunal for the Former Yugoslavia,” *Social Science Quarterly* 88, no., 5 (2007).

Before examining the tribunal's shortcomings, its successes must first be discussed with particular focus on the landmark cases of prosecuting sexual violence. Since its establishment, the ICTY charged several Serbs with acts of sexual violence, including rape, the establishment of rape camps, and the forced impregnation of Bosnian women. Of the 161 accused, 78 individuals, or 48 percent, had been charged with sexual violence that was included in their indictments.⁵³ Out of the 78 defendants, 32 were convicted for crimes of sexual violence. There are several landmark cases that were prosecuted during the tribunal. The first is the trial against Dusko Tadic that was the first trial to prosecute sexual violence against men. His was the first international war crimes trial since Nuremberg and the first international trial to involve charges of sexual violence. A Bosnian Serb, Tadic was the Democratic Party's local board president and held a great deal of authority. He was found guilty and sentenced to 20 years imprisonment for violation of the laws and customs of war and crime against humanity.⁵⁴ The next trial, *Mucic et al* indicted four former members of the Bosnian armed forces and recognized rape as a form of torture, a breach of the Geneva Conventions and a violation of laws and customs of war.⁵⁵ Three out of the four of the accused were charged with sexual violence as a form of torture against men and women in detention camps. The defendants were sentenced to 9-18 years' imprisonment.⁵⁶ The case of Anto Furundzija, was the first case at the ICTY to bring up charges completely on sexual violence. This case was significant as the tribunal judges confirmed that rape could be used as a tool of

⁵³ United Nations, "UN International Criminal Tribunal for the Former Yugoslavia (ICTY)," accessed January 30, 2018. <http://www.icty.org/en/features/crimes-sexual-violence/in-numbers>

⁵⁴ United Nations, ITCY.

⁵⁵ Ibid.

⁵⁶ Ibid.

genocide.⁵⁷ The case against *Kunarac et al* was the second trial to deal entirely with charges of sexual violence. The three accused Bosnian Serb army officers were charged with sexual enslavement and rape as crimes against humanity. The defendants received punishments ranging from 12 to 28 years impertinent.⁵⁸ The last landmark case of the tribunal is of Radislav Krstic, a major general in the Bosnian Serb Army. Chamber judges also argued the link between rape and ethnic cleansing, sentencing Krstic to 35 years' imprisonment for his role in ethnic cleansing of the Bosnian Muslim population.

Rape remains the “least condemned war crime,” with the verdicts of the ICTY being no exception. The first decision issued by the ICTY condemned male sexual violence, and though Tadic was tried on various charges of rape against women, those charges were dropped as the proceedings evolved.⁵⁹ The tribunal has been significant in setting a precedent in cases involving sexual violence against men. As one member of the Office of the Prosecutor stated:

One area where the ICTY has advanced the cause of gender justice has been with no longer looking the other way when men are assaulted in times of armed conflict. Perhaps one of the most important areas of jurisprudence where we have contributed has been the prosecution of sexual violence against men because until us, men have been on their own. And they should thank us for being here to fight this battle.⁶⁰

Sexual violence against men due to ethnic, racial, or religious identity is a crime against humanity and is a subject that has been relatively understudied. Of course, it is essential to address all forms of violence, especially sexual violence against civilians and sexual

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ King, 1056.

⁶⁰ Ibid.

violence as a means to achieve genocidal ends; however, the question remains whether these trials did enough to prosecute the rape of women and whether “perpetrators of male sexual assault receive greater sentences than those accused of assaulting females”⁶¹ and whether the ICTY failed to distinguish the differences between sexual violence against men from sexual violence against women.

The ICTY, while successful in many aspects, failed in other respects. One of these outright failures was the protection of victim anonymity. Victim anonymity, (if anonymity is the preference of the victim) is an essential protection that should be provided to victims testifying about their experiences. While the numbers of victims of rape and sexual violence is estimated to be between 20,000 and 50,000, relatively few women spoke out during the ICTY trials, in part for their own protection. Because many of the rapes that occurred were perpetrated by neighbors and community members, many women opted to not report what had happened to them for fear of retaliation. Other women chose not to report their rapes because of their devout faith and fear that recounting their stories would re-victimize them as well as bring attention to questions about their “honor.” According to Catherine Niarchos who analyzed the challenges of prosecuting genocidal rape in the ICTY, “One area of weakness in the rules concerns protection from reprisals because, even if the strongest protective measures are adopted, the witness's identity will be known to the defendant...the fact that such a step is deemed necessary indicates how much women have to lose by coming forward.”⁶² The physical

⁶¹ Ibid.

⁶² Catherine N. Niarchos, “Women, War, and Rape: Challenges Facing the International Tribunal for the Former Yugoslavia,” *Human Rights Quarterly*. Vol. 17, No. 4 (Nov. 1995). 689.

safety of the victims, as well as protections from re-victimization, is essential in cases of rape and sexual violence.

Another failure of these proceedings was the inability to link rape directly to ethnic cleansing.⁶³ Instead, appeals and proceedings following the initial trials of certain defendants did more to equate rape to ethnic cleansing: “Although this latter reference to cleansing might provide fuel for arguing that the Tribunal has linked rape to ethnic cleansing, it would of course still require a series of leaps to equate ethnic cleansing and genocide.” While in other cases, judges associated rape more closely with crimes against humanity and genocide, it is essential that rape and sexual violence be clearly defined, delineated, and tried within the full extent of international and domestic laws. The final failure of the ICTY that will be discussed here is the lack of emphasis on forced impregnation as a form of genocide. While forced impregnation is viewed overall within the context of genocidal rape and ethnic cleansing, the crime of forcibly impregnating a woman, and withholding access to abortion services, is a unique crime that many feminist scholars argue has long lasting impacts on the victim and her community. There was little emphasis on this tactic and how it was used against Bosnian Muslim women. Forced impregnation was clearly a part of the anti-Muslim campaign and used as a direct weapon to ethnically cleanse the population and, therefore, should have been viewed and tried as genocide.⁶⁴

⁶³ Karen Engle, “Feminism and its (Dis)contents: Criminalizing Wartime Rape in Bosnia and Herzegovina,” *American Journal of International Law* 99 (2005): 799.

⁶⁴ *Ibid*, 803.

Overall, the ICTY did not provide victims the justice they deserved and many within the international community are troubled with the tribunal's inability "make explicit that any rape committed in armed conflict is a war crime, entail[ing] the risk of creating the assumption that 'lesser' rapes may still be committed with impunity."⁶⁵ Despite its failures, The International Criminal Tribunal for the Former Yugoslavia proved a relative success in paving a path for the international prosecution of genocidal rape. Most importantly, it brought international attention to the brutality, swiftness, and pervasiveness of sexual violence as a weapon of ethnic cleaning and genocide. The ICTY, along with the Rwandan tribunals, have been important steps toward securing justice for victims and survivors.

⁶⁵ Hilary Charlesworth and Christine Chinkin, "The Boundaries of International Law," in Engle, 782.

Chapter 6: Rwanda

“He called everyone who was outside and said, ‘you come and see how Tutsikazi are on the inside.’ Then he cut out the inside of my vagina. He took the outside, took a small stick and put what he had cut on the top. He stuck the stick in the ground outside the door and was shouting, ‘Everyone who comes here will see how Tutsikazi look.’”¹

- Unidentified Tutsi Rape Survivor

Background

In 1994, the swiftness and brutality of the Rwandan genocide shocked the international community. The world stood idly by as over 1 million Rwandans were killed by machetes in 100 days. Fueled by a legacy of colonialism, Rwandan Hutus served as the catalysts for a calculated and effective ethnic cleansing and genocidal campaign against Rwandan Tutsis. The genocide was as brutal as it was swift: preparations for the impending genocide from Hutu militia included an effective dehumanization and propaganda campaign against Tutsis which began long before the death of Rwandan President Juvénal Habyarimana.² This wide spread violence resulted in the death of 1 million people, thousands of orphaned children, and an estimated 250,000 and 500,000 women raped during the genocide. Hundreds of thousands of survivors contracted HIV/AIDS and other sexually transmitted infections and diseases.

¹ Based on the testimony of a Tutsi rape survivor, found in Weitsman, “if there were peace, you would never accept me,” “You Tutsi girls are too proud.” One rape survivor described how, after being raped, her assailant said, “Now the Hutu have won. You Tutsi, we are going to exterminate you.” He then took her inside, put her on a bed, and held one leg open, while another her other leg. “He called everyone who was outside and said, ‘you come and see how Tutsikazi are on the inside.’ Then he cut out the inside of my vagina. He took the flesh outside, took a small stick and put what he had cut on the top. He stuck the stick in the ground outside the door and was shouting, ‘Everyone who comes past here will see how Tutsikazi look.’” Patricia A. Weitsman, “The Politics of Identity and Sexual Violence: A Review of Bosnia and Rwanda,” *Human Rights Quarterly* 30, no. 3 (August 2008): 575-576.

² There is a general consensus that the official start to the genocide began following Habyarimana’s death.

The precursors to the genocide stemmed from the long legacy of colonialism in the country. Rwanda was colonized by the Germans in 1884 and later by the Belgians after the First World War.³ The three populations present in the country during European colonization were the Hutu, who made up a majority, the Tutsis, and the Twa, who at the time of the genocide made up less than one percent of the population.⁴ Historians believe that Twa were the first in the country and gave up their lands to the Hutu who arrived in present day Rwanda and Burundi from the fifth to eleventh centuries. The Tutsis first migrated to the area around the fourteenth century and used their wealth and advanced combat skills to gain political and economic control over Hutu resources and lands. Scholars argue that the Tutsi established a caste system which placed them, as light skinned Africans, over the darker skinned Hutus. The arrival of the Germans only exacerbated an already contentious relationship between Hutu and Tutsi populations. Tutsis were given an elevated status over the Hutu because they were lighter skinned and were believed to be more “civilized” and less “ape-like” according to European settlers.⁵ Tutsis were often delegated roles as house servants and Hutus worked primarily in the fields, planting coffee and performing agricultural work.⁶ German and Belgian colonizers further subjugated both populations and worsened the caste system which placed Europeans at the top, Tutsi below them, and Hutus at the very bottom.

The European “divide and conquer” strategy, coupled with the spread of scientific racism that was common in the nineteenth and early twentieth centuries, proved

³ “Rwanda—History,” African Studies Center: University of Pennsylvania, accessed January 16, 2018, <https://www.africa.upenn.edu/NEH/rwhistory.htm>.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

successful in further subjugating Hutu and Tutsi populations and forming an oppressive social, political, and economic hierarchy. Hutus grew to resent their status in colonial society and viewed Tutsis as part of the cause of their misfortunes. After “liberating” the region from German occupiers, Belgian forces further employed the German strategy of racial and economic subjugation.⁷ This came in the form of removing Hutu political leaders and replacing them with Tutsi leaders, stripping Hutus of any lands they may have held, and expanding *Ubuletwa*, the forced labor system that disproportionately affected Hutu communities.⁸ Furthermore, Tutsis were the only racial group in the country that had the option of receiving an education and were often in a much higher economic position than Hutus. With increasing racial tensions, the League of Nations tasked Belgium with the responsibility of implementing a strategy to integrate Hutus into positions of power. The Ten Year Development Plan, proposed by the Belgians, was intended to provide a variety of broad socioeconomic reforms to promote social and political advancement for Hutu communities; however, this program ultimately benefitted the Tutsis, granting them political, social, and economic domination over the Hutu.⁹

Despite efforts to “develop” Rwanda, Belgian forces had a hand in the severe political unrest that followed soon after the implementation of the Ten Year Plan. In 1959, Belgian forces initiated a state of emergency in Rwanda, calling for Belgian military forces to restore order in the region.¹⁰ While there was a state of relative peace,

⁷ Cody Saunders, “Colonial Influence’s Role in the Rwandan Genocide,” Washington State University, published on January 20, 2016, <https://history.libraries.wsu.edu/spring2016/2016/01/20/un-tribunal-on-rwanda-massacre-officially-ends/>

⁸ Saunders, “Colonial Influence’s Role in the Rwandan Genocide.”

⁹ University of Pennsylvania, “Rwanda—History.”

¹⁰ Ibid.

animosity between Hutus and Tutsis reached a breaking point. In 1962 Rwanda became an independent state with Gregoire Kayibanda as President.¹¹ His presidency came to an end in 1973 when Major General Juvenal Habyarimana led a violent coup to overthrow Kayibanda. Habyarimana launched Le Mouvement Revolutionnaire National pour le Development (MRND), the nation's sole political party leading up to the genocide.¹² This political shift, along with the centuries of racial inequality, made the impending genocide almost inevitable. After the President's plane was shot down in April of 1994, killing President Habyarimana and Burundian President, Cyprien Ntaryamira, the genocide officially began and during the following three months, an estimated one million people were killed, nearly three quarters of the Tutsi population in Rwanda.¹³ The massacre of the Tutsi population did not require high technology¹⁴ or traditional military leadership. Ordinary Hutu men picked up machetes and other agricultural tools and killed their Tutsi neighbors. The warning signs were glaringly obvious to the international community that refused to intervene before, and during, the 1994 genocide. Though many world leaders were criticized for lack of intervention, President Bill Clinton later said that not intervening to stop the genocide was the biggest mistake of his presidency.

In addition to understanding the colonial context which helped facilitate racial tensions in the region, it is essential to understand the three paradigms in explaining the

¹¹ Ibid.

¹² Ibid.

¹³ Brenda Fitzpatrick, *Tactical Rape in War and Conflict: International Recognition and Response* (Bristol: Policy Press at the University of Bristol, 2016), 133.

¹⁴ One of the most important ways in which Hutu militia carry out mass executions of Tutsi were by using machetes, farm equipment and other "low technology" weapons rather than using guns, bombs, or other advanced weaponry. There was no clear power structure and "ordinary" Hutus were encouraged to kill their Tutsi neighbors in order to protect themselves. Much of this propaganda and broadcasting of information came from radio programming where broadcasters would often provide specific and detailed information for Tutsi enemies including names, addresses, and other personal information.

genocide. According to international security scholar Peter Uvin, the genocide can be explained with three distinct paradigms: elite manipulation, ecological resource scarcity, and examining the socio-psychological features of the perpetrators.¹⁵ For this thesis, only a brief overview of these paradigms will be explained for the purposes of understanding the complexities of the Rwandan genocide. The first of these explanations is that the Hutu elite, historically deprived of power and control, was determined to not only increase their status but also retain their newfound power. Tutsis were viewed as a threat to the Hutus' new position in society, and therefore it was the responsibility of Rwandan Hutus to eradicate the threat.¹⁶ The next explanation centers on Rwanda's position as a resource scarce country. This problem, coupled with Rwanda's position as a country with one of Africa's highest population growth rates, served as a root cause of the genocide. Uvin calls attention to the challenges a country faces with resource scarcity and over population: the potential of social conflict, communal violence, famine, and a number of other problems.¹⁷ Lastly, many scholars of the Rwandan genocide pay particular attention to the features of the perpetrators, particularly the belief that obedience and conformity is a fixed property in Rwandan culture: men followed orders from superiors to kill, maim, and torture.¹⁸ Of course, this analysis is oversimplified and ignores racialized beliefs that were fostered during colonization of the region. The most significant explanation of the Rwandan genocide was the role colonization held in shaping and creating racial tensions, ethnic divisions, and providing a model for which Rwandan Hutus could use to rid the

¹⁵ Peter Uvin, "Reading the Rwandan Genocide," *International Studies Review* 3, no. 3 (Autumn 2001).

¹⁶ Uvin, 80-81.

¹⁷ Uvin, 83.

¹⁸ Uvin, 84.

region of Tutsi enemies. A distinct campaign of the genocide, which will be explained at length, was the rape and sexual violence against Tutsi women.

Before delving into the ways that rape and sexual violence were used against Tutsi women,¹⁹ it is important to examine the constructed hatred of them. Much of the racial and ethnic animosity that fueled the genocide specifically targeted Tutsi women—primarily through propaganda. Hutu extremists labeled them as enemies of the state that needed to be both raped and “exterminated:” “Public media was used to establish and construct social relationships and increase the vulnerability of Tutsi women who were frequently admired for their beauty and feared for their ability to seduce and harm Hutu men. Tutsi women were always viewed as ‘enemies of the state’” according to Fitzpatrick.²⁰ Stereotypes portrayed Tutsi women as arrogant, proud, “too good” for Hutu men and as “weapons” which could be used by Tutsi men against the Hutu.²¹ Tutsi women were overly sexualized and were targeted not only for their belonging to their ethnic group but also for their perceived superiority over Hutus. The women who were raped during the genocide recall hearing phrases and conversations from their attackers during their rapes such as: “we want to see how sweet you Tutsi women are, “you Tutsi women think you are too good for us:” “you Tutsi girls are too proud.”²² Because Tutsi

¹⁹ Following the end of the genocide, many women reported rape and sexual abuse. While Tutsis were targeted for genocide, and Tutsi women were the primary targets for sexualized violence, there are several reports of rape against Hutu women. Many of these reports are from Hutu women who had been married to Tutsi men or were labeled as Tutsi sympathizers according to a Human Rights Watch report. This chapter however, will primarily discuss the sexual violence committed against Tutsi women by Hutu militia as a calculated tool for ethnic cleansing and genocide.

Human Rights Watch, “Shattered Lives: Sexual Violence During the Rwandan Genocide and its Aftermath” published in September 1996, <https://www.hrw.org/legacy/reports/1996/Rwanda.htm>.

²⁰ Fitzpatrick, 140.

²¹ Ibid.

²² Ibid.

women were a particularly hated group, they were direct targets for rape and sexualized violence by Hutu men.

Rape as Ethnic Cleansing

Hutu *Interahamwe*²³ gangs raped Tutsi women for the purposes of rendering them infertile and unable to carry on the Tutsi bloodline as well as to promote comradery among the soldiers. All women were at risk of gang rape, especially young and pregnant Tutsi women. Because women were viewed as the carriers of their culture, traditions, and the next generation of Tutsis, women of child bearing age were especially targeted for sexual violence and gang rape. A Tutsi victim recalls her gang rape when she was several months pregnant: “They took turns to rape me. I didn’t know them. My private parts were injured and there was a risk that I would miscarry.”²⁴ Because one of the goals of the genocide was to eradicate the Tutsi bloodline, pregnant women were targets of violence, forced abortions, and killings. Gang rapes were often also accompanied by beatings, torture, and sexual mutilation. One victim, Josette, reported her experience during the genocide:

They gave me the big bloodstained stick that they had just used in massacring my people, a short distance away, and they began to rape me in the same field. They were many of them. I didn’t even dare look at them and so I didn’t recognize them. The génocidaires raped me whenever we met, until they felt satisfied. Sometimes, you would meet a very nasty man who would beat you before or after his vile deed. Some women or girls were also tortured in their private parts, but that didn’t happen to me. Another act of savagery, which happened often, is that you were tortured by seven génocidaires, or even more, at the same time.²⁵

²³ Term for the bands of Hutu civilians that killed Tutsis. Similar to mobile killing units.

