Mass Rape and Genocide: International Law and the Increased Need for Deterrence Regarding War Crimes Committed During Civil Conflict

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Mass Rape and Genocide: International Law and the Increased Need for Deterrence Regarding War Crimes Committed During Civil Conflict

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A Thesis in the field of International Relations for the Degree of
Master of Liberal Arts in Extension Studies

Harvard University
May 2017
Abstract

This thesis explains why there is an increased need for deterrence in international law with regard to war crimes of sexual violence and mass rapes. Increased deterrence is necessary in nations where there is ongoing civil conflict. This thesis will also clarify the laws that were implemented to serve and protect women and children from these types of war crimes at the beginning of the 20th century. These current laws have not done enough to deter sexually violent crimes toward women and children in civil conflict. There has been an increase in reported human rights abuses of sexual violence over the last eight decades. These abuses of sexual violence target the female population. One such example is the Holocaust, which is a contemporary civil conflict where women experienced sexually violent crimes and were brutally raped on a continual basis. These types of war crimes were used as a method of genocidal destruction and population control. Even though the Holocaust is one of the most documented genocides in history, victims of these mass rapes have often gone unheard. This is because there were no laws in place for courts to prosecute this type of crime during this period. Violent crimes would repeatedly occur without charges being brought forth to the perpetrators. If there was no established law to be broken a crime could be committed without recourse. The Holocaust has left a roadmap for the act of genocide. When international laws and humanitarian laws are not enforced with greater consequences for perpetrators globally they continue to commit these crimes.

The aftermath of the Holocaust, has also laid the groundwork to increase preventative measures for systematic rapes inflicted on women and children in civil
conflicts. Since there are such deficiencies in the law, perpetrators do not fear any retribution for the sexually violent crimes they have committed. This was seen during the Rwandan Genocide in the early nineties, when thousands of women and children were brutally raped en masse. After the Rwandan genocide, the governing bodies of international law tried to confront and subsequently rectify their handling of these war criminals by creating a Tribunal. This Tribunal would deal specifically with war crimes and crimes against humanity committed during the Rwandan genocide. However, the approach was inadequate as it lacked the ability to hold the perpetrators accountable. This missed an opportunity to set a precedent to deter mass rape and sexual violence in nations engaged in civil conflict. An example of this increased need can be seen with the ongoing sexual violence taking place in the current genocide in the Democratic Republic of Congo.

I have gathered and created a data report on the correlation of increased sexual violence and influx of rebel armies in certain provinces in the Democratic Republic of Congo. These increases show that there is a lack of deterrence and enforcement in international law when it comes to perpetual sexual violence in these provinces. This could be influenced by the escalating numbers of rebel armies present in the Democratic Republic of Congo that shun international humanitarian law. Aggravated acts of sexual violence creates a need to deter war crimes of such magnitude. The rise of these armies in my literature review which explains the theory of why nations engaged in civil conflict continue to use mass rape and sexual violence as a successful weapon of war. This weapon of war is being used as a means to commit genocide, as seen in the Holocaust, Rwanda (1994) and currently in the DRC.
The increased need for deterrence of mass rapes and sexual violent crimes being committed should be apparent in human rights law and international law communities. However the initiatives taken both proactively with prevention as well as with the prosecution have not been strong enough to create substantial change. We must realize that it is as important to teach the lessons learned from genocides passed as it is to have the nations with the most influence succeed in pushing forward an increase in deterrence. This would make it impossible for perpetrators to commit these atrocities without being held accountable for their actions, whether direct or indirect. Instituting tougher measures on multiple ends of the judicial spectrum would consider both an increase in sentencing as well as greater rehabilitative initiatives for areas experiencing mass rapes and increased sexual violence during genocide. If deterrence is not increased, perpetrators will continue to commit these crimes against humanity.

My research demonstrates how deficiencies in the law prevented adequate justice for the victims of the Rwandan Genocide. Combined with the data from the International Criminal Tribunal of Rwanda, it is found that lax retribution or rehabilitative initiatives promote reoccurrence rather than decreasing it. My findings ultimately reinforce what I had presumed, that perpetrators of the Rwandan genocide who were indicted as a result of the erected International Criminal Tribunal for Rwanda were rarely ever tried. Many had died or fled while awaiting trial. Secondly, current perpetrators in the Democratic Republic of Congo are following the same scheme. Rebel groups and state actors have increased their roles in committing or sanctioning mass rapes and sexual violence in order to commit genocide, multiplying the number of affected women and children by the
thousands each year without the fear of repercussions for the war crimes they have committed.

Two substantial questions which still go unanswered today are: If there was an international tribunal created to bring justice to the inhumane crimes committed during the Rwandan genocide, why have we not created one for the Democratic Republic of Congo? And why do we allow these crimes against humanity to continue in 2017? The answers to these questions lie ahead for the reader.
Dedication

To my mother, the strongest and most loving person that I know, without your continued support and immense encouragement I would have never been able to do this. I am truly one of the lucky ones. There are not enough thank you’s in the world to tell you how grateful I am. I love you.
Acknowledgements

To Professor Doug Bond, you are truly what they call an educator. You have taught me patience and persistence throughout my time here at Harvard. Thank you for standing by me and guiding me through this intense process.

To Professor Lucie White, thank you for believing in me. I am grateful for all of the advice that you have given me and that you truly recognized my passion for human rights. Thank you.
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List of Terms

Armed conflict: “A non-international (or "internal") armed conflict refers to a situation of violence involving protracted armed confrontations between government forces and one or more organized armed groups, or between such groups themselves, arising on the territory of a State.”¹

Civil Conflict: Alternative term to describe an internal armed conflict.

Combatant: “Persons taking a direct part in hostilities in non-international armed conflicts are sometimes labelled “combatants”²

Crimes Against Humanity: "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

(a) Murder;
(b) Extermination;
(c) Enslavement;
(d) Deportation or forcible transfer of population;
(e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
(f) Torture;
(g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;


(h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

(i) Enforced disappearance of persons;

(j) The crime of apartheid;

(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.3

Deterrence: A principle or objective of sentencing a person guilty of a crime which ensures that the punishment is sufficient to deter the guilty person, and others, from committing the same crime.4

DRC: “Democratic Republic of Congo. Currently involved in a genocide, ..... Democratic Republic of the Congo (DRC) will become the first place where grave crimes are prosecuted by the International Criminal Court.”5

Entry into Force: A treaty does not enter into force when it is adopted. Typically, the provisions of the treaty determine the date on which the treaty enters into force, often at a specified time following its ratification or accession by a fixed number of states. For example, the Convention on the Rights of the Child entered into force on 2 September 1990—the 30th day following the deposit of the 20th State’s instrument of


ratification or accession. A treaty enters into force for those states which gave the required consent.⁶

Geneva Conventions: “The Geneva Conventions and their Additional Protocols form the core of international humanitarian law, which regulates the conduct of armed conflict and seeks to limit its effects. They protect people not taking part in hostilities and those who are no longer doing so.”⁷

Genocide: Deliberate extermination of a group of people.

Holocaust: “The Holocaust was the systematic, bureaucratic, state-sponsored persecution and murder of six million Jews by the Nazi regime and its collaborators.”⁸

Hutu: Ethnic tribe in Rwanda. Perpetrators of the Rwandan Genocide

ICC: “The International Criminal Court (ICC) is a permanent international tribunal created for the prosecution of crimes against humanity, genocide, and war crimes. The International Criminal Court is currently in the process of preparing its first cases and is based in The Hague.”⁹

ICTR: “The United Nations Security Council established the International Criminal Tribunal for Rwanda 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”10

ICTY: The International Criminal Tribunal for the former Yugoslavia (ICTY) is a United Nations court of law dealing with war crimes that took place during the conflicts in the Balkans in the 1990’s. Since its establishment in 1993, it has irreversibly changed the landscape of international humanitarian law and provided victims an opportunity to voice the horrors they witnessed and experienced11

IHL: “International Humanitarian Law is a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict.”12

Interahamwe: Militia group in Rwanda that took part in the systematic extermination of Tutsis.

Mass Rape: Rape used as a tool of war during civil conflict or genocide to destroy large populations of women and children of the opposing or unwanted group in that state.

MONUSCO: “MONUSCO took over from an earlier UN peacekeeping operation – the United Nations Organization Mission in Democratic Republic of the Congo (MONUC) – on 1 July 2010. The original mandate of the mission was


established by Security Council resolution 1925 of 28 May to reflect the new phase reached in the country. It was authorized to use all necessary means to carry out its mandate relating, among other things, to the protection of civilians, humanitarian personnel and human rights defenders under imminent threat of physical violence and to support the Government of the DRC in its stabilization and peace consolidation efforts.”

NGO: A non-governmental organization (NGO) is any non-profit, voluntary citizens' group which is organized on a local, national or international level. Task-oriented and driven by people with a common interest, NGOs perform a variety of service and humanitarian functions, bring citizen concerns to Governments, advocate and monitor policies and encourage political participation through provision of information. Some are organized around specific issues, such as human rights, environment or health. They provide analysis and expertise, serve as early warning mechanisms and help monitor and implement international agreements. Their relationship with offices and agencies of United Nations system differs depending on their goals, their venue and the mandate of a particular institution.

Non-Combatant: “persons who are members of the armed forces but do not have any combat mission, such as judges, government officials and blue-collar workers, are non-combatants”\(^{14}\)

Resolution 955: Resolution to establish a criminal tribunal in Rwanda after the Rwandan Genocide took place.\(^{15}\)

Resolution 1820: “Explicitly links sexual violence as a tactic of war with women peace and security issues.”\(^{16}\)

Rome Statute: The ICC was established by this treaty to prevent human rights injustices to occur.

Rwanda: African nation where systematic extermination of Tutsis took place in 1994. United Nations: “The United Nations is an international organization founded in 1945. It is currently made up of 193 Member States. The mission and work of the United Nations are guided by the purposes and principles contained in its founding Charter.”\(^{17}\)

UN Security Council: “Under the Charter, the Security Council has primary responsibility for the maintenance of international peace and security. It has 15


Members, and each Member has one vote. Under the Charter, all Member States are obligated to comply with Council decisions.\(^\text{18}\)

Tutsi: Ethnic tribe in Rwanda, intended victims/and victims of the Rwandan Genocide

War Crime: “Includes grave breaches of the Geneva Conventions and other serious violations of the laws and customs applicable in international armed conflict and in conflicts "not of an international character" listed in the Rome Statute, when they are committed as part of a plan or policy or on a large scale.”\(^\text{19}\)


Introduction

This thesis examines: (1) mass rape and sexual violence in the Rwandan Genocide; the concept of mass rape as a war crime in international humanitarian law; (2) mass rape and sexual violence in the Democratic Republic of Congo; the failure of deterrence with respect to sexually violent crimes committed in the Democratic Republic of Congo; (3) and recommendations for resolutions to increase deterrence and decrease incidence in nations engaged in civil conflict.

Mass rape is not a new method of destruction to use against women and children during a civil conflict and genocide. Incidences of mass rape and sexual violence increase during civil conflict. However, mass rape as a crime is a relatively new concept in international law when used as a weapon of war as it relates to ethnic cleansing and genocide. Using sexual violence as a weapon of war during civil conflict is legally considered a war crime. However, sexual violence was not always legally considered a war crime in earlier genocides. One of the most well-documented 20th century genocides where sexual violence existed as a method of ethnic cleansing was the Holocaust in World War II. Since mass rape and sexual violence were not legally recognized as a crime against humanity, perpetrators that committed sexually violent crimes during the Holocaust could not be indicted for them. The Nuremberg trials,20 where perpetrators

were put on trial for crimes committed during the Holocaust could not be prosecuted under what would be considered ‘mass rape as a war crime.’

During the Holocaust, rape and sexual violence were considered a circumstance of what could happen to women and children during a civil conflict. There were no written laws to prevent these sexual violent crimes from occurring. Since sexual violence was not outlawed the perpetrators during the Holocaust could commit these crimes without impunity. This set forth a precedent of non-liability for sexually violent crimes committed which has carried over into future genocides. This precedent of impunity will be discussed in this thesis.

Sexual violence and mass rape incidences have become more aggressive rather than declining in activity over the last few decades. There has been minimal progress made in international law and human rights to counteract these increases of sexual violence in civil conflict. Stalled progress has led to numerous genocides that have included sexually violent crimes as a weapon of war. The two nations most affected by these increases of sexual violence were Rwanda during the ninety-nineties and the current genocide in the Democratic Republic of Congo. This thesis will examine how these two genocides orchestrated through mass rape and sexual violence seamlessly intertwine. Demonstrating the correlation between increased sexual violence and impunity by analyzing the relationship of deficiencies in the law and deterrence.

Examining these deficiencies in the law with respect to sexual violence will uncover the gaps within the justice system that continue to cost thousands of people their lives each year.
The laws put in place to prevent a second Holocaust still do not do enough to protect the victims of mass rape and sexual violence during civil conflict.

Exploring the development of these laws that established sexual violence as a war crime through each aforementioned genocide will shed light on how much more work there is to be done with regard to deterring sexual violence. Deterrence is key to protecting women and children from mass rape and sexual violence during conflict. Insufficient methods of deterrence whether by law and punishment or by rehabilitative measures greatly impact the women and children of the Democratic Republic of Congo.

Mass rape is such a violent crime in the Democratic Republic of Congo that it will most likely result in death. Surviving this ordeal does not ensure an end to the terror that she has overcome. For example, if a perpetrator chooses to let their victim live, there are numerous consequences she will face. Victims of sexual violence suffer from physical scarring and psychological trauma. Mass rape victims fear retribution from returning perpetrators and being ostracized from their community. This continued terror and practice of intimidation keep victims from coming forward. Victims in the Democratic Republic of Congo know that the perpetrator will not serve any time for their crimes committed. Deficient laws and minimal punishments do not deter perpetrators from raping again thus sustaining the cycle of continued impunity and increased incidence of sexually violent crimes. The increase of such violent crimes that occur which decimate a human being physically as well as mentally are perpetuated by the inability to adequately prosecute these crimes. Exposing these inadequacies in the law can bring clarity to what has not been done to combat and deter these violent crimes from reoccurring. By reexamining the cases in the International Criminal Tribunal for Rwanda (ICTR) can lead
to resolutions to counteract increased sexual violence from happening in the Democratic Republic of Congo.

