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Engendering Accountability

Gender Crimes Under International Criminal Law

Richard J. Goldstone
Estelle A. Dehon

Gender crimes, such as rape, sexual assault, sexual slavery, and forced prostitution, have always been perpetrated during war, yet the laws of war have been slow to acknowledge these crimes and to bring their perpetrators to justice. This article examines the response of the International Criminal Tribunals for the Former Yugoslavia and Rwanda to this lacuna in international law, and analyzes the mainly positive developments they have made in this area in relation to the definition of rape and to the prosecution of gender crimes as crimes against humanity, war crimes, grave breaches of the Geneva Conventions, and genocide. It also traces the procedural safeguards instituted to facilitate the prosecution of gender crimes. The authors consider the way in which these advances have been taken forward in the Statute of the International Criminal Court, and the usefulness of other responses, such as the truth commissions in Bosnia and Yugoslavia, and the gacaca courts in Rwanda.

In September 1998, Trial Chamber I of the International Criminal Tribunal for Rwanda (ICTR) rendered judgment in the case of *The Prosecutor v Jean-Paul Akayesu*.¹ The three judges, drawn from around the world and acting on behalf of the entire international community, stated unequivocally that “rape is a form of aggression,” “a violation of personal dignity,”² and that rape and sexual violence constitute “one of the worst ways of [harming] the victim, as he or she suffers both bodily and mental harm.”³ For the first time in the history of humanitarian law, the Chamber handed down a conviction for rape as a crime against humanity and held that the rapes condoned and encouraged by Akayesu constituted genocide.⁴

To date,⁵ the Rwanda Tribunal has indicted thirty-four men and one woman for gender crimes,⁶ including nine former government ministers, and has found three people guilty of rape as genocide or as a crime against humanity. The Tribunal for the former Yugoslavia (ICTY) has convicted seven perpetrators of rape, has held sexual slavery to be a crime against humanity, and thirty of its public indictments, including those of Slobodan Milosevic, former president of the Former Republic of Yugoslavia (FRY); Radovan Karadic, the former leader of Republika Srpska; and Ratko Mladic, his army chief, incorporate gender crimes.

In the past decade of tumultuous progress in international criminal law, the advances made in the recognition and prosecution of gender crimes committed

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during armed conflict stand out as noteworthy. This is particularly so because of the history of virtual effacement of these crimes from international instruments and prosecutions.⁷ In this article, we examine the successes and shortcomings of the way in which the International Criminal Tribunals have effected both substantive and procedural developments in prosecuting gender crimes. We also consider how these developments have been taken forward in the Rome Statute establishing the International Criminal Court. The constant background for this analysis is the recognition that rape, sexual slavery, forced pregnancy, and other forms of gender violence will in all likelihood persist among the most heinous aspects of war, and that the multiplicity of ethnic conflicts plaguing many different parts of the world threaten to expand the use of gender crimes as a means to bring about genocide and ethnic cleansing. The institutions responsible for developing international criminal law in this area are therefore facing a pertinent and difficult challenge in assessing and augmenting the practical deterrent effect of prosecuting gender crimes and finding ways to change the attitudes that lead to gender violence in war.⁸

The International Criminal Tribunals: Breaking the Pattern of Disregard

One of the unique characteristics of the International Criminal Tribunals is the concern that was shown, right from their inception, to ensure that prosecutions for gender crimes would occur. This is reflected in the early Security Council resolutions concerning the conflict in Bosnia and Herzegovina — resolutions that paved the way for the establishment of the ICTY. One of these, Resolution 798, contains the first ever condemnation by the Security Council (SC) of rape in war, declaring the SC to be “appalled by reports of the massive, organized and systematic detention and rape of women, in particular Muslim women, in Bosnia and Herzegovina.”⁹ As was recognised by the ICTY itself, this reaction against sexual violence was a key element in motivating the creation of the Tribunal.¹⁰

Once the Security Council had formally proposed the idea of a tribunal as a way to restore peace in the former Yugoslavia,¹¹ the Secretary-General compiled a report on all aspects of implementing the tribunal, in which he highlighted the “widespread and systematic rape and other forms of sexual assault, including enforced prostitution,” occurring in the Balkans.¹² Concern to address these crimes led the Secretary-General to break new ground in international criminal law in his proposed statute for the ICTY by enumerating rape as a crime against humanity in Article 5(g), and by suggesting that, given the fact that the Tribunal would have to deal with “victims of rape and sexual assault, due consideration should be given in the appointment of staff to the employment of qualified women” in the Office of the Prosecutor. These suggestions were accepted,¹³ and subsequently the Statutes of both the International Criminal Tribunals set important precedents in enumerating rape as a crime against humanity and entrenching various procedural safeguards for the protection of victims of and witnesses to sexual assaults. The Statute of the Rwanda Tribunal, set up three years later in response to the genocide in Rwanda, goes even further than its counterpart. It enumerates rape as a war crime, and also expressly refers to “rape, enforced prostitution and indecent assault” as violations of Common Article 3 of the 1949 Geneva Conventions.¹⁴

This stands in stark contrast to the Tribunals’ legal predecessors, the International Military Tribunal in Nuremberg (IMT) and the International Military Tribunal for the Far East in Tokyo (IMTFE), which were set up in the aftermath of World War

II. Neither of the statutes of these tribunals contained any reference to rape. Although both the French and Soviet prosecutors before the IMT introduced evidence of rape in the course of establishing war crimes and crimes against humanity,¹⁵ the Nuremberg judgment does not once mention rape. Specific charges of rape were heard before the IMTFE, but none of the women who had been raped were actually called to testify.¹⁶ The IMTFE did recognise that “[a]pproximately 20,000 cases of rape occurred within the city [of Nanking] during the first month of the occupation,”¹⁷ but it devotes only one paragraph of its judgment to the gender crimes infamously memorialized as the “Rape of Nanking.” Rape was subsumed under general charges of command responsibility for the atrocities committed in Nanking, and the conviction of General Iwane Matsui for war crimes and crimes against humanity was based in part on evidence of rape committed by his troops. The equally notorious forcing of thousands of “comfort women” into prostitution in Japanese military brothels was, however, ignored by the IMTFE.¹⁸

For the greater part of the twentieth century, therefore, the law of war largely overlooked women and gender crimes as potential subjects.¹⁹ This is not really surprising, given that these laws were written by men drawing heavily on the male chivalric tradition²⁰ and were interpreted by male military lawyers, judges, and governmental experts in an age when rape was placed on the same footing as plunder, and was considered to be an inevitable consequence of war.

The International Criminal Tribunals therefore represent a distinct shift in approach, which has been characterized as “a specific intent to prosecute the perpetrators of sexual assaults.”²¹ In fulfilling this specific intent, the Tribunals have advanced the substance of humanitarian law through defining rape, sexual violence, and sexual slavery and broadening the categories of international crime under which gender crimes can be prosecuted. They have also advanced procedural law both in relation to evidentiary rules for prosecuting gender crimes and affording protective measures to safeguard the physical and mental well-being of victims of and witnesses to those crimes.

Much of the credit for these advances must go to the human rights organizations that alerted the first Chief Prosecutor (one of the authors of this article) to the anger and frustration of the victims of gender crimes and to the concern of many thousands of women across the globe that perpetrators of gender crimes should be prosecuted. In consequence of that concern, and of the thousands of letters and petitions that flooded the Office of the Prosecutor (OTP) in its early days, Patricia Viseur Sellers was appointed by the Chief Prosecutor as the OTP’s Legal Advisor for Gender-Related Crimes. She was charged with developing the law through formulating the approach of the OTP to the investigation and indictment of gender crimes. She also devised the approach of the OTP to gender issues within the office itself. Ms. Sellers applied herself diligently to her difficult tasks and many of the developments referred to below are the result of her initiatives.

The early prosecution of gender crimes was, however, hampered by the conditions under which the initial indictments were issued by the ICTY. Immense pressure was brought to bear on the Tribunal to issue its first indictment in order to obtain crucial funding from the General Assembly of the United Nations. The decision was made to indict Dragan Nikolic, the Commander of the Susica detention camp in Vlasenica, but the time pressure from the General Assembly resulted in the OTP deciding that there was insufficient evidence to justify charging him with gender crimes. As witnesses began to testify before the ICTY, however, evidence began to emerge that many of the women detained in the camp were subjected to sexual

assaults, including rape. This spurred Judge Odio-Benito, one of two women judges on the Tribunal at that time, publicly to exhort the OTP to include gender crimes in the indictment.²² She took the other two members of her trial chamber with her, and they began to call, in their judgments and during proceedings, for indictments to be amended to include gender crimes. In the proceedings for re-confirmation of the Nikolic indictment, the judges commented:

From multiple testimony and the witness statements submitted by the Prosecutor to this Trial Chamber, it appears that women (and girls) were subjected to rape and other forms of sexual assault during their detention at Sušica camp. Dragan Nikolic and other persons connected with the camp are alleged to have been directly involved in some of these rapes or sexual assaults. These allegations do not seem to relate solely to isolated instances. . . . The Trial Chamber feels that the prosecutor may be well-advised to re-view these statements carefully with a view to ascertaining whether to charge Dragan Nikolic with rape and other forms of sexual assault, either as a crime against humanity or as grave breaches or war crimes.²³

Not only is this statement remarkable in its activist concern for the prosecution of gender crimes, taking as it does an unheard-of stance for an international judicial body; it is also remarkable in its suggestion that the judges would be open to considering the indictment of rape and sexual violence beyond the enumerated ground of a crime against humanity. The implication that the Tribunal would be prepared to develop the jurisprudence around war crimes and grave breaches of the Geneva Conventions to include gender crimes was truly groundbreaking, especially coming as it did in one of the ICTY's earliest judicial statements.