²⁴ African Rights, “Rwanda: Broken Bodies, Torn Spirits Living with Genocide, Rape and HIV/AIDS,” published April 2004, <http://preventgbvafrica.org/wp-content/uploads/2013/10/brokenbodies.africanrights.pdf>.

²⁵ African Rights, 12.

Gang rape served as a calculated tactic to control and prevent Tutsi reproductive capacity. Not only could a woman miscarry if she was raped while pregnant, but she could be raped so violently that the physical trauma would prevent her from having any future children. Many Hutu soldiers also used rape as a precursor to executions of Tutsi women. Many women were killed immediately after their rapes. Despite the Hutu goal of complete extermination of Tutsis, as Mullins argues, “If a large enough portion of the Tutsi women who survive the genocide itself are sterile, then their ability to reconstitute themselves as a population is compromised.”²⁶

One of the unique features of the Rwandan genocide was the attempt to ethnically cleanse the country, including through the intentional spread of HIV to Tutsi women. One study carried out after the genocide reported that up to 70% of rape survivors had contracted HIV.²⁷ Although it is possible that women could have contracted HIV at any point in their lives, according to an Amnesty International report, “the mass rape during 1994 contributed significantly to the spread of the virus in Rwanda, particularly as rates of HIV transmission during sexual violence was believed to be high.”²⁸ HIV/AIDs positive *Interahamwe* soldiers used rape specifically for the purposes of spreading the disease to Tutsi women. “Among the weapons of choice calculated to destroy while inflicting maximum pain and suffering was HIV” according to researcher Paula Donovan.²⁹ Hutu soldiers did not make efforts to conceal their intentions, according to

²⁶ Christopher W. Mullins, “He Would Kill Me with His Penis: Genocidal Rape in Rwanda as a State Crime” *Critical Criminology: An International Journal* 17, no. 1 (January 2009): 25

²⁷ African Rights, 93.

²⁸ Amnesty International, “‘Marked for Death,’ Rape Survivors Living with HIV/AIDS in Rwanda,” April 5, 2004. 2. <https://www.amnesty.org/download/Documents/92000/afr470072004en.pdf>.

²⁹ Paula Donovan, “Rape and HIV/AIDs in Rwanda” *The Lancet* 360, s17-s18 (December 2002).

Donovan, “Eyewitnesses recounted later that marauders carrying the virus described their intentions to their victims: they were going to rape and infect them as an ultimate punishment that would guarantee long-suffering and tormented deaths.”³⁰ These “long suffering and tormented deaths” were in part due to the lack of access to anti-retroviral drugs (ARVs) and that general healthcare was (and still is) extremely expensive and inaccessible for a majority of the Rwandan population. Soldiers felt that even if women survived the genocide, they would be infected with AIDs and would pass it to their spouses, and children if they became pregnant in the future, and would eventually die from the disease. Simply put, the purposeful spread of HIV through rape was a strategy to ethnically cleanse the country of the Tutsi population. According to Weitsman, “Instead of using rape as a mechanism to propagate more Hutus, it used rape as a mechanism to try to take life. Rwandan President Paul Kagame said, “we knew that the government was bringing AIDS patients out of the hospitals specifically to form battalions of rapists.””³¹

The deliberate spread of HIV/AIDs to Tutsis was not limited solely to women, though women were a majority of the victims of sexual violence during the genocide. In the case of the spread of HIV for the purposes of ethnic cleansing, *Interahamwe* soldiers also forced Tutsi men to have sex with women who had contracted the disease. In some cases, these women had the disease before the genocide, and in other cases, it is believed that men were forced to have sex with women who had contracted the disease after having experienced rape by Hutu forces.

³⁰ Paula Donovan, “Rape and HIV/AIDs in Rwanda.”

³¹ Weitsman, 577.

They demanded that I have sex with her. She lay on the ground and they told me to show them what I did with my wife. When I refused, one of them beat me with his club and I had no choice but to do what they wanted. They stood next to me, hurling insults which I couldn't repeat to you. They had spears, clubs and bows. When the deed was done, they told me that there was no death quite like sleeping with a woman with AIDS. They knew very well that her husband had died from AIDS, but I hadn't known this. I didn't even know the lady.³²

Despite rates of HIV/AIDs being high before the genocide, scholars and medical professionals believe that the continually high rates of HIV infection in Rwanda following the genocide were results of the particularly sexualized violence that occurred during the conflict.³³ This is most commonly seen in patients who reported being raped by *Interahamwe* soldiers. Human Rights Watch reported that "Victims of sexual abuse during the genocide suffer persistent health problems. According to Rwandan doctors, the most common problem they have encountered among raped women who have sought medical treatment has been sexually transmitted diseases, including HIV/AIDS."³⁴ While it is impossible to medically prove that patients caught HIV through rape by Hutu soldiers, there is significant data and statistics that correlate the spread of HIV with rapes that occurred during the genocide. The Rwandan government asserted in 1996 that "Without question, the situation of HIV/AIDS infection was aggravated considerably between April and July 1994. A large number of girls and women who survived the genocide were raped; others are living in displaced persons camps or refugee camps, where the conditions of hygiene and promiscuity favor the transmission of HIV/AIDS."³⁵ Medical professionals believe that the true number of women (and men) that have

³² African Rights, 19.

³³ Human Rights Watch, "Shattered Lives."

³⁴ Ibid.

³⁵ Ibid.

HIV/AIDs is actually much higher than what is reported. The spread of HIV/AIDs through rape during the genocide resulted in the deaths of thousands of individuals and continues to plague the country as many survivors of genocidal rape live with the disease and have transmitted it to their offspring and others.

Mutilation was used against Tutsis as a physical manifestation of ethnic hatred. Hutu soldiers mutilated both Tutsi men and women either before or after killing them. Human Rights Watch reports that mutilation was a specific tactic that targeted the Tutsi identity. The same report by Human Rights Watch explains that Hutu *Interahamwe* cut off particular “Tutsi” features such as “thin noses and long fingers.”³⁶ While mutilation affected both male and female victims, women were often the most targeted for mutilation, either during or after rape. One witness testified in the trial of Sylvestre Gacumbitsi to being raped by three men and afterwards with a tree branch:

During the act, they openly talked of how they 'hated [Tutsi] and now they were going to freely take advantage of us ... they meant that Tutsi women and girls didn't like Hutu men and refused to marry them. And they said now they could do everything they wanted with us ... [they] stuck me and then raped me and afterward they thrust a stick of a tree, a branch in my vagina.’³⁷

Often, this mutilation took the form of rape with foreign objects that were not a penis or body part. Many reports following the genocide highlighted the widespread use of objects such as sticks and branches, weapons such as guns, truncheons, knives, and spears, and cigarettes being inserted into a victim’s vagina, anus, or other body parts. Even if the victim survived these violent rapes, the mutilation a victim experienced would

³⁶ Human Rights Watch, “Shattered Lives”

³⁷ Christopher W. Mullins, “‘We are going to rape you and taste Tutsi women:’ Rape During the 1994 Rwandan Genocide,” *The British Journal of Criminology* 49, no. 6 (November 2009): 21.

undoubtedly cause physical scars, infertility, and other health and psychological problems. The use of foreign objects to rape a woman was extremely common during the genocide. The same victim from above testified during the trial of Sylvestre Gacumbitsi that after her gang rape, she was taken to a house where Gacumbitsi, "...took out a pistol ... he said he wasn't going to waste a bullet ... he said he was going to kill me with his penis ... he took a police man's weapon [a truncheon] ... he raped me with that weapon', then with his penis. When he was finished, he told the victim 'go and others shall kill you'"³⁸ Ultimately, mutilation and the rape of women with foreign objects also helped further the purpose of ethnically cleansing the country from the Tutsi population either through the murder of women through violent rape, or rendering survivors infertile due to physical trauma.

Mutilation also occurred after the rapes and murders of Tutsi women. This was often in the form of the removal of female body parts, suggestive placement of Tutsi bodies or body parts, and more. Human Rights Watch reported that the extreme mutilation of Tutsi bodies was characteristic of the genocide. These mutilations, according to their report included: "the pouring of boiling water into the vagina; the opening of the womb to cut out an unborn child before killing the mother; cutting off breasts; slashing the pelvis area; and the mutilation of vaginas."³⁹ An *Interahamwe* soldier testified in the trial of Juvenal Kajelijeli that, "I saw these two people rape a girl...I saw them rape her and after that they used a spear to pierce her and they also

³⁸ Mullins, "He Would Kill Me with His Penis," 16.

³⁹ Human Rights Watch, "Shattered Lives."

pierce her sexual organs...I saw [them] cut off [her] breast...after cutting the girl's breast off he [Kajelie] sucked it.”⁴⁰

Pregnant women were at a heightened risk, particularly from forced abortions or mutilation of the unborn child. One survivor recalls witnessing the murder of a pregnant woman and her children by several *Interahamwe* soldiers:

They lay her down, took a spear, inserted it in her and stirred it in her. They first kneaded her body as if helping her to give birth. Because of fear the baby came out. We thought that they were helping her to give birth so as to separate her from the baby. When the baby was half way out, they sent a spear upwards and stirred until when the spear came out of the mother's mouth.⁴¹

As in other genocides, pregnant women were seen as a threat to the overall goal of extermination of the Tutsi community. Most Tutsi women were seen as essential for the reproduction of Tutsi people and culture; therefore, pregnant women were often at an even greater risk of torture and death. Another survivor reports hiding in a bush when she heard several *Interahamwe* soldiers walking, while hiding she watched the soldiers rape a woman and leave the body with her throat slit, skirt torn, and a large stick protruding from her genitals.⁴² Soldiers often left mutilated bodies in public and visible places in part to create a state of constant fear and terror for women and their communities, as well as to publically humiliate and degrade Tutsi women, even after their deaths.⁴³ The main goal of this mutilation, however, was the ethnic cleansing of the Tutsi population - the ultimate goal of the genocide.

⁴⁰ Mullins, “He Would Kill Me with His Penis,” 18.

⁴¹ Nicole Rafter, *The Crime of All Crimes* (New York: NYU Press, 2009), 163.

⁴² Mullins, “He Would Rape Me with His Penis,” 18.

⁴³ Mullins, “He Would Rape Me with His Penis” and “We are going to rape you and taste Tutsi women.”

Rape to Destroy Communities

A distinct feature of the Rwandan genocide came in the form of destroying kinship networks and Tutsi communities—primarily through the rape and sexual violation of Tutsi women. First, it is essential to understand kinship networks in Rwanda. Kin did not only refer to immediate families but also extended families, family friends, and caretakers.⁴⁴ Familial networks in pre-genocidal Rwanda were considered to be sacred, where customs, religious beliefs, and cultural practices were passed on to future generations.⁴⁵ The Rwandan family was the center of the community, and “center of activities as a social organization because it provid[ed] a forum for members to come together for recreational, religious and social ceremonies.”⁴⁶ Furthermore, the family and kin network was thought to be “the nexus of identity where values and skills are learned and where political, economic and social development occurs.”⁴⁷ Unlike western cultures, Rwandan kinship networks depended on deep and cultivated relationships with extended family and family friends. These values and practices reflected a deeply held Rwandan belief in the “strength of the collective and the importance of kinship as a foundation for organizing production, reproduction and the distribution of goods and services.”⁴⁸ The structure of these familial and kin networks made the targeting of Tutsi women a clear and strategic objective of the genocidal campaign.

⁴⁴ Nicole Fox, “‘Oh Did the Women Suffer, They Suffered so Much:’ Impacts of Gender Based Violence on Kinship Networks in Rwanda,” *International Journal of Sociology of the Family* 37, no. 2 (Autumn 2011): 281.

⁴⁵ *Ibid.*, 283.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ *Ibid.* 285.

Hutu militia targeted Tutsi women in the hopes of destroying communal ties and eventually eliminating the Tutsi ethnic identity from Rwanda. Women were believed to be the carriers of a group's collective honor. Tutsi women were taught from an early age to be pure and chaste, well-behaved, "contained citizens and mothers."⁴⁹ On the other hand, Tutsi men were taught to be "brave defenders of both the family and the nation,"⁵⁰ while women would be responsible for the honor of their family and community and men would be responsible for protecting the woman's honor when she cannot.⁵¹ The rape of a Tutsi woman both violated the honor and purity of the victim and her family and community but also emasculated the male members of her family and community, whose jobs were to protect her. This was particularly demoralizing for entire communities: "Because women bear the burden of being the honor of the collectivity and the entire nation, genocidal rape and the shame that comes with sexual assault and sexual torture functions not only to damage a single woman, but an entire nation and its national identity."⁵² By raping the women, Hutu militia attempted to destroy Tutsi kinship networks and, therefore, the ethnic identity of Tutsi families.

In addition to targeting Tutsi women for rape, Hutu soldiers often took women from their communities and forced them into sexual slavery and servitude. While five examples of sexual enslavement of Tutsi women were uncovered during the trial testimonies, scholars believe the number of women that were enslaved was much higher.⁵³ Many rape survivors report being held as sex slaves, both individually and

⁴⁹ Fox, 288.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Mullins, "He Would Kill Me with His Penis."

collectively, often the private property of one individual or a group of men.⁵⁴ One survivor, Stéphanie, recalls her husband being kidnapped and killed by *Interahamwe*, and later taken by the same soldiers, and despite being several months pregnant, held as a sex slave for Hutu militia:

They kept us there for a whole month. Each evening the *Interahamwe* would come back from their killings and pass by this office, taking women and girls to rape. During a single night, one could easily pass between three or four men. Later, they didn't have any more discretion—they gang-raped us and in the same communal room. They shared us between themselves as they wished. Even the little girls were not spared. The pregnant women were the most targeted. For the *Interahamwe*, raping a pregnant woman was to claim two victims and that gave them great satisfaction.⁵⁵

Survivor reports vary - from being held a few days to being held in captivity for years.⁵⁶

The element of confinement for the purpose of repeated rapes, with the threat of death, offers a different element to genocidal rape: this method of sexual violence was used particularly for the purposes of “breaking” both the victim and her community. Sexual enslavement—and repeated violent rapes—could render a woman infertile, but the goal of this particular form of sexual violence was the subjugation of Tutsi women and the emasculation of Tutsi men. Men are traditionally viewed as the protectors of the women in their families and communities and when “their” women are taken for the purposes of repeated rapes and domestic servitude, men have failed in their job as protectors.

An important factor of the genocide centered on the humiliation of Tutsi women, both as a physical manifestation of power against the victims but also as a way to dehumanize the population, making it easier to commit genocide. Humiliation took a

⁵⁴ Weitsman, 576.

⁵⁵ African Rights, 22.

⁵⁶ Weitsman, 576.

variety of forms including forced public nudity, public shaming, and more. Hutu militia used sexual humiliation as a way to isolate Tutsi women from their families and destroy communities, thus making Tutsis easier to kill. During the Jean Paul Akayesu trial, a Hutu woman remembered seeing the sexual humiliation of a Tutsi girl in high school. She was forced to stand naked in public and do gymnastics in front of a crowd and was later gang raped by several Hutu militia.⁵⁷

Much of the public humiliation of Tutsi women stemmed from the belief that Tutsi women felt that they were superior, therefore Hutu men believed they could finally engage sexually with Tutsi women. Tutsi women were fetishized by Hutu men which resulted in extreme cruelty and sexualized violence against them. Victims reported being forced to undress and walk around nude in front of *Interahamwe* troops,⁵⁸ others report that the sexual humiliation they experienced was often accompanied with threats to their lives: in one reported incident, Hutu militia took several Tutsi women who were seeking refuge in a hospital. One soldier selected three women from a group of refugees and forced them to a private room within the hospital demanding they undress and lie on their backs so the *Interahamwe* soldiers could “see what the genitals of a Tutsi looked like...they looked at us and raped us...[saying to us] we are going to kill you. After having raped you, we are going to pierce your genitals with a sharpened sticks.”⁵⁹ These shaming and humiliation processes were not only directed at the victims but also the victims’

⁵⁷ Mullins, “We are going to Rape you and Taste Tutsi Women,” 20.

⁵⁸ Ibid.

⁵⁹ Ibid.

ethnic identity. Survivors bore—and still bare—painful physical and psychological scars, including shame and stigmatization.

Many in the international community, upon hearing the reports of extreme sexual cruelty against Tutsi women, raised questions as to what the purpose of the humiliation was if the end goal was to kill the entire Tutsi population. Like other forms of sexual violence, humiliation of the enemy group served several genocidal purposes:

...the rapes function to add socio-cultural insult to physical injury for the victim and the ethnic group itself. Not only will the population be destroyed—the ultimate goal of any genocide—but, before the destruction occurs, all dignity and rights held by the population will be destroyed—the ultimate goal of any genocide—but, before the destruction occurs, all dignity and rights held by the population will be destroyed—the ultimate goal of any genocide—but, before the destruction occurs, all dignity and rights held by the population will be removed.⁶⁰

Thus, rape and sexual violence can be used as a way to demoralize and terrorize an entire community or ethnic group as well as a way to tarnish the reputation and memory of an enemy group by:

...ensuring that not only are the final experiences of the population horrible by nature, but the way in which they are remembered by others is also fixed on those end moments (i.e. a nude woman laying along the side of the road with her throat slit and a tree branch inserted into her vagina). Not only is the population itself eliminated, but the final memories of the people's existence are tarnished.⁶¹

Hutu forces used this technique to destroy Tutsi kinship networks. Many rape victims and survivors report being cast out of their communities and families due to the rapes, sexual violence, and sexual humiliations they experienced during the genocide. In a genocidal context, even if the victim was not killed, or the ethnic community was not eradicated, sexual violence ensured that not only would the victim be left homeless and without

⁶⁰ Mullins, "We are going to rape you and taste Tutsi women," 25.

⁶¹ Ibid, 25-26.

physical, emotional, or financial support but there would also be lasting effects on the community and kinship networks.⁶²

Aftermath: The International Criminal Tribunal for Rwanda (ICTR)

After one hundred bloody days, the international community responded, spearheaded by the United Nations call for a tribunal to prosecute those responsible for the genocide. The United Nations Security Council established the International Criminal Tribunal for Rwanda (ICTR) to “prosecute persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and neighboring States, between 1 January 1994 and 31 December 1994.”⁶³ Since it began in 1995, the Tribunal has indicted 93 people responsible for violations of Rwandan and humanitarian laws including, acts of genocide, crimes against humanity, and more. Those indicted were high-ranking military and government officials who were responsible for the genocide, as well as politicians, businessmen, religious, militia, and media leaders. As of 2015, 62 defendants have been sentenced, fourteen have been acquitted, ten referred to national jurisdictions for trial, three were fugitives, two were deceased prior to judgement, and two indictments were withdrawn before trial.⁶⁴ The ICTR is the first ever international tribunal to interpret the definition of genocide as set forth by the 1948 Geneva Convention as well as the first tribunal to recognize rape as a means of perpetrating genocide.⁶⁵ Out of the concluded proceedings for 85 accused of genocide, only a handful faced judgements of rape and sexual violence. The case of Jean

⁶² Mullins, “He Would Kill Me with His Penis” 25.

⁶³ United Nations Mechanism for International Tribunals, “The ICTR in Brief” accessed December 14, 2017, <http://unictr.unmict.org/en/tribunal>.

