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The Quest for Post-Conflict Gender Justice

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There is no scarcity of evidence of gender-related crimes committed on an astronomical scale in current or past conflicts around the world, despite the reluctance of victims to report the crimes and the disinclination of a majority of investigators and reporters to search for evidence of sexual violence. Sex crimes are exceedingly commonplace during periods of international and internal armed conflict, with the crimes committed both opportunistically and purposefully, randomly and calculatedly, and by persons in control or those out of control. Such crimes are committed regardless of whether there are orders or encouragement to commit rape or whether such assaults are expressly forbidden by superiors. Sexual violence is committed by military personnel and civilians alike on all sides of armed conflict, whether to achieve political and military objectives or simply for personal motivations or gratifications. Once considered a by-product of war, it is now recognized that women and girls are regularly and intentionally targeted for abuse, particularly sexual abuse. Evidence is incontrovertible that in conflicts as diverse as those in Sierra Leone,¹ East Timor,² Colombia,³ Afghanistan,⁴

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1. See, e.g., CHEN REIS ET AL., WAR-RELATED SEXUAL VIOLENCE IN SIERRA LEONE (2002) (Physicians for Human Rights), available at <http://www.phrusa.org/research/sierraleone/report.html>; Corinne Dufka, *Sierra Leone: Getting Away with Murder, Mutilation and Rape*, 11 HUMAN RIGHTS WATCH (AFRICA DIVISION) 3(A) (June 1999), available at <http://www.hrw.org/reports/1999/sierra/>; Scott Campbell & Jane Lowicki, *Sowing Terror: Atrocities Against Civilians in Sierra Leone*, 10 HUMAN RIGHTS WATCH (AFRICA DIVISION) 3(A) (July 1998), available at <http://www.hrw.org/reports98/sierra/index.htm>; Louise Taylor, "We'll Kill You if You Cry": *Sexual Violence in the Sierra Leone Conflict*, 15 HUMAN RIGHTS WATCH (AFRICA DIVISION) 1(A) (Jan. 2003), available at <http://www.hrw.org/reports/2003/sierraleone/>.

2. See, e.g., Prosecutor v. Gonsalves et al., Indictment, UNTAET B0-84-99-SC (United Nations Transitional Authority in East Timor, June 2002) (alleging rape, torture, and persecution as crimes against humanity for crimes including sexual violence); Radhika Coomaraswamy, U.N. Special Rapporteur on Violence Against Women, *Mission to*

Kosovo,⁵ Peru,⁶ Mozambique,⁷ Bangladesh,⁸ Congo,⁹ Nicaragua,¹⁰ Sudan,¹¹ Bosnia,¹² Haiti,¹³ Rwanda,¹⁴ Chechnya,¹⁵ Somalia,¹⁶

Indonesia and East Timor on the issue of violence against women (20 November-4 December 1998), U.N. ESCOR, Comm'n on Hum. Rts., 55th Sess., Agenda Item 12(a), ¶¶ 9, 93-98, U.N. Doc. E/CN.4/1999/68/Add.3 (1999); *East Timor's Children of the Enemy*, WEEKEND AUSTRALIAN, Oct. 3, 2001 (sexual slavery; rape used as a weapon of war); Seth Mydans, *Sexual Violence as a Tool of War: Pattern Emerging in East Timor*, N.Y. TIMES, Mar. 1, 2001, at A1.

3. AMNESTY INTERNATIONAL, *WOMEN IN COLOMBIA: BREAKING THE SILENCE* (1995).

4. See, e.g., SURVIVORS' RIGHTS INTERNATIONAL & WOMEN'S ALLIANCE FOR PEACE AND HUMAN RIGHTS IN AFGHANISTAN, *JOINT REPORT: SEVERE PERSECUTION AND VIOLENCE UNDER THE TALIBAN'S VEIL: WAR AGAINST WOMEN AS CRIMES AGAINST HUMANITY* (2002); Kevin Sullivan, *Kabul's Lost Women: Many Abducted by Taliban Still Missing*, WASH. POST, Dec. 19, 2001, at A1.

5. MARTINA VANDENBERG, *KOSOVO: RAPE AS A WEAPON OF 'ETHNIC CLEANSING'* (2000) (Human Rights Watch), available at <http://www.hrw.org/reports/2000/fry/index.htm>.

6. HUMAN RIGHTS WATCH, *UNTOLD TERROR: VIOLENCE AGAINST WOMEN IN PERU'S ARMED CONFLICT* (1992); AMNESTY INTERNATIONAL, *WOMEN IN PERU: RIGHTS IN JEOPARDY* (1995).