I hypothesize that laws that were seen as current at the end of the Rwandan genocide in 1994 and in effect for the International Criminal Tribunal for Rwanda, were conclusively ineffective to prevent mass rapes and sexual violence from occurring during civil conflict. Investigating the deficiencies will prove that there is an increased need for deterrence. This is an immediate need with regard to the mass sexual violence that is happening in the Democratic Republic of Congo. There should be a new set of international laws instituted to adequately punish individuals who commit such deplorable crimes. This applies to those who endorse the use of such violence as a weapon of war.

To test my hypothesis, I gathered data from the United Nations, ICRC, as well as surveys that were conducted on sexually violent crimes committed in the Democratic Republic of Congo in 2007. Even though these surveys were conducted several years ago they establish a point of reference between the end of the Rwandan genocide, the establishment of the International Criminal Tribunal for Rwanda (and its closing) and the spike increase of mass rapes and sexual violence in the DRC.

My analysis suggests that over the last decade there has been an extreme increase in sexual violence and mass rapes being used as a weapon of war. This influx created a whole new chapter to the question of deterrence of crimes that should have ceased with the end of the Rwandan Genocide. It could also suggest that the Mechanism put in place, such as was the case with the ICTR, has failed those it was meant to protect. This failure set a precedence for sexually violent (considered crimes against humanity), crimes
committed during civil conflict to go unpunished. Which is subsequently the opposite of what had been set forth and established after the Nuremberg trials.

Central to my thesis is the notion of inherent deterrence implied by 20th century laws instituted to combat sexual violence during civil conflict. However, in the last seventeen years the numbers of occurrences of mass rape and sexually violent crimes have significantly increased in the Democratic Republic of Congo. These increases indicate that the laws that are currently instituted do not deter sexual violence therefore negating the argument of inherent deterrence. International humanitarian and criminal laws cannot provide protection from mass rape and sexually violent crimes to occur if they are not enforced within the DRC. If the laws to prevent sexually violent crimes cannot be enforced then the Democratic Republic of Congo will need outside intervention to remedy the situation. International focus has shifted from creating new innovative and more effective laws to increase deterrence to promoting awareness of mass rapes and sexually violent crimes being committed in nations in civil conflict. Ultimately, we must shift the focus back to creating stronger laws, increasing methods of deterrence and finding alternative solutions to fix corrupt systems in order to stop this ongoing violence.

Chapter one of my thesis is a literature review on the concept of sexual violence. With a focus on mass rape as a war crime in international law established after the Rwandan Genocide. I have analyzed works that give understanding to how mass rapes and acts of extreme sexual violence came to be considered a war crime. Also, what constitutes a war crime under international law. I will explore the brutality of what happened during the Rwandan genocide when sexual violence was used as a weapon of
war. I will also discuss that this is a targeted crime with an intent to decimate not only a human being but an entire population.

In chapter two, I analyze the creation of the International Criminal Tribunal of Rwanda and the deficiencies within the Tribunal. These deficiencies were discovered from the lack of prosecution of the documented cases during the tribunal. Failures in recognizing the inadequacies from the Rwandan Tribunal left a gap in prosecuting future perpetrators committing crimes against humanity in the DRC. Also, the thesis argues that had the ICTR not been so deficient, the current genocide in the Democratic Republic of Congo could have been prevented.

The loss of life could have been minimized. The lessons learned from the deficiencies in the ICTR must be used as a preventative measure for the future. If laws that were implemented are still not working, and do not deter these crimes from taking place, then something must change. Global society needs to recognize that there is an impetus for change, otherwise international laws enacted should be rescinded if they do not do what they are supposed to do. Change is especially prudent if passed indictments were withdrawn or persons were acquitted for these unthinkable crimes against humanity.

The law is inefficient if it is not punitive or unable to rectify. Perpetrators know that governments and nation states will not prosecute them for their crimes to the full extent of the law which demonstrates weakness within the laws created. This exposed weakness is very important because a law in place may be mistaken to still be able to serve its purpose. When in actuality the law is accomplishing the opposite result, which hinders justice. This hindrance creates a gray area which promotes violence instead of ending it. If someone commits a crime against humanity by extreme sexual violence and
uses sexual violence as a weapon of war there should not be any gray areas regarding punishment. If the law was just and stringent enough on sexually violent crimes against humanity, deterrence would be inherent. This is explored in this chapter by examining the creation of the International Criminal Tribunal for Rwanda.

Chapter three focuses on the closing of the International Criminal Tribunal of Rwanda, the impact of the framework left behind and the ability of this framework to enact justice globally. The closing of the ICTR has made the world become aware of Rwanda’s neighbor, the Democratic Republic of Congo and the increase in sexually violent crimes being committed. Yet, there have not been enough steps taken within the law to institute justice for the women and children effected.

A closer look at what the ICTR accomplished for the victims of the Rwandan Genocide can clarify both the positive and negative impacts of the law on prosecuting sexual violence. Investigating these impacts from the ICTR can determine if the laws are adequate or if the framework left behind needs to be re-evaluated. The purpose of re-examining the framework would be to define the deficiencies that can be strengthened in case a tribunal for the DRC needs to be erected. These are the most important aspects to look at when evaluating the ability to create change whether it is for the victim or the potential perpetrator. Another tribunal should not be warranted, but the continuous rise in sexual violence in the DRC would suggest otherwise.

Chapter four focuses on mass rape and sexual violence in the Democratic Republic of Congo. This chapter will explore how people throughout history in the DRC have fallen victim to endless corruption which is the backbone to this ongoing civil conflict. Lack of international intervention has allowed poorly trained military and rebel
armies to continue to use mass rape as a weapon of war. The increase of sexual violence as a weapon of war without impunity has made the situation in the DRC worse with each passing day. A closer look at these rebel armies will lead the reader to understand how these ongoing crimes against humanity are parallel to the crimes that were committed during the Rwandan Genocide mentioned in the previous chapters.

Increasing comprehension of a nation such as the Democratic Republic of Congo will allow the reader to; (1) gain knowledge with respect to the development of the DRC and how its past has affected its current state of violence; (2) understand and assess the circumstances that have been created from laws enacted post-Rwandan genocide; (3) grasp the ineffectiveness of the International Criminal Tribunal for Rwanda and how it relates to lack of deterrence against sexual violence in the DRC; and (4) see that changes need to brought about in the DRC with the help of the global community to stop the ongoing violence.

All four chapters focus on mass rape and sexual violence as it is interpreted in international law and the implications for the Democratic Republic of Congo. The fifth chapter, inclusive of a conclusion will focus on the rehabilitative measures and recommendations to amend the situation. These recommendations can provide an alternative framework for the current mechanism to bring justice and increased deterrence to the forefront. The world may be vigilant in keeping its global citizens abreast of the ongoing civil conflict in the DRC, but it has failed in deterring the perpetrator from committing these grave crimes. In the aforementioned chapters, many factors will be taken into account, such as influence of government on the justice system, globalization and technology. My hypothesis suggests that inefficiency of the ICTR, lax
prosecution and convictions continually intersect with lack of deterrence for current genocides. This has heavily influenced the current aggressive state of sexual violence and mass rapes happening in the DRC.
Chapter I.

Mass Rape and Sexual Violence During the Rwandan Genocide: the Concept of Mass Rape and Sexual violence as a War Crime in International Law

While reading the article about the Rwandan Genocide “The Rwandan Genocide: International Finance Policies and Human Rights,” by Rothe, Mullins and Sandstrom, the authors provided limited insights into the economic and human rights conditions that led to the international conflict known as the Rwandan Genocide. The authors could not explain the consequences that came from the conditions that led up to the conflict. It is unclear if the authors left out economics for the sake of not being economists themselves or because they wanted to skew the article towards the social sciences. What is clear is that the article could have been expanded to include some different plausible human rights theories to the variables that led up to this conflict. Such as why institutions like the World Bank and the IMF which were built on the premise of providing reparations to end poverty, have contributed ultimately to funding domestic civil wars by lending these monies which destabilized governments. Funding these civil wars has led to the mass rape of 100,000-250,000 women in Rwanda. From these data, the conditions that led to mass rape committed during the Rwandan genocide should be reexamined, to take a closer look at the laws created after the Rwandan genocide set a precedent to hinder


future attacks of this type of ethnic cleansing on women and children. Women and children can be viewed as a more lucrative target now that they were “legally” off-limits.

The focus needs to be put back on the laws that have been created since the Rwanda Genocide and see if they are a deterrent or a hindrance to creating future rape victims. It has only been in recent years that rape and sexual violations are truly being recognized as war crimes: "Sexual violence in conflict needs to be treated as the war crime that it is; it can no longer be treated as an unfortunate collateral damage of war.”\(^23\)

Even though rape in war is not a new phenomenon,\(^24\) wars have casualties, which are either dead bodies or they are survivors (for this purpose I am using “survivors” as those who survived being raped or sexually violated). The very act of using mass rape to induce an ethnic cleansing is more disturbing than the act of war itself. An act of war can be defined as the use of a form of combat whether armed or nuclear. However, this act of war using sexual violence and mass rape as genocide that is most heinous of all. A victim that survived his ordeal will have to be a living testament to the actions that occurred to her during the conflict. Although she still is physically alive she will relive these events until her death. It should not take years of sexual violence and a genocide to make mass rape a war crime. My reviewed literature will also be used to weigh in on the current international law to see if provisions in place against mass rape and sexual violations during conflict are strong enough. On an international level women's rights abuses during


\(^{24}\) Tuba Inal, Looting and Rape in Wartime: Law and Change in International Relations. (Philadelphia: 2013), Chapter 4.
armed conflict have become more of a prevalent topic in today’s day and age. I will use literature published in more recent years to explore what progress has been made since the Rwandan genocide of 20 years ago.

Heineman\textsuperscript{25} explores the progression of women’s rights and how subsequent laws came to fruition by looking at crimes committed in the past as precedence for future human rights laws. Reexamining these crimes indicates that even in past conflicts, international humanitarian law prohibited sexual violence. However, legal leniency towards the perpetrators allow sexual violence to still occur. Thus, even after so much progress, women are still often sexually violated. It is expressed that women are viewed as proverbial familial glue within tribes and nations. Mass rape and sexual violence are an implicit tactic during armed conflict to destroy the woman’s capabilities of having a life. This destroys her ability to maintain a sense of community even though she was the one that was violated. She is also the one that has to deal with the shame and being ostracized for it. It is within this scope of the loss of sense of self that human rights groups, individuals and organizations took it upon themselves to find justice for these victims of sexual violence. Activists encountered roadblocks to define what counts as sexual violence in international law. Questions arose from the lack of concrete definitions of what constitutes sexual violence. To find justice for a victim a crime must be sharply defined. Initiatives have led to recognition of rape and sexual violence as a war crime during extreme conflicts as seen in the Rwandan genocide. The author does note that these war crimes have been redefined to be more inclusive and not limit it to dire cases.

Redefining these war crimes has also led to greater accountability. No longer can a nation pretend to be in obscurity and skirt passed the issue but legally that nation will be held accountable (which was the opposite in World War II in the prosecution of Nazi war criminals). However, there was a failure with this process of redefinition after the Rwandan Genocide. The idea of redefinition fails in the areas where women are regarded as second class citizens. Inequality creates difficulties to implement newer laws that explicitly define crime and punishment. Failure in implementation and vagueness in the law has allowed perpetrators to once again gain the upper hand. This impedes justice with regard to women's rights and preventing sexual violence, instead of promoting changes in the law so that perpetrators can be prosecuted and held accountable for their crimes.

Heineman references the major influencers that are responsible for creating changes, which are the UN, Tribunals for Rwanda and the Statute of Rome with the ICC. Recognizing accountability within these three bodies of law puts pressure on the Security Council to address gender issues. No longer can rape be seen as simple discrimination. It had to be seen as a grave individualized crime. It was not until the 1992, that the CEDAW convention made the distinction between rape as a gender discrimination crime (which was the most accepted notion at the time). This convention essentially made rape a violent crime against women. This historic suggestion propelled women’s rights into action and influenced many provisions for future crimes of rape and sexual violations during civil conflict.
The authors Stern and Fouchard\textsuperscript{26} explain the importance of the 1992 Bassiouni Commission compared to the two committees that were birthed from WWI and WWII, namely the Commission of Experts and the UN war crimes Commission. The latter was created to prevent future warfare by punishing violators of perpetrated war crimes. What the Commission did not do is to include actions that could be sanctioned as a war crime, they would only elude to these actions and therefore punishment was never enforced. This renders the Commission useless by creating distinctions in a war crime, so that the crime goes unpunished. However, these Commissions started paving the way for change in international humanitarian law. The Bassiouni Commission made great strides within international humanitarian law by helping with the establishment of criminal tribunals that were keys in the recognition of genocide and severe crimes against humanity.

In \textit{The Challenge of Conflict}\textsuperscript{27}, the authors express that sexual violence during the Rwandan genocide was not only used to traumatize victims but as a means to boost morale for those committing these crimes. Mass rapes were used to instill terror in families and break all will to resist. However, these rapes went unnoticed. It is a general accepted understanding among Tutsi and Hutu women do not report an act of rape that has occurred. This changed nine months later in 1995, when women who survived the genocide began giving birth en masse. It was noted by the authors that Tutsi women that had been raped mostly by Hutu men were brutalized.


The methods of brutalization mentioned were that they had been vaginally impaled and there had been cutting of the breasts as well as uterine slashing (mainly to abort the unborn). There was also a high incidence of HIV among them causing already existing discrimination and alienation to grow. However, the authors leave the door open to question the futures of these women. Not only were these women being ostracized because they were violated, they were also left as an empty shell that was marked for life. Ethnic cleansing was the end goal. Perpetrators killed whomever they thought was impregnated after surviving being brutally raped. These perpetrators would leave a growing number of women to bear witness. This was a constant reminder of what atrocities had been committed. To have killed them would have been viewed as a kind gesture. Instead, these perpetrators were only offering them an alternative to a quick death which was a slow one by humiliation, isolation and disease. Better yet, they were left behind as a reminder that this type of violence can occur at any time. That all women should be aware because if it happened to your sister it could have just as easily have been you. Next time when they come back it will be you.