⁶⁴ Ibid.

⁶⁵ Ibid.

Paul Akayesu was groundbreaking and precedent setting in regards to the prosecution of genocidal rape.

Jean Paul Akayesu was declared guilty of genocide, crimes against humanity, and violations of Article 3 of the Geneva Conventions on September 2, 1998. Akayesu served as *bourgmestre*, the most powerful figure in each commune of the eleven Rwandan prefectures. His *de facto* authority in the region made him an extremely powerful figure: he had executive control of communal police and gendarmes, and was responsible for the execution of laws and administration of justice in the commune.⁶⁶ Akayesu was accused and convicted of using his powers as *bourgmestre* to sexually abuse civilian women: “Many women were forced to endure multiple acts of sexual violence which were, at times, committed by more than one assailant. These acts of sexual violence were generally accompanied by explicit threats of death or bodily harm.”⁶⁷ The judgement continues,

Jean Paul Akayesu knew that the acts of sexual violence, beatings and murders were being committed and was at times present during their commission. Jean Paul Akayesu facilitated the commission of the sexual violence, beatings and murders by allowing the sexual violence and beatings and murders to occur on or near the bureau communal premises.⁶⁸

Initially, rape and sexual violence were not among the accusations; on June 17, 1997, the indictment against the defendant was amended to include allegations of sexual violence.

The amendment of the indictment came only after the testimonies of two witnesses

⁶⁶ International Criminal Tribunal for Rwanda, “The Prosecutor versus Jean-Paul Akayesu,” United Nations, published September 2, 1998, 5, <http://unictr.unmict.org/sites/unictr.org/files/case-documents/ictr-96-4/trial-judgements/en/980902.pdf>.

⁶⁷ Ibid, 11.

⁶⁸ Ibid.

during the trial. Akayesu was tried, and eventually convicted of several crimes including rape under the designation as a “crime against humanity.”⁶⁹

While there were several others that were tried and convicted of rape as a crime against humanity, the case of Jean Paul Akayesu set a precedent to the way international criminal courts and tribunals handle the prosecution of genocidal rape. Akayesu was the first defendant to be tried for rape during the tribunal. The original indictment against him did not include charges of sexual violence or genocidal rape, though intense pressure from international NGOs and witness and survivor testimonies caused the courts to amend the indictment. During the trial, the ICTR affirmed that rape and sexual violence fell under the Convention on the Prevention and Punishment of the Crime of Genocide, since rape, especially during the Rwandan genocide, was used as a tool to destroy in whole or in part, the Tutsi population. However, despite this precedence setting, many critics of the tribunal felt that in reality, victims did not get the justice they deserved, especially survivors of rape and sexual violence. Out of all the convictions, an overwhelming ninety percent of judgements contained no rape convictions according to Binaifer Nowrojee, “Only two cases have resulted in rape convictions. More disturbingly, there were four acquittals for rape (double the number of convictions)”⁷⁰ according to a study that gathered information on the prosecution of rape during the tribunal. “No rape charges were even brought by the Prosecutor’s Office in 90 percent of those adjudicated cases. In the 30 percent that included rape charges, only 10 percent were found guilty for

⁶⁹ Ibid.

⁷⁰ Binaifer Nowrojee, “‘Your Justice is Too Slow’ Will the ICTR Fail Rwanda’s Rape Victims?” *United Nations Research Institute for Social Development (UNRISD) Occasional Paper* 10 (November 2005): iv.

their role in the widespread sexual violence.”⁷¹ As of 2004, when this study was published, only two defendants were found guilty for their role in the crimes of sexual violence and the rapes of hundreds of thousands of women—these convictions were reversed on appeal.^{72 73} While Akayesu’s case was truly groundbreaking, the tribunal as a whole did not do enough to secure justice for the victims and survivors of genocidal rape in Rwanda.

Despite its importance in the international community and to the victims of the genocide, the International Criminal Tribunal for Rwanda ultimately failed in the goal to bring justice to victims and survivors of rape and sexual violence. Tim Gallimore, spokesperson for the ICTR prosecutor expressed his frustrations with the proceedings, ““It needed to be done and still needs to be done. The kinds of precedents it set - over what it means to commit genocide, and to establish a regime for protecting human rights is a significant accomplishment...But I'm disappointed about the justice aspect of it," specifically the overturning of guilty verdicts during the appeals process, cases that had collapsed, prisoners that received shorter sentences or early releases and more.⁷⁴ Simone Monasebian, a prosecutor during the tribunal believed that “One of the biggest challenges

⁷¹ Nowrojee, 3.

⁷² Nowrojee, iv.

⁷³ The following are the results of the trials of the defendants tried for rape as a crime against humanity: Musema, Alfred (ICTR-96-13): life sentence for rape (2000), overturned on appeal and acquitted of rape (2001). Niyitegeka, Eliezer (ICTR-96-14): acquitted of rape (2003), rape acquittal not appealed by prosecution. Kajelijeli, Juvenal (ICTR-98-44A): acquitted of rape (2003), rape acquittal not appealed by prosecution. Akayesu, Jean Paul (ICTR-96-4): 15 years for rape (1998), upheld on appeal (2001). Musema, Alfred (ICTR96-13): life sentence for rape (2000), overturned on appeal and acquitted of rape (2001). Semanza, Laurent (ICTR-97-20): seven and 10 years for two counts of rape, upheld on appeal. Found in Nowrojee, 5.

⁷⁴ Alastair Leithead, “Rwanda Genocide: International Criminal Tribunal Closes,” *BBC News*, December 14, 2015, <http://www.bbc.com/news/world-africa-35070220>.

that we faced is not including voices of survivors sooner. There was this misconception that if we involved Rwandans in the trials, especially victims, that it would in some way create bias...I think it was a mistake. We lost a lot of expertise from Rwandan women and people were fed up with the tribunal.”⁷⁵ Yolande Bouka, researcher from the Institute for Security Studies told the BBC that “Ordinary people would tell me one of the greatest frustrations about the tribunal was the disconnect between the people and the process - they couldn't look at those accused and get a sense of who organized the genocide.”⁷⁶ Most difficult of all, however, is the failure of these proceedings for the victims of genocidal rape who feel they had been let down by the international community. A rape survivor, who contracted HIV from her attack feels that the international community has failed her:

For those of us on the road to death, this justice will be too slow. We will be dead and no one will know our story. Our families have been killed and our remaining children are too young to know. What happened to us will be buried with us. The people for whom this tribunal was set up for are facing extinction—we are dying. We will be dead before we see any justice.⁷⁷

The importance of prosecuting sexual violence cannot be overstated and will be explored further later in this thesis. What the international community must remember is that in the case of Rwanda, rape and other forms of sexual violence were used as a form of genocide, a strategy to destroy physically (and psychologically), in whole or in part, the Tutsi population. Sexual violence was an integral part of this destruction. Sexual violence was genocide and should have been tried and treated as such.

⁷⁵ Simone Monasebian, Interview with Larissa Peltola, April 3, 2018.

⁷⁶ Ibid.

⁷⁷ Nowrojee, 6.

Chapter 7: Rohingya and Yazidi

“I was held down by six men and raped by five of them...He stuck a knife into my side and kept it there while the men were raping me. That was how they kept me in place. ... I was trying to move and [the wound] was bleeding more.”

- Fatama Begum, Rohingya Rape Survivor

“Men came several times to take away some of the girls. Those who resisted were beaten and pulled away by the hair. Some were beaten with electrical cables. I was not afraid of the beatings, but could not bear the thought that they could attack my honour. We were constantly told that we would be forced to marry or sold to some men.”

- Anonymous Escaped Yazidi Sex Slave

Introduction

Sexual violence and rape committed against the Rohingya Muslims in Burma¹ and Yazidi women by the terrorist groups ISIS and ISIL,² offer unique insights in relation to the other case studies in this thesis. The violence in Rakhine State and civil war in Syria are currently happening and the horrific treatment of women receives little attention in the international arena compared to the other war crimes being committed in these countries. While these conflicts have not yet been labeled as genocides by the United Nations, genocidal acts and ethnic cleansing are occurring at an alarming rate. Sexual violence is being used as a form of subjugation and ethnic cleansing, to inflict terror on civilian populations, and as a targeted effort to remove ethnic minorities from specific geographic regions. These recent events show us that mass atrocities against women in the form of sexual violence have still not risen to the level of international violations, despite the history of cases that I have presented here, to warrant the pursuit of the perpetrators in the international court system. This chapter will explore the origins and

¹ In 1989, the then-ruling military junta changed Burma's official name to "Myanmar," however, activists and many international actors do not recognize the legitimacy of the military junta and their illegal occupation of the country and therefore do not recognize the change in the country's name. For this purposes of this thesis, the country of Myanmar will be referred to as "Burma."

² "Islamic State in Iraq and Syria" (ISIS) and "Islamic State in Iraq and Libya" (ISIL)

current state of the conflicts and will argue that, without international intervention, these conflicts will escalate and may lead to genocide; likewise, this chapter will discuss the ways in which sexual violence is an integral force in this escalation against civilians especially women and girls. Furthermore given the current occurrence of these atrocities, there is an urgency to assess and respond to them, as well as to see how this unfolding case can be better understood in light of the deeper 20th century history of sexual violence.

Before discussing the specifics of the Rohingya and Yazidi cases, it is essential to point out the limitations of researching these conflicts. Two significant limitations are the restricted access to information gathering and victim testimonies. Due to the prohibitive access to the countries, few international organizations have visited Rakhine State in Burma to chronicle the violence against the Rohingya. Similarly, aid workers and human rights activists cannot reach the female captives being held by ISIS and ISIL forces. In the case of the Rohingya, human rights organizations and media outlets have heard reports of sexual violence only after men and women fled to refugee camps in Bangladesh. Investigations into allegations of mass rape by Burmese military forces have been conducted by human rights organizations such as Human Rights Watch and Amnesty International, though these investigations are not comprehensive. There are relatively few testimonies that exist that document rape used against Rohingya women and girls. This is in large part because the conflict is ongoing and reports emerge only after survivors have fled Burma. Additionally, the nature of the crime, and the shame and guilt that Muslim women feel, make it even harder for activists to get testimonials. As documented in other genocides, shame and the ostracization of female victims make it

difficult for women and girls to report what has happened to them. This shame is heightened by the belief in Islam of a woman's purity and honor. Likewise, in the case of the female victims of ISIS/ISIL, reports of sexual violence and sexual slavery only emerged from witness testimonies of survivors who managed to escape enslavement. International journalists and organizations have no access to the terrorist organizations and rely on witness statements and reports from victims' families and community members. Much of this chapter will rely heavily on the reports issued by human rights organizations and news outlets.

Despite these limitations, studying these conflicts is crucial. The international community is at a critical juncture. Although these conflicts are not yet classified as genocides, international actors must act to prevent further war crimes and crimes against humanity from being perpetrated. The following chapter will examine the background to the violence in Burma and the violence being carried out by ISIS/ISIL forces and how rape and sexual violence are currently being used against innocent civilian populations to intimidate, ethnically cleanse, and inflict terror on communities.

Rohingya: Background

The Rohingya, historically known as the Arakanese Indians, are the largest ethnic minority and religious group in Buddhist-majority Burma. They are a stateless Indo-Aryan speaking people from the region of Rakhine State in Burma. It was reported that before the crisis, over one million Rohingya Muslims were living in the Rakhine region. By October 2017, the United Nations reported that over 500,000 Rohingya refugees had flooded into Bangladesh since August 2017. Since March of 2018, that number has

increased to over 800,000 refugees being hosted in Bangladesh.³ The UN has described the Rohingya as one of the most persecuted people in the world. Historically, the Burmese military has cracked down on Rohingya communities, preventing them from gaining citizenship status, restricting freedom of movement, preventing rights and access to education and not acknowledging them as one of the eight national indigenous races.⁴ The current treatment of the Rohingya has been called ethnic cleansing by Human Rights Watch, Amnesty International, and other international agencies. There have been repeated warnings that without international intervention and a de-escalation of violence, the conflict is at risk of becoming a genocide.

Rakhine State is of strategic importance to Burma, as well as China and India. The Rohingya, who have occupied the land for centuries, pose a threat to the geopolitical goals of the three countries. China and India are heavily invested in the Rakhine State, according to Karen Jungblut, Director of Global Initiatives for the USC Shoah Foundation. Both countries back Burma's leadership and its fight against "terrorism." According to the South China Morning Post, both China and India have invested in enormous infrastructure projects in Burma including "–the India-funded Kaladan multi-modal project designed to provide a sea-river-land link to its remote northeast through Sittwe port and the China-funded Kyauk Phyu port, which is to be the starting point of an oil-gas pipeline and railroad link to Yunnan State in China."⁵ India and China are looking

³ UN News, "'No other conclusion,' ethnic cleansing of Rohingyas in Myanmar continues – senior UN rights official," *United Nations*, March 6, 2018, <https://news.un.org/en/story/2018/03/1004232>.

⁴ Skye Wheeler, Interview with Larissa Peltola, February 7, 2018.

⁵ Subir Bhaumik, "Why Do China, India Back Myanmar Over the Rohingya Crisis?" *South China Morning Post*, October 18, 2017, <http://www.scmp.com/week-asia/geopolitics/article/2115839/why-do-china-india-back-myanmar-over-rohingya-crisis>.

to finance projects in Burma and use the guise of terrorism by the Rohingya as a way to strong arm Burma into “cleansing” and vacating the region. The countries argue that the terrorist labeled Arakan Rohingya Salvation Army (ARSA) poses a threat to these development projects. These two countries support Burmese efforts to remove the “threat.” Activists see this argument as a façade or excuse to cleanse the Rakhine State of the Rohingya ethnic minority, thereby making that land available for foreign investment.⁶

The most recent outbreak of violence began with the attack on several police posts by ARSA on August 25, 2017 in Rakhine State. The Burmese military reported that eleven security forces personnel were killed. The ARSA, formally known as Harakatul Yakeen, is comprised of a small group of Rohingya men that, in 2016, led attacks on police outposts using the only weapons at their disposal—sticks and knives according to Al Jazeera.⁷ The group emerged in response to a history of violent oppression against the Rohingya. Maung Zarni, an adviser to the European Center for the Study of Extremism, explained that ARSA is “...not a terrorist group aimed at striking at the heart of Myanmar society as the government claims it is.” Instead, Zarni argues, “They’re a group of hopeless men who decided to form some kind of self-defense group and protect their people who are living in conditions akin to a Nazi concentration camp.”⁸ Soon after the August attack, the Burmese security forces began a wide scale ethnic cleansing campaign against the Rohingya Muslims. According to the Council on Foreign Relations, the

⁶ Karen Jungblut, interview with Larissa Peltola, April 7, 2018.

⁷ Fiasal Edroos, ARSA: Who are the Arkan Rohingya Salvation Army?” *Al Jazeera Online*. September 13, 2017. <https://www.aljazeera.com/news/2017/09/myanmar-arakan-rohingya-salvation-army-170912060700394.html>.

⁸ Ibid.

“clearance operations” carried out by the Burmese security forces included widespread human rights abuses perpetrated by the Burmese army, scorched earth policy tactics, massacres, torture, forced disappearances, landmines, and sexual violence.⁹

The Rohingya crisis is the fastest growing refugee disaster in the world. The UN High Commissioner for Human Rights has identified this crisis as a “textbook example of ethnic cleansing.” According to Amnesty International,

“The attack on the Rohingya population has been both systematic and widespread, constituting serious human rights violations and crimes against humanity under international law...The violations and crimes have been committed within a context of decades of systematic, state-led discrimination and persecution of the Rohingya population and occasional large-scale outbursts of violence.”¹⁰

The Rohingya crisis is a complex situation fueled by a variety of factors including ethnic and religious hatred and competition for natural resources and land. The most vulnerable and most affected by the conflict in Burma are women and girls. “The conflict with the Rohingya is a slow burning genocide that is manifesting in women and girls” according to Jungblut.¹¹ Rohingya women are targets of rape and sexual violence by Burmese military forces in their homes and as they try to escape to safety in the refugee camps.¹² The United Nations, along with numerous human rights organizations, have condemned the treatment of the Rohingya Muslim population; however, little has been done to stop the massacres. The frequencies of rapes and sexual violence committed against Muslim

⁹ Mayesha Alam, “Women and Girls at Risk in the Rohingya Refugee Crisis” *Council on Foreign Relations*, September 19, 2017, <https://www.cfr.org/blog/women-and-girls-risk-rohingya-refugee-crisis>.

¹⁰ Amnesty International, “‘My World is Finished’: Rohingya targeted in Crimes Against Humanity in Myanmar,” published 2017, 6.

¹¹ Karen Jungblut, Interview with Larissa Peltola, April 7, 2018.

¹² Rohingya women are also prone to rape and sexual violence within the refugee camps; however, this chapter will only highlight rape used against the Rohingya by the Burmese state to ethnically cleanse the Rakhine State.

women have dramatically increased since the outbreak of violence in 2017. Sexual violence against Muslim women in Burma is not opportunistic or random; rather it is a systematic attack on their ethnic and religious identity.

Rape to Spread Terror

One of the most prominent ways in which Burmese security forces have used rape as a weapon against Rohingya populations is by spreading terror and fear within communities. Many rapes occur during raids by Burmese security forces when they enter villages to beat, arrest, or kill men. These rapes are not opportunistic or random but rather a calculated effort by security forces given direct orders, by their superiors, to attack women. One survivor, under the alias of “Noor” who was in her forties at the time of her attack and is now a refugee living in Bangladesh, recounts the raid on her home in which 20 Burmese soldiers separated her from her husband and raped her:

“They took me in the yard of the home. Another two put a rifle to my head, tore off my clothes, and raped me.... They slaughtered [my husband] in front of me with a machete. Then three more men raped me.... After some time, I had severe bleeding. I had severe pain in my lower abdomen and pain in my whole body.”¹³

Many of the raids are conducted under the guise of searching for “terrorists” who are trying to impose “Muslimic rule.”¹⁴ Security forces would target the female family members of suspected “terrorists” from the communities and then rape them during interrogation. According to testimonies gathered by Human Rights Watch, “Other women said that security forces asked if they were ‘harboring terrorists,’ then proceeded

¹³ Human Rights Watch, “‘All my Body was in Pain:’ Sexual Violence against Rohingya Women and Girls in Burma,” November 16, 2017, <https://www.hrw.org/news/2017/02/06/burma-security-forces-raped-rohingya-women-girls>.