7. Alcina Antonio De Abreu, *Mozambican Women Experiencing Violence*, in *WHAT WOMEN DO IN WARTIME: GENDER AND CONFLICT IN AFRICA 73* (Meredeth Turshen & Clotilde Twagiramariya eds., 1998).

8. See, e.g., Sultana Kamal, *The 1971 Genocide in Bangladesh and Crimes Committed Against Women*, in *COMMON GROUNDS: VIOLENCE AGAINST WOMEN IN WAR AND ARMED CONFLICT SITUATIONS 268* (Indai Lourdes Sajor ed., 1998); JAHANARA IMAM, *OF BLOOD AND FIRE: THE UNTOLD STORY OF BANGLADESH'S WAR OF INDEPENDENCE* (1991).

9. See, e.g., JOANNE CSETE & JULIANE KIPPENBERG, *THE WAR WITHIN THE WAR: SEXUAL VIOLENCE AGAINST WOMEN AND GIRLS IN EASTERN CONGO* (2002), available at <http://www.hrw.org/reports/2002/drc/Congo0602.pdf>; *UN Probe Confirms Human Rights Atrocities in DR of Congo*, U.N. NEWS CENTRE, Jan. 15, 2003 (confirming reports of systematic rape), available at http://www.un.org/esa/africa/UNNewsAfrica/humanrights/atrocities_in_drc.htm.

10. See, e.g., Donna Vukelich, *Nicaragua: "In My Country of Water and Fire. . ."*, in *WARS DIRTY SECRET 139* (Anne Llewellyn Barstow ed., 2001).

11. Sondra Hale, *Is There Genocide in Sudan?*, *Cultural Assault a Form of Genocide*, CRIMES OF WAR PROJECT, Apr. 2002, available at <http://www.crimesofwar.org/sudan-mag/sudan-hale.html> ("[V]irtually every woman placed in a peace camp has been raped or forced into service as a prostitute or concubine for the army or militia. Massive systematic rape functions as a kind of ethnic cleansing, since it is designed to produce children without a clear ethnic identity.").

12. See, e.g., *MASS RAPE: THE WAR AGAINST WOMEN IN BOSNIA-HERZEGOVINA* (Alexandra Stiglmeier ed., 1994).

13. *Rape in Haiti: a Weapon of Terror*, 6 HUMAN RIGHTS WATCH 8 (July 1994) (National Coalition for Haitian Refugees).

14. BINAIFER NOWROJEE, *SHATTERED LIVES: SEXUAL VIOLENCE DURING THE RWANDA GENOCIDE AND ITS AFTERMATH* (1996) (Human Right Watch), available at <http://www.hrw.org/reports/1996/Rwanda.htm>.

15. See, e.g., LEONARD S. RUBENSTEIN ET AL., *ENDLESS BRUTALITY, WAR CRIMES IN CHECHNYA 75-76* (2001) (Physicians for Human Rights), available at http://www.phrusa.org/research/pdf/chech_report_final.pdf; Martina Vandenberg & Kelly Askin, *Chechnya: Another Battleground for the Perpetration of Gender Based Crimes*, 2 HUM. RTS.

Guatemala,¹⁷ Angola,¹⁸ Argentina,¹⁹ Ethiopia,²⁰ Iraq,²¹ and Cambodia,²² among a myriad of others, sexual violence is committed in strikingly comparable contexts.²³

Various forms of sexual violence, particularly rape and sexual slavery, are used methodically and strategically as weapons of war and instruments of terror. On the one hand, such violence is used as a tactic for deliberately destroying lives and terrorizing members of opposing sides, and on the other hand, it serves as fuel for soldiers as part of the war machinery.²⁴ Sexual slavery, particularly in the form

REV. 140 (2001).

16. Christine Chinkin, *Rape and Abuse of Women in International Law*, 5 EUR. J. INT'L L. 362 (1994); Angela Robson, *Rape: Weapon of War*, 244 NEW INTERNATIONALIST (June 1993).

17. See, e.g., Marion Ciborski, *Guatemala "We Thought it was Only the Men They Would Kill"*, in WARS DIRTY SECRET, *supra* note 10, at 124; Jan Perlin, *The Guatemala Historical Clarification Commission Finds Genocide*, 6 ILSA J. INT'L & COMP. L. 389-413 (2000).

18. See, e.g., UNITED NATIONS, WOMEN, PEACE AND SECURITY: STUDY SUBMITTED BY THE SECRETARY-GENERAL PURSUANT TO SECURITY COUNCIL RESOLUTION 1325 (2000), at 22 (2002) [hereinafter WOMEN, PEACE AND SECURITY]; Victor Agadjanian & Ndola Prata, *Trends in Angola's Fertility*, U.N. Doc. UN/POP/PFD/2001/9 (2001), available at http://www.un.org/esa/population/publications/prospectsdecline/agad_jani.pdf (assessing the impact of civil war on reproductive dynamics in Angola).