The judges of the ICTR were similarly progressive in their furtherance of the prosecution of gender crimes. The initial indictment issued against Akayesu did not charge him with gender crimes. When the trial commenced, however, witnesses made constant reference in their testimony to widespread rape and sexual violence in the Taba commune, and to Akayesu's tacit support for the commission of these gender crimes. The only woman judge on the ICTR at that time, Judge Navantham Pillay, was astute in eliciting evidence of gross sexual violence. Her actions, combined with an amicus curiae brief filed by the Coalition for Women's Human Rights in Conflict Situations,²⁴ urging the Tribunal to request an amendment of the indictment to include sexual violence, resulted in a postponement of the trial, during which the Prosecutor amended the indictment to include charges of sexual violence against displaced women who sought refuge at the Taba commune.

This judicial diligence in facilitating testimony relating to gender crimes and in urging the inclusion of such crimes in indictments, together with the hard work of Patricia Sellers and others in the OTP, has contributed significantly to the progress that the Tribunals have been able to make in the recognition and prosecution of gender crimes. Indictments began more regularly to include allegations of gender crimes, and in 1996 the Prosecutor issued the first indictment focusing exclusively on sexual assault, without including any other charges.²⁵

It is interesting to note that, on one occasion, the supposed activism of a female judge was used by defense counsel as a ground of appeal against a judgment of the ICTY. In the *Furundzija* appeal²⁶ it was alleged that Judge Florence Mumba, who presided in the case, gave the appearance of bias because for a period of time she was a representative of the Zambian government on the United Nations Commission on the Status of Women (UNCSW).²⁷ The appellant argued that, since UNCSW had participated in a campaign for the reaffirmation of rape as a war crime, "an appearance was created that Judge Mumba had improperly sat in judgment in a case that

could advance and in fact did advance a legal and political agenda which she helped to create whilst a member of the UNCSW:²⁸

In dismissing this allegation, the Appeals Chamber sketches a much changed international arena as regards gender crimes — an arena in which there is a “determination to put an end to such crimes and to take effective measures to bring to justice the persons who are responsible for them.”²⁹ The Chamber went so far as to say that “even if Judge Mumba sought to implement the relevant objectives of the UNCSW, those goals merely reflected the objectives of the United Nations, and were contemplated by the Security Council resolutions leading to the establishment of the Tribunal.”³⁰ Indeed, according to the Appeals Chamber, Judge Mumba’s prior membership of UNCSW, far from rendering her biased, was actually an asset that should be considered part of the requisite experience for judges demanded by Article 13(1) of the ICTY Statute.³¹

Substantive Challenges: Gender Crimes Beyond Crimes Against Humanity

The OTP, taking its cue from the progressive statements emanating from the bench of the Tribunals, began to take imaginative substantive steps to prosecute gender crimes as war crimes and grave breaches of the Geneva Conventions. A most successful strategy adopted to achieve such prosecutions has been to use rape and sexual assault as the *actus reus*, “guilty deed” in law Latin, of other war crimes or grave breaches enumerated in the Statutes of the Tribunals.³² The first indictment to use this tactic was the *Delalic* case,³³ in which repeated incidents of forced sexual intercourse were charged as torture. After a wide-ranging analysis of the constituent elements of torture, the ICTY made a strongly worded ruling that rape fulfills those elements, stating that the “Trial Chamber considers the rape of any person to be a despicable act which strikes at the very core of human dignity and physical integrity.”³⁴

When the notion of prosecuting rape as the *actus reus* of other crimes was first mooted, there was some resistance to the idea from women writers, who were concerned that such an approach would not acknowledge the gravity of sexual offences in their own right and would fail to recognize the specific nature, effect, and rationale of gender crimes.³⁵ In fact, the opposite seems to be the case, as shown by the judgment in *Delalic*. In investigating rape as torture, the Chamber examined and elucidated the physical and psychological effects of rape, including the way such suffering can be exacerbated by social and cultural conditions.³⁶ Furthermore, in examining the prohibited purposes for which the rapes were committed, the Chamber found that the crimes were perpetrated against the two victims because they were women, which “represents a form of discrimination.”³⁷ This is the first time that the violent discrimination against women that manifests itself as gender crimes has been acknowledged at an international level. It is exactly this type of judicial statement that is necessary to begin combatting the discriminatory attitudes and practices that pave the way for rape in war (and in peace).

Through prosecuting gender crimes as torture, the Tribunals have brought a gender aspect to crimes previously disassociated from any gender analysis. The recognition of rape as a constituent element of war crimes and grave breaches of the Geneva Conventions is significant for two reasons. First, it reverses the dismissive attitude toward crimes perpetrated mostly against women that resulted in none of the provisions specific to women in the Geneva Conventions being designated as “grave

breaches.”³⁸ Rape specifically was not enumerated in the list of grave breaches, possibly because it was not considered to be a crime of violence of the type deserving of the greatest liability under the Conventions³⁹ — the jurisprudence of the Tribunals, combined with a statement issued by the International Committee of the Red Cross (ICRC) in 1991, has comprehensively gainsaid such attitudes. Second, those gender crimes recognized as grave breaches are subject to universal jurisdiction. This development allows for gender crimes to be prosecuted by domestic courts, which could facilitate the domestic implementation of the substantive and procedural advances made by the Tribunals in their analysis and prosecution of gender crimes.

The prosecution of rape as torture also facilitated a key development that had been advocated by writers and social activists: the recognition of rape and serious sexual assault as self-standing war crimes. Although this is one of the most important advances in international law relating to gender crimes, it happened without any judicial or prosecutorial trumpet-blowing. The process of recognition began in Trial Chamber II of the ICTY in *Prosecutor v Anto Furundzija*.⁴⁰ Furundzija, the commander of a special military police unit, was charged with violations of the laws or customs of war (torture and outrages upon personal dignity including rape) for interrogating a woman while she was being raped and sexually assaulted by another officer. The charges of rape as a war crime were based on article 4(2)(e) of Additional Protocol II to the Geneva Conventions, which, as discussed above,⁴¹ enumerates rape as a war crime under the rubric of “outrages upon personal dignity.” The Prosecutor submitted that the substantive offences prohibited by article 4 of Additional Protocol II were “part of customary law and that they enhance[d] the protection afforded by common article 3.”⁴²

The Tribunal stated without much discussion that rape in time of war is prohibited both “by treaty law”⁴³ and, most significantly, as a matter of customary international law, and made the finding that “[i]t is indisputable that rape and other serious sexual assaults in armed conflict entail the criminal liability of the perpetrators.”⁴⁴ It then went on to hold that Furundzija was guilty of “aiding and abetting” the rape of the victim, and therefore “guilty of a violation of the laws or customs of war (outrages upon personal dignity including rape).”⁴⁵

This finding in and of itself does not establish rape as a self-standing war crime, since both the discussion of Additional Protocol II and the charge of which Furundzija was found guilty deal with rape as an aspect of outrages against personal dignity. The groundbreaking step was made by the Appeals Chamber in the course of adjudicating the argument of bias leveled against Judge Mumba.⁴⁶ In determining whether Judge Mumba’s participation in the UNCSW had influenced the Trial Chamber’s understanding of rape, the Appeals Chamber stated the following:

With regard to the issue of the reaffirmation by the International Tribunal of rape as a war crime, the Appeals Chamber finds that the international community has long recognised rape as a war crime. In the *Celebici* judgment, one of the accused was convicted of torture by means of rape, as a violation of the laws or customs of war. This recognition by the international community of rape as a war crime is also reflected in the Rome Statute where it is designated as a war crime [Footnoted reference to Articles 8(2)(b)(xxii) and Article 8(2)(e)(vi) of the Rome Statute].⁴⁷

It is clear from these statements that the Appeals Chamber does not consider the finding in *Furundzija* to categorize rape as a subset of outrages against personal dignity. That rubric does not even appear in the Appeals Chamber’s discussion. Much more telling, however, is the reference to Articles 8(2)(b)(xxii) and Article 8(2)(e)(vi) of the Rome Statute, where “rape, sexual slavery, enforced prostitution,

forced pregnancy... enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions” are listed as self-standing war crimes. The Appeals Chamber is therefore suggesting that its understanding of the Trial Chamber’s finding is that rape per se is a war crime.

This understanding has since been confirmed in *Prosecutor v Dragoljub Kunarac, Radomir Kovac, and Zoran Vukovic*.⁴⁸ The initial indictment in this case, prepared on June 26, 1996, charged all of the sixteen counts of rape as crimes against humanity. In line with prosecutorial strategy at that stage, when rape was the basis for war crimes charges, it was subsumed under torture and outrages against personal dignity. By July 1998, however, the indictment had been amended to charge six counts of rape as “a violation of the laws or customs of war, punishable under Article 3 of the statute of the tribunal and recognised by Additional Protocol II Art 4 (rape) of the Geneva Conventions,” separate from the two remaining charges of outrages against personal dignity. And by the end of 1999, the amended indictment charged seven counts of rape as a war crime, reading simply “Rape, a violation of the laws or customs of war, punishable under Article 3 of the Statute of the Tribunal.”