¹⁴ Edroos, “ARSA: Who are the Arakan Rohingya Salvation Army?”

to beat and rape them when they said “no.” A woman in her 20s, who said soldiers attempted to rape her in her home, added that they told her, “you are just raising your kids to kill us, so we will kill your kids.”¹⁵

Many of the rapes that occur against Rohingya women are accompanied by physical attacks on their homes or in their communities, including the burning of homes and villages. Security forces often enter a village with the purpose of burning it down or forcing the community to flee and search for safety. Human Rights Watch found that “Burmese security forces raped and sexually assaulted women and girls both during major attacks on villages but also in the weeks prior to these major attacks sometimes after repeated harassment.”¹⁶ This form of scorched earth policy was common in the case of Guatemala and other conflicts and has forced many Rohingya to flee to neighboring Bangladesh. According to a report by Amnesty International:

“As Rohingya women, men, and children fled their homes, the soldiers and police officers often opened fire, killing or seriously injuring at least hundreds of people in total. Survivors described running to nearby hills and rice fields where they hid until the forces left...As the Myanmar military set fire to villages, people were burned to death in their homes.”¹⁷

While men, the elderly, and children are often targeted for execution or arrest, women face the worst forms of sexual violence, as well as suffering from the psychological scars of losing their families and homes. Women are particularly vulnerable to sexual violence during attacks on villages. Sayeda, a rape survivor in her forties, reported to Human Rights Watch that she and her daughter were raped in their home, which was then burned down by the soldiers: “On the spot in front of me, four military raped [my eldest

¹⁵ Human Rights Watch, “All My Body was in Pain.”

¹⁶ Ibid.

¹⁷ Amnesty International, 9.

daughter]...When the soldiers attacked her, I grabbed my other daughters and ran. We ran into the bushes. Other people later told me she died. I didn't see her body.”¹⁸ These attacks are carried out by armed security to force Rohingya Muslims to flee the region and go to other countries. Those that do not leave are slaughtered and forcibly “cleared” from the area. According to Skye Wheeler, a researcher for Human Rights Watch, “We constantly receive reports of the military arriving in [Rohingya villages] and arresting men, raping women [in an effort to] force them to flee. Women are constantly under the threat of violence, verbal and sexual abuse from the military and other ethnic civilian groups.”¹⁹ This is evidenced by the number of Rohingya mothers and pregnant female refugees escaping into Bangladesh (where the largest concentration of Rohingya refugees now reside) and other regions of Burma. Women report being surprised that they had not been killed by the soldiers, as so many men and children have been; however, it is more likely that security forces did not intend to kill the women, but rape and force them out of Burma.

Rape as Ethnic Cleansing

The “clearance” operations that began in 2016, with an emphasis on the rape of Rohingya women, show a clear pattern of ethnic cleansing. The central directive of the Burmese security forces is the complete and total destruction and removal of the Rohingya bloodline, religion, and culture from the country. Security forces are attempting to complete this objective through increasingly extreme and cruel forms of violence,

¹⁸ Human Rights Watch, “Burma: Security Forces Raped Rohingya Women, Girls,” February 6, 2017, <https://www.hrw.org/news/2017/02/06/burma-security-forces-raped-rohingya-women-girls>.

¹⁹ Skye Wheeler, Interview with Larissa Peltola, February 7, 2018.

especially rape and sexual violence. Amnesty International has condemned this campaign of ethnic cleansing stating, “Myanmar’s security forces are building on entrenched patterns of abuse to silently squeeze out of the country as many of the remaining Rohingya as possible. Without more effective international action, this ethnic cleansing campaign will continue its disastrous march.”²⁰ Without a doubt, rape is a specific strategy of the government’s ethnic cleansing campaign. Many women told Human Rights Watch that “soldiers threatened or insulted them with language focused on their status as Rohingya Muslims, calling them ‘you Bengali bitch’ or ‘you Muslim bitch’ while beating or raping them. ‘We will kill you because you are Muslim,’ one woman said soldiers threatened.”²¹ According to Jungblut, another indicator of ethnic and religious hatred comes in the form of attacks and rape of the wives of Muslim religious leaders and Imams: “We see this as a specific form of religious and ethnic hatred...that is very clear.”²² The systematic rapes committed by the Burmese army were directed specifically at Muslim women and young girls.

Burmese security forces have also been accused of perpetrating sexual violence against young girls/children²³ in an effort to ethnically cleanse the Rakhine region of the Rohingya bloodline. This is in part to force migration out of Burma as well as targeting the reproductive capacities of the Rohingya. Children and women are the most vulnerable to violence in times of war and conflicts and are often defenseless, as is the case in

²⁰ Amnesty International, “Myanmar: Fresh Evidence of Ongoing Ethnic Cleansing as Military Starves, Abducts and Robs Rohingya,” February 7, 2018, <https://www.amnesty.org/en/latest/news/2018/02/myanmar-fresh-evidence-of-ongoing-ethnic-cleansing-as-military-starves-abducts-robs-rohingya/>.

²¹ Human Rights Watch, “Burma: Security Forces Raped Rohingya Women, Girls.”

²² Karen Jungblut, Interview with Larissa Peltola, April 7, 2018.

²³ Children in this case will be defined as anyone under the age of 18.

Burma. Survivors recall witnessing the rape of girls as young as nine years old, hearing their screams, watching security forces take children away, and learning soon after that sexual violence had occurred. One survivor recalls the gang rape of her 13-year-old sister: “They took my other [13-year-old] sister to another room and raped her there. We heard [her screaming]. She screamed, ‘Someone save me! He’s trying to take my clothes off!’ What I saw from outside is that 10 more people entered that room with my sister.”²⁴ Another refugee woman told doctors in the refugee camp that her 14-year-old sister had been gang raped during a raid on her village:

“They tortured and raped many girls and women. When they stopped and left I went looking for my sister and saw many bodies on the ground. When I found my sister I didn’t know if she was alive or dead, but she was breathing...She was bleeding a lot so I carried her to a little river and washed her. Then I took her on my shoulders till I found a small medical clinic [in Rakhine] and got some medicine for her.”²⁵

Other reports include cases of girls under ten years old who have been raped while fleeing the violence. Many of these young victims have been treated in the largest refugee camp in Cox’s Bazar and, according to Médecins Sans Frontières, of those fleeing who sought treatment relating to rape, “about 50% are aged 18 or under, including one girl who was nine years old and several others under the age of 10.”²⁶ For many young girls, rape was their first sexual experience, making them significantly less likely to report what happened to them. The targeting of young girls and children is used as a form of ethnic

²⁴ Human Rights Watch, “Burma Security Forces Raped Rohingya Women, Girls.”

²⁵ Fiona MacGregor, Rohingya Girls under 10 Raped While Fleeing Myanmar, Charity Says,” *The Guardian*, October 25, 2017, <https://www.theguardian.com/world/2017/oct/25/rohingya-children-fled-myanmar-violence-charity>.

²⁶ Ibid.

cleansing, and is employed in an effort to both destroy the bloodline as well as strategy of removing the population from the country.

Gang rape is one of the most horrific forms of sexual violence most commonly used against the Rohingya. Burmese soldiers gang rape Muslim women for a variety of reasons: to intimidate communities, as an expression of ethnic hatred, and in an effort to ethnically cleanse a population. Human Rights Watch conducted several interviews with Rohingya refugees in Bangladesh who reported being gang raped, often in front of their children or husbands. In other cases, women were separated from their families and taken to other houses, public spaces, or to other rooms in their homes and gang raped by five or more soldiers. Several women reported losing consciousness during the rape or being beaten so badly that they do not fully remember the details of their attack(s). “Ayesha,” a Rohingya woman in her 20s, told Human Rights Watch: “They gathered all the women and started beating us with bamboo sticks and kicking us with their boots. After beating us, the military took [me and] 15 women about my age and separated us.... [The soldiers] raped me one by one, tearing my clothes.” Forms of humiliation, violence, and cruelty accompanied many of these gang rapes. “Noor” reported being beaten badly by Burmese forces during her rape:

“Two of them held my arms tightly. I couldn’t move. They took me in the yard of the home. Another two put a rifle to my head, tore off my clothes, and raped me.... While they held me, my husband was also held. They slaughtered him in front of me with a machete. Then three more men raped me. I began bleeding severely. After some time, I didn’t know what was happening, I fell unconscious.... I regained consciousness the next morning...I walked there very slowly, as I was in pain. I had severe pain in my lower abdomen and pain in my whole body.”²⁷

²⁷ Human Rights Watch, “Burma Security Forces Raped Rohingya Women, Girls.”

Other survivors recall their rapists laughing at them during their attack, threatening or committing violent acts against their children, forcing the children or family members to watch their attacks and more.²⁸ By targeting women with sexual violence, women's reproductive capacities may be impacted due to the violent nature of the gang rapes.

State Denial

As of April 2018, Rohingya Muslims still face a violent campaign of ethnic cleansing by the Burmese state. Authorities in Burma deny any wrongdoing and, in most cases, outright reject the accusations of ethnic cleansing or genocide. "There is no ethnic cleansing or genocide in our country," declares U Aung Tun Thet, the chief coordinator of the Myanmar government body dedicated to the Rohingya crisis,²⁹ "there is no case of the military killing Muslim civilians," said Dr. Win Myat Aye, the country's social welfare minister and the governing National League for Democracy party's point person on Rakhine. "Muslim people killed their own Muslim people." Burmese authorities have been vocal about the danger Muslim "terrorists" pose to their country. Many officials argue that Rohingya radicals are responsible for burning down their own villages thereby creating a narrative of victimhood to garner sympathy and support from the international community. Mr. Aun argues that the refugee crisis is not, in fact, a crisis and the over (800,000) Rohingya who have fled the country were enticed with the prospect of better livelihoods in Bangladesh.³⁰ Other members of Parliament praise the Rohingya exodus as beneficial to Burma because the dangerous terrorists were finally leaving: "All the

²⁸ Human Rights Watch, "All My Body was in Pain..."

²⁹ Hannah Beech and Saw Nang, "Myanmar Rejects U.N. Findings: 'No Ethnic Cleansing or Genocide in Our Country,'" March 14, 2018, <https://www.nytimes.com/2018/03/14/world/asia/un-myanmar-rohingya-genocide.html>.

³⁰ Ibid.

Bengalis learn in their religious schools is to brutally kill and attack,” said Daw Khin Saw Wai, a Rakhine member of Parliament from Rathedaung Township. “It is impossible to live together in the future.”³¹ When journalists have asked about allegations of sexual violence by security forces, Rakhine's Minister for Border Affairs, Phone Tint, replied: “These women were claiming they were raped, but look at their appearances - do you think they are that attractive to be raped?”³²

One notable world leader has been widely criticized for not condemning the horrific treatment of the Rohingya—Daw Aun Sung Suu Kyi. Suu Kyi was a political prisoner held under house arrest in Burma for almost 20 years and was awarded the Nobel Peace Prize for her peaceful fight for democracy, justice and human rights in her native country. In 2012, twenty years after being awarded her Nobel Prize, Suu Kyi gave a compelling acceptance speech in Oslo, saying that Burma is a “country of many ethnic nationalities and faith in its future can be founded only on a true spirit of union,” and “Ultimately our aim should be to create a world free from the displaced, the homeless and the hopeless, a world of which each and every corner is a true sanctuary where the inhabitants will have the freedom and the capacity to live in peace.” For decades, Suu Kyi was a symbol of defiance against a brutal military junta and a model for human rights activism. Now, Suu Kyi has become a symbol of injustice and inaction, a failure in upholding human rights standards in her own country. Suu Kyi casts blame on “both

³¹ Hannah Beech, “Across Myanmar, Denial of Ethnic Cleansing and Loathing of Rohingya,” *New York Times*, October 24, 2017, <https://www.nytimes.com/2017/10/24/world/asia/myanmar-rohingya-ethnic-cleansing.html>.

³² “Army’s Rape of Rohingya Women Sweeping, Methodical: AP,” *Al Jazeera*, December 10, 2017, <https://www.aljazeera.com/news/2017/12/rape-rohingya-women-sweeping-methodical-ap-171211063236832.html>.

sides” and a “climate of fear” in the country that is facilitating violence, but refusing to acknowledge the ethnic cleansing; “Muslims have been targeted but Buddhists have also been subjected to violence,” she said in an interview with the BBC.³³ While many believe that Suu Kyi has not done enough for the Rohingya, others believe that she is complicit in the ethnic cleansing of the population, claiming that a call from her to end the violence would be an important step in ending the campaign against the Rohingya. Her denial of the state sanctioned violence is signaling to the international community that the Burmese government, and its security forces, should not be held accountable for war crimes and crimes against humanity as defined under international law.

Yazidi: Background

Few had heard of the Yazidi population in Iraq before ISIS and ISIL began a genocidal campaign against Yazidi communities. The Yazidi, also known as Yezidi, Daasin, and Ezidi, are a Kurdish-speaking “ethno-religious community” from Northern Iraq also living in Iran, Syria, and Turkey.³⁴ The Yazidi are a small religious minority living in a majority Muslim country. Their religion has elements of Christianity, but draws from other traditions that many orthodox Islamicists view as intolerable. The Yazidis practice one of the oldest religions, one that is said to have played a role in the founding of Assyrian, Babylonian, and Jewish civilizations in the Middle East.³⁵ Certain

³³ “How Aung San Suu Kyi Sees the Rohingya Crisis,” *BBC News*, January 25, 2018, <http://www.bbc.com/news/world-asia-42824778>.

³⁴ Yasmine Hafiz, “Yazidi Religious Beliefs: History, Facts and Traditions of Iraq’s Persecuted Minority,” *Huffington Post*, September 6, 2016, https://www.huffingtonpost.com/2014/08/13/yazidi-religious-beliefs_n_5671903.html.

³⁵ Kelsea Carbajal et al, “Report on the Yazidi Genocide: Mapping Atrocity in Iraq and Syria,” *Syrian Accountability Project: Syracuse University College of Law* (October 16, 2017): 4.

practices, such as circumcisions, not consuming pork, and baptism can be found in the world's major religions including Judaism, Christianity, and Islam. While the Yazidis have been most linked to traditional Christianity, one major difference between the two religions is the Yazidi belief in intermediaries between God and humanity. While they believe one God made the earth, they also believe that God entrusted the earth and everything in it to seven angels, the most important being Tawsi Melek, the Peacock Angel.³⁶ ISIS/ISIL forces view this and other aspects of Yazidi religious tradition as “satanic” and “diabolic” and that the Yazidi are in need of conversion to Islam, or death.

They have been the primary targets of ISIS, the Sunni-identified Islamic State which has persecuted and massacred several other religious and ethnic minorities including “Christians, Shiite Muslims, Shiite Turkmen, Shiite Shabaks, and of course the Yazidi.”³⁷ The Yazidi population is estimated at around 600,000 though recent violence had drastically decreased this figure.³⁸ While Yazidis have been targets for religious persecution for centuries, the most recent surge in violence began in 2014 when ISIS forces invaded Yazidi communities in Northern Iraq. Reports of mass executions, forced conversion, torture, and sexual violence began to spread. As of August 2016, “seventy-two mass graves containing fifteen thousand bodies have been found. As a result of the violence, tens of thousands of Yazidis have fled north into Kurdistan, west to Europe, or to other countries.”³⁹ There is little doubt that these crimes constitute ethnic cleansing and

³⁶ Carbajal et al., 5.

³⁷ Hafiz, “Yazidi Religious Beliefs.”

³⁸ Ibid.

³⁹ David Sverdlov, “Rape in War: Prosecuting the Islamic State of Iraq and the Levant and Boko Haram for Sexual Violence Against Women,” *Cornell International Law Journal* 50, (2017): 337.

genocide. The UN Human Rights Council recognizes these events as genocide.⁴⁰ The most troubling reports that have reached international human rights organizations is the widespread use of rape and sexual violence by ISIS/ISIL forces, particularly with efforts to prevent Yazidi births and the sexual enslavement of Yazidi women.

Targeting of Reproductive Capacities

ISIS and ISIL forces began targeting Yazidi women for ethnic cleansing by attacking their reproductive abilities. The first form in which ethnic cleansing is carried out is through forced abortions and forced birth control. Being recognized as biological and cultural reproducers, Yazidi women pose a threat to ultra-militant groups that seek to eradicate religious and ethnic minorities in Iraq and Syria. In the cases of pregnant women abducted by ISIS/ISIL forces, these women were often forced to have abortions, according to CNN. Bushra, 21, who escaped captivity says she witnessed, “two doctors invasively examine girls to find out if they were already pregnant. Those found to be expecting were forced to abort their babies.” She recalls, “One of my friends was pregnant. Her child was about three months in the womb. They took her into another room. There were two doctors and they did the abortion.”⁴¹ After her friend’s abortion, which left her in severe pain and bleeding heavily, she, like other pregnant women, were separated from other captives and placed into a separate house. Pregnant women were brutalized while in custody. One Yazidi victim described how “an ISIS doctor sat on her stomach, aiming to kill her unborn child” and “two other women detailed how they were

⁴⁰ Sverdlov, 338.

⁴¹ Atika Shubert and Bharati Naik, “ISIS 'forced pregnant Yazidi women to have abortions,’” *CNN*, October 6, 2015, <https://www.cnn.com/2015/10/06/middleeast/pregnant-yazidis-forced-abortions-isis/index.html>.

also forced to undergo abortions, being first injected and then forced to take pills. Prior to the procedure, one witness heard an ISIS fighter state: ‘we do not want more Yazidis to be born’” according to a report published by the Vanderbilt Law School.⁴² Abortions were only required, however, for Yazidi women who had previously been pregnant with “infidel” children.⁴³ Often, after women are forced to undergo painful and often dangerous abortion procedures, they are sold as wives or sexual slaves for ISIS fighters. This is done in an effort to ensure that if a woman does conceive, it is with a Muslim, non-Yazidi partner, therefore creating a generation of children that are more ethnically and culturally Muslim. And in accordance with an obscure Islamic law, the man must ensure that the woman with whom he is to engage with sexually is “free of child.”⁴⁴

Other victims report being forced to take birth control in the form of oral contraceptives in an effort to prevent births. A 16 year old former ISIS sex slave recalls being given what she later learned was birth control by the fighter that had purchased her: “Every day, I had to swallow one in front of him. He gave me one box per month. When I ran out, he replaced it. When I was sold from one man to another, the box of pills came with me.”⁴⁵ While preventing reproductive capacities of enemy groups is not uncommon in genocide and ethnic cleansing, the methodical forced contraception method seen in the case of the Yazidi is unique. According to a report by the *New York Times*, based on the

⁴² “Yazidi Genocide: Opinion,” *Vanderbilt School of Law*, accessed on April 10, 2018. 15. https://law.vanderbilt.edu/academics/academic-programs/international-legal-studies/Yazidi_Genocide_Opinion_KRG_4.15.pdf.

⁴³ “Yazidi Genocide: Opinion,” 15.

⁴⁴ Rukmini Callimachi, “To Maintain Supply of Sex Slaves, ISIS Pushes Birth Control,” *New York Times* March 12, 2016, <https://www.nytimes.com/2016/03/13/world/middleeast/to-maintain-supply-of-sex-slaves-isis-pushes-birth-control.html>?

⁴⁵ Ibid.

relatively low number of women that were pregnant following their escape from ISIS/ISIL captivity, this could prove just how calculated forced contraception is:

“But overall, the methodical use of birth control during at least some of the women's captivity explains what doctors caring for recent escapees observed: Of the more than 700 rape victims from the Yazidi ethnic group who have sought treatment so far at a United Nations-backed clinic in northern Iraq, just 5 percent became pregnant during their enslavement, according to Dr. Nagham Nawzat, the gynecologist carrying out the examinations.”⁴⁶

Since most of the women treated were of reproductive age, and often teenagers, the relatively few pregnancies can be considered a result of contraceptives that they were forced to take by their captors. Pregnancy prevention methods used by ISIS and ISIL soldiers demonstrate the calculated way by which they ensure that they are able to continuously rape and sexually abuse their captives. Once the soldier's tire of their victims, they often sell them to other soldiers or give the women as “gifts” to others.⁴⁷

Birth control provides assurance to ISIS fighters that they could rape Yazidi women and then continue to sell them without fear of the women becoming pregnant.

