


5-2016

# Breaking the Legacy: Recognizing and prosecuting sexual violence as a violation of human rights in the Democratic Republic of the Congo

Miranda L. Weinstein

Clark University, [weinsteinmiranda@gmail.com](mailto:weinsteinmiranda@gmail.com)

Follow this and additional works at: [https://commons.clarku.edu/idce\\_masters\\_papers](https://commons.clarku.edu/idce_masters_papers)

 Part of the [African Studies Commons](#), [Eastern European Studies Commons](#), [Human Rights Law Commons](#), [International Humanitarian Law Commons](#), [International Relations Commons](#), [Law and Gender Commons](#), [Other Legal Studies Commons](#), [Peace and Conflict Studies Commons](#), [Public Policy Commons](#), and the [Women's Studies Commons](#)

---

## Recommended Citation

Weinstein, Miranda L., "Breaking the Legacy: Recognizing and prosecuting sexual violence as a violation of human rights in the Democratic Republic of the Congo" (2016). *International Development, Community and Environment (IDCE)*. 16.  
[https://commons.clarku.edu/idce\\_masters\\_papers/16](https://commons.clarku.edu/idce_masters_papers/16)

This Thesis is brought to you for free and open access by the Master's Papers at Clark Digital Commons. It has been accepted for inclusion in International Development, Community and Environment (IDCE) by an authorized administrator of Clark Digital Commons. For more information, please contact [mkrikonis@clarku.edu](mailto:mkrikonis@clarku.edu), [jodolan@clarku.edu](mailto:jodolan@clarku.edu).

# BREAKING THE LEGACY

Recognizing and prosecuting sexual violence as a violation  
of human rights in the Democratic Republic of the Congo

*Weinstein, Miranda*

*Honors Thesis | Clark University | March 2016*

*Advisor: Ken MacLean | Second Reader: Kristen Williams*



**Abstract:** This paper aims to outline the existing policies aimed at providing protection for sexual abuse survivors in the Democratic Republic of the Congo. In an attempt to provide justice for the survivors of sexual abuse, an analysis of the 1992-1995 Bosnia and Herzegovina post-conflict reconstruction is included. In particular, prosecution of sexual violence and rape as a weapon of war will be provided in order to weigh the benefits and weaknesses of international criminal law. The conflict in eastern Democratic Republic of the Congo witnesses widespread and systematic sexual violence abuses. With over 60 armed groups at any given day, identifying the perpetrators of the crimes are challenging. Perpetrators go unpunished, which adds to the air of impunity seen throughout the country. There is an urgency to incorporate sexual violence into prosecution of all war criminals. It is imperative that the government of Democratic Republic of Congo, and the international community realize the destructive nature of disregarding the voices of the people who have suffered during the conflict. In addition to improving the prosecution of alleged war criminals, civil societies and survivors of conflict need to be incorporated into the peace talks and post-conflict reconstruction.

**Key words:** Democratic Republic of the Congo, Bosnia and Herzegovina, transitional justice, sexual violence, rape as a weapon of war, human security

# TABLE OF CONTENTS

<b>PREFACE</b> .....	<b>V</b>
<b>CHAPTER 1: INTRODUCTION</b> .....	<b>1</b>
BRIEF HISTORY OF THE DEMOCRATIC REPUBLIC OF THE CONGO .....	1
SCOPE OF INVESTIGATION .....	6
METHODOLOGY .....	10
<i>Politics of Numbers</i> .....	12
IMPORTANT DEFINITIONS AND DISTINCTIONS .....	13
<i>Fundamental definitions</i> .....	13
<i>Gender-Mainstreaming versus Gender-Centrality</i> .....	16
<i>Hegemonic Masculinity</i> .....	17
<i>Victimization</i> .....	19
<i>Policy Definitions- Refugee versus Internally Displaced Persons</i> .....	20
<i>Intra-State Wars versus Inter-State Wars</i> .....	21
<i>Transitional Justice and the Six Aspects of Justice</i> .....	21
<i>Human Rights Law and Policies</i> .....	25
CONCLUSION.....	26
<b>CHAPTER 2: LITERATURE REVIEW</b> .....	<b>27</b>
DECONSTRUCTING RAPE AS A WEAPON OF WAR AND VICTIMIZATION .....	28
INSTITUTIONAL RESPONSIBILITIES .....	32
CONSTRUCTION OF GENDER AND GENDER ROLES.....	34
LEGAL THEMES AND PROSECUTION .....	35
LIMITATIONS OF THE RESEARCH .....	37
<b>CHAPTER 3: CONFLICT IN THE DRC</b> .....	<b>39</b>
CONFLICTS IN DRC.....	40
KIVU CONFLICTS .....	44
HUMAN SECURITY RISKS .....	47
POWER RELATIONSHIPS.....	50
RAPE AS A WEAPON OF WAR .....	52
CONCLUSION.....	57
<b>CHAPTER 4: BOSNIA AND RAPE AS A WEAPON OF WAR</b> .....	<b>58</b>
UNDERSTANDING THE WAR IN BOSNIA AND HERZEGOVINA .....	59
DAYTON PEACE ACCORDS AND POST-CONFLICT BOSNIA .....	62
TRANSITIONAL JUSTICE: WHAT IS JUSTICE FOR BOSNIA? .....	65
INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA .....	66
WAR CRIMES CHAMBER .....	71
ICTY AND THE ESTABLISHMENT OF THE INTERNATIONAL CRIMINAL COURT .....	73
FEMINISM AND GENDER-CENTRALIZATION .....	75
CONCLUSION.....	77
<b>CHAPTER 5: INTERNATIONAL POLICIES</b> .....	<b>80</b>
INTERNATIONAL POLICIES .....	80
<i>Geneva Conventions</i> .....	80
<i>Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)</i> .....	83
<i>Convention on the Rights of the Child (CRC)</i> .....	85
<i>Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power</i> .....	90
UNITED NATIONS SECURITY COUNCIL RESOLUTIONS .....	92
<i>United Nations Security Council Resolutions 1325</i> .....	92