The judgment handed down by the Tribunal in *Kunarac* states that the “jurisdiction to prosecute rape as an outrage against personal dignity, in violation of ... Article 3 of the Statute, including upon the basis of common Article 3 to the 1949 Geneva Conventions, is also clearly established.”⁴⁹ Although this could have been interpreted as resurrecting the notion of charging rape under the rubric of outrages against personal dignity, the main discussion of rape as a war crime distinguishes between rape and outrages on personal dignity. It concludes:

The Chamber further considers that it is unnecessary to discuss any additional requirements for the application of rape charges based on treaty law, since common Article 3 alone is sufficient in principle to form the basis of these charges under Article 3.... In particular, rape, torture and outrages upon personal dignity, no doubt constituting serious violations of common Article 3, entail criminal responsibility under customary international law.⁵⁰

Although the statements of the Tribunal in *Furundzija* and *Kunarac* strongly suggest that rape is now considered to be a self-standing war crime, what is needed in coming cases is an unequivocal and authoritative affirmation that gender crimes form their own standalone category of war crimes and grave breaches of the Geneva Conventions.

Finally, the ICTR has also explicitly recognized that rape can, when accompanied by genocidal intent, be prosecuted as genocide, and stated boldly in *Akayesu*:

With regard, particularly, to ... rape and sexual violence, the Chamber wishes to underscore the fact that in its opinion, they constitute genocide in the same way as any other act as long as they were committed with the specific intent to destroy, in whole or in part, a particular group, targeted as such.⁵¹

This acknowledges to the fullest extent the devastating effects of rape and sexual violence, and the discriminatory motivation behind such crimes.

Defining Gender Crimes

The other substantive challenge facing the Tribunals in the prosecution of gender crimes, as pointed out by the ICTR in *Akayesu*, was that there was “no commonly accepted definition of [rape] in international law.”⁵² The Trial Chamber in *Akayesu*, in a key step toward filling the gender crimes lacuna in international law, became the first international judicial body to define the crimes of rape and sexual violence.

The Chamber adopted a progressive definition, stating that:

the central elements of the crime of rape cannot be captured in a mechanical description of objects and body parts. . . .The Chamber defines rape as a physical invasion of a sexual nature, committed on a person under circumstances which are coercive. Sexual violence which includes rape, is considered to be any act of a sexual nature which is committed on a person under circumstances which are coercive.⁵³

In two ways, this definition represents a victory in the fight against gender crimes and in ensuring that a gendered approach is taken to the prosecution of these crimes. First, the definition assuages a concern, articulated by women writers when the Tribunals were established, that the understanding of rape adopted by the Tribunals should be sufficiently broad “to ensure that the variety of invasive acts which a woman considers to constitute sexual defilement is accounted for by the category of rape.”⁵⁴ Second, the definition is not fixated, as in many domestic jurisdictions, on the act of penetration, preferring to focus on the notion of “violation.” The definition of rape around penetration is a very male approach to what it means to be sexually violated,⁵⁵ and it is commendable that the ICTR chose not to define rape and sexual violence, crimes overwhelmingly committed against women, according to what men think violates women.

It must be noted, however, that a difficulty may be inherent in these positive aspects of the definition of rape. The scope and flexibility of the definition could lead to an overbroad understanding of rape, which may dilute the concept and diminish the seriousness of the crime. Despite this, however, the definition of rape and sexual violence in *Akayesu* was adopted by the ICTY in the *Celebici* decision,⁵⁶ which went on to use that definition in its finding that rape could constitute the crime of torture.⁵⁷

Two further judgments of the ICTY have addressed the definition of rape, and have generally entrenched and augmented a progressive definition. In confronting the broad nature of the *Akayesu* approach, and in attempting to focus the definition, however, some shortcomings have emerged. In the *Furundzija* case, the Chamber undertook a wide-ranging review of the definition of rape in various domestic jurisdictions, and used this as a basis for two changes to the definition in *Akayesu*.⁵⁸ First, the Chamber found that forcible oral sex, as a “most humiliating and degrading attack upon human dignity,” could rightly be included in the definition of rape, despite divergent domestic approaches to this crime. Although this understanding of rape was clearly possible under the definition in *Akayesu*, the express finding that forcible oral sex constitutes rape is a welcome advance.

The chamber in *Furundzija* also restructured the definition of rape, finding that the “objective elements of rape” are:

“(i) the sexual penetration, however slight:

(a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or

(b) of the mouth of the victim by the penis of the perpetrator;

(ii) by coercion or force or threat of force against the victim or a third person.”

This definition is significant in making it explicit that a threat of force against a person other than the rape victim is sufficient for consent-vitiating coercion.

Although this recasting of the definition may help to avoid the dangers of vagueness posed by the approach taken in *Akayesu*, the shift to defining rape in terms of penetration is a step backwards. It is regrettable that the ICTY did not retain the phrase “invasion of a sexual nature” instead of “sexual penetration,” since, within the framework of the *Furundzija* definition, “invasion of a sexual nature” would have taken on a much more concrete form, while still avoiding fixation on penetration.

The revised definition of rape in *Furundzija* has not found favour with the Rwanda Tribunal, which considered the matter in *Prosecutor v Alfred Musema*.⁵⁹ Musema was charged with crimes against humanity for raping, and encouraging others to rape, several Tutsi women. In its judgment, the ICTR reaffirmed the approach taken in *Akayesu* that “the essence of rape is not the particular details of the body parts and objects involved, but rather the aggression that is expressed in a sexual manner under conditions of coercion.”⁶⁰ In a tacit acknowledgment of the difficulties of an overbroad definition, the Chamber then went on to try to amplify the distinction made in *Akayesu* between rape and other forms of sexual violence. It deemed rape to be “a physical invasion of a sexual nature” committed on a person under circumstances that are coercive, as opposed to sexual violence, which it described as “any act of a sexual nature” committed under coercive conditions.⁶¹

The Chamber noted that the *Furundzija* judgment acknowledged the trend in national legislation to broaden the definition of rape, but went on to comment that, “in light of the dynamic ongoing evolution of the understanding of rape and the incorporation of this understanding into principles of international law,” a “conceptual definition” of rape was preferable to “a mechanical definition.”⁶² Such a conceptual definition, the Chamber suggested, established “a framework for judicial consideration of individual incidents of sexual violence and a determination, on a case by case basis, of whether such incidents constitute rape.”⁶³

The commendable aim of the ICTR in retaining the definition in *Akayesu* was therefore to ensure that its understanding of rape is broader than the “non-consensual intercourse” of many domestic jurisdictions.⁶⁴ The Tribunal’s steadfast rejection of a mechanical approach to rape and of an understanding based purely on penetration is similarly admirable. Nevertheless, the task of drawing a logical distinction between “a physical invasion of a sexual nature” and “any act of a sexual nature” without equating invasion with penetration is a most difficult one. Also, a vague “conceptual” approach leading to a case-by-case evaluation could, unless carefully undertaken, keep the international understanding of rape hazy.⁶⁵

Another benchmark judgment involving gender crimes was handed down by the ICTY in *Prosecutor v Kunarac*,⁶⁶ in which the Tribunal held for the first time in history that sexual slavery is a crime against humanity.⁶⁷ The judgment is also significant in its approach to the definition of rape. Although the Trial Chamber somewhat surprisingly did not refer at all to the discussion of rape in *Musema*, it concluded that the definition of rape in *Furundzija* was:

in one respect, more narrowly stated than is required by international law. In stating that the relevant act of sexual penetration will constitute rape only if accompanied by coercion or force or threat of force against the victim or a third person, the *Furundzija* definition does not refer to other factors which would render an act of sexual penetration non-consensual or non-voluntary on the part of the victim.⁶⁸

The Chamber then went on to examine the notion of coercion, force, or threat of force, and to provide what it sees as a broader version of the definition in *Furundzija*.

The initial analysis undertaken by the Chamber is extremely positive. The Chamber identifies “the true common denominator which unifies the various [domestic] systems” to be the “wider or more basic principle of penalizing violations of sexual autonomy.”⁶⁹ This focus on sexual autonomy foregrounds notions of gender roles and attitudes, and could present a significant vehicle for the International Tribunals to begin discussing the underlying gender prejudices that make women especially vulnerable to rape in war. For, as Tamara Tompkins points out,⁷⁰ it is not only the situations of lawlessness brought about by armed conflict that give rise to rape. War also exaggerates the conditions that give rise to rape in peace:⁷¹ the socialized link between violence, masculinity, and sex; the sexualization of women’s bodies and notions of male ownership of these bodies that make sense of victorious forces using female bodies to send messages of victory; the prizing of sexual purity as a woman’s prime virtue, which renders the taking of that purity both an act of conquering the entire community by shattering their values and a means of destroying that community through the inevitable shunning of rape victims.

These factors are often combined with the view, all too common throughout history, that women are part of the “spoils” of war to which soldiers are entitled. Deeply entrenched in this notion is the idea that women are property, “chattel available to victorious warriors.”⁷² It would be very significant if the Tribunals began to address these underlying causes of gender violence, and this is certainly an area in which the jurisprudence of the Tribunals, if widely disseminated, could be used to try to change attitudes that give rise to such violence, both during war and in peace.