19. See, e.g., Deborah Schofield, *Former Military Leader Arrested in Argentina*, GUARDIAN, July 2, 2001.

20. See, e.g., Shana Swiss & Joan E. Giller, *Rape as a Crime of War—A Medical Perspective*, 270 J. AM. MED. ASSOC. 612 (1993).

21. See, e.g., Marie Colvin, *Saddam Blackmails Rebels With Rape*, SUNDAY TIMES (UK), July 9, 2000; Jane Wardell, *Britain Accuses Iraq of Torture, Rape*, ASSOC. PRESS, Dec. 3, 2002.

22. See, e.g., WOMEN, PEACE AND SECURITY, *supra* note 18; LOUNG UNG, FIRST THEY KILLED MY FATHER: A DAUGHTER OF CAMBODIA REMEMBERS (2000).

23. See generally JUDITH G. GARDAM & MICHELLE J. JARVIS, WOMEN, ARMED CONFLICT AND INTERNATIONAL LAW 27 (2001) (wartime rape in Aceh, Afghanistan, Algeria, Angola, Azerbaijan, Bosnia, Bougainville, Chad, Chechnya, Croatia, Cyprus, East Timor, Georgia, Guatemala, Haiti, India, Indonesia, Irian Jaya, Kashmir, Kosovo, Liberia, Mozambique, Myanmar, Namibia, Palestine territories, Persian Gulf conflict (1990-91), Peru, Philippines, Rwanda, Sierra Leone, Somali refugees in Kenya, South Africa during the apartheid, Sudan, Tibet, Uganda, and West Papua); WARS DIRTY SECRET, *supra* note 10; WHAT WOMEN DO IN WARTIME: GENDER AND CONFLICT IN AFRICA (Meredith Turshen & Clotilde Twagiramariya eds., 1998) (wartime sexual violence in Chad, Liberia, Mozambique, Namibia, Rwanda, South Africa, and Sudan); José E. Alvarez, *Seeking Legal Remedies for War Crimes: International vs. National Trials*, 6 J. INT'L INST. (1998); Caroline Moorehead, *Hostage to a Male Agenda: From Somalia to Balkans, from Rwanda to Colombia, Rape has Become the Ultimate Weapon in the Dying Century's Wars*, 24 INDEX ON CENSORSHIP 64-69 (Aug. 1995).

24. See specific descriptions of this dichotomy during World War II in: Kelly D. Askin, *Comfort Women—Shifting Shame and Stigma from Victims to Victimizers*, 1 INT'L CRIM. L. REV. 5, 29 (2001); Christine Chinkin, *Women's International Tribunal on Japanese Military Sexual Slavery*, 95 AM. J. INT'L L. 335, 340 (2001).

of forced marriage or enforced prostitution, is treated as a means of providing relatively safe, cheap, and convenient sexual services to the fighters. Sometimes women and girls are raped purportedly “to give the soldiers energy.”²⁵ Hence, women are used and abused for multiple purposes during war and periods of mass violence, with two parallel objectives: to use sexual violence as a means to demoralize and destroy the opposition as an instrument of war; and to use sexual access as a means to entertain or reward the fighters as an engine of war, fuel that energizes and galvanizes the troops.

Women are regularly murdered after they are raped or otherwise sexually abused, and sometimes their death is an inadvertent, albeit seemingly irrelevant, consequence of the violence inflicted on their bodies and imprinted on their psyche. When victims of an opposing side are intentionally left alive, it is typically either because the perpetrators consider rape to be a fate worse than death or because the perpetrators intend to infect women with HIV/AIDS so that they will die a slow death, and in the interim spread the deadly virus to members of their own community. Reproductive crimes—ranging from sexual mutilation and forced sterilization to forcible pregnancy or abortion—are also remarkably pervasive during wartime, when women’s bodies and their reproductive capacities serve as a battleground for injuring or eliminating outright an opposition group.²⁶ When women and girls are murdered during armed conflict, their deaths often have a sexualized component, such as having their breasts cut off, fetuses ripped from their wombs, weapons thrust up their vaginas, or their sexual organs impaled. Sexual violence, and fear or threat thereof, inflicts widespread psychological harm on victims and others associated, however remotely, with the victim. Indeed, wartime violence has deliberately become sexualized as a means of inflicting physical or mental harm on members of the opposition group.