A report released by Human Rights Watch in 2014,\(^\text{28}\) reminds us that a genocide ideology law had been revised in October 2008 to include amendments that would provide a clearer definition of motive and intent which would reduce the ability to prosecute in the realm of abuse. Changes to this law means that the maximum sentence received for committing the crime of genocide was reduced to nine years from the prior maximum amount which was set at twenty-five.

Chrispin Myano reported\(^2^9\) that along with reports from Human Rights Watch, the Democratic Republic of Congo M23 rebels received support from their Rwandan neighbors to carry out executions and mass rapes. Even though the Rwandan government denies any involvement it demonstrates a complete disregard for human right laws that have been instituted since 1994. It supports the case for amending these that will hold the Rwandan government liable if they commit these atrocities again in the near future.

Eboe-Osuji’s theory is that the line between rape as a form of assault and rape as a type of sex act (forced marital intercourse), has not yet been clearly defined in international criminal law.\(^3^0\) There is still an ongoing debate of what the definition of rape should be and if the definition is too obscure to be enforced. This creates holes for the defense when trying to prosecute someone for the crime of rape. Especially when rape is used as an act of war. This inability to define a crime would affect those who stood trial. Often these perpetrators cannot be fully prosecuted if they have not been physically intimate with a victim. For example if the perpetrator tried to rape but did not succeed (by not completing penetration), they could not be convicted of a crime. Even if the perpetrator had the full intention to engage and finish the act. The author suggests that the school of thought should come together in establishing what defines rape as genocide in the international law arena with regard to sexual violence prosecution. One might point


\(^{3^0}\) Chile Eboe-Osuji, *International Law and Sexual Violence in Armed Conflicts* (Leiden; Boston: 2012)
out that the forcible act of unwanted sex is a crime, especially where Mens Rea\textsuperscript{31} is concerned. Nonetheless constant debate about semantics hampers the wheels of justice as seen in the Rukundo\textsuperscript{32} case. The prosecution made many mistakes in the case because of the lack of clarity in what constitutes a crime of sexual violence. Since Rukundo’s crimes were not identical in nature as that of Akayesu’s,\textsuperscript{33} the court could not find him guilty of genocide. Establishment of clearer laws to constitute rape as a weapon of war in genocide is one of the major battles that the governing bodies in international humanitarian law face.

The other major battle is defining who can be prosecuted by these laws and to what extent. If there is no clear distinction made in the law, then a perpetrator cannot rightfully be prosecuted without this evidentiary support. Therefore, international laws need to be revised to specify what constitutes sufficient evidentiary support.

In \textit{Why We Harm},\textsuperscript{34} tactics in dehumanizing women applies to the framework of using mass rape and sexual violence as a means to genocide. A combatant should be able to separate the idea of a potential victim from an enemy during times of conflict. If combatants are educated enough to process this thought of separation that is an invaluable lesson to be learned.

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\textsuperscript{34} Lois Presser, \textit{Why We Harm} (New Brunswick, New Jersey: 2013)
However, the opposite occurs with dehumanization, which is that the perpetrator has not made the distinction which allows them to easily carry out acts as sexual violence. Dehumanization is especially problematic in a country where officials proclaim that you have a right to live unless you are the enemy. Manipulation of the perpetrator by the government is useful in propaganda and dehumanization. It allows the perpetrator to easily carry out these human rights abuses. Leaving the perpetrator without liability since the government condoned such acts to begin with. A country assessment was made by the United Nations in 2006\textsuperscript{35} on gender based violence in Rwanda using data collection to verify accounts of rape, sexual violence and psychological effects on victims. The assessment looked at the outcomes of incidences of sexual violence toward women. Statistically there was a higher HIV, AIDS and STD population in the poorer areas but also higher psychological stress associated with poorer areas as well. They did make limitations in categorizations for data collection. These categorizations were; sexual violence, physical violence, economic violence and psychological violence. Minors (aged 5 being the youngest) and teenagers were the biggest group to experience sexual violence.

Evidence supports that Kigali is the area where the highest incidents of rape occur amongst teens. This is because of the high numbers of cases that are reported. However, perpetrators in the Kigali area are usually those that are in law enforcement. Physical

violence is very high within the nation itself at a staggering 83%. It was also concluded that domestic violence was highest in Kigali.

They reported that the husbands were the actual perpetrators, which suggests that the perpetrators are either familial or in authoritative positions. The role of protector of women (man protects the woman) are the perpetrators and aggressors. These psychological and economic abuses were suffered by roughly half of the country. Most of these incidences occur in poverty stricken cities where lack of economic opportunity, education and oppression are at the forefront. Relegating human rights issues and enforcement of the law to the end of the nation’s priority list. Even though data suggests that Rwanda's government has at times been apprehensive at implementation of human rights laws, they still have gone forth to do so. It was recommended that new policies and laws based on gender violence be revised and implemented as soon as possible. A country-wide joint program would insure that laws based on gender violence be implemented. That awareness of existing laws would be prevalent. This program was held in 2008 in Kigali. Activities that would be seen as social engagement should be used to bring awareness to violence against women. There is no actual new suggestions for laws mentioned by the United Nations in this report. The report only brought attention to the fact that new laws need to be executed and old ones need to be revised so that perpetrators can be brought to justice in a swift and expedient manner.
Amnesty International\textsuperscript{36} released a report in 2004 that examined why punishment for the perpetrator is hard to come by after civil conflict. They concluded that it was often due to the discriminatory laws preventing women to be able to seek justice.

The imbalance of rights based on gender before civil conflict is exacerbated afterwards. Even though sexual violence is an act which is prohibited by law, evidentiary support is often null and void due to the stigma associated with being sexual assaulted. For fear of being alienated, women that have suffered through these abuses do not come forward or go to seek medical attention. This makes impunity the normal circumstance in international criminal law. In this respect, women’s human rights advocacy groups have been instrumental in bringing individual sexual violence accounts to light. They have given the ability for the victims stories to shape and determine changes made within international law with regard to sexual violence and mass rape. Even though there has been significant progress made within the laws themselves there is still a high incidence of sexual violence during conflict. This suggests that the laws do not make an impact on the ground level. There has to be cooperation from the states that have participated in civil conflict to restore and rebuild the lives of the women it stole. From healthcare to financial aid, restoration to the victims reputation also need to be made a priority. Guarantees need to be put in place that this type of violence will not happen again. Progress can only be made with state to state cooperation and changes within their governing laws. Equality needs to be restored. The barriers for these victims need to be

removed. With promotion of valuing the rights of all women, states can begin the order to provide swift justice for these victims. Instead of allowing the perpetuation of human rights abuses to continue.

In 2012’s *On the Frontlines,* the author makes notes that accountability for crimes based in sexually violence have been upheld more recently in with respect to clearer defined international laws. However, it has not been clarified if the lawmakers that are constituting distinctions in sexual violent crimes have done all that is necessary in empirical research on the subject. Since these clarifications and distinctions in accountability are quite new with respect to defining sexually violent crimes. Law makers need to further their research efforts in order to establish a broader sense of what constitutes sexual violence and its functionality when used as a weapon of war. This is because women’s rights are usually not prioritized by the governments that have had reported cases of mass rape and sexual violence.

This implies that these governments that have continual incidences of mass rape are not imposing the laws that prevent these crimes from happening. To counteract this, international pressure should be imposed on these governments so that these instituted laws are upheld and that cases are pushed to the forefront of the international criminal court system. In order for this push to happen the terminology used to describe a sexually violent crime should also be broadened.

A way to broaden the terminology is to broach a different subject that relates to these crimes that are being committed. This subject would be psychology and the reasoning behind increasing use of sexual force as a way to target women and children.

The circumstances and the psychology need to be further explored with each victim of sexual violence. Victims should be able to verbalize acts carried out against them. Increased testimonies and research could characterize sexual violent crimes in another way to help delineate the law. Official Testimonies heard in the court of law and on record would reveal details of how these crimes are being committed. The distinctions made between a women's experience with sexual violence from a stranger than that of a familiar person in their lives would be clarified. This research would need to be done to establish grounds for deeper exploration of the effect on women after the event.38

It would also broaden the range of prosecution possibilities within the international criminal courts. Instead of the lean terms used today in the court of law as to what constitutes sexual violence, it would determine the extent of the perpetrators accountability. There are also questions raised to the causality of conflict through socio-economics status which hinges upon discrimination. A solution to this may be to first end the fundamental corruption at the economic level. This could be used to prevent conflict in the first place, which is needed to promote equality in human rights and prevent the occurrence of sexual violence. Therefore, norms that were established when creating the criminal laws need to be reevaluated and reassessed to consider the subjectivity of each

experience of these women. Taking these experiences into account would force their
governments to develop new attitudes toward sexually violent crimes.

There is a still a stigma attached for the allowances of rape regarding the
perpetrator as well as the survivor. Laws that have been implemented for safety of
women and girls during armed conflict have not progressed along with the advancement
of society. We still reference old inferences to state what constitutes a crime based on
sexual violence against women. It is still seen as an archaic act. Which causes the courts
to handle the incidents as such. Laws need to be amended so that perpetrators can be held
accountable for mass rapes and international human violations crimes carried out today.
As seen with the M23\textsuperscript{39} in the Congo, using its might to kidnap and violently assault
Nigerian school girls sexually. This precedence of abuse and assault began with human
rights violations in Rwanda. The funded militia will continue to commit crimes against
humanity if no entity will intervene and get to the root of the problem, which is to explain
where funds allocated for reparations are allowed to be controlled by corrupt
governments.

The major gap that was discovered in this literature was that authors did not offer
solutions to stop these abuses and war crimes. I want to know that mass rape and sexual
violence against women can be deterred if funding from the World Bank and IMF to
unstable countries is cut off despite its own vested interests. If there is no money going to
corrupt governments then they cannot form militias. Governments cannot purchase

\textsuperscript{39}\textsuperscript{39} “Enough 101: What is the M23 Movement in Eastern Congo?” enoughproject.org.
Last accessed November 2014,
weapons and cannot mobilize therefore the abuse is cut out at the beginning. This would stop the cycle of mass rape from being a possibility at all.

However, if there are laws that established that mass rape and sexual violence committed during civil conflict is a war crime, then why are the incidences of sexual violence increasing. There may be a correlation between deficiencies in the law and impunity for the perpetrators that commit these sexually violent crimes. For answers to that question we must take look at the Rwandan Genocide and the International Criminal Tribunal for Rwanda. The creation of this Tribunal will be explored in Chapter II.
Chapter II
The Creation of the International Criminal Tribunal for Rwanda

The International Criminal Tribunal for Rwanda was created in 1994 under Resolution 955 by the United Nations Security Council to remedy the grave human rights violations that occurred during the Rwandan Genocide in 1994. The Security Council had established that there was systematic extermination going on within Rwanda that same year. Therefore, the Security Council sought to remedy this genocide by creating a court to address these crimes against humanity. As discussed in the previous chapter, these crimes against humanity were orchestrated as a weapon of war, which was enacted through the acts of mass rape and sexual violence of women and children.

It was under Resolution 955 that the United Nations vehemently recognized that those responsible for the Rwandan Genocide also had to be held accountable. With this in mind the Council created the International Criminal Tribunal for Rwanda (ICTR). The ICTR would be able to prosecute perpetrators of mass rape and sexual violence as war crimes under international law. To fully comprehend the development of the ICTR it is important to look back through the chronology of Conventions created in order for the Tribunal to become a plausible possibility.

The path to establishing that mass rape and sexual violence were considered crimes against humanity and punishable by international law was a difficult one because sexual violence had never been recognized as punishable crime before. Conventions that were adopted into international law had to have continuous amendments, which are called “protocols”. Additional protocols are needed in order to clarify and make the laws
as transparent as possible so that the laws have blanket coverage instead of only
protecting specific individuals. What had been previously established prior to these
amended Conventions was seen as more of a universal guideline. When the need arose to
take action against the state or the individual in the arena known as international law it
would officially be known as Customary International Law, which is considered "a
general practice accepted as law."40 Although there is no written form defining the actual
rules for these state actors to abide by, when states are engaged in conflict they are bound
by what the state practices as customary law in their homelands.

Therefore, even if a state actor has not ratified any of the Conventions that follow
below, they are bound by Customary International Law. To clarify, if a nation has ever
put a law into practice in its homeland it must abide by that law. Individuals are subject to
prosecution and consequences if these laws are broken. They (or the individual) may also
be prosecuted internationally for breaking these laws, especially if the government
chooses not to prosecute the individual in their homeland.

The first of these conventions that applied to the human rights abuses of those that
were embattled in civil conflict was in April 24, 1863 with the introduction of the Lieber
Code.41

40 “Customary international humanitarian law,” ICRC.org. Last accessed January 2015,

2015 https://www.globalpolicy.org/component/content/article/163/28204.html (Timeline
from this reference).
The Lieber Code was established to give guidelines on how the American army should act when engaged in battle. One of the most important guideline being the following:

Section X “Insurrection - Civil War - Rebellion” Article 155 All enemies in regular war are divided into two general classes - that is to say, into combatants and noncombatants, or unarmed citizens of the hostile government. The military commander of the legitimate government, in a war of rebellion, distinguishes between the loyal citizen in the revolted portion of the country and the disloyal citizen. The disloyal citizens may further be classified into those citizens known to sympathize with the rebellion without positively aiding it, and those who, without taking up arms, give positive aid and comfort to the rebellious enemy without being bodily forced thereto.42

Article 155 is of great importance in international law with respect to human rights infractions because it establishes the difference between combatants and non-combatant civilians. In other words, during civil conflict people are divided into “hostiles” which are considered combatants. Those that are considered non-hostile civilians would be recognized as non-combatants. These labeled differences should construct a clear distinction of how persons living in areas engrossed in civil conflict should be treated, which is that if a person is considered a non-hostile, then different rules of engagement should apply to them.

However, the Lieber Code only generalized between combatant and non-combatant. This created a large grey area to allow continual at-will assessments of what a persons deemed status was within a conflict zone. This creates the possibility of killing without impunity.