Sexual Slavery and Commodification of Yazidi Bodies

The most prominent strategy employed by terrorist groups to commit genocide against the Yazidi is the sexual slavery and commodification of Yazidi women. Sexual slavery is used both to eradicate the Yazidi bloodline as well as force conversion to Islam. ISIS and ISIL networks have developed an extensive and well-organized slave market to buy and sell Yazidi women. A study by Cornell University demonstrates the extent of these slave markets: As ISIL invaded the Sinjar region, it abducted at least

⁴⁶ Ibid.

⁴⁷ Ibid.

5,270 women. One year later, in 2015, international organizations estimated that 3,144 women remained slaves. Now, these organizations estimate that throughout ISIL's reign, at least six thousand Yazidi women have spent some time in bondage. The same report explains that "ISIL has been successful in its mass enslavement of Yazidi women in part because of the institutions it has set up to facilitate the enslavement, including legal institutions. ISIL needed its courts to make rulings and provide justifications for resurrecting the slave market practice and facilitate the complex questions of owning and trading slaves. These women are sold for several reasons—to be used as wives, sexual slaves, and as "gifts" to brave soldiers. A former ISIS sex slave told *The Guardian* that when she and several other Yazidi women were captured, they were all told, "Give up your family, and give up that you are Yazidi — you are now Muslims. We are going to marry you; each fighter will have one of you."⁴⁸ Paradoxically, these radical Islamist groups use religion as justification for sexual slavery, actually modeling the practice from the time of Muhammad; "Islamic State leaders have made sexual slavery as they believe it was practiced during the Prophet Muhammad's time integral to the group's operations, preying on the women and girls the group captured from the Yazidi religious minority almost two years ago."⁴⁹ ISIS officials not only sanction but also justify sexual slavery as a part of service to Allah. "According to Isis, it has no choice but to attack and kill disbelieving men" reports *The Guardian*, "Flowing from this, it justifies the enslaving of their women as an act of protection, a way of replacing the men who previously looked

⁴⁸ Emma Graham-Harrison, "'I was Sold Seven Times': the Yazidi Women Welcomed back into their Faith," *The Guardian*, July 1, 2017, <https://www.theguardian.com/global-development/2017/jul/01/i-was-sold-seven-times-yazidi-women-welcomed-back-into-the-faith>.

⁴⁹ Callimachi, "To Maintain Supply of Sex Slaves, ISIS Pushes Birth Control."

after them. This idea is crucial to the role of slavery in ISIS's conception of how a caliphate should function."⁵⁰ An ISIS pamphlet confirms this stating "[slavery is] among the greatest forms of the honour of Islam and its sharia [Islamic law], as it is a clear affirmation showing the supremacy of the people of sharia, and the greatness of their affairs, and the dominance of their state, and the power of their might."⁵¹ Extremists use religious justifications for this illegal and heinous practice, activists believe that ISIS/ISIL practice sexual slavery in an effort to wipe out the Yazidi culture, religion, and ethnicity.

Many of the Yazidi sex slaves are bought and sold with the intention of being married off to ISIS/ISIL soldiers. Just as soldiers use forced abortions and forced birth control to limit reproduction and pregnancy among Yazidi women, the opposite is also true as sex slaves are forced to marry and eventually procreate with their captors. Both of these cases represent ethnic cleansing, as the victim's reproductive rights are being violated and controlled with the intent to either prevent future generations of Yazidi children or create future generations of non-Yazidi children. The author of the same ISIS pamphlet that justified sexual slavery as an honor to Islam also wrote, "Slavery serves to increase the ISIS community because Yazidi women will give birth and the children will be brought up among its fighters."⁵² One of the primary goals of forced marriage of Yazidi women is their religious conversion to Islam. Through constant threat of sexual violence, soldiers believe these women will either convert out of fear of another attack, or

⁵⁰ Cathy Otten, "Slaves of Isis: the Long Walk of the Yazidi Women," *The Guardian*, July 25, 2017, <https://www.theguardian.com/world/2017/jul/25/slaves-of-isis-the-long-walk-of-the-yazidi-women>.

⁵¹ Ibid.

⁵² Ibid.

simply by being married to an ISIS/ISIL fighter. Beyond this, many of the soldiers believe that if the women give birth to a Muslim child, they, too, will abandon their faith and join Islam. According to the Global Justice Center, “In Yazidi culture, membership of the group is determined by the identity of both parents, thus [ISIS] killing of Yazidi men and enslavement of Yazidi women prevents future generations of Yazidis. In captivity, Yazidi women and girls are forcibly married, raped and forcibly impregnated by [ISIS] fighters.”⁵³ By this logic, any children born of the rapes by Islamic State soldiers would be raised as Muslim and not Yazidi.

In order to ensure reproduction occurs within these forced marriages, Islamic state militants “purchase” young Yazidi women and girls, often in their early teens. Girls, as young as twelve and thirteen, are bought and then raped by soldiers whose specific goals are to impregnate them. *The Guardian* reports that ISIS fighters carried out pre-planned mass abductions looking specifically for unmarried women and girls over eight years old.⁵⁴ While Yazidi families were often separated, and the men and boys killed, young female family members were abducted and sold together. In the case of Rewshe, fifteen at the time, she and her fourteen-year old sister were sold to a Palestinian fighter with the Islamic State for 1,000 US dollars.⁵⁵ Another Yazidi girl, who was able to escape captivity, recalled that she was:

...taken to Mosul and kept there all the time. First in a building which they called the maqarr (headquarters). We were about 150 girls and five women. A man called Salwan took me from there to an abandoned house. He also took my

⁵³ “Genocide and Gender: Daesh’s Crimes against Yazidi Women and Girls,” *Global Justice Center*, February 13, 2017. 2.

⁵⁴ Otten, “Slaves of Isis: the Long Walk of the Yazidi Women.”

⁵⁵ Skye Wheeler, “Yezidi Women After Slavery: Trauma,” *Human Rights Watch*, April 18, 2016. <https://www.hrw.org/news/2016/04/18/yezidi-women-after-slavery-trauma>.

cousin, who is 13 years old; we resisted and they beat us. He took me as his wife by force. I told him I did not want to and tried to resist but he beat me.⁵⁶

Young girls were either purchased as slaves or given as gifts to ISIS/ISIL fighters that had shown particular bravery in battle. These girls were consequently raped, gang raped, and forcibly married to older men. The targeting of young girls for forced marriage and forced impregnation is a clear strategy used by Islamic State soldiers to ethnically cleanse the Yazidi population. Impregnating Yazidi women, as mentioned above, creates a generation of non-Yazidi children and, ultimately, a loss of Yazidi cultures, customs, and religion. The systematic attack of young girls makes conversion to Islam simpler and more effective and because these girls are young, they are fertile and more likely to become pregnant and bear more children.

What is next for the Yazidi?

International human rights organizations such as The United Nations, Amnesty International and Human Rights Watch, as well as media outlets, have brought the plight of the Yazidi to the attention of the global public. However, little is being done on the ground for the Yazidi. The most pressing need is the rescue of the thousands of women and girls who are currently being held as sex slaves. This is difficult because it would most likely require military intervention. The fight against terrorism occurs on an international scale, involving dozens of countries in the West as well as the Mid-East and will continue to be at the forefront of politics and policies for the foreseeable future. While there is little that “average” citizens can do in combating international terrorists

⁵⁶ Amnesty International, “Escape from Hell: Torture and Sexual Slavery in Islamic State Captivity in Iraq,” December 12, 2014, 5.

networks such as ISIS and ISIL, individuals and organizations can support the Yazidi women that have been victims of sexual violence by donating to organizations providing medical help and trauma counseling. Many women have been lucky enough to escape the conditions of bondage they were held in by ISIS/ISIL forces. While in many cases these women have been welcomed back into their communities, most women are still not receiving the medical and psychological counseling they need. Human rights organizations should continue to document these abuses as well as focus their efforts on supporting rape survivors and their communities. For their targeted campaign against the Yazidi ethnic and religious minority, the Islamic State forces should be charged with crimes against humanity and genocide by the International Criminal Court.

While this may be difficult to do in the foreseeable future, human rights lawyers like Amal Clooney and human rights monitors should continue to collect testimonies and evidence that can be used by the courts at a later date. However, the priorities must be the protection of Yazidi women that are vulnerable to abduction by ISIS/ISIL fighters as well as continued support for those women and girls who escaped their captivity and are in need of medical and psychological care.

Chapter 8: Sexual Violence and International Law

“Many have asked me whether I am still angry with the Japanese. Maybe it helped that I have faith. I had learned to accept suffering. I also learned to forgive. If Jesus Christ could forgive those who crucified Him, I thought I could also find it in my heart to forgive those who had abused me. Half a century had passed. Maybe my anger and resentment were no longer as fresh. Telling my story has made it easier for me to be reconciled with the past. But I am still hoping to see justice done before I die.”¹

- Maria Rosa Henson, Former “Comfort Woman,” Sex Slave Captured and Held by the Japanese Army

The recent history of the prosecution of the crime of mass rape and other forms of sexual violence is not long, and not one marked by astounding achievements on behalf of the victims. As far as the prosecution of sexual violence is concerned, the creation of the International Criminal Tribunal for the former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR) paved the way for legal breakthroughs for victims and survivors of sexual violence. Both international humanitarian law and international human rights law provided specific provisions for the prosecution of sexual violence in conflict settings. The Universal Declaration for Human Rights (UDHR) drafted in 1948, the International Covenant on Civil and Political Rights (ICCPR, 1966), the UN Protocol to Prevent, Suppress, and Punish Trafficking of Persons (2000), to name a few, left room for international courts to challenge and prosecute sexual violence as early as 1948.² This being said, there were several limitations and failures of various genocide tribunals that left many victims feeling that justice had failed them. Furthermore, there are significant gaps and challenges in the current system of prosecution of genocidal rape. While the

¹ Maria Rosa, Henson, *Comfort Woman: Slave of Destiny*, (Manilla: Philippine Center for Investigative Journalism, 1996), 152.

² Tazreena Sajjad, “Rape on Trial: Promises of International Jurisprudence, Perils of Retributive Justice, and the Realities of Impunity,” in Rittner and Roth, 66.

ICTR and ICTY were steps in the right direction, supranational criminal law in relation to genocidal rape and sexual violence remains a new area of law and falls short in enforcement and prosecution of sexual violence. In some ways the challenges of prosecuting these crimes are mired in the bigger issues of the development and functioning of an international court system. Before examining the challenges that international courts face in the prosecution of sexual violence, it is essential to first understand the history of how supranational courts emerged, beginning with the Nuremberg Trials and Tokyo Tribunals.³

The Nuremberg and Tokyo Tribunals

The first significant international criminal trials emerged following the end of WWII: in Nuremberg, Germany in 1945 and in Tokyo, Japan in 1946. These tribunals were created with the intent to prosecute war criminals in Germany and Japan with war crimes and crimes against humanity. For the first time ever, individuals, rather than states were found responsible for war crimes and violations of international law.⁴ In regard to Nuremberg, despite reports of sexual violence committed by German soldiers, prosecutors chose not to pursue these charges for fear that the soldiers from Allied powers could also be tried for rape themselves.⁵ Prosecution of rape and sexual violence

³ This chapter will focus specifically on prosecution of genocidal rape and sexual violence on the intentional level. Many scholars and legal experts believe that international courts are only one piece of the puzzle of prosecuting wartime rape. Many believe that pursuing these cases on a national and domestic level (outside of international courts) may provide more justice for victims. This chapter will focus on the international discussion because international trials and cases help shape the discourse of genocidal rape and create precedent for future prosecution and handling of these cases.

⁴ Anne-Marie L.M. de Brouwer, *Supranational Criminal Prosecution of Sexual Violence: The ICC and the Practice of the ICTY and the ICTR* (Oxford: Intersentia, 2005), 6.

⁵ de Brouwer, 7.

could have been possible because of a number of statutes established under the Nuremberg Tribunal. Under the Nuremberg Statute:

Rape was specifically prohibited in the Lieber Code [1836] as a serious violation of the laws of war, there was evidence that the previous war crime trials had punished belligerents for sex crimes, and the Hague Convention [1907] asserted that ‘family honour and rights...must be respected.’ In the IMT (International Military Tribunal) Indictments for ‘war crimes,’ sexual assault could have fallen within the purview of ‘abduction of the civilian population...into slavery and for other purposes’ and as a ‘devastation unjustified by military necessity.’⁶

Furthermore, sexual assault could have been prosecuted under article 6(b) of the IMT charter and under Article 6(c) of the Nuremberg Charter.⁷ The main reason for not pursuing rape charges in Nuremberg or Tokyo is because the political will to prosecute sexual violence cases did not exist at the time. One of the criticisms leveled at the Nuremberg trials is the “selective focus on ‘the major war criminals of the European Axis.’”⁸ Specific defendants were tried (and convicted) which reflected the will of the Allied powers and their political objectives. The Allies tried Germans for specific war crimes which did not include rape.⁹ This is in part because of a culture of denial surrounding rape of Jewish women. As mentioned in the second chapter of this thesis, there was a widespread misconception that only Soviet soldiers were responsible for pervasive rapes during this time period, therefore, allied powers feared that the inclusion of any mention of rape or sexual violence as a crime could have resulted in trials of Soviet forces. There were other flaws in the Nuremberg Trials that proved a challenge in prosecuting a number of crimes and perpetrators. One of these flaws was “the long-

⁶ Ibid.

⁷ Ibid.

⁸ Kirsten Sellars, “Imperfect Justice at Nuremberg and Tokyo,” *The European Journal of International Law* 21, no., 4 (2011): 1089.

⁹ Sellars, 1089-1090.

established principle of *nullum crimen sine lege* – no crime without an accompanying law – was implemented in “an extremely loose and controversial” way at Nuremberg according to Adam Jones.¹⁰ This lack of political will, coupled with the concern that soldiers from the Allied powers could be tried for the same crimes stemmed, partly, from the lack of female leadership during the tribunals. Women were glaringly absent as judges, prosecutors, witnesses, experts, and advisors. According to Anne-Marie de Brouwer, “Moreover, the lack of female participation in the process leading to the establishment of the Nuremberg Tribunal as well as the lack of legal posts assigned to women may provide further clarification of the disinterest in sexual violence prosecutions.”¹¹ While Nuremberg is the most famous war tribunal in history, and successfully tried perpetrators of genocide, Nuremberg tribunal failed victims of rape.¹²

In the case of the Tokyo trials, sexual violence took a more prominent role during these proceedings, compared to its Nuremberg predecessor. Rape was included in the indictments of war crimes and under “inhumane treatment and ill-treatment.” Though no official wording existed in the Tokyo Statute, rape was successfully prosecuted. The Tokyo trials included few reports of widespread sexual violence in the city of Nanking, where over 20,000 women and girls were raped by Japanese soldiers.¹³ The Tribunal included reports of rape as well as testimonies from victims. The tribunal famously

¹⁰ Jones, “ 64.

¹¹ de Brouwer, 7.

¹² For more detailed analysis on flaws and failures of the Nuremberg and Tokyo tribunals see: Lucy Fiske and Rita Shackel, “Ending Rape in War: How Far Have We Come?” *Cosmopolitan Civil Societies Journal* 6, no.,3 (2014): 123-138; Heidi Nichols Haddad, “Mobilizing the Will to Prosecute: Crimes of Rape at the Yugoslav and Rwandan Tribunals,” *Human Rights Review* 12 (2011): 109-132.; Yuki Tanaka, Tim McCormack, and Gerry Simpson, *Beyond Victor’s Justice? The Tokyo War Crimes Trial Revisited* (Boston: Martinus Nijhoff Publishers, 2010); and Sellars, “Imperfect Justice at Nuremberg and Tokyo.”

¹³ Yuki Tanaka, Tim McCormack, and Gerry Simpson, *Beyond Victor’s Justice? The Tokyo War Crimes Trial Revisited* (Boston: Martinus Nijhoff Publishers, 2010).

resulted in the conviction of General Yamashita who was ultimately convicted for *inter alia*, “rape under his command.” Arguably, while the Tokyo trials did more for rape victims than Nuremberg, the Tokyo Tribunals proved a failure for victims of sexual violence, especially for “Comfort Women.” During WWII, over 200,000 Korean, Japanese, Indonesian, Filipino, and Dutch women were abducted by Japanese military soldiers and forced into sexual slavery and domestic servitude.¹⁴ Only 25 percent of these so-called Comfort Women survived their conditions of sexual slavery and those that survived were often unable to have children, were ostracized from their communities, and faced lifelong psychological and medical problems as a result of repeated rapes and sexual abuse. Today, the few remaining “Comfort Women” are still awaiting justice and acknowledgment from the Japanese government.

The ICTY and the ICTR

The International Criminal Tribunals of the Former Yugoslavia and Rwanda increased the visibility of prosecution of genocidal rape and set the international community on a path towards justice for rape survivors. There were several innovations made by these tribunals that should be commended. Despite flaws both in the trials themselves and in the sentencing of defendants, the ICTY and ICTR were essential in promoting and administering “peaceful mechanisms for post-conflict transitions” according to Jennifer Park.¹⁵ Of the most significant contributions these tribunals made, the creation of a central definition of genocidal rape and establishment of procedural processes, were two legal modifications that allowed for the prosecution of broader forms

¹⁴ Sellars.

¹⁵ Park, 14.

of sexual violence in addition to rape. These will be discussed at length later in this chapter. These tribunals were established, in part, with the intent of trying genocidal rape. This is evident by several resolutions that called for a broadening of what sexual violence meant within a genocidal context. In the case of the former Yugoslavia, Resolution 820 in 1993, the Security Council condemned “all violations of international humanitarian law, including in particular the practice of ethnic cleansing and the ‘massive, organized and systematic detention and rape of women.’”¹⁶ This signaled to the international community that perpetrators of rape and sexual violence were at risk of prosecution for these crimes, a relatively new aspect of the international criminal system. Furthermore, the 1994 Final Report of the Commission of Experts stated that “throughout the various phases of armed conflict in the former Yugoslavia, there have been numerous reports of widespread and systematic rape and other forms of sexual assault.”¹⁷ This was a historic statement and signaled a shift in the discourse around sexual violence. For the first time in an international forum, rape and sexual violence were recognized as a weapon, tool, or calculated strategy of genocide, rather than a product of war.