Impunity for the lengthy catalogue of sexual horrors committed exclusively or disproportionately against women and girls during armed conflict undermines humanitarian law, incites additional violence and violations, and endangers whole communities or groups. Rarely are perpetrators, facilitators, or complicit superiors of sexual violence held accountable for their crimes. Moreover, seldom are gender-related crimes included in reports of Truth and Reconciliation

25. Ellen Nakashima, *Burma's Child Soldiers Tell of Army Atrocities*, WASH. POST, Feb. 10, 2003, at A15.

26. See, e.g., Susan Brownmiller, *Making Women's Bodies Battlefields*, in MASS RAPE: THE WAR AGAINST WOMEN IN BOSNIA-HERZEGOVINA, *supra* note 12, at 183.

Commissions (“TRC”) investigating gross violations of human rights²⁷ and scarcely ever do victims of gender crimes receive any other form of judicial or quasi-judicial remedial measures, such as protective services or compensation.²⁸

It is important to note that women are increasingly recognized as actors, enablers, and even perpetrators, instead of simply as victims, of wartime violence. As more women participate as combatants and government officials, women are being accused of responsibility for war crimes, crimes against humanity, and genocide, including crimes involving sexual violence.²⁹ Additionally, within the

27. See, e.g., Kelly Askin & Christine Strumpfen-Darrie, *Truth Commission Reports: Reporting Only Half the Truth?: Listening for the Voices of Women*, in IV WOMEN AND INTERNATIONAL HUMAN RIGHTS LAW (Kelly Askin, Martina Vandenberg, & Deena Hurwitz eds., forthcoming 2003) (noting that prior to 2000 only the reports of Guatemala, Haiti, and South Africa took gender crimes or women’s issues into any significant account; since 2001, gender crimes are expressly on the agenda of commissions investigating gross human rights abuses, including TRCs, in Sierra Leone, East Timor, and Peru).

28. One of the most egregious examples of wartime sexual violence is the sexual slavery of some 200,000 so-called “comfort women” by the Japanese military during World War II. See *The Women’s International War Crimes Tribunal for the Trial of Japan’s Military Sexual Slavery*, Judgement, Dec. 4, 2001, as corr. Jan. 31 2002 (finding Emperor Hirohito and nine other Japanese military or government leaders individually criminally responsible for rape and enslavement as crimes against humanity, finding Japan violated its state responsibility for its role in establishing and maintaining the “comfort stations,” and making recommendations for reparation and accountability). This Women’s Tribunal was initiated by civil society and its Judgement thus carries no binding legal force. However, it carries significant moral force and the Tribunal and Judgement did provide a form of redress for the victims, particularly in that the “comfort women” were provided a forum in which their voices and experiences could be heard and admitted into evidence before an international judicial panel made up of experts in international law, and the Judgement promulgated as a result of applying the law as it existed in 1939–45 to the facts empowered the survivors by letting them know their testimony was believed by an eminent panel of jurists who concluded that what happened to them was a serious crime deserving of redress.

29. A woman has been charged with war crimes, crimes against humanity, and genocide before each of the Yugoslav and Rwanda Tribunals, and for both women these charges include responsibility for rape crimes. Pauline Nyiramasuhuko, former Minister of Women and Family Affairs in Rwanda, is charged before the International Criminal Tribunals for Rwanda (“ICTR”) with rape as a crime against humanity for inciting, encouraging, ordering and instigating rape crimes. And sexual violence is also included within the genocide charges of the indictment. See *Prosecutor v. Nyiramasuhuko & Ntahobali*, Amended Indictment, ICTR-9-21-I, Mar. 1, 2002, at counts 2 (genocide), 3 (complicity in genocide), 7 (rape as a crime against humanity), 8 (persecution as a crime against humanity), 9 (inhumane acts as a crime against humanity), 10 & 11 (war crimes). Significantly each of these counts not only include sexual violence, but also charges for participating in a common plan or scheme, which could make the accused liable for all foreseeable crimes committed while participating in the common plan. See *Prosecutor v. Kvočka et al.*, Judgement, IT-98-30/1-T, Nov. 2, 2001; *Prosecutor v. Krstić*, Judgement, IT-98-33-T, Aug. 2, 2001.