The First Hague Peace Conference of 1899 was held for the purpose of establishing customary international laws for the super powers known as “Signatory Powers” at that time. During this time the International Commission of Inquiry came into development. It is also where the rules of arbitration and procedure would take place within the international community. However since this Convention (I) was for the Pacific Settlement of International Disputes, its international reach was limited. It did not have adequate coverage for persons beyond this particular scope created this convention.

The second peace conference held in The Hague in the Netherlands in 1907 was called The Hague Conventions, which were entered into force on 26 January 1910. This peace conference was important because it served to distinguish a more clearly guided law of war and war crimes as set forth in the prior Geneva Conventions. One of the most important conventions to come out of this conference included Convention (IV) titled “Convention Respecting the Laws and Customs of War on Land”, It was established in the preamble that:

> Until a more complete code of the laws of war has been issued, the High Contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience.43

A distinction – in Section 1, Chapter 1 Annex to the convention (The qualifications of Belligerents) the following would be applicable to those affected by civil conflict:

A distinction – in Section 1, Chapter 1 Annex to the convention (The qualifications of Belligerents) the following would be applicable to those affected by civil conflict:

Article 3. The armed forces of the belligerent parties may consist of combatants and non-combatants. In the case of capture by the enemy, both have a right to be treated as prisoners of war.

Chapter II., Article 4. Prisoners of war are in the power of the hostile Government, but not of the individuals or corps who capture them. They must be humanely treated. All their personal belongings, except arms, horses, and military papers, remain their property.

Section III. Military Authority over the Territory of the Hostile State. Article 45 - It is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile Power.

Article 46 - Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. Private property cannot be confiscated.

Article 47 - Pillage is formally forbidden.


45 Ibid.

46 Ibid.

47 Ibid.

48 Ibid.

49 Ibid.
As succinct as these laws were, they did not qualify explicitly that women and children were protected under these articles. Therefore, these conventions inclusive of added protocols, were amended. These protocols were superseded by the Geneva Conventions of 1949. These amendments would blanket the entire population, women and children especially and would no longer be exclusive to combatants and non-combatants.

July 27, 1929: A major diplomatic conference is held in Geneva, which establishes the Convention relative to the treatment of Prisoners of War. It states that:

Article 3 - In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions: (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
(b) taking of hostages;
(c) outrages upon personal dignity, in particular, humiliating and degrading treatment;
(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.\(^{50}\)
(e) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.\(^{51}\)


Article 3 is relevant and important to support the argument on deterrence on two
different levels; the first being that the terms are less ambiguous because the provisions
are clearly stated with regards to Prisoners of War, especially in armed conflict; the
second is with these clearer provisions the possibility of abuse of any non-combatant
would likely be minimized. In the event that a nation state did not ratify this Convention
they should still abide by Customary International Law. Therefore, the aforementioned
reason would still hold validity of protection of all non-combatants inclusive of civilians.
This lays down the groundwork to condemn aggravated violence. In particular it sets
precedence to establish what a crime against humanity is. Although this was
revolutionary for its time this Convention was never entered into force.

A Draft Convention for the Protection of Civilian Populations Against New
Engines of War52 is introduced in Amsterdam in 1938. This was written in a way that was
radically different because it explicitly stated that the civilian population is different than
a combatant and that they much be treated so. It stated the following:

Article 1 - The civilian population of a State shall not form the object of
an act of war. The phrase "civilian population" within the meaning of this
Convention shall include all those not enlisted in any branch of the
combatant services nor for the time being employed or occupied in any
belligerent establishment as defined in Article 2.

Article 10 - For the purpose of better enabling a State to obtain protection
for the non- belligerent part of its civil population, a State may, if it thinks
fit, declare a specified part or parts of its territory to be a "safety zone" or
"safety zones" and, subject to the conditions following, such safety zones

52 “Draft Convention for the Protection of Civilian Populations Against New Engines
shall enjoy immunity from attack or bombardment by whatsoever means, and shall not form the legitimate object of any act of war.

Article 11- A safety zone shall consist of either: (a) a camp specially erected for that purpose and so situated as to ensure that there is no defended town, port, village or building within "x" kilometres of any part of such camp, or (b) an undefended town, port, village or building as defined in Article 2.

Article 12 - The inhabitants of a safety zone shall consist of persons who form part of the non-combatant civil population of the State concerned, and shall comprise only the following classes of persons: (a) persons over the age of 60 years, (b) persons under the age of 15 years, (c) persons between 15 and 60 years of age who, by reason of physical or mental infirmity, or by reason of their being expectant mothers or mothers who are suckling infants, are unfit or unable to take part in any work that would enable the State concerned to carry on the war. The question whether any person is or is not within this category is one for the decision of the Controlling Authority hereafter referred to, and (d) such other persons (not exceeding in the aggregate five percent of the number of such non-combatants) as shall be necessary for the purpose of tending such non-combatants and maintaining law and order within the safety zone, as well as the Controlling Authority hereafter referred to.

Article 21- If any State seeking to avail itself of the protection hereby afforded to safety zones commits a breach of any of the provisions relating to safety zones contained in this Convention in respect of one or more of its own safety zones, and such breach is notified as provided in the preceding article, and the safety zone or safety zones affected by such breach are specified in such notice, it shall be lawful for any other belligerent to give notice to such State that the safety zone or safety zones concerned will after the receipt of such notice no longer be recognized as such, but it shall not be lawful to cause any injury to civilian populations by way of reprisals for such breach.

Article 22 - Any party claiming that a breach of any of the provisions of this Convention (other than a breach of the provisions relating to the establishment of safety zones committed by a State seeking to obtain the protection hereby afforded to such safety zones, for which breach the provisions of the last preceding Article shall be the sole remedy) has occurred shall notify the President of the Permanent Court of International Justice with a view to the immediate constitution of a Commission of Investigation.”53

53 Ibid.
These Articles were crucial to the creation of human rights in international law because they distinguished between armed forces and civilians by officially assigning space to safeguard the civil population when involved in civil conflict. This is first time that a draft had explicit sanctions to combat breach of a Convention. This is leap above and beyond the scope of what was considered prior, when the law only considered two possible parties (combatant and non-combatant) to be able to be a participant in civil conflict. This signified a just stride in the right direction of protection of all people from suffering crimes against humanity when their nations are engaged in civil conflict.

However, as pertinent as these new universally applicable Articles were, they never entered force. This left a gaping hole in the protection of the civil population. This gap was exposed after the Holocaust occurred during World War II. The Holocaust was the genocide of more than 6 million Jews and non-Jewish people. The atrocities committed during the Holocaust, included torture and mass rape and death by gas, gun or extensive labor or any means of plausible extermination necessary that would deem it a fait accompli in Hitler’s Germany. The severity of these atrocities was horrifying because a country could openly commit these crimes.

While committing these atrocities, Germany chose to heavily document its actions against a targeted population of men, women and children. The Holocaust showed us that Hitler chose to ignore Customary International Law. He chose to reinterpret the laws to be applicable to his envisioned Nazi Germany, without the fear of liability for his actions. However, the law did not support his ideology. He and his accomplices would still be held liable under the Convention The Hague, 18 October 1907 (Which were entered into
force on 26 January 1910). Germany signed this Convention on October 10th, and then ratified it on November 11, 1909. With a nation's signature, it would bind a nation to the Preamble of this Convention that “Animated by the desire to serve, even in this extreme case, the interests of humanity and the ever-progressive needs of civilization”54

On August 8, 1945, in response to the atrocities that were committed during WWII allied governments established the Commission. The Commission was an International Military Tribunal which would serve to prosecute Nazi war criminals that had committed atrocities during the Holocaust. This Tribunal had a charter set forth with stipulations specifically designed to address indictments for these trials.55 The outcome of this charter was that indictments were handed out to 24 Nazi leaders for War Crimes which included Crimes Against Humanity. Indictments for Crimes Against Humanity were previously unheard of in the court of law.

When the General Assembly of the UN convened in the beginning of 1946 to have a first session; Resolutions adopted from its first session included: 3(I). Extradition and Punishment of War Criminals 13 February 194656

Prior to the Resolutions adopted in December, on October 1946: In the wake of the precedent set by the Nuremberg Trials, an international congress is convened in Paris


calling for the adoption of an international criminal code prohibiting crimes against humanity and the prompt establishment of an International Criminal Court (ICC). 57

95(I) Affirmation of the Principles of International Law Recognized by the Charter of the Nurnberg Tribunal 58 11 December 1946

96(I). The Crime of Genocide 59 11 December 1946

December 9, 1948: The UN General Assembly adopts the Convention on the Prevention and Punishment of the Crime of Genocide. An International Law Commission is asked to study the possibility of establishing an International Criminal Court.

December 10, 1948: The UN General Assembly adopts the Universal declaration of Human Rights detailing human rights and fundamental freedoms. 60 Stating that:

Article 5 - “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” 61

Article 6 - “Everyone has the right to recognition everywhere as a person before the law.” 62

Article 7 - “All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.” 63


58 Ibid.

59 Ibid.


61 Ibid.

62 Ibid.

63 Ibid.
Article 26 (2) - Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.64

October 15, 1956: The International Committee of the Red Cross drafts rules for the Limitation of the Dangers incurred by the Civilian Population in Time of War.45 The most important “Limitations” include Chapter I: Object and Field of Application Object:

Article 1. Since the right of Parties to the conflict to adopt means of injuring the enemy is not unlimited, they shall confine their operations to the destruction of his military resources, and leave the civilian population outside the sphere of armed attacks.65

This general rule is given detailed expression in the following provisions: Field of application

Article 2. The present rules shall apply:
(a) In the event of declared war or of any other armed conflict, even if the state of war is not recognized by one of the Parties to the conflict.
(b) In the event of an armed conflict not of an international character.
Definition of term “attacks.”66

Article 3. The present rules shall apply to acts of violence committed against the adverse Party by force of arms, whether in defence or offence. Such acts shall be referred to hereafter as “attacks.”67

Definition of term "civilian population:

Article 4. For the purpose of the present rules, the civilian population consists of all persons not belonging to one or other of the following categories:

64 Ibid.


66 Ibid.

67 Ibid.
(a) Members of the armed forces, or of their auxiliary or complementary organizations.
(b) Persons who do not belong to the forces referred to above, but nevertheless take part in the fighting.\(^{68}\)

Relation with previous Conventions

Art. 5. The obligations imposed upon the Parties to the conflict in regard to the civilian population, under the present rules, are complementary to those which already devolve expressly upon the Parties by virtue of other rules in international law, deriving in particular from the instruments of Geneva and The Hague.\(^{69}\)

These aforementioned “limitations” place value on each individual life, absent of distinction of sex along with the Universal Declaration of Human Rights. It also reiterates the prior Geneva and Hague Conventions that established of individual rights even during civil war. This set a precedent for future implications of war crimes committed as well as infractions of the law in accordance with said Conventions inclusive of “Limitations.”

November 26, 1968: (Entry into force 11 November 1970) The UN General Assembly decides that there is no statute of limitations to war Crimes and Crimes Against Humanity.

Article I
No statutory limitation shall apply to the following crimes, irrespective of the date of their commission:
(a) War crimes as they are defined in the Charter of the International Military Tribunal, Nürnberg, of 8 August 1945 and confirmed by resolutions 3 (I) of 13 February 1946 and 95 (I) of 11 December 1946 of the General Assembly of the United Nations, particularly the "grave breaches" enumerated in the Geneva Conventions of 12 August 1949 for the protection of war victims;

\(^{68}\) Ibid.

\(^{69}\) Ibid.
(b) Crimes against humanity whether committed in time of war or in time of peace as they are defined in the Charter of the International Military Tribunal, Nürnberg, of 8 August 1945 and confirmed by resolutions 3 (I) of 13 February 1946 and 95 (I) of 11 December 1946 of the General Assembly of the United Nations, eviction by armed attack or occupation and inhuman acts resulting from the policy of apartheid, and the crime of genocide as defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, even if such acts do not constitute a violation of the domestic law of the country in which they were committed.  

June 8, 1977: Additional Protocols of the Geneva Conventions are adopted:

I. relation to the Protection of Victims of International Armed Conflicts; and

II. relating to the Protection of Victims of Non-International Armed Conflicts.

December 10, 1984: (Entry into force 26 June 1987) UN General Assembly adopts the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It states that:

Article 1
For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Article 2
Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

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jurisdiction. (1) No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture. (2) An order from a superior officer or a public authority may not be invoked as a justification of torture.\footnote{Ibid.}

**Article 4**

(1) Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

(2) Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.\footnote{Ibid.}

This reinforces previous Conventions but also clarifies that no one under any circumstance should fall to inhumane offenses. It also stipulates that state parties must adopt this Convention.

As well as firmly states that those who commit these offenses shall be justly punished and the possibility of extradition is high if these offenses in the homeland where the crime was committed goes unpunished. Several years later the UN Security Council establishes an International Criminal Tribunal in May of 1993. The purpose of this Tribunal is to prosecute war crimes committed during civil conflict in the former Yugoslavia.\footnote{“United Nations International Criminal Tribunal for the former Yugoslavia,” ICTY.org. Last accessed February 25, 2017 http://www.icty.org/en/about.} The relevance of this is that the first ever perpetrator was tried and convicted under rape as a war crime during genocide. Within the same year The International Law Commission submits a draft Statues for an International Criminal Court to the General Assembly.

\footnote{Ibid.}
\footnote{Ibid.}
November 8, 1994: The UN General Assembly establishes a second International Criminal Tribunal to prosecute war crimes in Rwanda. The International Criminal Tribunal for Rwanda (ICTR) included resolutions that would finally address sexually violent war crimes. The mechanism created by Resolution 955\(^{75}\) UN Security Council;

Acting under Chapter VII of the Charter of the United Nations, 1. Decides hereby, having received the request of the Government of Rwanda (S/1994/1115), to establish an international tribunal for the sole purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighboring States, between 1 January 1994 and 31 December 1994 and to this end to adopt the Statute of the International Criminal Tribunal for Rwanda annexed hereto.\(^{76}\)

Under this resolution, the creation of this mechanism would serve to bring justice to the perpetrators of violating international humanitarian law during the 12-month period from January to December 1994. Under Article 2 and 3 of Resolution 955, persons that perpetrated any of the crimes that fall within the named definitions of the aforementioned articles can be prosecuted by the International Criminal Tribunal for Rwanda. The additional Article 4 in Resolution 955 included that crimes that were committed under Article 3 of the Geneva Convention inclusive of Protocol II,\(^{77}\) would also fall under the jurisdiction of the ICTR. This would allow the ICTR to prosecute those violators of that Convention accordingly.