In the case of the Rwandan Tribunals, stories of rape against Tutsi women by Hutu men were impossible to ignore. Likewise, a Commission of Experts noted the disturbing patterns of abduction, rape, and mutilation of Tutsi women. The greatest problem the Rwandan Tribunal faced was the question of who was to bear the responsibility for the genocide. The nature of the Rwandan genocide centered on neighbors killing neighbors. There was no official army or state leader that could bare the

¹⁶ United Nations International Criminal Tribunal for the Former Yugoslavia,

¹⁷ Ibid.

blame for the genocide. Instead, ordinary Hutu civilians were encouraged and often forced to take up arms against their Tutsi neighbors. The difficulty in establishing the tribunal was determining who would bear the “greatest responsibility.”¹⁸ As the tribunal advanced, the United Nations Security Council narrowed this focus even further. In resolutions 1503 (2003) and 1534 (2004) the shift turned to the “most senior leaders being suspected of being most responsible for crimes.”¹⁹ The Commission also considered rape to be both a “breach of international humanitarian law”²⁰ and a crime against humanity. This specific categorization was an essential distinction between the ICTY and ICTR and the Nuremberg and Tokyo Tribunals. According to de Brouwer, “[this distinction] can be seen as a clear improvement in comparison with their forerunners, the Nuremberg and Tokyo Tribunals, where gender-specific sexual violence crimes had not been included in the Statutes.”²¹ Prosecutions and convictions of sexual violence were more common during the Rwandan and Yugoslavian tribunals. One of the most prominent and precedent setting cases came out of the Rwandan Tribunal and established a model for which future prosecutors could try sexual violence cases. The prosecution of Jean-Paul Akayesu was the first case in which judges had to address the definition of rape in international law.²² However, in the 75 accused, only a handful were indicted on charges of sexual violence or rape.²³ Arguably, the most important result of the ICTR is the conclusion the judges reached before arriving at the official new

¹⁸ Chile Eboe-Osuji, 258.

¹⁹ Ibid.

²⁰ de Brouwer, 17.

²¹ Ibid.

²² Ibid, 106.

²³ Usta Kaitei, “Genocidal Gender and Sexual Violence The legacy of the ICTR, Rwanda’s ordinary courts and gacaca courts,” *Intersentia Series Supranational Criminal Law: Capita Saelecta* 17 (2013): 92.

definition of rape. The judges concluded that “while rape has been historically defined in certain national jurisdictions as non-consensual intercourse, variations on the form of rape may include acts which involve the insertion of objects and/or the use of bodily orifices not considered to be intrinsically sexual.”²⁴ Expanding this definition of rape opened the door for prosecution of various forms of sexual abuses. Despite its failures, the Rwandan tribunal was a clear watershed moment for the international community and future international criminal proceedings.

The International Criminal Court

The International Criminal Court (ICC) was created in 1998 amid trials of the ICTY and ICTR. It is meant to be a permanent legal body that had the authority to try war crimes, crimes against humanity, and genocide. The ICC, located at The Hague in the Netherlands, did not replace national courts but is complementary to national jurisdiction. The Rome Statute, which established the ICC, included various legal definitions of sexual violence including: “Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity.” The Statute also dictates that “The Prosecutor “shall appoint advisers with legal expertise on specific issues, including, but not limited to, sexual and gender violence and violence against children.” Following the Rwandan and Yugoslavian tribunals of the 1990s, the creation of the ICC and those drafting the Rome Statute made a conscious effort to fill the gaps in past tribunals. Part of these efforts included expanding of the definition of rape as:

²⁴ Ibid, 106.

The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.²⁵

Rape was explicitly listed as a crime against humanity that could be tried in court. The ICC Statute also recognized sexual violence as a “supranational criminal instrument”²⁶ rather than an attack on a “women’s honor” as previously defined. The expansion of the definition of rape, and the particular emphasis on all forms of sexual violence, were groundbreaking steps toward securing justice for victims of rape and sexual violence in the international arena. The expansion of these definitions assisted in shifting the discourse of wartime sexual violence from one that centered on the individuality of rape (e.g. one man committing a violent act against one woman) to rape being seen as genocidal and detrimental to women, their families and communities, and entire nations as a whole.

International pressure, which the ICC can provide, is essential in deterring rape and other forms of sexual violence. The ICC established several mechanisms that have been used in recent years to attempt to deter these types of war crimes. The first, according to Patricia Davis, is that the ICC brings war crimes out into the open and in the spotlight of the international community—these crimes are “forcibly exposed.”²⁷ Next, the ICC facilitates the “expedient prosecution of war crimes,” free of geopolitical

²⁵ Mukwege.

²⁶ de Brouwer, 102.

²⁷ Patricia Davis, 1230

pressure.²⁸ The ICC has its own investigative arm, financial resources, staff, and equipment to begin investigations and prosecutions. The court does not rely on other countries for resources and, therefore, is independent of geopolitical pressures that could hinder the investigation or prosecution of war crimes. Another key feature of the ICC is that it seeks to bring criminals to justice who would otherwise not be prosecuted by domestic or national courts. It acts completely independently of countries and government and focuses solely on the pursuit of justice. Lastly, the ICC is a permanent court and one of the first international entities focused on individuals. Many believe that under the Rome Statute, international law neither protected nor prosecuted individuals. Now, as many legal experts will argue, there has been a shift into both establishing and protecting the rights of individuals. Despite its successes, the International Criminal Court, overall, has not done enough for victims of sexual violence and has had several shortcomings when addressing wartime and genocidal rape and sexual violence.

The Importance of Prosecuting Sexual Violence

Before discussing the shortcomings of international courts in prosecuting sexual violence, it is critical to understand the importance of prosecuting sexual violence, specifically, in the international setting. Prosecution of rape and sexual violence cannot solely be left up to domestic and national courts. In many countries, there is little incentive or capability to prosecute these types of crimes. This is particularly true in countries that have normalized violence against women. Domestic courts can and should make efforts to prosecute sexual violence, however, international courts have the

²⁸ Ibid.

obligation to do this regales of national court's capabilities. Rape and sexual violence affect the victims and their communities and leave a lasting impact on both. Like any other weapon, rape inflicts physical pain as well as emotional and psychological trauma. The law is an essential component to securing justice for the countless number of women who have faced sexual abuse during armed conflicts. First, the law provides a space for the creation of a collective memory. It provides victims of sexual violence a voice and an active role in the construction of history and memory. According to Nicole Henry, the 1990s and the shift of attention to crimes against women signaled a "shift from state-centric and masculinized versions of the past that have excluded the voices of those historically silenced. The testimonies of women who have been raped during wartime in a sense constitute a counter-memory."²⁹ Victim testimonies and participation in international courts further contribute to a collective narrative and help create a "historical truth." In this capacity, women are not just seen as victims but as change makers and agents of change and justice. The law helps create a space for victims to become empowered and to demand justice for themselves and their families. These institutional mechanisms, provided by the legal arena, affords victims of sexual violence the ability to bear witness, which is inherently an act of resistance.

Furthermore, the law helps facilitate the creation of collective narratives of sexual violence. The prosecution of rape and sexual violence allowed victims to turn themselves into survivors and challenge the narrative of victimhood. Most importantly, the law contributed to history and how events will be remembered. Despite their successes, we

²⁹ Henry, 118.

remember Nuremberg and the Tokyo Tribunals as failures for victims of sexual violence. Men have dominated the history books when it comes to war and prosecution of war crimes. Until the ICTY and ICTR, women, let alone rape victims, were not present in the historical narrative. The law is intended to protect everyone, men and women alike, and yet, women are often left out of these protections and are unable to make their voices heard. The law also helps disseminate information from the past and how it should be remembered. Henry argues that "...international courts inescapably shape how the past will be remembered through their 'selective memory.' Of course, this has been shown to be problematic when courts fail to adequately prosecute certain crimes..."³⁰ In the case of rape, to not prosecute crimes of sexual violence or not prosecute these crimes "well" can lead to a distortion of history that may make future prosecution of sexual violence more difficult. Henry states, "The point here is that international war crimes courts play a powerful role in shaping what is to be remembered, regardless of whether or not they do a good job of it."³¹ International courts have the responsibility to provide a platform for victims to be heard and acknowledged. In regards to Rwandan genocide victims, Binaifer Nowrojee places responsibility on international courts to give women a platform:

Of all the things that international justice can give to the victim, this is perhaps the most straightforward. If it condemns, prosecutes and convicts offenders of sexual violence crimes, the crime committed against the rape victim is acknowledged and the silence is broken. No punishment can ever adequately redress the injuries of, or restore to their previous state, the victims of genocide. Yet despite this, there remains something important to the victims about the act of acknowledgement.³²

³⁰ Henry, 121.

³¹ Henry, 121.

³² Nowrojee, 5.

In short, international courts have the responsibility and obligation to prosecute to the fullest extent, rape and other forms of sexual violence.

Lastly, prosecution of sexual violence can become a deterrent for future crimes. While this is difficult to prove and may appear as an optimistic or simplistic argument, there is a valid argument to be made that the more likely an individual is to be tried and convicted of sexual violence, the more likely the individual will not commit that act because it will become socialized as a violation, culturally coded as wrong. While it is unlikely that soldiers will stop using rape and sexual violence as a weapon of war and genocide, it is entirely possible that rape and sexual violence could become less prevalent. However, to accomplish this would mean requiring several changes in the way international trials and tribunals are conducted (which will be explained further). According to Eboe-Osuji, “an effective combat against sexual violence against women as an evil requires a composite strategy that necessarily involves a policy of zero-tolerance against the conduct. The policy of zero-tolerance ought to warrant all efforts made to prevent any accretion to the gnarled culture of peacetime or conflict-inspired sexual violence against women.”³³ Sexual violence is often an afterthought in genocide trials and is often seen as a “lesser” crime than other crimes against humanity. In fact, rape and sexual violence have not been tried as their own crimes but rather under the umbrella term of “crimes against humanity” which include other crimes such as torture, inhumane treatment, and murder. Today, rape is the least prosecuted and convicted crime in the world which begs the question, *why will soldiers stop raping if there is no fear of*

³³ Eboe-Osuji, 263.

repercussion? The answer to this question is not a simple one. However, international courts have the responsibility to do their part to prosecute sexual violence as well as create deterrents for future crimes of sexual violence.

Shortcomings of Prosecuting of Genocidal Rape

Despite successes in the prosecution of genocidal rape and other forms of sexual violence, there is an urgent need to improve investigations into these claims and the overall prosecution of sexual violence. In order to understand what actions need to be taken in the future to best secure justice for these victims, it is necessary to understand the shortcomings and limitations of how genocidal rape is treated in international courts and tribunals today. By understanding the failures of past war and genocide trials and tribunals, legal experts will be able to prevent these failures in future proceedings. Furthermore, by examining the significance of genocidal rape and the importance of prosecuting it to the fullest extent, future attorneys will try more cases of genocidal rape and sexual violence and will bring justice to victims and survivors.

Rape as an Afterthought and Lack of Political Will

Despite rape being used as a systematic tool of ethnic cleansing and genocide since the advent of warfare, rape still is not viewed as a serious crime. One reason for this may stem from the debate as to whether rape constitutes the crime of genocide. Only a few decades ago, rape was considered merely a product of war rather than a calculated strategy. However, many still question the connection between rape and sexual violence and genocide. According to Powell, the basis for this debate

...is the way that rape is treated under international law. Rape is prohibited under international law, but it is not specifically designated as an international crime.

Because of this, rape must be subsumed within an established international crime such as genocide, crimes against humanity, or war crimes, if it is to be prosecuted within an international criminal tribunal or the International Criminal Court.³⁴

Of all of the crimes that are tried in the ICC and other courts, genocide is considered the gravest. Many have the false belief that rape is a “lesser” crime than genocide and therefore are hesitant to try rape in the legal system. Many believe that rape only affects the victim, therefore making it a crime that affects an individual only rather than a group or community. In the cases of the ICTY and ICTR, neither tribunal had been established with the purpose of prosecuting genocidal rape. In fact, in the case of Rwanda, rape and sexual violence were not including in many initial indictments. It was not until pressure from international NGOs, victims’ advocate groups, and others that rape was added as a charge against many defendants. Nowrojee recalls that the prosecution of rape and sexual violence had not initially been a priority of the Prosecutor’s Office in the Rwandan Tribunal:

Over the past decade, sexual violence crimes at the ICTR have never been fully and consistently incorporated into the investigative and prosecution strategy of the Prosecutor’s Office. For the past nine years, no comprehensive prosecution strategy or precise work plan to properly document and bring the evidence of sex crimes into the courtroom has been consistently pursued.³⁵

Despite overwhelming evidence of rape used as a form of genocide against the Tutsi population, relatively few defendants were tried or convicted for genocidal rape.³⁶

In regards to international tribunals, there is an overwhelming desire and push to receive the most convictions possible. Because of this, many prosecutors choose to try

³⁴ Powell, 14.

³⁵ Nowrojee, 7.

³⁶ Haddad.

cases of crimes against humanity and genocide which are objectively easier to prove and are often less “complex” than the prosecution of rape. Prosecuting rape and sexual violence as an international crime is extremely difficult. As in the case of past tribunals, there is a lack of political will to place the prosecution of rape and sexual violence at the forefront of ICC proceedings. Genocide trials and tribunals are often inherently political and have specific goals and objectives that seldom include the prosecution of genocidal rape and sexual violence. According to Henry, “international rape trials are fundamentally political...international criminal courts for the prosecution of serious violations of international humanitarian law operate according to the ideology of liberalism; that is, law as separate and independent from politics, and law as fundamental premised on the pivotal notions of justice, equality, and individualism.”³⁷ Gerry Simpson argues that “international law produces a form of displaced politics or conducts politics in a different way.”³⁸ Often, the political objectives that are present in these trials and tribunals do not address, or omit completely, the crime of rape and other forms of sexual violence as genocide. While there is no way to be sure of the reason behind this, it is likely that the lack political will to prosecute these crimes comes from the inaccurate but prevalent discourse that does not link rape to genocide. Even today, rape is not regarded to be as “bad” of a crime as torture, murder, or genocide. This lack of will may also stem from the desire to get convictions. Rape is the most challenging crime to prosecute and even more challenging is linking rape to genocide; therefore, trial attorneys are less likely to pursue cases of sexual violence because they fear those crimes will not secure

³⁷ Henry, 125.

³⁸ Henry, 126.

convictions. In addition to the lack of motivation to pursue these crimes in international courts, there have also been a number of errors and oversights that have often made prosecution of genocidal rape nearly impossible.

Legal, Investigative, and Procedural Failures

In recent decades, definitions and understandings of wartime sexual violence have expanded significantly, adding to the success of certain rape trials, however, there are still several difficulties with the legal definitions and mechanisms in which sexual violence is tried in courts. The first of which is that “sexual crimes are not clearly and explicitly demarcated in international criminal law, but are divided between different categories of abuses and crimes, such as crimes against humanity, violations of the Geneva Conventions, and most recently as a component of genocide”³⁹ according to Heidi Haddad. Even today, genocidal rape is not its own defined crime. Instead, rape and sexual violence is tried as a crime against humanity, genocide, and as violation of the Geneva Conventions to name a few.

Many of the investigative and procedural failures in prosecuting genocidal rape stemmed from a lack of a comprehensive definition of rape and its connection to genocide. Defining criminal behavior is essential for the prosecution, punishment, and deterrence of it. Because rape was historically excluded from prosecution of most conflicts until the ICTY and ICTR, attaining some measures of justice in cases of genocidal rape was virtually impossible. According to Jennifer Park, before the tribunals

³⁹ Heidi Nicholas Haddad, “Mobilizing the Will to Prosecute: Crimes of Rape at the Yugoslav and Rwandan Tribunals,” *Human Rights Review* 12, (2011): 111. 109-132.

of the 1990s, “the lack of definitions and appropriate procedural processes for prosecuting sexual violence proved to be a significant barrier towards advancing the status of sexual violence in international law.”⁴⁰ Confusion surrounding what constituted genocidal rape allowed for serious gaps in prosecutions and permitted perpetrators of sexual violence to walk free. Each genocide trial, beginning with Rwanda and the former Yugoslavia, has improved and expanded the definition of genocidal rape and also set precedents to address these crimes in court. However, while significant improvements have been made in regards to defining the crime of rape and sexual violence, little has been done to advance the way these crimes are treated and prosecuted in the international arena.

As mentioned earlier, there are significant intergovernmental and national interests that determine the outcomes and procedures of international war crimes and genocide trials. Investigators and prosecutors that investigate and try crimes of sexual violence often make serious errors in gathering information and relaying that information effectively during trial. This is in part due to the reluctance of many prosecutors to tackle on these cases. Many prosecutors do not want to take on the added difficulty of preparing witnesses for testimony and trial. According to one psychologist who worked in the Victim and Witness Unit of the tribunal for the former Yugoslavia, “rape cases were ‘too complicated’ and took ‘too much time.’”⁴¹ Another male prosecutor stated, “When I get the rape cases I think that I am going to deal with the most traumatized victims... I [have to] think of how to get them to tell the evidence as they [often] only disclose it very

⁴⁰ Park, 14.

⁴¹ Powell, 44.

gradually and confusingly.”⁴² In other cases, prosecutors are likely to overlook important information from victim statements during the investigation process. In the case of the Rwandan tribunal, many prosecutors “missed key elements or victims statements, particularly victims of sexual violence”⁴³ according to Simone Monasebian. “It was a real shame—those women never really got their voices heard.”⁴⁴ Unfortunately, it is a sad reality in many international courts. Court officials often do not take seriously the investigations into the crimes of rape and sexual violence that result in the misconstruction of victim testimonies, re-victimization of individuals, and an increase in the likelihood of acquittals.

Additionally, there have been serious procedural failures in trials for rape and sexual violence. Prosecutors who are not trained to work with victims of sexual violence are more likely to negatively affect the outcome of these trials. Despite its successes, the ICTR had several shortcomings, particularly with sensitivity towards rape victims during the trial. Judges, prosecutors, and other court personnel “have been known to be insensitive to rape cases. For example, during certain trials in the ICTR in 2001, three judges reportedly laughed at a victim witness who was testifying about her experience with rape. The defense attorney suggested that since the “survivor had not taken a bath and smelled, she could not have been raped” according to a report by Cassie Powell.⁴⁵ The fault does not rest solely with prosecutors but also on judges and other court personnel. In another case of the ICTR, a “survivor was asked 1,194 questions by the

⁴² Powell, 44.

⁴³ Monasebian, interview.

⁴⁴ Ibid.

⁴⁵ Powell, 44.

defense, some of which were perceived to be offensive, without interference by the judges.”⁴⁶ This oversight can most likely be attributed to a lack of proper sensitivity training on how to address cases of sexual violence as well as a general misconception that rape is based on lust and sexual attraction rather than an expression of power or act of genocide. There is also significant difficulty in protecting victims’ testimonies during trial. In addition to being re-victimized by their own attorneys and judges, victims often have their credibility or “victimhood” called into question by defense attorneys. Henry argues that “cunning lawyers are able to effectively bypass rules relating consent, captivity and cross-examination. As such, they are also able to deliberately construct an alternative narrative about the implicit authenticity of witness truth and memory.”⁴⁷ Defense attorneys are able to undermine and manipulate victim experiences and memory, often without objections from prosecution attorneys or judges. “This type of insensitivity, both to the victim and regarding the nature of rape,”⁴⁸ according to Powell, “increases the issues both with obtaining victim testimony and successfully prosecuting rape.”⁴⁹ This leads to a violent cycle of insensitivity and bias that prevents victims from wanting to come forward, which in turn dissuades prosecutors from choosing to pursue rape cases.