Despite the generally positive nature of the decision, the way in which the Trial Chamber in *Kunarac* chose to interpret sexual autonomy in the context of the definition of rape could have been problematic.⁷³ The Chamber used the idea as a basis for redrafting the definition of rape in *Furundzija*, changing the requirement of “coercion or force or threat of force against the victim or a third person” to read merely “without the consent of the victim.”⁷⁴ The intention of this recasting, the Chamber explained, was to introduce into the definition the idea that “serious violations of sexual autonomy are to be penalized.”⁷⁵ In the Chamber’s analysis, such violations occur “wherever the person subjected to the act has not freely agreed to it or is otherwise not a voluntary participant.”⁷⁶ So, the judgment concluded that the ICTY’s understanding of the *actus reus* of rape included the victim’s lack of voluntary consent, and that the *mens rea* of rape is the intention to effect sexual penetration, and “the knowledge that it occurs without the consent of the victim.”⁷⁷

This could have been a double-edged sword, for instead of importing broad victim-focused notions of sexual autonomy into understanding rape, it is also open to an interpretation which brings into question the subjective view of the perpetrator as to whether the victim consented to the act. It was very possible, therefore, that the legal emphasis in assessing whether rape occurred could have been placed on what the male perpetrator thought rather than on an objective factual conflict situation of violence and coercion. The Prosecutor may also have had to show that the victim demonstrated her lack of consent to her attacker through some act or communication. Indeed, it is no accident that exactly these arguments were made by all three accused in *Kunarac* when they appealed against the finding of the Trial Chamber. They contended that the definition of rape should be interpreted to include the victim’s “continuous” or “genuine” resistance, which is necessary to provide “notice to the perpetrator that the sexual intercourse is unwelcome.”⁷⁸

Had the Appeals Chamber accepted this sort of interpretation of consent, it would have been a considerable step backwards, since many of the most damaging

stereotypes about women's sexuality and credibility have made their way into legal reasoning through courts trying to determine whether a rape victim sufficiently demonstrated her lack of consent to her attacker. In fact, in many legal systems, the requirement of non-consent has led to an unjustified narrowing of the definition of rape.⁷⁹ Given this regrettable history, it is difficult to see how the Trial Chamber could have believed that importing consent into the elements of the crime of rape would usefully broaden understanding of the concept at an international level. The prevailing feeling before this ruling is aptly summed up by Christin Coan:

in light of the circumstances surrounding rape cases in the former Yugoslavia, it is difficult to fathom how consent could ever be a contested issue, as many rape victims were detained against their will in camps or raped at gun or knife point.⁸⁰

Indeed, Patricia Sellers and Kaoru Okuizumi commented that victims of sexual assault would be “more likely to appear before the Tribunal”⁸¹ because of “the low likelihood” that consent would be “deemed relevant, credible, and thus admissible.”

The drafters of the Rules of Procedure and Evidence of the Tribunals also believed consent to be irrelevant in the kind of situation of pervasive conflict and violence about which the Tribunals would be adjudicating. The first version of Rule 96, which deals specifically with evidence in cases of sexual assault, provided simply that consent would not be allowed as a defense to sexual assaults.⁸² It therefore established an irrefutable presumption that in war, “when an entire population is subject to duress and coercion by attacking forces and when there is widespread sexual assault, the voluntary consent of one individual victim is immaterial.”⁸³

Only in light of concerns raised about affording defendants fair trial rights by allowing all defenses to remain open and ensuring that defendants would be judged on the basis of their individual behavior, was a limited defense of consent included in the final version of Rule 96. Nevertheless, in recognition of the sometimes pernicious effect of a defense of consent on a complainant,⁸⁴ and with an awareness of the general context of war and armed conflict, Rule 96 still requires that the defense be tested in an in camera hearing to determine whether it is “relevant and credible” before being admitted at trial.

The continued applicability of Rule 96 could provide a useful safeguard against any potentially damaging effect of the definition of rape adopted in the Trial Chamber in *Kunarac*, for it still directs that:

consent shall not be allowed...if the victim has been subjected to or threatened with or has had reason to fear violence, duress, detention or psychological oppression, or reasonably believed that if the victim did not submit, another might be so subjected, threatened or put in fear.

As the Chamber recognised, an understanding of non-consent in light of this aspect of the Rule would be satisfied by showing objectively that the violent situation described in the Rule existed⁸⁵ — a position which does not depend on the subjective beliefs of the perpetrator regarding consent. This is important, especially given that the Chamber makes it clear that the burden of disproving consent is carried by the Prosecutor⁸⁶ (a clear shift from the previous position, in which the accused would have had to justify the admissibility of the defense).

Susan Estrich points out that, as it has been interpreted in domestic jurisdictions, “the consent standard denies female autonomy; indeed, it even denies that women are capable of making decisions about sex, let alone articulating them.” Yet, she calls attention to the possibility that “consent, properly understood, has the potential to

give women greater power in sexual relations and to expand our understanding of the crime of rape.”⁸⁷ It is interesting that, in responding to the arguments made by Kunarac, Kovac, and Vukovic about demonstrating a lack of consent, the Prosecutor chose to emphasise the principle laid down by the Trial Chamber that “serious violations of sexual autonomy are to be penalized,” but to do so in light of the Trial Chamber’s comment that “force, threats of force, or coercion” nullify “true consent.”⁸⁸

The judgment by the Appeals Chamber comprehensively dispatches the worrying aspects of the Trial Chamber’s handling of the definition of rape. It firmly rejects any requirement of resistance to demonstrate lack of consent as being without any “basis in customary international law,” and brands as “wrong on the law and absurd on the facts” the arguments made by the appellants about the way in which a rape victim should make obvious her lack of consent.⁸⁹ Importantly, the Appeals Chamber also expands on the implications of the Trial Chamber’s shift to focusing on the absence of consent in the definition of rape. The Appeals Chamber explains that this seeming departure does “not disavow the Tribunal’s earlier jurisprudence,” but merely seeks to elucidate “the relationship between force and consent.”⁹⁰ It interprets the Trial Chamber as pointing to a nuance in the definition — that while force or threat of force provides clear evidence of lack of consent, force per se is not an element of rape. The consequence of this nuanced understanding is held to be a broadening of the definition, which ensures that factors other than force can render the act of penetration non-consensual.⁹¹ In the final analysis, however, the Appeals Chamber comments that:

it is worth observing that the circumstances giving rise to the instant appeal and that prevail in most cases charged as either war crimes or crimes against humanity will be almost universally coercive. That is to say, true consent will not be possible.⁹²

Gender Crimes and Procedural Progress

The determination to bring the perpetrators of rape and sexual assault to justice that characterizes the Tribunals has particularly manifested itself in the procedural safeguards enacted to facilitate prosecution of gender crimes, mainly entrenched in Rule 96 of the Rules of Procedure and Evidence.⁹³ As seen in the previous discussion of consent, Rule 96 represents several welcome departures from the domestic practice of many States.

First, sub-rule (i) lays down that the Tribunals do not require corroboration of the testimony of a victim of sexual violence for that testimony to be admissible or to found a conviction for gender crimes. In domestic law, the corroboration requirement has been one of the more pernicious and openly sexist legal practices relating to rape. Although it has been formally repealed in many jurisdictions, it is important that the Tribunals explicitly distance themselves from the “evidentiary distrust of female complainants”⁹⁴ contained in the corroboration requirement. This unambiguous stance will hopefully encourage witnesses and victims of sexual assault to come forward and also ensure good prosecutorial and judicial practice. Three judgments of the Tribunals have specifically addressed this issue. The very first decision handed down by the ICTY, *Prosecutor v Dusko Tadic a/k/a/ “Dule”*⁹⁵ commented that the rejection of the corroboration requirement:

accords to the testimony of a victim of sexual assault the same presumption of reliability as the testimony of victims of other crimes, something long been denied to victims of sexual assault by the common law.

This strong affirmation of international standards of equality between the sexes was quoted with approval in both *Akayesu*⁹⁶ and *Delalic*.⁹⁷ Although there does not seem to have been a case decided by the Tribunals in which an accused has been convicted on the basis of uncorroborated testimony,⁹⁸ Rule 96 clearly envisages that this would be possible, and it is hoped that judicial or prosecutorial concerns about the sufficiency of evidence, which may result in a de facto corroboration requirement, will not prevent such prosecutions in the future.

Second, as discussed above, sub-rules (ii) and (iii) of Rule 96 outline the parameters within which consent may be raised as a defense to the charge of rape or sexual assault. The operation of these sub-rules has become more complicated in light of the ruling in *Kunarac*. Whereas before it was supposed that a defense of consent would be prohibited absolutely when the alleged offense occurred within the range of violent exclusionary circumstances described in sub-rule (ii),⁹⁹ this is now unclear given the new status of consent as an element of the crime of rape. The Tribunals will hopefully take sub-rule (ii) into account when giving content to the understanding of consent at international level. It is further hoped that in evaluating the conduct of the victim in the light of a defence of consent, the Tribunals will require affirmative speech or action indicating consent on the part of the victim, rather than be satisfied with an inference from passivity or acquiescence. The Tribunals have also yet to address the issue of the age at which consent can properly be given — an important issue given the reported number of very young girls who suffered sexual assault in the former Yugoslavia and Rwanda.

Finally, sub-rule (iv) of Rule 96 specifically excludes another particularly insidious practice of the common law: the admissibility of the prior sexual conduct of the victim. This sub-rule clearly dispenses with the implication that “a woman with a sexual history [is] an unreliable witness.”¹⁰⁰ It will also operate to prevent the possibility that women who were assaulted and raped by men they knew might have to face those prewar relationships being used as a justification for rape. This is clear from the firm statements made by the ICTY in interpreting sub-rule (iv). In a motion concerning the *Delalic* case, the Chamber commented that “sub-rule 96(iv) is an exclusionary rule which totally forbids the introduction of evidence concerning prior sexual conduct in sexual assault cases and there can be no waiver of its imperative application.”¹⁰¹ The Tribunals, it seems, are prepared to give the notion of “prior sexual conduct” a broad interpretation — in the *Delalic* motion, the Chamber found that statements made by a witness that she had previously had an abortion constituted inadmissible evidence of prior sexual conduct, even though her statements were in the public domain because they had been made during testimony in open court. The Prosecution Motion was brought at the witness’ request,¹⁰² and her wish to have the statements expunged from the public records of the Tribunal was granted. Hopefully such prosecutorial and judicial respect for the dignity of rape witnesses will become a hallmark of the new international attitude towards the prosecution of gender crimes.