\(^{76}\) Ibid.

\(^{77}\) Ibid. Article 4.
Article 6 within Resolution 955 outlined that a person would be held accountable as an individual even if they were marginally complicit in aiding in executing crimes mentioned in Articles 2 through 4. This meant that even if a perpetrator did not physically carry out attacks on the Tutsis but aided others in collusion, a perpetrator would be prosecuted for those attacks.

Taking a firm stance that any individual could be prosecuted with regard to plotting or facilitating crimes that were committed during the 12-month period. Article 6(2), also specified that no one person in power inclusive of holding a position in government would be exempt to be indicted. This statement is broad enough to be all-inclusive to anyone complicit in committing crimes that violate international humanitarian law. Article 6(3) supports the previous statement in that even if you were coerced into facilitating, plotting or physically carrying out the crimes that were committed you could still be tried and convicted of violating international humanitarian law.

Articles 7 and 8 explain the territorial jurisdiction that the ICTR will have, which is all of Rwanda. This includes crimes committed in Rwanda by land, sea and air. As well as surrounding states that acted in violation of the aforementioned articles during the specified 12-month period. The ICTR will also unequivocally be the lead when prosecuting or having the ability to prosecute crimes that violated international humanitarian law that were committed during the Rwandan Genocide. This expanded territorial jurisdiction of the ICTR broadened the reach of international law as it pertained to adjacent states and perpetrators. The ICTR would be allowed to prosecute perpetrators within those bordering states found to have been in collusion or who have individually
committed crimes against humanity that are in violation of international humanitarian law.

Article 9 specifies that no person may be tried twice. If the person was tried before the International Criminal Tribunal for Rwanda and not sentenced, they may not be tried for the same crime in a national court. However a person that went to trial on a national level may be tried before the ICTR within the following constraints; (1) they were charged with a lesser crime in order to go to trial on a national level; (2) they may have received a lesser sentence not in congruence with the actual crime(s) committed and; (3) That they received a biased trial during national court proceedings to impede just course of action taken against them and their graveness of crimes committed. Furthermore if a person stood trial at a national court but meets the criteria to be tried in the ICTR, their original sentence shall be considered when a new sentence is determined in the higher court of law.

Article 10 through 16 explain how the ICTR will be setup inclusive of duties and restrictions with respect to each function. The ICTR shall have 2 Trial Chambers, 1 Appeal Chamber, a Prosecutor (Article 15) and a Registry (Article 16). The Chambers will function with 11 judges all independent from one another. Two judges of the same nation may not serve on the court at the same time. Each Trial Chamber will have 3 judges besides the Appeals Chamber which will have 5 judges in total. Judges have to meet certain specified qualifications in order to serve. These qualifications are as follows: (1) Each judge must be able to serve on the highest court possible within their own nations and must have a great deal of experience with regard to international humanitarian law and human rights law next to criminal and international law. (2) Those
that serve on the Appeals Chamber for the ICTY\textsuperscript{78,79} will serve in the same function on
the ICTR. (3) Only the General Assembly may elect judges based on recommendations
from the Security Council and must be a part of a member state of the United Nations. A
non-member may be elected if they have a permanent mission at headquarters of the
United Nations. And only the president of the General Assembly may make the final
recommendations of the 12-18 elected that will be voted on. Each elect that is voted in
will hold their respective position for 4 years.

The chance of re-election is possible after completing their 4 year term. Chamber
Judges must elect a president for the ICTR as well as presiding judge with respect to each
case in each Chamber. Each judge must appropriate the same methods of procedure used
in the preceding International Criminal Tribunal for the former Yugoslavia. However,
they may amend these methods if need be with regard to the purpose of the ICTR and its
mandate.

The Prosecutor has three directives; (1) they are solely responsible for conducting
the necessary research into the persons that have committed extreme crimes i.e. Crimes
Against Humanity during the 12 month period as so named within Resolution 955 in
Rwanda and any surrounding nation that participated in transgressions within the scope
of international humanitarian law; (2) they must not be influenced or be in receipt of
guidance from any other entity whether it is an individual or governing body within a
different country. They are solely acting in service to the mandate that is the directive for


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the ICTR; and (3) the final directive is that whomever is the Prosecutor on the ICTY is also the Prosecutor for the ICTR (with added staff).

The Registry is a key component in the setup of the ICTR because they are responsible for the administrative duties which are essential for the International Criminal Tribunal for Rwanda to be able to function. The Registry also serves as an assistant to the United Nations Secretary General.

Article 17 in Resolution 955 is key in that it defines what and how the Prosecutor would conduct and investigation and determine if there is a valid claim to proceed to the indictment phase. Once it has been established that there is a valid claim to indict the Prosecutor has full governance over collection of evidence for the case. This may or may not include questioning not only the perpetrator (stipulated that perpetrator may have counsel paid or gratis dependent on financial status), but victims and eyewitnesses that would be privy to bring forth support to the possible indictment, the Prosecutor has brought forth. Once sufficiency has been determined the Prosecutor may submit a formal indictment to a Trial Judge of either Chamber.

The Trial judge will review (Article 18) and the indictment to see if it meets the criteria for a formal charge under the statutes on which the ICTR is based. If the indictment is accepted the Trial judge may issue formal charges with recommendation of means of detention or capture of the perpetrator in question to proceed. There is always a possibility of termination of the indictment if the conditions for a formal charge have not been met.
The International Law Commission presents a final draft in December 9, 1994 on the statute on the International Criminal Court to the UN General assembly and an ad-hoc committee is appointed to work on establishing the court.79

On December 11, 1995, the UN General Assembly establishes Preparatory Committee for the Establishment of a permanent International Criminal Court.80

On May 7, 1997, The UN Tribunal for Yugoslavia hands down its first conviction, sentencing a Bosnian Serb concentration camp guard to 20 years in prison for crimes against humanity and violations of the laws and customs of war.81

On June 17, 1998, the Rome Statute establishing the International Criminal Court is finalized and adopted.82

September 2, 1998: The UN Tribunal for Rwanda hands down its first conviction finding a Rwandan Hutu leader guilty of genocide.83

Rome Statute of 2002 – When an additional ten signatories (nations) ratified the treaty that was established in 1998.84


80 Ibid.

81 Ibid.


83 Ibid.

84 Ibid.
Although the progress has been slow it has been very significant in recognizing the plight of women and children that are experiencing aggravated cases of sexual violence civil conflict.

Since the inception of Customary Law, its applicability to all people affected by war has broadened its terms of inclusivity with respect to diversity of conditions. One such diverse condition that has been broadened is differentiating women and children from non-combatant civilian status. Altering the first premise that mentioned that this coverage was only for those considered non-combatant in civil war and genocide. However, although one might be able to extrapolate that a non-combatant would be all-inclusive of civilians, that was not the case. With each Convention terms of protection and prosecution became more clear and explicit. World War II would serve as the turning point as all of humanity was pushed to the tipping point. The genocide that befell these innocent victims during the Holocaust would be a precursor to what was to be if more stringent laws were not enacted.

The genocides that followed the Holocaust, specifically Rwanda and the current conflict in the Democratic Republic of Congo, have faced similar challenges in bringing forth indictments against the perpetrators that have committed and continue to commit sexually violent crimes. The argument still stands that the severity of punishment for crimes committed under these established laws do not counteract the amount of violence that is happening in the Democratic Republic of Congo. However, to ensure deterrence of these sexually violent crimes from being committed during civil conflict in the future, we must examine the global impact of the closing of one of the most profound tribunals that was ever created to prosecute sexual violence.
Chapter III.

The Closing of the ICTR, Deficiencies in the Mechanism, and Global Impacts

After 25 years of service the mechanism that had been created to provide justice for the victims of the Rwandan genocide was no more. Founded on the principle of protection and retribution for those that have suffered crimes of humanity, the International Criminal Tribunal (ICTR) was an incredible step in the fight for justice for those who have suffered human rights violations. It proactively followed a mandate (Resolution 955)\textsuperscript{85} that would pursue perpetrators legally and bring them to trial for crimes against humanity. The closing of the ICTR occurred on December 31, 2014. However, this Mechanism, as it is so called, would serve as the framework for the creation of future tribunals.

In 2010, prior to the closing of the ICTR, formally created what is now known as the Mechanism. This Mechanism serves as an ad-hoc tribunal, which can be erected to aid in the prosecution of sexual violence as human rights violations. The Mechanism describes itself as:

The Mechanism for International Criminal Tribunals (“Mechanism” or “MICT”), formally referred to as the International Residual Mechanism for Criminal Tribunals, is mandated to perform several essential functions previously carried out by the International Criminal Tribunal for Rwanda (“ICTR”) and the International Criminal

Tribunal for the former Yugoslavia (“ICTY”). In carrying out its multiple functions – as listed below – the Mechanism maintains the legacies of these two pioneering, *ad hoc* international criminal courts and strives to reflect best practices in the field of international criminal justice.86

The essential functions that The Mechanism has been tasked with are as follows:

**Tracking and prosecution of remaining fugitives** - Eight individuals indicted by the ICTR for genocide, crimes against humanity, and war crimes are still at large. Three individuals are expected to be tried by the Mechanism, and the cases of the remaining five individuals are expected to be tried in Rwanda. Locating and arresting the remaining ICTR fugitives is a top priority for the Mechanism’s Office of the Prosecutor.87

**Appeals proceedings** - The Mechanism is responsible for conducting and completing all appeal proceedings for which the notice of appeal was filed after the start of the relevant branch of the Mechanism. These proceedings may involve appeals against trial judgements, or sentences, pronounced by the ICTR, the ICTY, or the Mechanism.88

**Review proceedings** - The Mechanism may review judgements pronounced by the ICTR, the ICTY, or the Mechanism if a new fact, not known at the time of the trial or appeal proceedings, is discovered, and a Chamber accepts that such a fact, if proven, could have been a decisive factor in reaching the judgement, review proceedings may be conducted.89

**Retrials** - The Mechanism may also conduct retrials of ICTR, ICTY, and Mechanism cases.90

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88 Ibid.

89 Ibid.

90 Ibid.
Trials for contempt and false testimony - The Mechanism may conduct investigations, trials, and appeals in cases of contempt of court and false testimony committed in the course of proceedings before the ICTR, the ICTY, or the Mechanism. This jurisdiction also extends to contempt cases and false testimony cases arising from proceedings before the ICTR and the ICTY for which the indictment was confirmed after the start date of the respective branch of the Mechanism.  

Cases referred to national jurisdictions - Pursuant to Article 6(5) of its Statute, the Mechanism is responsible for monitoring cases referred by the ICTR and the ICTY to national courts, with the assistance of international and regional organizations and bodies. The Mechanism currently monitors five cases referred by the ICTR to national court.

Protection of victims and witnesses - Over 10,000 witnesses, many of whom are also victims, gave evidence before the ICTR and the ICTY. In total, 46 per cent of those witnesses were granted protective measures by the Tribunals. The Mechanism continues to ensure that witnesses receive protection and support both for ongoing cases before the Mechanism and completed cases from the two Tribunals and the Mechanism.

Supervision of enforcement of sentences - Persons convicted by the ICTR, the ICTY, and the Mechanism serve their sentences in one of the States that have signed an agreement on the enforcement of sentences. These sentences are enforced in accordance with international standards on detention and the applicable law of the enforcing State, subject to the supervision of the Mechanism.

The President of the Mechanism is responsible for designating the State of enforcement, supervising the enforcement of sentences, and deciding on requests for pardon, commutation of sentence, or early release.

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91 Ibid.
92 Ibid.
93 Ibid.
94 Ibid.
95 Ibid.
Assistance to national jurisdictions - With the completion of the ICTR’s mandate at the end of 2015, and the expected completion of the ICTY’s mandate at the end of 2017, further cases related to crimes committed in Rwanda and the former Yugoslavia are now being tried within national jurisdictions. Consequently, the number of requests for assistance from courts, prosecutors, and defence lawyers in relation to national investigations and prosecutions has been growing.\textsuperscript{96}

The Mechanism facilitates requests by national authorities, or parties to national proceedings, for assistance with domestic proceedings related to the national investigations and prosecutions of crimes committed in Rwanda and in the former Yugoslavia. The Mechanism responds to requests for assistance from national authorities and others by providing evidence, facilitating the collection of information, and offering other technical support at their request.\textsuperscript{97}

Preservation and management of archives - The Mechanism is responsible for the preservation, including the management and access, of the ICTR, the ICTY, and the Mechanism archives. These archives document investigations, indictments, and court proceedings, the protection of witnesses, work relating to the detention of accused persons, the enforcement of sentences, and the Tribunals’ relationships with States, other law enforcement authorities, international and non-governmental organizations, and the general public. The archives consist of a range of materials, from photographs and documents to maps and audiovisual recordings.\textsuperscript{98}

Although the tasks that have been set forth by the Mechanism are worthwhile and have an established framework for future country-specific ad-hoc tribunals if necessary, there remain gaping holes which leave the Mechanism ineffective. If left unrecognized then this would ultimately lead to similar failures as in Rwanda.

\textsuperscript{96} Ibid.

\textsuperscript{97} Ibid.

\textsuperscript{98} Ibid.
Article 15 where the duties and directives of the Prosecutor are given, is a disservice to the victims because the Prosecutor for the ICTR was in actuality the same Prosecutor that served on the ICTY.

This lessened their ability to serve justice objectively because there was a lack of similar tribunals to prosecute these types of war crimes. The tribunals relied on the same prosecutor for both the ICTY and ICTR which could create error on behalf of the prosecutor, if the Prosecutor has been exposed to more grievous crimes in the previous Tribunal. If a trial concludes without prejudice there is an increased possibility of sentences being contested. The same Prosecutor could also be seen as an ineffective representation on the part of those that were killed as well as the survivors that seek justice for these crimes, if the sentences were more lenient than those in the ICTY. There is also no term limit which both judges in Chambers as well as the Registry have.