Impunity and Defendants

The development of rape as genocide has been relatively slow but has shown some progress in the cases of Rwanda and the former Yugoslavia. Since the establishment of the ICC in 2003, twelve individuals have been indicted for rape. Out of

⁴⁶ Ibid.

⁴⁷ Henry, 127.

⁴⁸ Powell, 45.

⁴⁹ Ibid, 45.

the twelve, only one defendant was indicted for genocidal rape. The ICC was established to have freedom of prosecuting the most grave human rights violations without limitations or restrictions by national and domestic courts and governments. Yet, justice appears to be very slow for victims of rape. This is in large part because of the focus of international courts to try and convict those “most responsible” for genocidal acts, rather than prosecuting lower ranking officers, soldiers, or officials that were responsible for crimes of rape and sexual violence. The sole focus of these tribunals is prosecuting defendants but the stories of victims and witnesses are not fully told through law. Victims are often advised by prosecutors to omit parts of their stories and experiences. Sometimes, the prosecution and defense lawyers manipulate the victims’ accounts in order to achieve specific ends. Prosecutors and defense attorneys focus exclusively on confirming factual evidence, rather than creating a narrative that may be used to prove a “bigger picture” pertaining to genocidal rape. Furthermore, international tribunals seek to “individualize” guilt and accountability: “Often defendants are not accused of having personally committed rape, but their position of seniority or superiority means they are attributed individual criminal responsibility for the crimes committed under their command or leadership.”⁵⁰ While individualization of genocide is an important step in securing justice for victims of genocide, the problem lies in that few perpetrators of sexual violence and rape are actually tried or convicted, meaning for victims, justice eludes them.

⁵⁰ Henry, 124.

Few perpetrators of rape are brought to justice in international courts. While it is essential to try those in high-ranking positions for genocidal rape (because they are the ones that give direct orders) it is of paramount importance to also try lower level and lower ranking soldiers directly responsible for rape and sexual violence against civilian women. Impunity in prosecuting genocidal rape signals to victims, perpetrators, and the international community that few rapists will ever be brought to trial. Furthermore, it signals that rape during times of conflict will almost certainly go unacknowledged and unpunished as long as the perpetrator is not in a position of authority. Impunity represents a barrier to justice for victims and for this reason, war crimes courts fail to “capture the collective frenzy of warfare and crimes of rape.”⁵¹ “Changing the culture of impunity is so important” says Holly Dranginis, Senior Policy Analyst at the Enough Project, “if we want women to keep coming forward as witnesses, we have to address impunity.”⁵²

Absence of Victims’ Voices

The legal profession, including international human rights law, is often dominated by men with little room available for the voices of women. Apart from occasionally testifying as witnesses, in recent decades, victims of genocidal rape have had little to no voice in genocide trials. This is, in part, because of the emphasis on prosecuting other crimes against humanity such as murder, torture, and other inhumane treatment. Women have often been underrepresented in these trials as a whole. International feminist scholars have claimed that the “ways in which male-defined substantive, procedural and conceptual structures may serve to undermine, marginalize or obscure women’s

⁵¹ Henry, 124.

⁵² Holly Dranginis, interview with Larissa Peltola, October 24, 2017.

experiences in warfare.”⁵³ Nearly every trial of genocide and crimes against humanity has utilized victims’ voices, experiences, and testimonies in an effort to secure justice for those victims. However, when it comes to prosecution of rape and sexual violence, victims are often left out of the legal narrative. Dranginis argues, “we learn from victims... [Including victims’ voices] helps us understand the nature of conflict, offers dignity for the victims, and helps with the punishment of offenders.”⁵⁴ Not including victims of sexual violence as a part of genocide trials almost always ensures a denial of justice for these victims.

Recommendations⁵⁵

More Women, More Justice

One of the most important ways in which international courts can secure justice for rape survivors is by including more women in every step of the process from investigation to prosecution. Because women are disproportionately the victims of sexual violence, they are more attentive and sensitive to understanding the impact and implications of genocidal rape. Powell explains that “Women, historically, are generally more attuned to gender-based violence than men, and thus the addition of their voices on the court is instrumental to effectively prosecuting rape as an international crime.” She continues “studies demonstrate that men are more willing to blame a rape survivor and see a rapist as less blameworthy than women.”⁵⁶ This is due to the existing false narratives

⁵³ Henry 147.

⁵⁴ Dranginis, interview.

⁵⁵ The following is a list of recommendations based on interviews with international trial prosecutors, activists, and scholars. These recommendations are for the overall justice of victims.

⁵⁶ Powell, 18.

that place, at least, some blame of victims. Women are overwhelmingly the victims of sexual abuse and therefore are able to approach sexual abuse more holistically than men. “One of the most important methods is to hire people, especially women, who have been trained to work with victims of rape and sexual violence and who have specific expertise on this matter”⁵⁷ according to Monasebian, “...training people that work with witnesses and survivors to make them more sensitive to [the victims]”⁵⁸ and creates an overall better understanding of genocidal rape. In addition to hiring women that would better meet the needs of rape victims, Monasebian also argues that including voices of rape survivors, not just as “victims” or as witnesses, but as advisors to prosecutors and others: “Having an advisory board of survivors, not just using them as witnesses but as decision makers and help inform necessary decisions in these tribunals.”⁵⁹ This would not only help shape the focus and execution of certain trials but also empower victims in the process. By reclaiming their power and being an active part of the process, and not as a witness to be pitied, victims can transform themselves into survivors and can be a part of helping in the prosecution of the criminals and of achieving justice for the victims.

More specifically, women should be included in the trial itself as witnesses, experts, prosecutors, and judges. While victims’ voices, as advisors and witnesses, are a vital part of the legal process, in order to ensure justice for rape victims, women must be put into positions of power within these trials, particularly as judges. Navanethem Pillay, the first female judge of the ICTR argued that “who interprets the law is at least as

⁵⁷ Monasebian, interview.

⁵⁸ Ibid.

⁵⁹ Ibid.

important as who makes the law, if not more so. I cannot stress how critical I consider it to be that women are represented and a gender perspective integrated at all levels of the investigation, prosecution, defense, witness protection and judiciary.”⁶⁰ In one of the most groundbreaking rape judgments of all time, Pillay oversaw the *Prosecutor vs. Akayesu* case during the Rwandan tribunal where she pursued an inquiry into rape allegations. “It was only because of her intervention that the prosecution eventually amended their charges to include sexual violence counts” says Monasebian.⁶¹ Having women in these positions in the judiciary are essential as they can use their power to intervene on behalf of genocide survivors.

Women have been important advocates and a key reason for why genocidal rape has been introduced into the legal discourse. No women were a part of the Nuremberg trials, not as judges, attorneys, or advisors that is why many scholars believe that little was done to advance prosecution of sexual violence. In the establishment of the ICC, there was a strong lobby and coalition of over 200 women’s groups internationally which demanded the inclusion of crimes relating to gender identity. “As a result of the Women’s Caucus hard wrought work,” argues de Brouwer, “gender was defined in the Statute as referring to the ‘context of society,’ including sociological differences between men and women and paved the way for including a non-discrimination provision against gender.”⁶² Likewise, seeing the success of female judges in the ICTR, the ICC adopted this model as a part of the Rome Statute, requiring, ““fair representation of female and

⁶⁰ In Simone Monasebian, “Sex Matters: The Invisibility of Women at the Iraqi Tribunal,” *Grotian Movement Blog*, January 30, 2006.

⁶¹ Ibid.

⁶² de Brouwer, 20.

male judges' be taken into account in the selection process...as well as a fair representation of women and men in the selection of staff in the Office of the Prosecutor and in all other organs of the Court."⁶³ The only way ahead in the prosecution of sexual violence in the international arena is through the inclusion and incorporation of women in every part of the process.

Appeals for Rape Acquittals

If rape convictions are to become a deterrent, then prosecutors must not only work towards getting a conviction for sexual violence but also appeal acquittals for these crimes. It is not enough to try the crime of rape once or in a few isolated cases. In conflicts and genocides where rape and sexual violence are used as direct strategies, the number of indictments (and convictions) should reflect the magnitude and impact genocidal rape had (and has) on victims and their communities. Henry argues that "it is important to point out that for the international community to pursue sexually motivated crimes as serious international human rights violations, such crimes need to be connected to a political motivation and contextualized as a public violation in order to be tried as a crime against humanity, torture, genocide and war crime."⁶⁴ With this motivation in mind, there could be fewer barriers to prosecution of these crimes and more justice for victims. Prosecutors should treat rape as genocide. By doing this, and changing the way in which rape is viewed in international courts, as well as prosecuted, this could act as a deterrent for future perpetrators of sexual violence.

Victim Care and Counseling

⁶³ Ibid, 21.

⁶⁴ Henry, 126.

The law should not only be used to prosecute and sentence criminals but also to protect victims of genocide, particularly, victims of genocidal rape. Victims should be provided with medical and psychological counseling, especially if they are part of the proceedings as witnesses, experts, or advisors. The protection of rape victims should be a priority of legal systems. During the Rwandan genocide, the spread of HIV through rape by Hutu militants left a large portion of the Rwandan population, especially women, with no access to anti-retroviral drugs, and medical care. During the tribunals, perpetrators of the genocide who were standing trial were given free medical care, including ARVs. However, female victims of rape who had contracted HIV/AIDs were not given the same treatment.⁶⁵ That act signaled to victims that their lives, their health, and their struggles were second to those of their rapists. Furthermore, it signified that the legal system was not on the side of the victim. In addition to medical care, courts and international systems should be providing victims with psychological counselling and services as well as taking into consideration the victims themselves. Davis argues that in “future war crimes trials, courts need to be continually aware (unless and until attitudes about rape victims change dramatically) that when asking a rape survivor to testify against the accused rapist, they are asking for her, once again, to put her life, reputation, and mental health on the line. In addition, in some cultures they may be asking her to risk dishonoring her family or community.”⁶⁶ All members of the courts that will be working and interacting with victims of sexual violence should receive the proper training which takes into

⁶⁵ Monasebian, interview.

⁶⁶ Davis, 1246.

consideration the special needs of these victims. “Mental healthcare is an absolute necessity [for victims]” said Dranginis.

Reparations

Likewise, victims of genocidal sexual violence deserve reparations. Reparations are an essential component in achieving justice for women, their children, and their communities. Reparations are a signal of justice for victims and their families. Often the legal system has failed victims and their pursuit of justice, however, if a victim’s assailant is not tried, indictment, or convicted, (which is a tragic reality for must victims), women are left with little comfort or support. According to Zia Wasserman and the Sexual Violence Research Initiative, “...the conviction [or lack of conviction] of perpetrators of crimes of sexual violence is unlikely to be significant source of relief for victims.”⁶⁷ Wasserman continued, “when asked about the types of reparations that female victims prefer, responses across countries and cultures followed a similar pattern: they asked for services to meet their basic needs...victims appear to be primarily present and future oriented. Their needs are so immediate that they are less concerned with the justice of the past than survival in the present and future.”⁶⁸ Reparations are a signal to victims and survivors of rape that their suffering was not in vain and that the international community cares about their plight. It also proves that the international community is committed to justice for victims of genocidal rape. Reparations also help to hold perpetrators accountable and can have the potential to deter future rape campaigns. If a perpetrator

⁶⁷ Zia Wasserman, “Wartime Rape and the Need for Reparations,” *Sexual Violence Research Initiative*, April 11, 2016, http://www.svri.org/blog/wartime-rape-and-need-reparations#_ftn8.

⁶⁸ Wasserman, “Wartime Rape and the Need for Reparations.”

fears not only being indicted for crimes of rape and sexual violence but is at risk of paying reparations to the victims, he could be less likely to commit the act in the first place. The need for reparations should not come at the cost of prosecuting rape in the legal system, however. Both should go hand in hand for the purposes of seeking justice for the victim(s). Reparations are “the most victim-centered justice mechanism available and the most significant means of making a difference in the lives of victims”⁶⁹ both financially and psychologically. Of course, reparations will never replace physical and psychological counseling and care and will never fully provide justice to victims of sexual violence. However, reparations are the most “victim centered” justice mechanism that the international community has today.

There are a number of challenges that prevent victims from receiving reparations from the ICC today. These challenges stem from the overall shortcomings of the international legal system in representing the needs of sexual violence survivors. The first of these challenges is that victims are often deterred from participating in ICC criminal trials. This is for a number of reasons inducing victim apprehension of recounting their experiences, limited scope of a particular case, complex application processes and other legal procedural failures mentioned above. If victims are not represented in trial, reparations are unlikely. The second challenge victims face is the length and duration of ICC trials. Most trials can take years before a verdict is reached (not including appeals processes).⁷⁰ This poses a serious threat to victims who are in need of urgent physical,

⁶⁹ Ruth Rubio-Marin, “Reparations for Conflict-Related Sexual and Reproductive Violence: A Decalogue,” *William And Mary Journal Of Women And The Law* 19, no., 69 (2012): 73.

⁷⁰ Christine Evans, *The Right To Reparation In International Law For Victims Of Armed Conflict*, (Cambridge: Cambridge University Press, 2012).

psychological and financial support. In the case of Rwanda, many victims died from complications from their rapes (especially victims who were deliberately infected with HIV) while the trials went on because they could not afford life-saving treatments. Next, because of cultural differences, the ICC may find it difficult to provide reparations that would realistically help victims: “by failing to understand the local customs and values of the victim, the Court may exclude certain persons from claiming victim status and may order reparations that do not reflect the suffering of the victim in her community”⁷¹ argues Wasserman. The last challenge to the feasibility of providing reparations is arguably the most difficult hurdle to overcome for victims. Wasserman claims:

The Court is only empowered to order reparations against a convicted accused person. This is fundamentally problematic because victims are thus required to wait until the end of a (usually lengthy) trial until reparations can even be considered, and the possibility of such an order is predicated on the proven guilt of the accused. That is, even if the victim is accepted as having victim status, she will receive no relief if the accused is found to be not guilty for whatever reason.⁷²

While securing reparations is not a flawless system, reparations are the most important element to securing justice for rape victims. There is a clear need to both support victims of genocidal rape and correct the failures in the current international legal system. There should be calls to reform the ICC so that the can order timely, adequate, and effective reparations to victims of sexual violence.

An Urgent Need to Act

There is an urgent need to not only correct the failures of the current legal system but also improve support for victims of sexual violence. This is not an easy feat and will

⁷¹ Wasserman, “Wartime Rape and the Need for Reparations.”

⁷² Wasserman, “Wartime Rape and the Need for Reparations.”

require commitment by the ICC, the United Nations and other international actors, as well as governments, and individuals. However, improving this system is one of the most pressing issues of today. Two genocides are occurring currently with the Rohingya and Yazidi ethnic and religious minority populations. Rape is being used at an alarming rate as a form of genocide. Yet, many activists fear that the international community is failing yet again in not only intervening in the genocides but also failing the victims of genocidal rape. Little is being done for rape victims or their communities and many activists fear that if the legal system is not improved, the Rohingya and Yazidi victims will never see justice. The international community must do its part to ensure that it does not fail the Rohingya and Yazidi the way it failed the “Comfort Women” and the millions of other victims that still await justice.

Epilogue: Where do we go from Here?

“Naming sexualized violence as a weapon of war makes it visible -- and once visible, prosecutable. What happened to men in the past was political, but what happened to women was cultural...we have to stop saying sexualized violence is inevitable, or allowing its victims to be blamed. We have to imagine change before we can create it.”¹

-Gloria Steinem and Lauren Wolfe

In a globalized and globally connected world like the one we have today, it is impossible to be ignorant of the various human rights abuses that are occurring around the world. What is possible is to turn a blind eye to human suffering, to human rights abuses, and to genocide. It is easy to close oneself off from the rest of the world, to focus solely on individual interests, needs, wants, desires, and those of one's family or community. Many people rely on the “what am I supposed to do” argument when confronted with the guilt of *choosing* not to act. Others embrace the “it is not *my* responsibility” approach to the issues plaguing our society. And then there are individuals who feel compelled to tackle the challenges of protecting and promoting human rights internationally.

Tackling genocidal rape and sexual violence can be daunting. While the international community, for the most part, can agree that prosecution of genocidal rape and protection of rape victims and survivors is of paramount importance, too few people, organizations, and governing bodies have been able to successfully address this crime against humanity. There are several reasons why sexual violence has not been in the forefront of our collective international conscience or consciousness: the first reason is

¹ Gloria Steinem and Lauren Wolfe, “Can we End Rape as a Tool of War?” *CNN*, February 8, 2012, <https://www.cnn.com/2012/02/08/opinion/steinem-wolfe-rape-war/index.html>.

the perception that it is a “woman’s issue,” that cases of gender violence are perceived as a singular problem that affects individual women rather than one that affects entire communities and populations. A second reason is the belief that rape and sexual violence are merely tragic by products of conflicts and wars and are the transgressions of a few “bad apples,” rather than a calculated and methodical weapon, strategy and campaign used against women and their communities for ethnic cleansing and genocide. Finally, certain critics, though they may recognize the effects of rape on victims and their communities, reject efforts to distinguish and prosecute sexual violence in courts believing that the distinction is neither necessary nor conducive to the bigger goal of the success of genocide trials. As war and all forms of conflict continue to become more destructive and more widespread, forms of cruelty against civilian populations continue to increase. While rape and sexual violence may be easily linked to conflicts, the obligation of the international community is to prosecute these crimes, mete out justice and send a strong message that women’s human rights matter.

As discussed earlier, international courts have failed victims of genocidal rape. The first failure of international courts stems from the discourse surrounding wartime rape. The courts need to acknowledge that sexual violence is a form of genocide that targets a woman’s reproductive capacity and freedom and also impacts a woman’s ties to her ethnic, religious, and cultural communities. In many cases, rape is an afterthought of genocide trials and tribunals. Second, historically there has been a significant lack of political will to prosecute rape and sexual violence. The crime of rape was not present in the Nuremberg Trials and only played a minor role in the Tokyo trials. Even in the ICTY and ICTR, sexual violence was included only after the international community and

NGOs placed significant pressure on the courts to include crimes of sexual violence. Even today, little political will exists to prosecute genocidal rape. The third failure of international courts is the exclusion, whether intentional or otherwise, of female victims, attorneys and advocates from the trial process. Victims and survivors should be involved in these trials as witnesses, experts, consultants, and in other capacities. They should play a central role during genocide tribunals. A fourth reason rests with the international community failing to provide the necessary support for victims of rape during armed conflict. Victims and their communities should be given access to free medical care, psychological counseling, and other resources necessary for their physical and emotional recovery. The fifth failure that has been identified in this thesis is the overall poor or mishandled investigations leading up to and during international trials and tribunals. Investigators often do not take the proper measures to protect victims from further victimization, do not conduct proper or thorough research or information gathering. What frequently results are mistakes, errors, and oversights that hurt the women seeking justice or negatively affect the outcome of the trial. The sixth and final failure examined here is the impunity for perpetrators and the focus on prosecuting those “most responsible,” high ranking military officials, for genocide and crimes against humanity. The prosecutors should also be prosecuting lower ranking soldiers who may be most directly responsible for rape and sexual violence.