Such an attitude of respect and care is enshrined in several other Rules, which function together to protect witnesses testifying before the Tribunals. Under Rule 69 the Prosecutor may ask the Trial Chamber for “protective measures,” including, in “exceptional circumstances,” the non-disclosure of the identity of the witness, even from the defendant. Rule 75 lists the measures available: redaction of the record, suppression of witness identity or whereabouts, assignment of pseudonyms, and closed sessions. That Rule also allows the Tribunals to safeguard witnesses during

their testimony, by controlling the “manner of questioning to avoid any harassment or intimidation.”

The Tribunals have been willing to make use of these protective measures, and to expound their special necessity in gender crimes cases.¹⁰³ The Trial Chamber of the ICTY commented in one of the early motions in the *Tadic* case:

It has been noted that rape and sexual assault often have particularly devastating consequences which, in certain instances, may have a permanent detrimental impact on the victim. . . . It has been noted further that testifying about the event is often difficult, particularly in public, and can result in rejection by the victim’s family and community. . . . In addition, traditional court practice and procedures have been known to exacerbate the victim’s ordeal during trial. Women who have been raped and have sought justice in the legal system commonly compare this experience to being raped a second time.¹⁰⁴

These procedural advances in the prosecution of gender crimes have been augmented by the establishment, in the Registry of each Tribunal, of a Victims and Witnesses Unit with a special mandate to “recommend protective measures for victims and witnesses. . . and provide counselling and support for them, in particular in cases of rape and sexual assault.”¹⁰⁵ Again, a specific concern for victims to and witnesses of gender crimes was evinced right from the formation of the Tribunals, with the Secretary-General commenting in his Report pursuant to the Resolution to establish the ICTY:

In the light of the particular nature of the crimes committed in the former Yugoslavia, it will be necessary for the International Tribunal to ensure the protection of victims and witnesses. Necessary protection measures should therefore be provided in the rules of procedure and evidence for victims and witnesses, especially in cases of rape or sexual assault. Such measures should include, but should not be limited to the conduct of in camera proceedings, and the protection of the victim’s identity.¹⁰⁶

In line with this, Rule 34 establishing the Victims and Witnesses Unit lays down that “due consideration shall be given, in the appointment of staff, to the employment of qualified women.” Although the Victims and Witnesses Units have experienced many difficulties in carrying out their mandate,¹⁰⁷ it cannot be doubted that their growing expertise in protecting the victims and witnesses of gender crimes and facilitating their appearance before the Tribunals is an important development in the successful prosecution of such crimes.

Entrenching the New Accountability: the Permanent International Criminal Court

The jurisprudence of the Tribunals represents a momentous advance in the international attitude toward prosecuting gender crimes committed in times of conflict. The conceptual developments in this area provide the legal tools to ensure accountability at all levels of the chain of command, and for all aspects of these crimes. The way is now open for international judicial bodies and domestic courts to prosecute gender crimes as war crimes, grave breaches of the Geneva Conventions, crimes against humanity, and genocide, and in so doing to analyze and comment on the attitudes and practices that motivate the violent invasion of sexual autonomy. Victims and witnesses are protected by a gamut of procedural safeguards, which may provide a basis for domestic legal reform of rape and sexual assault laws.

The jurisprudence of the Tribunals is also noteworthy in that it has not shied away from telling the stories of the victims and witnesses in detail. The Nuremberg and Tokyo Tribunals refused to examine the specifics of gender crimes, either in oral proceedings or in their written judgments, despite not flinching from gory description of other crimes being tried. One of the fears expressed by writers and activists in the early days of the Yugoslavia and Rwanda Tribunals was that they might follow that precedent of effacement, and be dominated by men too “chivalrous” to record the details of sexual violence, leading to yet more international jurisprudence devoid of the experiences of the women survivors. The Tribunals have, to their credit, recounted in often painful and disturbing detail the testimony of victims of and witnesses to gender crimes, and have not shrunk away from robust comment on these crimes as heinous and barbaric.

The substantive and procedural advances made by the Tribunals have been taken forward in an encouraging and important way through their codification in the founding statute of the International Criminal Court (ICC), which formally came into being on July 1, 2002. This is significant, since the ICC Statute is the normative benchmark of international criminal law, and it gives gender crimes the recognition they were denied for so many years. Much of the credit for the extent to which these advances were taken up by the ICC statute must go to women’s organizations and lobby groups, specifically the Women’s Caucus for Gender Justice.¹⁰⁸ The Caucus worked tirelessly at the preparatory meetings and at the Rome Diplomatic Conference, at which the statute was finalized and accepted, sometimes facing strong and organized opposition to giving the ICC extensive powers to prosecute gender crimes.¹⁰⁹ It is a tribute to the dedication of women’s groups that the ICC statute enshrines all the procedural and substantive advances made by the Tribunals (indeed, in places even going further than the Tribunals had at that time).

The definitions of the crimes that fall within the jurisdiction of the ICC all include a proper account of gender crimes. In line with work begun by the Women’s Caucus at the December 1997 PrepCom session,¹¹⁰ gender crimes are no longer subsumed under the rubric of “outrages on personal dignity.” Rape, sexual slavery, forced pregnancy, enforced sterilization, and other forms of sexual violence are enumerated separately as crimes against humanity (article 7) and, building on the advances of the Tribunals, as war crimes both in international armed conflicts [Article 8(2)(b)(xxii)] and non-international armed conflicts [Article 8(2)(c)(vi)]. The inclusion of sexual slavery was especially important, for it vindicated the struggle of the comfort women and others to have their condition recognized as slavery and not only enforced prostitution.¹¹¹ Equally significantly, and despite some quite concerted opposition, these articles recognize that gender-based violence may involve reproductive as well as sexual violence. Of particular note is that the Statute is the first international treaty to acknowledge the crime of forced pregnancy.

The advances made in the *Delalic* judgment¹¹² regarding gender discrimination and persecution being a prohibited goal under the regime of crimes against humanity have also been taken forward in the Rome Statute, which enumerates persecution based on gender as a separate crime against humanity [Article 7(1)(h)]. It should be noted, however, that there was some uncertainty and considerable frustration around the way in which the term “gender” was defined in the Statute. Article 7(3) defines gender to be “two sexes, male and female, within the context of society. The term ‘gender’ does not indicate any meaning different from the above.” Some commentators have criticized this definition as an unwarranted qualification of the term gender, which “will complicate the prosecution of gender-based crimes” and

which is “unworkable and impractical.”¹¹³

Despite these fears, it is not clear that the ICC need be hindered by Article 7(3). The definition was drawn partly from the Report of the Secretary-General to the Beijing Platform for Action,¹¹⁴ which was circulated among those delegates of the Rome Conference negotiating the gender definition. Taken at its best, it represents an overt recognition that “gender roles are contingent on the social and economic context and can vary according to the context and time.”¹¹⁵ It is hoped that the ICC will be free to pursue the understanding of gender outlined in the Secretary-General’s Report, which reads in part:

Gender analysis is done in order to examine similarities and differences in roles and responsibilities between women and men without direct reference to biology, but rather to the behaviour patterns expected from women and men and their cultural reinforcement. These roles are usually specific to a given area and time.¹¹⁶

This discussion would provide an excellent basis for the Court to examine and critique the sociological and cultural practices that make women so vulnerable to gender crimes in conflict situations.

On the procedural side, the Statute requires that “fair representation of female and male judges” be taken into account in the selection process [Article 36(8)(a)(iii)], as well as fair representation of females and males in the selection of staff in the Office of the Prosecutor and in all other organs of the Court. The Prosecutor is required to appoint advisers with legal expertise on specific issues including sexual and gender violence [Article 42(9)]. He or she can refer cases to the ICC *proprio motu*, acting on NGO information. This is especially important for victims of gender crimes since it allows for women’s NGOs to provide the Prosecutor with information that might not be forthcoming if left to the women victims of gender crimes because of the shame attached to these crimes.¹¹⁷

Article 54(1)(b) imposes a general duty on the Prosecutor to:

[t]ake appropriate measures to ensure the effective investigation and prosecution of crimes within the jurisdiction of the Court, and in doing so, respect the interests and personal circumstances of victims and witnesses, including...gender...and take into account the nature of the crime, in particular where it involves sexual violence, gender violence.

Clearly the “specific intent” to prosecute gender crimes will also inform the workings of the ICC.

This will be supplemented by the Rules and Procedures of Evidence of the ICC, which, now in finalized draft form,¹¹⁸ also codify the procedural advances in relation to gender crimes pioneered by the Tribunals. Rule 63 lays down that the ICC “shall not impose a legal requirement that corroboration is required in order to prove any crime within the jurisdiction of the Court, in particular, crimes of sexual violence.” Rules 70 and 71 contain the provisions relating to consent and the admissibility of prior sexual conduct in cases of sexual violence. They mirror the Rules of the Tribunals in providing for a complete prohibition on the admissibility of “prior or subsequent sexual conduct of a victim or witness.” The provisions relating to consent are, in fact, more comprehensive than their predecessors, specifying that consent “cannot be inferred by reason of any words or conduct of a victim where force, threat of force, coercion or taking advantage of a coercive environment undermined the victim’s ability to give voluntary and genuine consent”; nor can it be inferred “by reason of any words or conduct of a victim where the victim is inca-

pable of giving genuine consent” or “by reason of the silence of, or lack of resistance by, a victim to the alleged sexual violence.” This goes a long way to ensuring that, even if non-consent is considered a substantive element of rape and other gender crimes, the destructive interpretations given consent that bedeviled much domestic jurisprudence will not make their way into the international arena.