Furthermore, there is no explanation of how a rejected indictment may be reissued or how it may be transferred to the national court (Article 9). Since the perpetrator was not formally charged by the ICTR, or in a broader sense does it go to the ICC or not: where there may be other obstacles to issue an indictment.99

The ineffectiveness of this framework is supported by the review of the International Criminal Tribunal for Rwanda cases. The tribunal only handed out 93 indictments to perpetrators of the Rwandan Genocide. Out of the 93 indictments; only 61 perpetrators were ever sentenced, 14 were acquitted, 3 died before going to trial, 3

perpetrators are still fugitives, and 3 indictments were withdrawn. A closer look at the indictments showed that only 13 indictments\textsuperscript{100} included sexual violence charges.

However, the astounding numbers of reported incidents of 100,000 - 250,000\textsuperscript{101} victims of rape would contradict the small number of indictments. Of the three indictments that were withdrawn, we must be able to conclude they were withdrawn because of insufficient evidence or due to a deficient prosecutor. The only way to come to that conclusion would be to investigate if there were other deficiencies within the Tribunal. Multiple deficiencies would lead to an inability to uphold the law and prosecute under it. The Mechanism has left itself wide open for mass appeals and the possibility of invalidating what it set forth to do, i.e. provide justice, not aid the perpetrators who committed these crimes.

The mechanism put in place by the United Nations (the ICTR), because of the Rwandan genocide, has set a precedent of injustice in the global community. Perpetrators could possibly commit sexually violent crimes under the mandate of the ICTR during civil conflict without impunity. Such leniency does not provide a strong enough deterrent to prevent aggravated cases of mass rape and sexual violence.

If these gaping holes in current international law are not recognized and amended or changed, incidences of mass rape and sexual violence can become more prevalent in the future. As populations grow and conflicts arise, stronger preventative measures


should be taken. Each ICTR case should be revisited and, we should examine why some sentences were more lenient than others. There are many more important lessons to be learned from this Tribunal.

Not only the how, more specifically: how did we get to this point, but also why are we still in the same place 23 years later, and who are the people that still think “the Mechanism” works. If we focus on how archaic it sounds that “the Mechanism” would still be relevant today without any updates in the laws that it upholds, we could enact major changes. If changes could be made in the Mechanism that sufficiently adjust to current global concerns of sexual violence during armed conflict, the impact would be marked. The most profound impact would be for women and children that live in a fixed state of aggravated sexual violence such is the case with the DRC. If significant strides are made to combat the continued violence, the Democratic Republic of Congo could be the biggest beneficiary of these changes to international law. The gravity could restructure the whole DRC, as they are currently in a state of conflict. This conflict in the DRC will be examined by looking at the DRC’s history of instability and political corruption.
Chapter IV

Mass Rape and Sexual Violence in the Democratic Republic of Congo

The Democratic Republic of Congo has been in a perpetual state of political upheaval that has led to increased human rights abuses, using mass rape and sexual violence as a weapon of war. This suggests that there are deficiencies in the law: promoting sexual violence against women instead of deterring it.

As stated in the previous chapter, if changes are to be made to international law so that the Mechanism, when needed can make a real shift in the DRC. The Mechanism needs to stop relying on working knowledge from decades ago and focus on the current states of depravity in nations in armed conflict. The reason is because during the Rwandan genocide there were only two distinctive at war during the 100 day period. However, in the DRC the perpetrators are individual rebel armies that are spread over multiple provinces. Compromised of former Interahamwe, civilians, child soldiers and higher ranked government military has allowed them to carry out their reign of terror with marginal punishments for aggravated sexual violence over the last 16 years.

The combination of multiple armies with widespread reach has turned the Democratic Republic of Congo into the rape capital of the world. At the start of 2016, the Democratic Republic was during a genocide. Approximately 48 women were raped each
However, the DRC has not always not been in such a state of depravity; a brief look back into the history of the DRC, reveals repetitive themes, such as continued civil unrest and corruption that coincides with human rights violations. This consistent wave of corruption and human rights violations suggests a pattern within the DRC’s own history. This pattern suggesting that the Congolese government has been guilty of turning a blind eye to international humanitarian law in lieu of private profits for the government at the cost of human lives. This suggests that in the DRC there is an increased need for deterrence. This can only be made possible when international laws become more stringent with countries that have an established a pattern of inability to adhere to the laws that are in place to prevent systematic extermination.

Throughout its history, the DRC has had its fair share of complex issues that stemmed from colonization and resulted in social and continuous political upheaval. These issues may lead to a cycle of instability that may create a wider gap between the law and human rights abuses. Early instances of human rights abuses through political upheaval began when the indigenous Congolese people were repeatedly exploited during the period when the nation was under Belgian colonial rule. Belgium colonized the Congo because of the rich minerals found in its land. The Congolese were incapable to protect its own people allowed the colonist to enslave indigenous labor to mine it. Exploitation and human rights abuses increased because mining became more lucrative.


When labor requirements went from sixty days a year to one hundred twenty, a labor strike required resistance to these inhumane conditions. The strike failed, civil unrest and gaining residual debt incurred at the hands of the Belgians, led the government of the Republic of Congo to request aid from the United Nations. The request was answered by the UN when a new peacekeeping initiative was created.

ONUC was established in July 1960 to ensure the withdrawal of Belgian forces, to assist the Government in maintaining law and order and to provide technical assistance. The function of ONUC was subsequently modified to include maintaining the territorial integrity and political independence of the Congo, preventing the occurrence of civil war and securing the removal of all foreign military, paramilitary and advisory personnel not under the United Nations Command, and all mercenaries.

This was an integral move on the part of the United Nations to protect the Congolese people. ONUC was a mission that spanned four years (July 1960 to June 1964) and was highly effective as a preventative measure to protect. ONUC’s effectiveness to protect came was tested in the second year of the mission when unifying Congolese insurgents made varied attempts to dismantle ONUC’s efforts to prevent civil unrest, by attempting to assassinate the Prime Minister. This caused some unease for the Congolese people and their safety. However, civil war would not break out during this time. This small timeframe of peace creates a success story for not only the Congolese

\[ \text{\underline{\text{\footnotesize 104}} \text{ Ibid.}} \]

people but the United Nations peacekeeping efforts in countries that often face turbulent times.

Civil unrest seemed to be the only course of action for the Congo (now known as Zaire), once the military dictator Mobutu Sese Seko obtained power. Mobutu obtained power by overthrowing the old regime and weakening the country’s political power. He turned the government into his own private club. Reorganization and restructuring of this government while trying to increase foreign investment stalled the country economically instead of invigorating it. Mobutu fulfilled his hunger for power and popularity by allowing civilians to fill government appointed seats. However, his method of restructuring the government served as a temporary fix in a tempestuous nation. Recklessness and corruption were the backbone of the Regime of Mobutu. Economic decline was steadfast, and similar civil unrest was on the horizon for the Congo at the same time the Rwandan genocide was beginning. Mobutu had profited privately for his assistance to western investors while destroying his own nation. His scheme benefitted the rich while alienating anyone that did not have a financial stake in his government. This included the countries that surrounded the Congo. This left the Congo distraught and distressed in his wake with no recourse to rectify unsound behavior from their leader and his followers. This resulted in the end of his long-time 32-year reign.106

This end of Mobutu's reign came in May 1997. Laurent Kabila became the president of what we now know as the Democratic Republic of Congo. An educated man,

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Kabila had been a prominent figure in the turbulent times of civil unrest in the Congo in the early 1960’s.

He began his rise up in power, as a member of a what came to be the People’s Revolutionary Party and eventually became the leader of the Alliance of Democratic Forces for the Liberation of Congo-Zaire (AFDL). The AFDL was formed by discriminated and marginalized Congolese people, and by those affected in border countries, including Rwanda. The main mission of the AFDL was to overthrow Mobutu and his regime. This AFDL was aided by the Rwandan government who were in search of expelled and fleeing Hutu’s who took part in the Rwandan Genocide and had fled to the DRC. The AFDL was successful in their mission and Kabila was now the Commander in Chief of the DRC. However, his alliance with Rwanda was short lived when Kabila instigated ill will towards Tutsis in and outside of the DRC. This act of ill will further strained the relationship between the Democratic Republic of Congo and Rwanda.107

Laurent was assassinated in 2001, leaving his son Joseph Kabila as the Head of State of the Democratic Republic of Congo. Joseph ruled differently than his father, by engaging in peacekeeping initiatives for cease fires as well as remove the previously instated cabinet to implement a shared power government which would include members of the rebel armies who took part in the ceasefire agreement. This shared power agreement did not help the civilians, but did aid in empowering rebel armies within the

nation. Limited resources during this time period would hinder efforts of reporting increases in sexual violence from rebel armies such as the ADFL, Mai Mai and M23.

Reports on these activities would be brought to light in the later part of the decade. Kabila did address the increase of sexual violence in the Democratic Republic of Congo with a newly instituted Constitution (2006), which allowed for a multiparty election to take place.108 This was radical in thought for the nation as well as instilling a new process. This newly-amended constitution under Kabila, had not only opened the gate towards actual democratic practices, but also addressed human rights violations in very specific terms, as follows.

The Democratic Republic of Congo’s constitution, Articles 15 and 16 states the following:

Article 15 - “Les pouvoirs publics veillent à l'élimination des violences sexuelles. Sans préjudice des traités et accords internationaux, toute violence sexuelle faite sur tout~ personne, dans l'intention de déstabiliser, de disloquer une famille et de faire disparaître tout un peuple est érigée en crime contre l'humanité puni par la loi.”109

Translation:
Article 15 - “The public authorities are responsible for the elimination of sexual violence used as an instrument in the destabilization and displacement of families. International treaties and agreements notwithstanding, any sexual violence committed against any person with the intention to destabilize or to displace a family and to make a whole people disappear is established as a crime against humanity punishable by law.”110

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108 Ibid.


These specific Articles not only address, but also acknowledge, what can be considered a human rights violation under DRC constitutional law. However, the Democratic Republic of Congo has had a difficult time enforcing these laws with an increase of sexually violent crimes being committed by the insurgence of rebel armies. Furthermore, when these sexually violent crimes are committed, the perpetrators are rarely prosecuted to the full extent of the law. A prime example of lack of prosecution for sexually violent crimes committed in the DRC, is the Minova trial\textsuperscript{113} of 2012.

This was one of the biggest and most publicized trials in the country because of the nature and volume of crimes committed. The basis for the trial was that for over a 10-day period soldiers went into the town of Minova and brutally raped at least 76 women.

\begin{flushright}
\textsuperscript{111} Ibid.
\textsuperscript{112} Ibid.
\end{flushright}
However, only 39 soldiers were indicted on rape charges, and only 2 out of the 39 were ever convicted of rape. This low conviction rate of sexually violent perpetrators exposes the inadequacy of the military courts to properly execute justice for the victims of sexually violent crimes in the Democratic Republic of Congo. This landmark trial could have set a precedent to execute justice for sexually violent crimes committed in the Democratic Republic of Congo.

Instead the lack of convictions demonstrates a bias toward the perpetrator which could constitute favor toward impunity rather than justice. Leniency towards these perpetrators also increases the negative stigma that is still associated with rape in the DRC. This association of stigmatism was made apparent by the witnesses and victims giving testimony while fully veiled. The veil denotes two things; (1) there is a fear of retribution for coming forward and, (2) there is shame associated with being a rape victim in the DRC. If the victims cannot openly testify without fear of retribution that signifies an immense problem with the justice system in the Democratic Republic of Congo. Continued favor associated with these judgements of minimal sentences during military trials proves to not only be inefficient but reckless for both the victim and perpetrator. This could warrant international intervention to properly-execute justice or sexually violent crimes committed within the DRC.

Such is the case with the insurgent rebel armies M23 and the FARDC, whose corruption of high powered generals often wields the power to commit mass atrocities with impunity. If the DRC government has outlined these human rights violations as illegal and punishable by law then why is it still occurring at such an alarming rate? The

\[114\text{ Ibid.}\]
Democratic Republic of Congo, currently has the highest rate of sexual violence in a population of seventy-seven million\textsuperscript{115} people within its borders. According to a United Nations Security Council report, released in June 2016,\textsuperscript{116} (a follow up to the one released in March 2016),\textsuperscript{117} MONUSCO (United Nations Organization Stabilization Mission in the Democratic Republic of Congo), reported that there were 1153 human rights violations, (38\% by armed groups and 62\% by State actors), inclusive of the newer terrorist group the Mai-Mai Simba - “The case against Mayi-Mayi Simba elements accused of crimes against humanity and war crimes was closed in April with one conviction, carrying a six-year prison term, and nine acquittals.”\textsuperscript{118}

In the time span of three months since MONUSCO’s last investigation, 38 instances of reported sexual violence occurred, claiming 68\% responsible for these incidents were armed forces and 32\% were State actors.\textsuperscript{119} This shows that even with an amended Constitution outlawing sexual violence in the DRC there is something lacking. The DRC is capable of repeating the Rwandan Genocide in greater numbers in its own nation. Failure to deter these continued acts of violence is up to the governing bodies in


\textsuperscript{118} Ibid. Section G 42.

\textsuperscript{119} Ibid. Section H 44.
international law. Recommendations for these governing bodies can be found in the next chapter.
Chapter V

Conclusion and Recommendations

As stated in the previous chapters’ current cases of sexual violence are being held in front of the ICC as well as held in the military courts in DRC. However, many of the perpetrators have not been indicted and those that have been brought to trial were either acquitted or scapegoats for the high ranking military officers, who found a way around the system.

As this civil conflict in the DRC has been going on for well over a decade there has not been a mechanism put in place to deal directly with mass rape and crimes against humanity. This directly effects any promise of deterrence for reducing the incidences of mass rape that continue to go on in this genocide. However, there is one formal way to remedy this and that would be an International Tribunal for DRC. Aside from a call to action from a petition signed in 2013, there has been no Resolution created by the Security Council in the UN in the same respects as the ones created for the ICTY and the ICTR. This brings up a valid question if international pressure had to be applied during the Minova trial to hand out minimal indictments against the perpetrators then is there not a greater outcry as the numbers of sexual violence and mass rapes increase day to day. As it stands today the number of females that experience sexual violence in these mass assaults is growing at an alarming rate.
However, there have only been reports and recommendations from the OCHR. These recommendations have called for interventions but the heavy military presence has made this too difficult, which has made matters worse for women in the effected provinces.