Biljana Plavšić, former acting President of the Serbian Republic of Bosnia and Herzegovina, was charged with genocide, crimes against humanity, and war crimes for a series of crimes, including rape crimes, committed by Serb military, political, and

last ten years, women have secured high level positions in internationalized trials and consequently they have begun investigating, prosecuting, and sitting in judgment of individuals accused in these trials.³⁰ And gradually, the international and local

governmental authorities and agents. In a recent plea bargain, Plavšić pled guilty to one count of persecution as a crime against humanity for the prosecution dropping all other charges. The persecution count includes sexual violence. See Momčilo Krajišnik & Biljana Plavšić, Consolidated Amended Indictment, IT-00-39 & 40-PT, Mar. 7, 2002, at Count 3 (persecution as a crime against humanity), para. 19 (c) & (g) (alleging the accused are responsible for cruel and inhumane treatment, including sexual violence, inflicted upon non-Serbs in some 38 municipalities in Bosnia and Herzegovina). See also Prosecutor v. Plavšić, Plea Agreement, IT-00-40, Sept. 30, 2002 (pleading guilty solely to Count 3, persecution as a crime against humanity). As the persecution count explicitly included sexual violence, Plavšić pled guilty to and was convicted of crimes including sexual violence.

30. Two of the three Chief Prosecutors of the ICTY/R Tribunals have been women (Louise Arbour from Canada and Carla del Ponte from Switzerland), one of the three Registrars of the ICTY has been a woman (Dorothy De Sampayo from the Netherlands), and both the ICTY and ICTR have had a woman as President of the Tribunal (Gabrielle Kirk McDonald from the United States (ICTY) and Navanethem Pillay from South Africa (ICTR)). Other women have served as permanent judges to the Tribunals (Elizabeth Odio-Benito from Costa Rica, Florence Mumba from Zambia, and Patricia Wald from the United States to the ICTY; Arlette Ramarason from Madagascar, Andréia Vaz from Senegal, and Inés Mónica Weinberg de Roca from Argentina (elected Feb. 3, 2003) to the ICTR). The ICTY elected eight females out of the twenty-seven *ad litem* judges elected (Sharon Williams from Canada, Carmen Argibay from Argentina, Maureen Harding Clark from Ireland, Ivana Janu from Czech Republic, Chikako Taya from Japan, and Fatoumata Diarra from Mali have already served. The female *ad litem* judges waiting to be called to The Hague are: Vonimbolana Rasoazanany from Madagascar and Christine van den Wyngaert from Belgium). The ICTR will elect eighteen *ad litem* judges in May, 2003. On February 7, 2003, seven women were elected as Judges for the International Criminal Court (Maureen Clark from Ireland, Fatoumata Diarra from Mali, Navanethem Pillay from South Africa, Elizabeth Odio Benito from Costa Rica (these four with previous judicial experience in the ICTY/R), Akua Kuenyehia from Ghana, Sylvia de Figueiredo Steiner from Brazil, and Anita Usacka from Latvia).

The ICTY Prosecutor's Office also has a gender issues legal officer (Patricia Viseur Sellers from the United States). A number of women also serve in other critical positions, including as investigators, trial lawyers and prosecutors, legal advisors, and staff of the Victim and Witnesses Unit.

Internationalized trials, generally those held locally having a mixed composition of domestic and international prosecutors, judges, and defense attorneys, and typically adjudicating international crimes, such as special courts in East Timor, Sierra Leone, and Kosovo, also have females participating as high level prosecutors or judges. More precisely, in East Timor, Maria Natercia Gusmao from East Timor is a Judge on the Serious Crimes Panels, and Siri Frigaard from Norway is Deputy Prosecutor of United Nations Transitional Authority in East Timor's Serious Crimes Unit; in Sierra Leone, of the eight local and international judges appointed to the Special Court, one is female, Renate Winter, from Austria; Elizabeth Muyovwe from Zambia is an alternative judge for the Special Court; in Kosovo, of the thirteen international judges, four are women (Agnieszka Klonowiecka-Milart from Poland, Hajnalka Karpati from Hungary, Marilyn Kaman from the United States, and Lolita Dumlao from the Philippines); three other female international judges recently left: Catherine Marchi-Uhel from France, Birgit Lange-Klepsch from Germany, and Renate Winter from Austria) and two of the thirteen international prosecutors are women (Cecilia Tallada from the Philippines and Elizabeth Rennie from Canada; Jane Mitchell and Lorna Pickering, both from the U.K., left at the end of 2002).

communities are recognizing women as enablers, as capable actors who are remarkably strong, creative, and multifaceted, and as people who are often able to contribute to maintaining and then rebuilding their family and society during and after conflict, despite their losses and the abuses committed against them, and notwithstanding the gross discrimination and other obstacles confronting them. For example, one woman in Rwanda, Severa Mukakinani, was forced to watch her seven children being slaughtered during the genocide. Afterwards, she was repeatedly gang raped and savagely beaten by the same men who had just murdered her family. Thrown to her death in the river, she nevertheless survived and eventually found that she was pregnant from the rapes. Believing the child itself was innocent, Severa gave birth to and then raised the baby, a girl. Though widowed and traumatized by the violence, she has somehow managed to go on with life and she struggles daily to secure a better future for her daughter.³¹ Countless other women have similar stories of endurance and contribution that are simultaneously heart-wrenching and inspirational. Their strength and resourcefulness in the face of unspeakable brutality and adversity is awe-inspiring. To regard these dynamic survivors simply as victims not only fails to accurately portray them, but also fails to fully respect, embolden, and empower the women as survivors and enablers.