This thesis also addressed the ways in which prosecution of genocidal rape can be improved. The first step is the inclusion of more women into the process from beginning to end. This includes rape victims and survivors, more female judges and prosecutors, and more women involved in the investigation of rape crimes. Women are essential in the

securing of justice for rape victims. Many of the failures of the tribunals in the past century have been due to the lack of gender representation both in the investigation and prosecution processes. The second improvement international courts should make is in the appeals for rape acquittals. One of the biggest failures of the current international legal system is that rape is the least punished and prosecuted crime. Because prosecution and punishment of this crime could prove a deterrent to future rape campaigns, it is necessary to continue to appeal overturned convictions or acquittals of rape and sexual violence. International courts have to hold perpetrators accountable for their actions and the crime of rape is no exception. Rape should be treated as an egregious crime and as genocide. As such, prosecutors have the obligation to continue to try rape cases and appeal those that have not resulted in a successful conviction. Next, victim care and counseling before, during, and after the trial(s) is an obligation of international courts. Lastly, reparations for the crime of genocidal rape and other forms of sexual violence should be made to the victims and their families. This could act as a deterrent for future rape campaigns and provide victims another form of justice they deserve. While these improvements could change the landscape of both the prosecution of rape during genocide, these only address the legal and technical aspects of this debate but do not challenge the broader international community on its collective responsibility. In order to one day prevent genocidal rape altogether, actions must be taken both by international actors, attorneys, courts, and NGOs but also the average person who can do her/his part.

Suggestions for the International Community

The international community can be a powerful catalyst for change when it comes to demanding justice for genocidal rape. First, international actors should work to end impunity of genocidal rape by signing onto and supporting the ICC as well as judicial proceedings at the state level. A more conscientious and concerted effort must be made to ensure that the international community is committed to prosecuting and challenging wartime rape. Next, providing long term support and resources to local organizations that work with rape survivors and communities that have been affected by genocide would enable longer term “planning and development of best practices”² according to the Nobel Women’s Initiative. Likewise, the international community should make efforts to provide funding for research to “better understand the problem of sexual violence in conflict and its ramifications and impact to feed into better responses and recovery strategies – more data is needed.” In order to understand the nature of genocidal rape and how to best prevent and combat it, more research is needed into the ways in which men rape and also *why* men rape. It is not enough to say that the wartime context triggered outbreaks of sexual violence; rather, the international community must learn and understand why men rape, why rape is as effective as ethnic cleansing and genocide, and the best ways to prevent these crimes. Lastly, international actors must be held responsible for the advancement of women’s leadership positions in post-genocide societies. According to the Women’s Nobel Initiative, the international community must “Prioritize the views and concerns of women and girls when granting funding and identifying priorities for investment and reconstruction, enabling women and girls to

² Nobel Women’s Initiative, “War on Women: Time for Action to End Sexual Violence in Conflict,” May 2011, <http://nobelwomensinitiative.org/wp-content/uploads/2013/09/war-on-women-web.pdf>. 18.

participate politically in reconstruction efforts.”³ In order to prevent genocide and crimes of sexual violence in the future, women must be empowered and placed in positions of leadership. Post genocide reconstruction is difficult and requires an extraordinary amount of financial resources, time, effort and political will. However, if done “right,” post conflict societies may be able to overcome their dark pasts and advance women’s and human rights effectively.

On the Individual Level: Destigmatizing Rape and Changing the Discourse

The first way in which individuals can work for the protection of victims of genocidal rape is by challenging the current discourse and stigma of rape and sexual violence. While there have been significant strides in recent decades on changing the discourse around rape in relation to conflict, there is still work to be done and progress to make. One of the essential ways that individuals can support the fight for justice for victims of genocidal rape is by actively participating to change the current discourse. Rape is still seen as a “women’s problem,” a tragic by product of conflict, and as something that will never stop existing. Rape is the only crime in which blame is placed on the victim. This is in part because of the inferior societal positions of women in so many parts of the world. These positions where women lack power coupled with, toxic cultures of misogyny, sexism and male masculinity, allows for sexualized violence against women to continue. However, this was not always the case, according to Gloria Steinem and Lauren Wolfe,

...It is crucial to remember that it wasn't always like this, nor does it have to be. Sexualized violence isn't a "natural" part of conflict. For the first 90% or more of

³ Ibid, 18.

human history, females and males had roles that were balanced and porous. Our societal positions weren't based on the domination of females by males. Humans and nature, women and men, were linked rather than ranked. The circle, not the hierarchy, was the organizing principle of our thinking.⁴

Unfortunately, because this field of study emerged only a few decades ago, people still lack the understanding of how rape affects women, communities and countries as a whole. Individual must educate themselves on the most egregious human rights violations that exist today and challenge others to do the same. Though rape will likely never cease to exist in conflict settings, a shift in the way individuals and the international community view, combat and prosecute genocidal rape is a necessary. Equally as important is a shift in the way we treat victims and survivors. They should be supported and not re-victimized so they feel less stigma and shame, and be more willing to share their stories so they can receive the justice they deserve. Each and every person should be responsible for educating themselves about human rights violations and help to educate others. The more people that become aware and engaged in this global human rights Issus, the easier it will be to change the discourse which will, in turn, change the way genocidal rape victims are treated in the legal system, in their countries, and in their own families and communities.

Part of the change in discourse and the way genocidal rape is viewed must come from the male members of communities whose wives, sisters, daughters and female friends have been affected by sexual violence. In many communities around the world, men are viewed as the providers, protectors, and charged with the physical protection of

⁴ Steinem and Hill, "Can we end Rape as a Tool of War?"

female family members and their communities. Rape affects women, of course, but also leaves a lasting impact on the men of the victim's family. Men often also feel shame and a sense of failure that they "allowed" their wives/daughters/mothers/sisters to have her "honor" removed. This is often the case in more religious and conservative cultures that bind a woman's sexual purity to the honor of her household and family. The shame, stigma, and ostracization that comes from rape also affects men. It is of the utmost importance to change the way individuals view genocidal rape; however, it is equally as important to educate and train male members of communities on the best ways to support female members of their communities who have been victimized. By educating men, changing the discourse and addressing the way in which rape and sexual violence are treated by men in these communities, there would likely be less stigma and fewer instances in which victims feel ostracized from their communities, resulting in more social cohesion within these communities.

Supporting Victims and Survivors

In addition to legal support and justice, victims and survivors of genocidal rape and sexual violence are in dire need of psychological services. More often than not, victims are left without the resources or ability to heal, both physically and emotionally. Women are often re-victimized during the trial/legal process and are made to relive their experiences often without support from counselors, psychologists, or attorneys and judges that have not received sensitivity training. After the trial process ends, women are left to return home to their families and communities without any emotional support. In many cases, due to stigma and shame, victims choose not to speak of their experiences

(or feel they have no choice in the first place) with family or community members. Furthermore, the victims that testify in court or make public their rapes are often ostracized from their communities, unable to return home to their husbands or families and left without financial resources. Challenging cultural norms of certain groups and the overall stigma that inherently accompanies sexually violent crimes will be extremely difficult to eradicate. However, individuals can support survivors of wartime sexual violence by providing psychological counseling or by supporting organizations that work with survivors of genocidal rape.

Doctor Denis Mukwege, Congolese gynecologist, developed a strategy for victim care that, if adopted on a wide scale, could mean the long term health and support for rape survivors.⁵ The first of these pillars is medical care. Medical care is the most urgent need for most rape victims, both immediately after the rape occurred and in the months and years after, depending on complications that follow sexual violence. The next pillar is what Mukwege defines as “psychosocial support.” In addition to psychological services and trainings, Mukwege argues that involving the community is an important part of this healing process: “Family and community support are also crucial for survivors’ psychosocial well-being. This may require (1) working with local leadership (for example women, men, young people) in community-awareness actions to reduce stigma and (2) providing recreational activities to minimize social isolation and increase social cohesion.”⁶ Through group therapy, psychotherapy, and other counseling services

⁵ Dr. Mukwege has addressed sexual violence and rape as genocide for several decades and has since provided medical and psychological counseling for a countless number of rape survivors. His various strategies can be found on his website, mukwegefoundation.org.

⁶ Dr. Denis Mukwege Foundation, “Strategy 1: Holistic Healing Services,” Accessed April 2, 2018. <http://www.mukwegefoundation.org/strategies/holistic-healing-services/>.

both for the victim and their family/community, survivors are able to heal and will be able to retake their positions within their families and communities without the stigma, shame, or guilt. The third pillar of Mukwege's strategy is legal aid. While the prosecution of sexual violence and genocidal rape on an international courts level is often difficult, victims and survivors are should be encouraged to pursue justice in domestic judicial processes. Legal aid should be provided for victims at all levels of the legal process, "legal aid can include covering expenses, providing transport and translation, and the supply of all legal services including representation in court."⁷ Lastly, and most importantly, rape survivors need socio-economic support, which has proven to be a significant part of the healing process. When survivors are able to be financially independent and able to contribute financially to the success of their families and communities, they are able to take on more positions of leadership within their communities and reclaim the power that had been taken from them during their attack(s). "This type of support may take several forms" according to Mukwege, "ranging from a livelihoods cash grant to vocational training, or access to business development services or loans."⁸ Other forms of assistance involve supporting a victim to continue with her education, "livelihood programs" which provide survivors with practical training such as financial management, as well as "general life-skills training in areas such as conflict management, negotiation, leadership, reproductive health and self-esteem."⁹ Mukwege

⁷ Ibid.

⁸ Ibid.

⁹ Ibid.

argues that “such development allows victims of rape to activate the power that is within them, to become leaders in their community and fight for rights and justice.”¹⁰

Political Actions

Lastly, ending genocidal rape will never be possible without international actors and individuals placing political pressure on international courts to prosecute genocidal rape as well as placing pressure on governments and government officials to end genocidal rape. Individuals can engage in political actions to work to end wars and genocide. In many western, democratic countries, letter writing and direct action advocacy are, arguably, the most effective weapons in an activist’s arsenal. Demanding action from government officials directly elected by constituents is an important first step. In the current cases of the Rohingya and the Yazidi, concerned and engaged citizens can donate to organizations helping the refugees with humanitarian aid and legal representation for their trials as well as put pressure on the US government to act on behalf of the Rohingya and Yazidi and place political pressure on the Iraqi and Burmese governments.

Rape and sexual violence are the most deadly, long lasting, and devastating weapons used in armed conflicts today. Without action from state actors, the international community, judicial systems internationally and domestically, as well as individual citizens around the world, rape and sexual violence will never just be a part of history but will continue to affect countless number of victims every day. All human beings are responsible for demanding an end to genocidal rape. No one should turn a blind eye to

¹⁰ Ibid.

human suffering anywhere in the world, especially for victims of rape and sexual violence whose suffering can be life long. It is essential that international courts capitalize on the momentum created by the ICTY and ICTR for trying perpetrators of rape. It is even imperative that individuals and organizations hold international and domestic courts, as well as politicians and state agents accountable for using their positions to advance protections and justice for victims of sexual violence. Survivors can no longer be silenced; shamed, or let down by the failures of those too concerned with their own lives, or by those who are unwilling to help. The global community has the responsibility and obligation to act and protect universal human rights, of which women's rights are inextricably linked. No one is exempt.

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Appendix: Interview Participants

The following are the biographies of experts, academics, and filmmakers that have been interviewed for this thesis. Their biographies have been taken from each participant's personal website or have been sent directly to the author by the participant.

Holly Dranginis: Holly is a Senior Policy Analyst for the Enough Project where she focuses on the Democratic Republic of Congo, Lord's Resistance Army, and Central African Republic. Holly is an attorney specializing in international criminal justice, sexual and gender-based violence, and natural resource trafficking. Holly has worked on numerous regional and international criminal cases, including the case against former-Liberian President Charles Taylor and the genocide case against former-Guatemalan President Efraín Ríos Montt. She has litigation experience at the International Criminal Tribunal for the Former Yugoslavia and the Inter-American Court of Human Rights, as well as representing and supporting victims of sexual violence, forced disappearances, and torture. In 2008, she was a consultant to then-ICC Chief Prosecutor Luis Moreno Ocampo, and later led a program in Northern Uganda introducing human rights curriculum into conflict-affected schools. In 2007, Holly was a Fulbright Scholar in Guatemala where she worked with the UN Office for the High Commissioner for Human Rights and local organizations investigating genocide crimes and violence against women in urban settings. In 2005, she worked as a consultant to truth commission efforts in Peru and Paraguay, gathering testimony from victims of civil war and dictatorship.

Karen Jungblut, the USC SHOAH Institute's Director of Research and Documentation, oversees scholarship and research activities, as well as a global network of partner sites with access to the Institute's testimonies, most notably the growing number of institutions worldwide with digital access to the entire archive of nearly 52,000 testimonies. Karen is also in charge of expanding the existing archive with video testimonies of survivors of other genocides, which will provide scholars and teachers with unprecedented research and teaching opportunities. With the Institute since 1996, Karen has led an international and multilingual staff to successfully catalog and index the archive and has been instrumental in developing the indexing and cataloging methodology and software applications. Karen received an MA in Political Science from the Freie Universität Berlin and a BA in History and International Affairs from Hunter College, New York. While studying in New York, Karen worked at the United Nations Secretariat. She has been published in the *Encyclopedia of Genocide and Crimes against Humanity*, ed. Dinah L. Shelton, 2005.

Simone Monasebian, is the Director of UNODOC, The United Nations Office on Drugs and Crime in New York. Before this position she was a trial attorney with the United Nations International Criminal Tribunal for Rwanda and one of the prosecutors in the Media Trial. Later, she was principal defender at the Sierra Leone tribunal before her appointment at UNODOC.

Irma Alicia Velásquez Nimatuj, Doctor Irma Alicia Velasquez Nimatuj is a journalist, social anthropologist, and international spokeswoman. She has been at the forefront of the struggles for respect for indigenous cultures. She was the Executive Director of the Mecanismo de Apoyo a Pueblos Indigenas Oxlajuj Tzikin (Support Mechanism for Indigenous Peoples) from 2005-2013. Dr. Velasquez is the first Mayan woman to earn a doctorate in Social Anthropology, and she initiated the court case that made racial discrimination illegal in Guatemala. She was a member of the Latin American Consulting Group of Indigenous Leaders for UNICEF and participates in the UN through the Permanent Forum on Indigenous Issues. She also served as advisor on indigenous issues for Latin American and Caribbean office of the UN Women (2014-2015). Dr. Velasquez was featured in Pamela Yates' documentary, *500 Years*, and she served as an expert witness during the genocide trial of General Efraim Rios Montt.

John Roth: Professor John Roth received his Ph.D and M.A. in philosophy from Yale University and B.A. from Pomona College. He was the Edward J. Sexton Professor of Philosophy at Claremont McKenna College and Director of its Center for the Study of the Holocaust, Genocide, and Human Rights. For his Ina Levine Invitational Scholar Fellowship, Professor Roth conducted research for his project "In the Shadow of Birkenau: Ethical Dilemmas during and after the Holocaust." Professor Roth has earned several fellowships and awards for his commitment to teaching. In 1988, he was named the National Professor of the Year by the Council for Advancement and Support of Education and the Carnegie Foundation for the Advancement of Teaching. He held a Koerner Visiting Fellowship for the Study of the Holocaust at the Oxford Centre for Hebrew and Jewish Studies in Oxford, United Kingdom and was a Visiting Professor of Holocaust Studies at the University of Haifa, Israel; a Fulbright Lecturer in American Studies attached to the Royal Norwegian Ministry of Education, Research, and Church Affairs, Oslo, Norway; a Fulbright Lecturer in American Studies at the University of Innsbruck, Austria; a Visiting Professor of Philosophy at Franklin College, Lugano, Switzerland; and a Visiting Professor of Philosophy at Doshisha University, Kyoto, Japan. In addition to lecturing widely throughout the United States and around the world, Professor Roth has authored, coauthored, or edited more than 35 books and has published hundreds of articles and reviews.

Morton Sklar has spent his entire professional life working on human rights. He started in Alabama during the early years of the Civil Rights Movement in the U.S., working on voting rights cases. In 1978 he was one of the earliest advocates for applying international human rights standards to the United States, writing, and presenting to Congress, the first report on U.S. compliance under the human rights provisions of the Helsinki Accords. In 1995 he founded and headed a human rights litigation group, initially called the World Organization Against Torture USA, later Human Rights USA, that developed and won a number of ground breaking human rights case, including the only successful court challenge to the U.S. government's "rendition to torture" policy (the Abu Ali case), the successful challenge to Yahoo!'s practice of providing Internet user ID information to the government of China that had placed hundreds of Chinese political dissidents in jail (the Shi Tao case), and the highest level U.S. court case dealing with the practice of female genital mutilation in Africa (the Philomena Nwaokolo case).

He also served on the staff of the United Nations (ILO) Special Commission of Inquiry on Human Rights in Burma in 1997.

Peter Uvin: Peter Uvin served as the Academic Dean and Henry J. Leir Professor of International Humanitarian Studies at The Fletcher School before starting as Dean of Faculty at Claremont McKenna College. He has written extensively on the intersection between human rights, development, and conflict resolution. He has been a frequent consultant to agencies working in Africa on these same issues. His 1998 book “*Aiding Violence: The Development Enterprise in Rwanda*” won the Herskovits Award for the most outstanding book on Africa. In 2006/7, he received a Guggenheim Fellowship, which led to his latest book “*Life after Violence. A People’s History of Burundi*” (2008). He also wrote a book on “*Development and Human Rights*” (2004). Dr. Uvin obtained his Licences in Diplomatic Science and in Political Science from the University of Ghent and his Ph.D in Political Science from Institut Universitaire de Hautes Etudes Internationales, University of Geneva.

Skye Wheeler: As emergencies researcher for the Women’s Rights Division of Human Rights Watch, Skye Wheeler monitors and documents women’s rights abuses during human rights crises including situations of armed conflict, massive civilian displacement, and large-scale killings. Previously, Skye worked as a researcher for the Africa Division monitoring, investigating and documenting human rights in Sudan and South Sudan. Before joining Human Rights Watch in February 2013, she worked for OXFAM America and as a journalist for a range of outlets including Thomson Reuters.

Pamela Yates: Pamela Yates is the Co-founder and Creative Director of Skylight, a non-profit company dedicated to creating feature length documentary films and digital media tools that advance awareness of human rights and the quest for justice by implementing multi-year outreach campaigns designed to engage, educate and activate social change. She is the Director of the Sundance Special Jury award winning *When the Mountains Tremble*; the Executive Producer of the Academy Award winning *Witness to War*; and the Director of *State of Fear: The Truth About Terrorism*, which has been translated into 47 languages and broadcast in 154 countries. Her film *Granito: How to Nail a Dictator*, for which she awarded a Guggenheim fellowship, was used as key forensic evidence in the genocide trial against Efraín Ríos Montt in Guatemala. Her third film in the Guatemalan trilogy, *500 YEARS* had its world premiere at the Sundance Film Festival and is currently in wide release. Yates is a member of the Academy of Motion Pictures Arts and Sciences, Writers Guild of America, and the International Documentary Association.