Rules 87 and 88 of the ICC Draft Rules codify the gamut of protective measures available for victims and witnesses. Notably, Rule 88(5) dealing the “special protective measures” states:

a Chamber shall be vigilant in controlling the manner of questioning a witness or victim so as to avoid any harassment or intimidation, paying particular attention to attacks on victims of crimes of sexual violence.

Finally, Rules 16-19 establish the ICC’s Victims and Witnesses Unit. One of the responsibilities of the Registrar, under whom the Unit falls, is enumerated in Rule 16(1)(d) to be “taking gender-sensitive measures to facilitate the participation of victims of sexual violence at all stages of the proceedings.” Exactly the same duty is enumerated for the Unit itself under Rule 17(2)(b)(iii), and the powers of the Unit have been expanded from those of the Units in the International Tribunals to include “recommending to the organs of the Court the adoption of protection measures” [Article 17(2)(a)(ii)].¹¹⁹

Beyond the Courtroom: Changing Attitudes

Given these substantive and procedural advances in addressing gender crimes, the question becomes how to ensure that these advances will actually affect the attitudes that lead to rape, or indeed whether they will provide some sort of deterrence to the future commission of gender crimes. The first possibility, already discussed, is that the delineation rape, sexual slavery, forced pregnancy, enforced sterilisation, and other forms of sexual violence as crimes against humanity and war crimes in the ICC Statute and the jurisprudence of the Tribunals will form the basis for the prosecution of international gender crimes in domestic courts. If the countries in which the crimes took place, as well as the state to which perpetrators have fled, invoke universal jurisdiction to try those who committed gender crimes, the way will certainly be open for the substantive findings and the procedural advances of the Tribunals to influence domestic legal systems. It would also go a long way toward changing sexist attitudes for courts in such cases, which will no doubt generate much media attention, to comment on the social and cultural prejudices and stereotypes that underpin gender crimes.

One of the bars to the influence of the tribunals for positive reform of legal systems and social attitudes in the former Yugoslavia and Rwanda is that the communities on behalf of whom the Tribunals act often feel alienated from them. The distance between the Balkans and the Hague, between Kigali and Arusha, has led to the very people for whom justice is being sought feeling as though they do not own the process, and that they are not affected by the results. The Tribunals face a special challenge in ensuring that their judgments are reported to and understood by the people of the Former Yugoslavia and Rwanda, most especially the victims of and witnesses to gender crimes.

Another possible means to effect change in the former Yugoslavia and Rwanda is through truth commissions. For several years, leaders of civil society in Bosnia have been calling for a truth commission to augment the work of the ICTY.¹²⁰ An

influential group of leaders from all sectors of Bosnian society, led by Dr Jakob Finci, have formulated the Citizen's Association on Truth and Reconciliation, which is working both to popularize the idea of the truth commission with the general population, and to establish the legal framework for the commission.¹²¹

The Association has drawn up a draft statute establishing the commission, which has been presented to the Minister for Human Rights and Refugees, who will present it to the Parliament for adoption. The Commission will consist of seven commissioners chosen by the parliament of Bosnia and Herzegovina. It will operate at a state level, and its main function will be to collect information from victims through public hearings.¹²²

Given that they are not seeking the power to grant amnesties, but wish rather to have a credible platform from which Serbian, Croatian, and Bosnian victims can make their voices heard, support for the idea is gathering momentum within the ICTY itself. Indeed, the process for setting up such a commission has resulted in increased interaction between the Tribunal and civil society in Bosnia and Herzegovina. At the end of 2000, the steering committee of an association of citizens from Bosnia and Herzegovina addressed the President and the Prosecutor of the ICTY about the compatibility of the mandate of a truth and reconciliation commission with that of the Tribunal.¹²³ And on May 12, 2001, a conference entitled "An idea whose time has come: a Truth and Reconciliation Commission in Bosnia and Herzegovina" was organized in Sarajevo to allow all concerned parties to "air their views on the appropriateness of the commission, its legitimacy and its compatibility with the International Tribunal."¹²⁴ Claude Jorda, president of the Tribunal, gave a speech at the Conference in which he proposed the establishment of a system of reconciliation complementary to the work of the Tribunal that would allow for a more effective contribution to the reconstruction of national unity.¹²⁵

It will be most important for such a truth commission to address gender crimes, although the mechanism by which it will undertake to do this will probably be difficult to set up. It is quite foreseeable that victims unwilling to testify in in camera proceedings far away from their communities will balk at the idea of appearing before a commission the very point of which is to be as public about their experiences as possible. Nevertheless, a truth commission for Bosnia and Herzegovina will have to find ways, possibly through working with women's NGOs, to facilitate the testimony of victims of gender crimes, allowing them the vindication of an opportunity to tell their stories to the world, and providing a vital chance for their society to begin to address the gender discrimination that led to such widespread rape and sexual violence.

Such concerns will also have to be addressed in Rwanda by the "gacaca jurisdictions" initiative, aimed at clearing the huge backlog of prisoners accused of committing crimes during the genocide. The gacaca system is based on a form of traditional non-penal Rwandan justice in which communities elect judges to preside over community gatherings. The modern gacaca jurisdictions will have a penal function, and will operate by means of meetings at which witnesses and victims will denounce alleged perpetrators of crimes.¹²⁶ The community, led by the judges, will then decide the guilt of those accused. The gacaca system is expected to be composed of about 10,000 courts, with an estimated 400,000 court officials. An "organic law" setting out the operation of gacaca courts was passed by the Rwandan parliament and approved by Rwanda's Constitutional Court in 2001.¹²⁷

The gacaca jurisdictions will play an important role in prosecuting the gender crimes so prevalent during the Rwanda genocide, as all allegations relating to the

genocide have to go through the initial stages of gacaca hearings in order to be categorized and processed. Allegations of rape and sexual assault, which have been classified as “category one” crimes, will then be passed on to the Rwandan court system. This means that, although not responsible for prosecuting gender crimes, the gacaca jurisdiction will nevertheless be forced to address the great difficulties around victims of gender crimes having to participate in this kind of public process in order for the perpetrators of crimes against them to be brought to justice. Mary Balikungeri, director of a Kigali clinic that supports rape victims and widows, commented:

Our hope is that gacaca will bring people to dialogue....The truth is important. Somehow, justice will have to take its course. Without it, survivors cannot come to terms with what has happened.¹²⁸

There have been several encouraging signs in relation to the gacaca’s ability to address gender crimes. Although the traditional form of gacaca was dominated by men, the modern version is very different. A woman, Aloisea Inyumba, has been made Co-ordinator of the gacaca jurisdictions, and both she and Angelina Muganza, the Rwandan Minister for Gender, stated several times that women will be an important part of the process.¹²⁹ Between June and December 2002, 118 pilot gacaca jurisdictions were set up, all of which are still completing the pre-trial categorization process. In some areas, two-thirds of the judges elected are women, and women have played a significant role in identifying possible accused, sometimes even serving as surrogates for the absent male members of their families.¹³⁰ Most significantly, in many jurisdictions women have given spontaneous testimony about rape,¹³¹ belying conventional notions about the reluctance of Rwandan women to speak about gender crimes. Hopefully gacaca will provide a medium through which the gender crimes committed in Rwanda will be addressed, and which will begin to break down the prejudices that gave rise to such widespread rape.

Conclusion

On Saturday, May 15, 1999, Kofi Anan jointly with Dutch Prime Minister Wim Kok, Prime Minister Sheikh Hasani of Bangladesh, and Queen Noor of Jordan presented to the world the Hague Agenda for Peace and Justice for the twenty-first century.¹³² The Agenda, which was the core document of the largest civil society peace conference in history, embraces fifty detailed programmes that set a worldwide direction for conflict prevention, implementation of human rights, peace-keeping, disarmament, and coping with the root causes of war.

In addressing the “Root Causes of War / Culture of Peace,” numbers five and six on the Agenda are:

5. Eliminate Racial, Ethnic, Religious, and Gender Intolerance
6. Promote Gender Justice

Under “International Humanitarian and Human Rights Law and Institutions,” the Agenda calls for the advancement of the global campaign for the establishment of the International Criminal Court, reinforced support for the International Criminal Tribunals, and the enforcement of universal jurisdiction for universal crimes. It then builds on these items to call for [ending] “violence against women in times of armed conflict.”