It has recently, if belatedly, been acknowledged that in order to secure a lasting peace and reconciliation, women must participate at all levels and in all aspects of peacemaking and peacebuilding.³²

In the International Military Tribunals held in Nuremberg and Tokyo after World War II, no women held positions of power and gender crimes were given only cursory treatment by these international war crimes tribunals. See KELLY D. ASKIN, *WAR CRIMES AGAINST WOMEN: PROSECUTION IN INTERNATIONAL WAR CRIMES TRIBUNALS* (1997).

For a summary of women in positions of power in international courts, see Jan Linehan, *Women and Public International Litigation* (2001) (background paper for the Project on International Courts and Tribunals), available at http://www.pict-pecti.org/publications/PICT_articles/Women1.pdf; Thordis Ingadottir, *The International Criminal Court, The Nomination and Election of Judges* (2002) (ICC Discussion Paper #4, Project on International Courts and Tribunals.), available at http://www.pict-pecti.org/publications/ICC_paprs/election.pdf.

31. See the story of Severa Mukakinani and other women in Kimberlee Acquaro & Peter Landesman, *Out of Madness, A Matriarchy: They survived machetes and mass rapes. Now, Rwanda's women—nearly two-thirds of the population—are learning to lead their country out of the darkness*, MOTHER JONES, Jan./Feb. 2003, at 59–63.

32. See especially S.C. Res. 1325, U.N. SCOR, 55th Sess., 4213th mtg., U.N. Doc. S/RES/1325 (2000), 40 I.L.M. 500 (2001); *Report of the Secretary-General on women, peace and security*, U.N. Doc. S/2002/1154 (2002); WOMEN, PEACE AND SECURITY, *supra* note 18; ELISABETH REHN & ELLEN JOHNSON SIRLEAF, *WOMEN, WAR, AND PEACE: THE INDEPENDENT EXPERTS' ASSESSMENT ON THE IMPACT OF ARMED CONFLICT ON WOMEN AND WOMEN'S ROLE IN PEACE-BUILDING* (2002), available at <http://www.unifem.undp.org/resources/assessment/index.html>.

The Secretary-General has voiced his firm commitment to increasing the number of women in senior peace-related positions.³³ In 2000, the Security Council passed Resolution 1325, a groundbreaking resolution in signifying the United Nations' ("U.N.") commitment to improving women's participation in and access to conflict resolution and to establishing remedial measures for those victimized by war and criminal activity. In the resolution, the Security Council expresses concern that civilians, especially women, are increasingly "targeted by combatants" and it recognizes "the consequent impact this has on durable peace and reconciliation."³⁴ The resolution unequivocally "[c]alls on all parties to armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse."³⁵ As a result of Resolution 1325, and the requests to the Secretary-General contained therein, two recent reports have focused on improving access by women to post-conflict peace and justice processes. The reports have made a number of significant recommendations geared toward changing the traditional landscape of excluding women from participating in decision-making processes and denying them judicial redress.³⁶ Some of the most crucial recommendations these two landmark reports make concerning gender justice include:

Establish an international Truth and Reconciliation Commission on violence against women in armed conflict, as a step toward ending impunity;

Establish specific, targeted sanctions, including criminal measures, against those complicit in trafficking of women and girls in or through conflict regions;

Increase long-term financial support, as well as psychosocial support and reproductive health services, for survivors of gender and sexual violence;

For the U.N. Secretary-General to appoint a panel of experts to assess the gaps in international and national laws and standards concerning the protection of

33. *Strategic Plan of Action, Report of the Secretary-General on the improvement of the status of women in the Secretariat (1995–2000)*, U.N. Doc. A/49/587, sect. IV (2000).

34. S.C. Res. 1325, *supra* note 32, pmbl.

35. *Id.* ¶ 10.