My recommendations for increased deterrence are as follows:

1. Establish an International Tribunal for The Democratic Republic of Congo. As with the previous International Tribunal for Rwanda, this would be the best course of action to establish a place that deals specifically with war crimes committed during civil conflict and what would be considered crimes against humanity. It would be successful in that this would be an impartial court. What that means is:

   a. The impartiality will limit the possibility of corruption as seen with the military courts.

   b. The possibility for scapegoating, as seen in the Minova Trial and possible future trials, would be limited. The Prosecutor would have ample resources to investigate thoroughly. The Prosecutor would make sure that those that the Tribunal would want to bring to justice have sufficient evidence against them and are the actual accused not a lower level ranking individual.

c. If fugitives result from indictments handed out on behalf of this Tribunal, there would be more international weight behind them. Although the ICC has investigated and brought forth 6 cases\textsuperscript{121} out of tens of thousands of women and children being brutally raped daily over the course of this genocide, the numbers do not even out.

2. Establish methods of rehabilitation for those that have committed minor/major crimes to reduce reoccurrences.
   a. Besides imprisonment and restitution punishments should include behavioral modification as part of the sentence.
   b. Provide extensive education on the impact of their actions on women and children. This would demonstrate the gravity of sexual violence and emphasize that these are not victimless crimes.
   c. Rehabilitation should also include working in refugee centers and clinical rehab centers for women and children. This will help to establish the connection that they are responsible for their crimes and as a result this is what they have created.

3. There should also be a reform made in the entire country with education, especially with respect to male and female interaction. If a person is educated in how to engage and see the opposite sex as an equal rather than some conquest it

may reduce future incidence of sexual crimes. According to the CIA,\textsuperscript{122} in 2015 people living with HIV/AIDS is among the highest in the world at 374,100, which totals about 0.85\% of the population. Sexual education and available contraceptives could slow infection. Reduction of gender based violence through increased punishment as well rehabilitation should decrease these numbers in the future. Literacy is at 63.8\% which could bode well for increased sexual education among the Congolese. This reform could eventually curtail the destruction of females within one society.

4. International organizations should increase and impose more consequential sanctions against the DRC.\textsuperscript{123}

a. Increased sanctions with import and export capability would put the country back in decline which no government would want. Since the DRC is rich in natural minerals sanctions can positively increase economic stability which could impact civil stability.

b. Increased sanctions against humanitarian peace keeping efforts could put pressure on the local governments to either intervene if they suspect or know of mass rapes being committed but it would also put further pressure on those that have partaken in these crimes.

c. Increased financial penalties to state parties would hopefully increase deterrence with sanctioned war crimes committed during this genocide.


These recommendations would be the easiest to establish and remedy a nation that is in ongoing conflict. It is up to the international organizations to impede these perpetrators who are bound by the UDHR to immediately intervene. International organizations should deter the violence, instead of sending out reports of previous years, which are irrelevant to the current situation. We must admit things are getting worse. Therefore we need the international community to acknowledge that there is an increased need for deterrence when it comes to mass rape and sexual violence being committed in countries where local governments do not intervene.

The recommendations would have to use a multi-prong approach which would differ from the systematic approach that occurred in Rwanda. Although this system used in Rwanda, shed light on the genocide and the sexual violence that occurred, it failed the international community by being deficient in justice. In theory, the ICTR should have worked but the government in Rwanda lacked protocol, enforcement and the necessary resources to adequately bring justice about for its people.

This is what the Security Council set out to do when it instituted Resolution 955. The ICTR was setup to bring about the remedy that Rwandan victims urgently sought. However, this remedy failed. The Tribunal continued to fall short when it came to prosecuting war criminals. One can argue that the short fall was most glaring when perpetrators were rarely sentenced, even with multiple indictments. When it comes to crimes against humanity the world should take a stance and not sit idly by as people are continually destroyed. The current reports, statistics and figures from over a decade
would justify a Tribunal. The corruption within the military to be allowed to rape without impunity as seen in the Minova Trial remains a mystery. Yet is there no International Tribunal in the Democratic Republic of Congo.

This nations’ judicial system needs a major overhaul. The how and the impact remains unknown. If we adjust and implement the above recommendations that would spark some thought and equally some resistance which is key. Furthermore a Tribunal within in the DRC most definitely needs to be established. Although the ICC is handling some of the cases it is a minuscule amount. A specified DRC Tribunal would bring the focus back to promoting justice. The added educational matters would prove somewhat daunting. If people are educated in their rights as well as what justice can and should do for them, a shift will occur. That is the biggest solution of all; the shift consisting of a change in mindset for military courts to exact justice on actual perpetrators, not those who are the lowest ranking.

The courts must take action against any perpetrator with the highest regard for the victims as they would if it were their own mothers, sisters and daughters. The last major shift would be that of empowering the victims and not shaming them. This shame is a major part of why this epidemic of mass rape continues. This was the case in Rwanda and it continues to be the case in the DRC. The women that suffer this trauma continue to suffer it for their entire lives. They are shamed for the occurrence and then shamed again if they come forward as a witness in a trial, which is a rare occurrence.
Reintegration: A look at historical precedent

When we have considered what civil conflicts have brought about with regard to fear, destruction and anger, the other side of the story has not been told. Changes in the law could bring reconciliation and peace to the Democratic Republic of Congo. However, I do not believe that will happen in the next decade, even though there has been some progress made in neighboring countries. It is a small example of what the people as well as the Security Council should aspire to within this country; it may be a slow process which will be part of the remedy to create a place where people thrive.

Aspirations should include victims that have suffered at the hands of perpetrators but also perpetrators themselves. Each individual should be given the chance to lead a fulfilling life without fear anxiety and hurt. It will be a case of nature vs. nurture. The hope is that a perpetrator may be able to transition into civility, instead of regressing back into the cycle of raping and committing sexual violence.

In an article from 2005 titled “Reintegration of ex-combatants,”¹²⁴ the peacekeeping mission of the UN has created a DDR initiative in countries that have experienced civil conflict. The premise of the DDR (disarmament, demobilization and reintegration), is to take perpetrators and reintegrate them as a functional civilian into their own society, as well as to work alongside those that were affected by their heinous actions in order to create a are unification in this humanitarian effort. As seen with the case in Liberia, the UN Mission in Liberia (UNMIL), ex-combatants are being reintegrated as working laborers and farmers, skilled enough to find employment far

removed from their passed destructive ways. This shows the resilience as a people to work alongside those that have harmed for a better and brighter future.

Similar missions have been deployed in neighboring nations within Africa, however the success of these missions have been far from great. As is the case with Sierra Leone, ex-fighters have had a trying time with gaining employment leading to a wide vocalized skepticism if this is the actual way to a better life.

These feelings were presented by numerous other countries within this article. Similar sentiments where expressed in the cases of Angola and Zimbabwe. Where the latter country’s now retired General Moyo, expressed that there was always a type of allegiance to a back-up plan or what is commonly referred to as “Plan-B Syndrome.” Distrust of success is backed up by resuming practiced norms in this case ex-combatants would fully re-neg and re-assimilate into a perpetrator once more. So there seems to be more than one flaw in this approach to rehabilitation of not only a perpetrator but the entire post-conflict nation.

The only success mentioned, was that of Mozambique which has had the most turn around at this time. However, Côte d’Ivoire suffered major setbacks where “Plan B” could not have been an option as the DDR was never attempted. The DRC initiated the DDR with some success in 1999. However this process is in a stalled state. This brings us to the most recent report of 2010, by the UN “Second Generation disarmament, Demobilization and Reintegration” (DDR), Practices in Peace Operations this report was issued with regard to a second attempt at the DDR in a new world and an approach that was far more integrated into actualities rather than theory.

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125 Ibid.
The Report is essentially an analyzed study which has embraced the ever-changing societies that experience civil conflict with the influx of modernity, inclusive of new ways to engage perpetrators (military), but also to mobilize those directly affected by civil conflict (namely victims), into secured peacekeeping societies. The approach, when applicable will employ different means in order to initiate peacekeeping methods and encourage rebuilding the nation from within. This is not too dissimilar for the initial DDR directive. However, it does state that this is the best practice when initial operational drives cannot be utilized and military focus ("Traditional DDR"\textsuperscript{126}) is offset by the gravity of affected civilians in armed conflict ("Second Generation DDR"\textsuperscript{127}). The genesis of this is that pre-conditions were not met in initial cases therefore traditional DDR would become an ineffective initiative to peace-keeping methodologies. Even if pre-conditions were met the most glaring problem within the framework suggests overall trust. Not only with the process of building trust but the ability to maintain it. This Second-Generation DDR would promote trust as base component in the building blocks needed to successfully drive the mission and to promote stability rather than skepticism.

This component would inherently increase success for areas where distrust was the downfall of the first attempted implementation. A supplemental IDDRS (the


\textsuperscript{127} Ibid. p.3.
Integrated DDR Standards\textsuperscript{128}) was introduced in 2006 as a result of the Brahimi Report,\textsuperscript{129} which highlighted the need of parallelism between strategy in place (operational) and Mandates (enforcement), one strategy cannot succeed without the other.

Therefore, the IDDRS - has a checklist of conditions to meet before either program (Traditional V. Second) should commence. This makes way for more adaptive measures if need and allows the DDR to be individualized to each nation in need. However even with the flexible approach, pre-conditions are troublesome to overcome. Some pre-conditions such as - signing of a peace treaty, enabling trust to succeed, success of agreement to establish a DDR in a nation by all parties involved and security are not easily attained all at once, yet one cannot be without the other.

A greater risk that was found in the study suggested that in some nations, upper level persons that were partaking in the DDR were also still falling back into their old ways.

Which was undermining the directive and not giving themselves the chance to see life in a different aspect. The leopard had not changed it spots,\textsuperscript{130} it just cloaked it in a way to seem less of a threat. This means there is a bigger problem at hand, which completely coincides with the argument for deterrence in civil conflict.


How can an initiative deem to have success with such a breach in security. If it is the persons who lead that are often the guide for perpetrators to follow, then the responsibility of civility and reintegration, using themselves as the exemplar lies heavily on their shoulders. As seen in the courts, the earlier Rwanda Tribunal and the recent Minova trial. The people in power position seem to think they are still above justice and the law. So how should a council combat this. The DDR is a stride toward a cohesive model, but only serves post-conflict societies that are bound within a framework of cooperating souls. The effort is there and the foundation is solid, however the radical and abrupt need to reinforce statutes and conventions that have been ratified. Such is the case for the DRC. They are in conflict and there is no end in the immediate future. If the framework begins to be deployed without the law to enforce it, one cannot expect a perpetrator to find themselves culpable if the world does not find the entire nation accountable.

Culpability is the responsibility of the nation that bred the conflict to begin with and allowed it to continue. Therefore, the DDR should be part of the multi-prong approach in my earlier recommendations to remedy a situation that seems to be beyond reprieve. It should not only be deemed useful and employed once the civil conflict has ended, it should find a niche in the multilateral approach while there is an ongoing war not just post-conflict focused.
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Appendix A

Findings

What I have found is that there has been an increase in mass rape being used as a weapon of war during times of armed civil conflict. This is used as a conventional method to aid in achieving genocide. International humanitarian laws sought to rectify this war crime by instituting new laws after the Rwandan genocide, which made mass rape a war crime against humanity punishable by law. Even with heightened awareness of the prevalence of these human rights violations, current international humanitarian law in place has not served well as a method for deterrence for these war crimes to occur. This may be demonstrated in particular areas where there has been an increase in mass rapes and sexual violence in the DRC. Since mass rape continues being used as a weapon of war during civil conflict even though it is punishable by law in the International Criminal Court, the question I seek to answer is the following: Based on previous research is it possible that the proportion of rapes have increased in those provinces in the DRC, where there has been an increased militia presence. However the data does suggest a stronger correlation rather than a weak one where this analysis is concerned.

My assumptions are that: I. Out of the 11 provinces in the DRC, the three provinces with the highest populations would have the highest occurrence of rape, possibly due to the influx of the presence of FDLR and concentrations of rebel armies. II. That there is a correlation of increased mass rape in areas that have a distinct rebel forces presence. III. It may be plausible that minimal convictions from the ICTR on mass rape as a war crime has increased the incidence in areas where there was an influx of FDLR
area, this may be due to lack of deterrence mandated by international law, therefore increasing human rights violations of sexual violence in the DRC.

It may also be reasonable to assume that due to minimal indictments and convictions under international humanitarian law and continued lack of deterrence, that a trend will occur in that sexual violence will continue to increase at an alarming rate since one can be a perpetrator with impunity in the DRC. Therefore if I can prove my hypothesis through my statistical analysis, that the areas with the highest influx of rebel armies also have the highest rates of sexual violence then it is not out of line to suggest the aforementioned assumptions as claims; that due to lack of deterrence from the international laws in place, that there is an increase in incidence of sexual violence. This would also deem a necessary overhaul of laws pertaining to mass rape as a war crime to increase convictions per crime committed with a higher penalty.

I will restate the case for Rwanda as the background guide to the statistical analysis with regard to the increase in sexual violence and mass rape in the Democratic Republic of Congo; Over the four month period from 6 April - 16 July 1994, there was a systematic extermination (Genocide) of Tutsi men, women and children in Rwanda. Mass rape became a tool of war used by the Hutu and the FDLR to brutalize and terrorize Tutsi women and children in Rwanda.

Between 250,000 and 500,000 women were brutally raped during this Genocide. And an estimated 800,000 -1,000,000 Tutsi, men women and children were slaughtered (inclusive of Hutus in opposition of this systematic extermination). Over this four month period from 6 April - 16 July in 1994, the murder rate was about 6 persons (inclusive men, women and children) every minute of every hour on a daily basis. In the aftermath
of the Rwandan genocide, the International Court Tribunal of Rwanda was created to prosecute those that committed the gravest crimes during the genocide. However many fled into the Democratic Republic of Congo.

With the ongoing civil conflict in the DRC, breakdowns in the governments, lack of conviction and extradition have created a breeding ground for those that commit mass rape and other human rights violations and atrocities.