This clarion call, which emerged from three years of intensive consultation

among hundreds of organizations of civil society across the world, and which is now entrenched in an official document of the United Nations, has begun to be answered. The work of the International Tribunals and the promise of the ICC provide a strong basis for the international community to start addressing rape, forced pregnancy, sexual slavery, and other gender crimes committed during armed conflict or as part of genocide. The misogynistic attitudes behind these acts can be unmasked at an international level, and the necessary steps towards eliminating these attitudes can be taken if the findings of international criminal law are brought home to domestic populations through publicity or domestic prosecutions. It is our firm hope that the history of impunity for gender crimes in internal criminal law will be resolutely replaced by a future of accountability, deterrence, and prevention. Z

Notes

1. ICTR-96-4-T (September, 1998).
2. Paras 596-7.
3. Para 731.
4. Paras 685-95 and para 706.
5. Correct as of June 2003.
6. Any area of study that focuses on sexual violence seems to be awash with terminological difficulties. We have chosen to use the term "gender crimes" as a generic term to encompass rape, sexual assault, sexual slavery, forced prostitution, forced pregnancy, and enforced sterilisation. We did so because this set of crimes is usually partially motivated by the gender of the victim (gender being inclusive of the social and cultural aspects of biological difference).
7. The history of omission of gender crimes in international law has been extensively discussed. See, for example, Gabrielle Kirk McDonald, "Friedmann Award Address: Crimes of Sexual Violence: The Experience of the International Criminal Tribunal," *Columbia Journal of Transnational Law* 39, no. 1 (January 2000): 1; Fionnuala Ni Aolain, "Radical Rules: The Effects of Evidential and Procedural Rules on the Regulation of Sexual Violence in War," *Albany Law Review* 60 (1997): 883; Linda A Malone, "Beyond Bosnia and in Re Kasinga: A Feminist Perspective on Recent Developments in Protecting Women from Sexual Violence," *Boston University International Law Journal* 14 (Fall 1996): 319; Catherine N Niarchos, "Women, War and Rape: Challenges Facing the International Tribunal for the Former Yugoslavia," *Human Rights Quarterly* 17, no. 4 (1995): 649; Christine Chinkin, "Rape and Sexual Abuse of Women in International Law," *European Journal of International Law* 5, no 3 (1994): 326.
8. It is important to acknowledge at this juncture that sexual violence during armed conflict affects both men and women. Research has shown, however, that women are more likely to be subjected to sexual violence than men, and the term "gender crime" is therefore more often used to mean crimes against women. The United Nations Division for the Advancement of Women found that women "are also targeted for different reasons than men, and they are affected by the experience in very different ways to men. . . [W]omen occupy very different positions in society to men, and are treated differently as a result of what has happened to them. Women are frequently shunned, ostracized, and considered unmarriageable. . . Thus, while it is imperative to acknowledge and redress the trauma suffered by both men and women, it is important to recognize their different experiences when responding to the problem." "Sexual Violence and Armed Conflict: United Nations Response" (April 1998), available at <http://www.un.org/womenwatch/daw/public/w2apr98.htm>
9. S/RES 798 (1992). This in itself was a significant change. Three years earlier, after the invasion of Kuwait by Iraq, a UN report documented the prevalence of rape perpetrated against Kuwaiti women by Iraqi soldiers during the invasion, but the UN

- Security Council did not refer to sexual violence against women in its resolutions relating to the Gulf conflict. See "Sexual Violence and Armed Conflict: United Nations Response" by the UN Division for the Advancement of Women (April 1998).
10. *Prosecutor v Anto Furundzija* IT-95-17/1-A (21 July 2000) para 201.
 11. S/RES/808 (1993).
 12. Report of The Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993) Presented 3 May 1993 (S/25704).
 13. Article 1, S/RES 827 (1993).
 14. Article 3, which is common to all four Geneva Conventions, requires parties to a non-international conflict to make provision for the humane treatment of persons not taking active part in the hostilities, and prohibits "outrages upon personal dignity, in particular humiliating and degrading treatment." In the 1977 Additional Protocol II to the Conventions, which supplements Common Article 3, rape, enforced prostitution, and indecent assault are expressly prohibited under the rubric of outrages on personal dignity. Although there is some debate as to whether the Additional Protocols have achieved customary international law status, the inclusion of wording clearly modeled on Additional Protocol II in the ICTR statute reflects a growing consensus that the Protocols applied to the conflicts in both Rwanda and the Former Yugoslavia. See Sharon A Healey, "Prosecuting Rape Under the Statute of the War Crimes Tribunal for the Former Yugoslavia," *Brooklyn Journal of International Law* 21, no. 2 (1995): 327, 346.
 15. Niarchos, "Women, War and Rape," 662.
 16. UN Division for the Advancement of Women, "Sexual Violence and Armed Conflict."
 17. http://www.missouri.edu/~jschool/nanking/Tribunals/imtfe_03.htm
 18. The victims of this practice had to wait until 1992 for any official acknowledgment of the crimes committed against them. In 1992, the Japanese Government finally yielded to international and domestic pressure and officially apologized to the comfort women.
 19. The law enacted to try lesser war criminals after World War II, Control Council Law 10, did specifically list rape as a crime against humanity. Despite this advance, no prosecutions were made under the rape provision. See Kirk McDonald, "Crimes of Sexual Violence," 10.
 20. Theodor Meron, "Shakespeare's Henry The Fifth and the Law of War," *American Journal of International Law* 86 (1992): 3.
 21. Patricia Viseur Sellers and Kaoru Okuizumi, "Symposium: Prosecuting International Crimes: An Inside View: Intentional Prosecution of Sexual Assaults" *Transnational Law & Contemporary Problems* 7, no. 1 (Spring 1997): 45, 46-47. Ms. Sellers is the Legal Advisor to the Office of the Prosecutor for Gender-Related Crimes at the International Criminal Tribunals for the former Yugoslavia and Rwanda, and Ms. Okuizumi was an Intern in the Office of the Prosecutor.
 22. The election of two female judges of eleven to serve on the ICTY in 1993 was the first time women judges entered the international arena, despite the 48-year existence of the International Court of Justice. These women judges have been crucial in ensuring the prosecution of gender crimes. So far seven women have served as judges on the tribunals: Judge Navanethem Pillay of South Africa (President of the ICTR and of Trial Chamber 1), Judge Arlette Ramarason of Madagascar and Judge Andrésia Vaz of Senegal on the ICTR and Judge Elizabeth Odio Benito (Costa-Rica), Judge Gabrielle Kirk McDonald (United States; former President of the ICTY), Judge Patricia McGowan Wald (United States) and Judge Florence Ndepele Mwachande Mumba (Zambia) on the ICTY. In addition, eight women have been elected as ad litem (temporary) judges in the ICTY.
 23. Judge Jorda, Judge Odio Benito, and Judge Riad, *In re Dragan Nikolic*: Decision of Trial Chamber I, *Review of Indictment Pursuant to Rule 61 (The Prosecutor v Dragan Nikolic)* IT-94-2-R61, (October 20, 1995), para 33.
 24. This coalition is comprised of more than 100 organizations working on issues related to women's human rights in conflict situations, and is coordinated by the International Center for Human Rights and Democratic Development, in Montreal, Canada. Division for the Advancement of Women, "Sexual Violence and Armed Conflict."
 25. *Gagovic and others "Foca"* No IT-96-23 (June 26, 1996).
 26. Above, n 10.

27. Paras 164-70.
28. Paras 169.
29. Para 201.
30. Ibid.
31. Article 13(1) states that “[i]n the overall composition of the Chambers due account shall be taken of the experience of the judges in criminal law, international law, including international humanitarian law and human rights law.” For judicial analysis of the Article, see *ibid*, paras 204-5.
32. Articles 2 and 3 of the ICTY statute, Article 4 of the ICTR statute.
33. *Prosecutor v Zejnil Delalic, Zdravko Mucic, Hazim Delic and Esad Landzo* IT-96-21-T (November 16, 1998). Also sometimes referred to as the Celebici judgment.
34. Para 495. *Prosecutor v Miroslav Kvocka, Milojica Kos, Mlado Radic, Zoran Zigic and Dragoljub Prcac* IT-98-30/1-T comprehensively acknowledged at para 145 that “the jurisprudence of the Tribunals, consistent with the jurisprudence of human rights bodies, has held that rape may constitute severe pain and suffering amounting to torture, provided that the other elements of torture, such as a prohibited purpose, are met,” citing *Celebici* Trial Chamber Judgment, paras 495-96 and 941-43, *Furundzija* Trial Chamber Judgment, paras 163 and 171, *Akayesu* Trial Chamber Judgment, paras 597-98. The *Furundzija* Trial Chamber also found at para 267 that being forced to watch serious sexual attacks inflicted on a female acquaintance was torture for the forced observer.
35. Ni Aolain, “Radical Rules,” 889-90. For an analysis of the technical and evidentiary difficulties of prosecuting rape as torture, see Christin B Coan, “Rethinking the Spoils of War: Prosecuting Rape and a War Crime in the International Criminal Tribunal for the Former Yugoslavia,” *North Carolina Journal of International Law* 26 (Fall 2000): 183, 201-2.
36. Para 495.
37. Para 941. See also para 963.
38. Judith Gardam and Michelle Jarvis, *Women, Armed Conflict and International Law* (The Hague: Kluwer Law International, 2001), 15-16.
39. Rhonda Copelon, “International Conference: Gender Crimes as War Crimes: Integrating Crimes against Women into International Criminal Law,” *McGill Law Journal* 46 (2000): 217.
40. IT-95-17/1-T (December 10, 1998).
41. See note 13 above.
42. Paras 44-46.
43. Citing “the Geneva Conventions of 1949, Additional Protocol I of 1977 and Additional Protocol II of 1977. Other serious sexual assaults are expressly or implicitly prohibited in various provisions of the same treaties.” Para 165.
44. Para 169.
45. Paras 270-75.
46. See pages 8-9 above.
47. *Furundzija*, paras 208 and 210.
48. IT-96-23-T & IT-96-23/1 (February 22, 2001).
49. Para 436.
50. Paras 406-8.
51. *Akayesu*, para 731. See also Kelly Dawn Askin, “Sexual Violence in Decisions and Indictments of the Yugoslav and Rwandan Tribunals: Current Status,” *American Journal of International Law* 95, no. 1 (January 1999): 97, 106-7.
52. Para 596.
53. Paras 596-97.
54. Ni Aolain, “Radical Rules,” 891.
55. Catherine MacKinnon, *Feminism Unmodified: Discourses on Life and Law* (Cambridge: Harvard University Press, 1987), 87.
56. *Prosecutor v Delalic*, above n 31.
57. See above, page 8.
58. Above, note 10.
59. ICTR-96-13-T (January 27, 2000).
60. Para 226.
61. Para 227.