36. Namely WOMEN, PEACE AND SECURITY, *supra* note 18, and REHN & SIRLEAF, *supra* note 32.

women and girls in both conflict and post-conflict situations;

For States Parties to the International Criminal Court (“ICC”) to undertake national law reform to ensure compatibility with the ICC Statute, with special attention given to the substantive and procedural provisions on gender crimes;

For national legal systems to penalize and remedy all forms of violence against women in conflict and post-conflict situations, including by establishing specially trained police units to investigate crimes against women and training law enforcement officials in gender sensitivity;³⁷

Prosecute perpetrators of gender or sex based crimes, including by U.N. personnel, and take all appropriate measures to prevent such violations;

Ensure that all initial appraisals, assessments, investigations, and fact-finding missions give attention to the situation of women and girls so that analyses, data collection, and planning processes take these issues into appropriate account;

Disseminate widely information on international humanitarian and human rights law and on the procedures for redress at local and international levels for violations;

Take steps to ensure that victims of gender related violence have the right to reparations for any damages incurred;

Ensure that amnesty provisions included in conflict settlement agreements exclude impunity for war crimes, crimes against humanity, and genocide, including gender crimes;

Set targets for ensuring gender balance when appointing investigators, judges, prosecutors, and legal counsel to all local, regional, or international justice

37. REHN & SIRLEAF, *supra* note 32, at x–xi (some recommendations cited verbatim).

bodies, truth commissions, human rights commissions, and other bodies, and ensure that experts in gender related crimes are represented and that any such bodies reflect gender perspectives and respond to the needs and experiences of female victims;

Ensure that any judicial or quasi-judicial mechanisms interpret and apply the international legal framework in a consistent and gender-sensitive manner.³⁸

Concerning peace-keeping and peacemaking, the experts, *inter alia*, recommend:

Include gender experts in all levels and aspects of peace operations, including in the design of conceptions of operation, training, staffing, and programs;

For gender equality to be recognized in all peace processes, agreements and transitional governance structures, whether international or local;

Systematic inclusion of information on the impact of armed conflict on women, and women's role in conflict-prevention and peace-building in all relevant U.N. country and thematic reports;

For operational humanitarian, human rights, and development bodies to develop indicators to determine the extent to which gender is mainstreamed throughout their operations in conflict and post-conflict situations;

Designate programs ensuring women's education and training in conflict and post-conflict situations;³⁹

Incorporate into all training information on the impact that armed conflict and interventions have on women and girls, as well as information on the contributions women make in conflict and post-conflict situations;

Ensure that all peace accords systematically and explicitly address gender issues, the contribution of women to the peace processes and the needs and

38. WOMEN, PEACE AND SECURITY, *supra* note 18, at 31, 49–51 (some recommendations cited verbatim).

39. REHN & SIRLEAF, *supra* note 32, at x–xii (some recommendations cited verbatim.)

priorities of women and girls in the post-conflict context;

Increase and ensure the full involvement of women in peace negotiations at the national and international levels;

Consult with civil society, including local and regional women's and youth groups, to ensure attention to the needs, concerns and experiences of women and girls throughout the peace process;

Increase access to information from women's groups on indicators of impending conflict as a means to ensure effective gender-sensitive early warning mechanisms;

Monitor and report on gender issues in peacekeeping as an integral part of mission reporting;

Ensure efforts to secure local ownership for reconstruction processes that women's groups and networks are actively involved in, particularly at decision-making levels;

Ensure that training for all personnel in peacekeeping operations—military, police and civilian staff, as well as humanitarian aid workers and local volunteers—both before and during deployment, adequately addresses gender issues, including violence against women, and integrates a gender perspective.⁴⁰

These are but a handful of the fundamental and often innovative recommendations made in the two reports. The U.N., nongovernmental organizations, intergovernmental organizations, and governments must work together and separately to ensure that the recommendations are implemented successfully.

An especially pernicious offense committed against women and children during conflict and post-conflict, including displaced persons in transit and in refugee camps, is the exploitation, trafficking, rape, and other abuse suffered at the hands of U.N. peacekeepers and human rights/humanitarian aid workers, who take

40. WOMEN, PEACE AND SECURITY, *supra* note 18, at 32, 72, 90, 91, 106, 109, 127 (some recommendations cited verbatim).

advantage of the special vulnerability facing women and girls in these situations.⁴¹ All those charged with assistance and protection who use their positions and access to commit such acts should be regarded as despicable and cowardly criminals. It is crucial to establish procedures and mechanisms to punish perpetrators and prevent future violations.