Subsequently, according to DRC domestic law, the Congolese government have only authorized the military courts and their tribunals to deal with international crimes. Therefore, since rape is not considered illegal in the DRC, these perpetrators which are mainly military personnel are committing crimes with impunity. This known impunity is giving Congolese armed rebel forces leeway to continue to use systematic rape as a tool of war and to keep the natives from uprising in order to continue to destabilize the country.

I sought to answer the aforementioned questions which are based on my research that I conducted. Seeking a possibility that the proportion of rapes will be higher in those provinces that have a higher influx of military rebel forces than the areas where there are lower numbers. This is based on my statistical tests conducted and with my results that are shown in Research Methods. Multiple tests on this data could suggest that there is a relationship between provinces with an influx of rebel forces and militias to have an increased sexual violence. There is a relationship between the increased sexual violence in the DRC due to the influx of rebel armies that rose up to power after the Rwandan Genocide into specific areas of the DRC, specifically in Nord-Kivu, Sud-Kivu and Orientale. This is seen by the 2-sample test for equality of proportions with continuity
correction when it was conducted it showed 95% confidence with respect to the top 3 populations with the highest rebel armies is between .0810 to .0815 higher than that of the lowest 3 populations with the lowest population of rebel armed forces in the Democratic Republic of Congo. Which is significant in that if you live within these three provinces you have an increased chance of 8.10% - 8.15% of being raped.

As for the answers to my assumptions: The two tests that I have conducted on this data have shown evidence that Out of the 11 provinces in the DRC, the three with the highest concentrations do have the highest occurrence of rape, due to the influx of rebel armed forces concentrated in those areas. That there is a significant correlation of increased mass rape in areas where there are higher concentrations. It is plausible that minimal convictions from the ICTR on mass rape as a war crime has increased due to lack of deterrence and therefore increased human rights violations of sexual violence in the DRC. There is also evidentiary support that this increase is due to lack of deterrence from non-enforced international humanitarian law domestically as well as inconsistencies with trials and convictions. Since violence against women is constantly increasing. This can be validated by looking at the proportion of convictions for Rwanda which was 52(men convicted)/500,000 (women raped) = 0.000104. This means that for each woman raped there was a 0.01% chance that that perpetrator would be convicted for that crime.

Numbers in the data could be significantly lower than reported. A reason for this is that the Rwandan genocide happened over 20 years ago, if a perpetrator was a young adult/adult in 1994 they would currently be between the ages of 34-51. This could make the frequency of attempted rapes less due to age and familial ties. However, this could be disputed merely if the perpetrators succeeded in having offspring and conditioned that
offspring in perpetuating similar acts of sexual violence. I do not have significant information to support that assumption because there is such limited research in this field.

This makes it more crucial to do more invasive and exploratory research. Since sexual violence in the Democratic Republic of Congo has become a way of life rather than a once in a while occurrence and has developed a trend of increased sexual violence. Statistical analysis has proven that there is a strong correlation between being in one of the provinces where there is a concentration of rebel armed forces and experiencing sexual violence, as well as a strong correlation between being in a higher populated area and being raped.
Appendix B

Research Methods

To test part of my hypothesis mentioned in my findings, the data that was used in this analysis consisted of 2 individual surveys conducted in 2007. Using R in conjunction with RStudio as my statistical software, I created two datasets from these surveys collected on mass rapes and sexual violence in the Democratic Republic of Congo. The data that was used was collected from each of the 11 provinces in the Democratic Republic of Congo. The sample that was used in each of the two studies consisted of 15 to 49 year old-Congolese women that had experienced sexual violence in each individual province (a total of 11 provinces in each study). The reason for using two different surveys is that there is a difference in population counts established in each survey; Annuaire Sanitaire had a population total of 63,226,000 and Program Élargi de Vaccination total population 66,966,036, which is a difference of 3,740,036 and could show variance in the results.

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I used the datasets\textsuperscript{134} from Annuaire Sanitaire (labeled dataset2) to the survey from Program Élargi de Vaccination (labeled dataset3) - this table can be found in Appendix A. These surveys were collected on Sexual Violence in the Democratic Republic of Congo (DRC), 2007.

These two datasets contain the number of occurrences of sexual violence in each province. I combined the two surveys into one main dataset labeled dataset1. To differentiate between the two surveys “groups” data for each province from the second group will have a postscript of a one (i.e. Kinshasa1).

Statistical tests that were conducted on this data were correlation, simple and multiple linear regression, and a 2-sample test for proportions. Using these statistical methods helped me to determine higher incidence of rape where there were higher influx of rebel armed forces. An “additional test 2” were used to see if there was a relationship between the variables.

Dataset2 - From the Annuaire Sanitaire dataset

There are 11 cases which are the Provinces within the DRC in each dataset. These cases are labeled Prov.

The observational units are women of reproductive age in 2007, which was established as age 15 to 49 years old in DRC’s 11 provinces.

\textsuperscript{134} See Appendix D for the dataset used in this statistical analysis.
Eight (8) quantitative variables were used in Dataset2:

ProP - Province Population  
NWRA - Number of Women of Reproductive Age (Absolute Number of Occurrences)  
IPSV - Intimate Partner Sexual Violence (Absolute Number of Occurrences)  
HOR - History of Rape (Absolute Number of Occurrences)  
RPMO - Rape in Preceding 12 Months (Absolute Number of Occurrences)  
IPSVRA - Intimate Partner Sexual Violence (Rates per 100 Women of Reproductive Age)  
HORRA - History of Rape (Rates per 100 Women of Reproductive Age)  
RPMRA - Rape in Preceding 12 Months (Rates per 100 Women of Reproductive Age)

“Dataset 3” - From the Program Élargi de Vaccination dataset, found in the lower half of the table found in Appendix D.

There are eleven (11) cases which are the Provinces within the DRC in each dataset labeled Prov - * Anotated by 1 after each Province name.

The observational units are women aged 15 to 49 years of age in DRC’s 11 provinces.

Eight (8) quantitative variables were used in Dataset2:

ProP - Province Population  
NWRA - Number of Women of Reproductive Age (Absolute Number of Occurrences)  
IPSV - Intimate Partner Sexual Violence (Absolute Number of Occurrences)  
HOR - History of Rape (Absolute Number of Occurrences)  
RPMO - Rape in Preceding 12 Months (Absolute Number of Occurrences)  
IPSVRA - Intimate Partner Sexual Violence (Rates per 100 Women of Reproductive Age)  
HORRA - History of Rape (Rates per 100 Women of Reproductive Age)  
RPMRA - Rape in Preceding 12 Months (Rates per 100 Women of Reproductive Age)
Results

I wanted to represent the data on a scatterplot before I started my analysis to show a visualization of where each Province (Prop) falls on the scale with respect to its frequency of reported rapes, which is the (HOR) History of Rapes.

Figure 1. A. Dataset1

A. Xyplot (Prov ~ HOR, data=data1) This plot shows the data collected from Program Élargi de Vaccination data collected with respect to the Province (Prov) and its frequency of History of Rape (HOR).
Figure 2 B Dataset1

B. Xyplot (Prov ~ HOR, data=data2) This plot shows the data collected from Annuaire Sanitaire with regard to Province (Prov) and frequency of History of Rape (HOR).
C. Xyplot (Prov ~ HOR, data=data3) This plot shows the data collected from Program Élargi de Vaccination and Annuaire Sanitaire with regard to the Province (Prov) and its frequency of History of Rape (HOR).

Dataset3 Is the combination of Dataset1+Dataset2 to show how the data collected would be shown visually with both studies. It also shows which provinces have a higher HOR.
Test 1.

H0: Prape highest Concentration Top3 = Prape least Concentration Low3

Ha: Prape Top3 ≠ Prape Low3 <- [If my results give a low p-value then there is evidence to suggest that the frequency of rape is higher in places that have a higher concentration of rebel armed forces.

rapesum < -c(774733,229096)

> Prop <-c(7262321,9010991)

> prop.test (rapesum,Prop)
2-sample test for equality of proportions with continuity correction data:  rapesum out of Prop

X-squared = 458700, df = 1, p-value < 2.2e-16

Alternative hypothesis: two-sided
95 percent confidence interval: 0.08100732, 0.08150142
Sample estimates:

prop 1
0.10667843
prop2
0.02542406

Results for Test 1 are as follows: First I took the top 3 provinces that had the highest HOR and the top 3 provinces with the lowest HOR, and then I took the 3 highest and the 3 lowest provinces with a population concentration of rebel armies. With this data, I ran the 2-sample test for equality of proportions with continuity correction to show the difference between rate of incidences. By comparing the extremes, we can see that there is a difference since my p-value < 2.2e-16 is small, therefore we reject the null. There is evidence of a relationship between x and y.
We are 95% confident that the proportion of rape in the top 3 provinces with the highest concentrations of rebel armed forces is between 0.0810 to 0.0815 higher than that of the lowest 3 provinces with the lowest concentrations of rebel armies in the DRC.

The top 3 and bottom 3 province populations of women show that there is no relationship between concentrations of female populations and chances of being raped. Therefore, these two variables are independent. The proportions differ significantly as well with prop1 = 10.66% whereas prop2 = 2.54%.

Conditions

Independence assumption - they are mutually independent.
Randomization - This is the whole population which is an extremely large sample therefore we do not have to worry about the randomization.
Success/Failure condition - There is either they did rape or did not rape.
Independent Sample condition - the two samples are independent of one another.

Test 2 (Figure 4)
Call:

```r
lm(formula = data1$HOR ~ data1$ProP)
```

Coefficients:

(Intercept)  data1$prop
3.988e+04, 2.005e-02

```r
plot(data1$HOR~data1$ProP,pch = 19) # filled circles
> abline(3.988e+04,2.005e-02)
```

HOR= 3.988e+04 + 2.005e-02ProP

I wanted to run an additional test which was a simple linear regression to see if there was an increase with the amount of rapes that occurred in the areas that have a more concentrated population.

This result would be confirmed by a positive slope. Running this regression demonstrated that: for each increase in concentration within the population there is an increase in the history of rapes. So as the population grows so does the increase of rapes

HOR= 3.988e+04 + 2.005e-02ProP.

Conditions

Linearity assumption - the scatterplot does appear somewhat linear. Independence assumption - they are mutually independent.

Randomization - This is the whole population which is an extremely large sample. Therefore we do not have to worry about the randomization.

Equal variance assumption - The spread around the line is fairly random but is about the line. Normal population assumption - We are dealing with a whole population
which is in the millions which by the Central Limit Theorem we can thereby assume that the population is normal.

This research is important because although the world may condemn these atrocities and statistical proves that there is an extreme increase in sexual violence within the DRC, little has been done to rectify this type of behavior. If there are no consequences for mass human rights violations we cannot as a global society expect it to end. Consequences have to be enforced through law and legislation. For example, if countries choose not to abide by international law and allow their own people to continue to commit human rights violations such as sexual violence, they should be sanctioned as a whole or fined for their inability to recognize these crimes. Each human being has the right to exist without worry of their human rights being violated, especially when it comes to rape and sexual violence. Society must recognize that we cannot have a global society where one can rape a 2 year old without impunity and be free to commit these atrocities at will.

Since April 2012, civil conflict has broken out between the Congolese army and M23 (which are former rebel fighters (Congrès national pour la défense du peuple, or CNDP), in Nord-Kivu, which is one of the most reported areas of sexual violence out of the 11 provinces in the DRC. As far as joint efforts to combat this are concerned, a Global Summit to End Sexual Violence was held in London over 3 days in June 2014.

This signified a great opportunity for state actors to come together with the Congolese government and present the case of why legal and lawful action must be taken against these perpetrators. However, evidence presented does not discount the fact that continued corruption within the Congolese government, especially on the Senior level
staff within the army, makes prosecution let alone indictments particularly difficult. As of May 2014 only 2 perpetrators out of 39 were convicted of rape, whereas 23 other perpetrators were convicted of petty crimes while 14 were acquitted.

Another problem that international humanitarian law is facing is with the closure of the International Tribunal Courts of Rwanda, which closed down at the end of 2014. After 20 years of its operation, and over 500,000 documented cases of mass rape of women and children, the court only convicted 52, 11 filed appeals and 12 were acquitted. 6 Of the 75 in total were indicted for mass rape, instituting mass rape as a tool of war and being convicted of mass rape as a war crime. While nine still remain at large there are currently no cases in progress pertaining to these nine.

The progress will come and lay more pressure onto the international community for its help in deterrence and convicting those of war crimes when they commit rape and engage in continued sexual violence. Although a model has been put forth for other state actors to follow, without follow through or creation of tribunal courts in each of these individual countries where these gross human rights violations continue to occur, change will be too slow and too many people will continue to lose their lives (both physically and mentally). Therefore, there is dire need for further and invasive research, as is implied from my research, although exploratory. I should not be a solo proponent for change. With many people suffering there should be twice as many people fighting for their plight and safety.
Appendix C

Research Limitations

There are some external factors that have to be taken into account when conducting analysis; mostly due to misinformation as well as corruption within the governments that may have led to intimidation of women surveyed or willing to come forward and participate without fear of retribution.

I as an outside investigator did had limited access to collecting data as well due to the aforementioned factors. Corrupt governments can at will diminish or delete pertinent information that would actually increase these actual results. Therefore, the numbers reported may be lower than actual occurrence. As seen in the Minova Trial, although women came forward and there were minimal reports about the trial - case files were impossible to acquire to give insight in proceedings - however the outcomes of the trial may shed light on the stigmatism still associated with committing these crimes without penalty.

There are also limitations in determining deterrence as effective and successful. I would consider a decline in incidence and occurrence as deterrence becoming effective. This can only happen with a change within the current laws. If a country does not consider the current laws in place as a plausible means to let their own people commit crimes against humanity at will, then there is an increased need for deterrence.
This would be an effective parameter to gage the current situation in the Democratic Republic of Congo. There is a major reform needed not only in the law but the limitations within it. As well as transparency and accessibility for all involved.

The lack of transparency in the Congolese government perpetuates these sexually violent crimes against humanity. If the government of the DRC would allow access to case files for examination - a comprehensive and thorough investigation can be conducted. This investigation by outside parties could fill in the gaps needed to conduct fair trials. Until this effort of transparency is recognized by the Democratic Republic of Congo or mandated by an outside party, the data is quite limited and continues to be restricted.
Appendix D

(Absolute # of occurrences) Rates per 1000 Women of Reproductive Age

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