62. Para 228.
63. Para 227.
64. Para 221.
65. Musema's conviction on the charges of rape was overturned by the Appeals Chamber on the basis of new evidence adduced by two additional witnesses. *Alfred Musema v The Prosecutor* ICTR-96-13-A (November 16, 2001). The Trial Chamber was not found to have erred in its assessment of the evidence before it at the time, however. It would merely have reached a different conclusion if the evidence of the two new witnesses had been submitted together with the evidence available at the trial. The substantive reasoning of the Chamber regarding the definition of rape was therefore not brought into question.
66. Above note 44.
67. Paras 539-43.
68. Para 438.
69. Para 440.
70. Tamara L Tomkins, "Prosecuting Rape as a War Crime: Speaking the Unspeakable," *Notre Dame Law Review* 70, no. 4 (1995): 845, winner of the 1994 Notre Dame Law School Feminist Jurisprudence Essay Contest.
71. Ibid, 851ff. See also Catherine MacKinnon, "Crimes of War, Crimes of Peace," *UCLA Women's Law Journal* 4 (Fall 1993): 59 and Susan Brownmiller, *Against Our Will: Men, Women and Rape* (New York: Bantam Books, 1974).
72. "Women 2000 — Sexual Violence and Armed Conflict."
73. We say could have because many of our concerns have been addressed by the Appeals Chamber in its recent judgment, which we discuss below. *Prosecutor v Kunarac, Kovac and Vukovic* IT-96-23 & IT-96-23/1-A (June 12, 2002).
74. Another worrying aspect of the judgment in *Kunarac* is that, throughout the discussion of rape, the act is described solely as "sexual penetration" or "sexual intercourse." The ICTY has therefore moved very far away indeed from the determination evinced by the ICTR not to limit the international understanding of rape to "non-consensual intercourse."
75. Para 457.
76. Ibid.
77. Para 460.
78. Above note 70, para 125.
79. Susan Estrich, "Rape," *Yale Law Journal* 94 (May 1986): 1087, 1096-97.
80. Coan, "Rethinking the Spoils of War," 216.
81. Sellers and Okuizumi, "Prosecuting International Crimes: An Inside View," 53.
82. International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991: Rules of Procedure and Evidence, rule 96, U.N. Doc. IT/32 (1994), reprinted in 33 *I.L.M.* 484 (1994).
83. Kate Fitzgerald, "Problems of Prosecution and Adjudication of Rape and Other Sexual Assaults Under International Law," *European Journal of International Law* 8, no. 4 (1997): 638, 671.
84. Ibid, 672.
85. Para 464.
86. Para 463.
87. This is a strange and uneasy position for something that has now become an element of the offence.
88. Para 126.
89. Para 128.
90. Para 129.
91. Ibid.
92. Para 130.
93. The Rule applies broadly to evidence in cases of "sexual assault," which has been interpreted to include indecent assault, enforced prostitution, sexual mutilation, forced impregnation, and forced maternity. See Sellers and Okuizumi, "Prosecuting International Crimes: An Inside View," 51.
94. Ni Aolain, "Radical Rules," 901.
95. IT-94-1-T (May 7, 1997), para 536.

96. Above note 1, para 134.
97. Above note 44, para 956.
98. For an analysis of corroboration in some of the cases before the ICTY see Coan, "Rethinking the Spoils of War," 213-4.
99. Fitzgerald, "Problems of Prosecution and Adjudication," 673.
100. Ni Aolain, "Radical Rules," 902.
101. *Decision on the Prosecutor's Motion for the Redaction of the Public Record*, IT-96-21-T, (June 5, 1997), para 58.
102. Para 4.
103. For an excellent discussion of the use of protective measures by the ICTY, see Coan, "Rethinking the Spoils of War," 219-22.
104. *Prosecutor v Dusko Tadic IT-94-1-T, Decision on the Prosecutor's Motion Requesting Protective Measures for Victims and Witnesses* (August 10, 1995), para 46.
105. Rule 34 of the Rules of Procedure and Evidence of the Tribunals.
106. Above note 12, para 108.
107. The ICTR Unit in particular has experienced problems, and underwent a series of major reforms as a result. For an in-depth discussion of the trouble encountered by both the Units, see the transcript of the two panel discussions on victim and witness issues hosted by the Women's Caucus for Gender Justice during the 26 July-13 August 1999 Preparatory Commission meeting on the International Criminal Court (ICC) at the United Nations Headquarters in New York, available at <http://www.iccwomen.org/reports/vwicc/intro.htm>.
108. The Caucus was founded at the February 1997 Preparatory Committee for the Establishment of an ICC, when a group of women's human rights activists realized that "governments and mainstream human rights groups were paying little attention to gender issues." Barbara Bedont and Matherine Hall Martinez, "Ending Impunity for Gender Crimes Under the International Criminal Court," *Brown Journal of World Affairs* 6, issue 1 (1999): 65, 68. The Caucus included, by the time of the Rome Conference, almost 200 women's organisations from around the world. See <http://www.iccwomen.org/>
109. This opposition consisted mainly of anti-choice groups from the US and Canada, and governmental delegations from the Vatican and several Islamic states. There was fierce resistance to including the crime of forced pregnancy in the Statute, and to using the term "gender" anywhere in the Statute. Bedont and Martinez, "Ending Impunity," 69-70.
110. Brook Sari Moshan, "Women, War and Words: The Gender Component in the Permanent International Criminal Court's Definition of Crimes Against Humanity," *Fordham International Law Journal* 22, no. 4 (November 1998): 154, 176.
111. This recognition came in July 1998, over a year and a half before the decision in *Kunarac* adjudged enforced prostitution to be a category of sexual slavery and a crime against humanity. The enumeration of sexual slavery in the Rome Statute was referred to by the Chamber in *Kunarac*, and used as "evidence of state *opinio juris* as to the relevant customary international law at the time at which the recommendations were adopted." Above note 44, footnote 1333 to para 541.
112. See above, page 9.
113. See Sari Moshan and the sources cited therein, "Women, War and Words," 178-9.
114. *Implementation of the Outcome of the Fourth World Conference on Women, Report of the Secretary-General*, U.N. Doc. A/51/322, (September 3, 1996).
115. Barbara B. Bedont, "Gender-Specific Provisions of the Statute of the International Criminal Court" in *Essays on the Rome Statute of the ICC*, ed. F. Lattanzi and W. Schabas (Editrice il Sirente, 2000).
116. *Implementation of the Outcome of the Fourth World Conference on Women*, para 4.
117. See <http://www.iccwomen.org/caucus/gains1pg.htm>
118. Adopted by the Preparatory Commission for the ICC, at its 23rd meeting on June 30, 2000. Available at <http://www.un.org/law/icc/statute/rules/rulefra.htm>
119. For a much more extensive analysis of the powers of the ICC's Victims and Witnesses Unit see Bedont, "Gender-Specific Provisions of the Statute of the ICC," 107.
120. This is not to be confused with the truth commission established by President Vojislav Kostunica in March 2001, which was initially criticized as a mechanism for avoiding sending the accused to The Hague. In the aftermath of the arrest and

- transfer of Slobodan Milosevic, such criticism has diminished, and the commission has become more active now that it has an office, a few staff members, and a small budget. See www.komisija.org.
121. Association of Citizens Truth And Reconciliation website <http://www.angelfire.com/bc2/kip/engleski.html>.
 122. Jakob Finci, "Why Do We Need a Truth and Reconciliation Commission?" delivered at the Stockholm International Forum "Truth, Justice and Reconciliation" (April 23-24, 2002).
 123. *Eighth Annual Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991*. S/2001/865 (September 17, 2001) para 33.
 124. Ibid, para 36.
 125. Available at <http://www.un.org/icty/pressreal/p591-e.htm>
 126. Gabriel Gabiro and Julia Crawford, "Rwanda Prepares for Unprecedented Justice System," *Foundation Hirondelle* (April 2, 2001). Available at <http://www.hirondelle.org/>
 127. Ibid.
 128. Cited in Anita Srikameswaran, "Journey Home," *Post-Gazette* (September 24, 2000) available at <http://www.post-gazette.com/headlines/20000924rwandaeight9.asp>
 129. Statement by Ms Angelina Muganza, Minister for Gender and Women in Development and Head of Rwandese Delegation to the 23rd Special Session of The General Assembly on Women 2000 Gender Equality, Development And Peace For The 21st Century, New York (June 7, 2000). Available at http://www.rwanda1.com/government/O6_08_00news_statement-muganza.htm
 130. Alison Des Forges, "Domestic Approaches: Gacaca and the Domestic Courts," address given at the conference "Transitional Justice in Rwanda: Lessons and Challenges," British Institute of International and Comparative Law, Friday, May 23, 2003.
 131. Ibid.
 132. <http://www.c3.hu/~bocs/hague2.htm> The Agenda has now become an official UN document, UN Doc. A/54/98.