Despite its insidious prevalence during armed conflict, even the most notorious or egregious cases of sexual violence are typically committed with absolute impunity. Measured progress has been secured internationally within the last decade through prosecutions in the International Criminal Tribunals for the former Yugoslavia (“ICTY”) and for Rwanda (“ICTR”),⁴² and landmark legal and procedural precedents have been established by these Tribunals.⁴³ Nonetheless, as noted above, an overwhelming majority of perpetrators or facilitators of sexual violence are not held accountable for their crimes and few survivors ever receive justice or any other form of accountability or reparation, much less medical, psychological, or financial redress. As accountability for international crimes comes of age in the twenty-first century, and as the seriousness of sexual violence has increasingly become recognized, internationalized/hybrid tribunals, the ICC,⁴⁴ regional

41. See, e.g., HUMAN RIGHTS WATCH, *SEEKING REFUGE, FINDING TERROR: THE WIDESPREAD RAPE OF SOMALI WOMEN REFUGEES IN NORTH EASTERN KENYA* (1993); REHN & SIRLEAF, *supra* note 32; Press Release, UNHCR/Save the Children-UK, *Sexual Violence and Exploitation: The Experience of Refugee Children in Liberia, Guinea, and Sierra Leone* (Feb. 27, 2002), <http://www.savethechildren.org.uk/pressrels/270202.html>.

42. S.C. Res. 827, U.N. SCOR, 48th Sess., 3217th mtg. at 29, U.N. Doc. S/827/1993 (1993) (Statute contained in U.N. Doc. S/25704, Annex (1993), attached to the “Report on the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808,”), 32 I.L.M. 1159 (1993); S.C. Res. 955, U.N. SCOR, 49th Sess., 3453d mtg. at 15, U.N. Doc. S/INF/50 Annex (1994), 33 I.L.M. 1598 (1994).

43. See especially *Prosecutor v. Jean-Paul Akayesu*, Judgement, ICTR-96-4-T, Sept. 2, 1998 [hereinafter *Akayesu*]; *Prosecutor v. Delalić et al.*, Judgement, IT-96-21-T, Nov. 16, 1998 [hereinafter *elebić*]; *Prosecutor v. Anto Furundžija*, Judgement, IT-95-17/1-T, Dec. 10, 1998 [hereinafter *Furundžija*]; *Prosecutor v. Kunarac et al.*, Judgement, IT-96-23-T & IT-96-23/1-T, Feb. 22, 2001 [hereinafter *Kunarac*]; *Prosecutor v. Kvočka et al.*, Judgement, IT-98-30-T, Nov. 2, 2001 [hereinafter *Kvočka*]. Some of the most significant convictions for sexual violence include rape as war crime (*elebić*, *Furundžija*, *Kvočka*), crime against humanity (*Akayesu*, *Kunarac*), instrument of genocide (*Akayesu*), form of torture (*elebić*, *Furundžija*, *Kunarac*), means of persecution (*Kvočka*), and indicia of enslavement for sexual slavery (*Kunarac*). For a review of the gender jurisprudence in the ICTY/R, see Kelly D. Askin, *Prosecuting Wartime Rape and Other Gender-Related Crimes Under International Law: Extraordinary Advances, Enduring Obstacles*, 21 BERKELEY J. INT’L L. 101 (Winter 2003).

44. Rome Statute of the International Criminal Court, arts. 7, ¶ (1)(g), 8, ¶ (2)(b)(xxii), 8, ¶ (2)(e)(vi), U.N. Doc. A/CONF.183/9 (1998), 37 I.L.M. 999 (1998) (*entered into force* July 1, 2002). In 2002, the Swiss government announced that it was initiating a review or revisitation of the Geneva Conventions. Indeed, the Conventions are arguably outdated when considering contemporary armed conflict, particularly in regards to gender crimes, terrorism,

human rights bodies, and domestic courts can be used to secure redress for gender related crimes. Hybrid tribunals have the advantage of including a mixture of international and local participants redressing crimes in the state where the crimes are committed. Thus, there is typically local ownership and participation, resulting in an improvement in the domestic judicial system and a greater awareness of judicial efforts by the victimized community. The ICC too can be an exceedingly important venue for securing some measure of gender justice for war crimes, crimes against humanity, or genocide for crimes committed after July 1, 2002, as the ICC Statute explicitly authorizes prosecution of rape, enforced prostitution, sexual slavery, forced pregnancy, enforced sterilization, and any other form of sexual violence of comparable gravity, including trafficking.⁴⁵

The quest for post-conflict gender justice has improved markedly in recent years. Yet, despite unprecedented progress and unparalleled participation of women in decision-making positions internationally, redress for sexual violence remains extremely limited and selective. The search for post-conflict gender justice continues.

increased technology, targeting issues, cyber warfare, humanitarian intervention, use of human shields, and perfidy. To address the gender issues, an Additional Protocol to the Conventions devoted to protecting women (whether civilian, combatant, medical personnel, reporter, Red Cross worker, religious worker, or other) from exploitation and abuse, including explicitly criminalizing rape, trafficking, and other forms of sexual violence, could be a solution to the need to provide increased protections to women and girls.

45. See ICC Statute, *id.*, arts. 7, 8.