<i>United Nations Security Council Resolutions 1820</i> .....	93
<i>United Nations Security Council Resolution 1888</i> .....	94
<i>United Nations Security Council Resolution 1889</i> .....	94
<i>United Nations Security Council Resolution 1960</i> .....	95
<i>United Nations Security Council Resolution 2106</i> .....	95
<i>United Nations Security Council Resolution 2122</i> .....	95
AFRICAN UNION POLICIES.....	95
INTERNATIONAL JUSTICE, THE ICC AND THE ROME STATUTE .....	97
CONCLUSION.....	98
<b>CHAPTER 6: CONGOLESE DOMESTIC POLICIES AND THE TRANSITIONAL JUSTICE APPROACH IN PROSECUTING RAPE AS A WEAPON OF WAR AND SEXUAL VIOLENCE DURING CONFLICT .....</b>	<b>100</b>
CULTURAL UNDERSTANDING OF RAPE IN DRC .....	100
PENAL CODE AND MILITARY CODE OF CONGO .....	101
MOBILE COURTS.....	106
LIMITATIONS OF THE JUDICIAL SYSTEM IN PROSECUTING WARTIME SEXUAL VIOLENCE .....	111
MINOVA COURT CASE .....	113
CONCLUSION.....	114
<b>CHAPTER 7: WHERE TO GO FROM HERE?.....</b>	<b>116</b>
INTERNATIONAL CRIMINAL JUSTICE .....	116
DEMobilIZATION, DEMILITARIZATION AND REINTEGRATION PROCESS AND PEACEBUILDING.....	118
COMBATING SEXUAL VIOLENCE DURING CONFLICT.....	121
IMPROVEMENTS FOR THE CONGOLESE JUDICIAL SYSTEM.....	122
LIMITATIONS FROM BOSNIA- WHAT THE DRC SHOULD IMPROVE UPON.....	123
ICC INVESTIGATIONS IN DRC .....	126
THE STRUCTURE OF THE COURT AND WITNESS INVOLVEMENT IN PROSECUTION .....	128
THE CALL TO INCORPORATE SEXUAL VIOLENCE CRIMES IN ALL PROSECUTIONS .....	130
RECOMMENDATIONS .....	131
<i>To the International Community</i> .....	132
<i>To the Government of The Democratic Republic of the Congo</i> .....	134
<i>Areas for further research</i> .....	139
CONCLUSION.....	140
<b>APPENDIX A.....</b>	<b>143</b>
FIGURE 1: MAP OF DEMOCRATIC REPUBLIC OF THE CONGO .....	143
FIGURE 2: MAP OF EAST-CENTRAL DEMOCRATIC REPUBLIC OF THE CONGO.....	144
<b>APPENDIX B .....</b>	<b>145</b>
FIGURE 3: MAP OF INTERNALLY DISPLACED PERSONS IN DRC AND RETURNEES .....	145
<b>APPENDIX C .....</b>	<b>146</b>
WHO’S WHO IN THE CONFLICT IN DRC .....	146
<b>APPENDIX D.....</b>	<b>147</b>
CHART OF POLICIES, RATIFICATION STATUS AND STATE SIGNATORIES .....	147
CHART OF IMPORTANT ICC AND ICTY CASES .....	149
<b>APPENDIX E .....</b>	<b>154</b>
ABBREVIATIONS .....	154
<b>BIBLIOGRAPHY .....</b>	<b>156</b>

# Preface

## *Positionality and Subjectivity Statement*

The main objective of this paper is to study pre-existing policies on transitional justice and prosecution of wartime criminals in order to determine areas that are imperative to be addressed during the post-conflict transitional justice phase in DRC. Specifically, it researches how to address rape as a weapon of war and sexual violence. It is aimed towards policymakers and academics. One might ask: What do I benefit from researching this topic? Why should anyone listen to my concluding remarks? While I might not be Congolese, or speak any languages spoken in the Democratic Republic of the Congo, I am a woman. I am a human rights defender, and understand the intricacies of international human rights law, international humanitarian law and the international justice system and conflict. I am currently a senior, double majoring in Political Science and International Development and Social Change. My specializations within each department are International Relations, and Gender Equality and Human Rights. While I might not understand every aspect of culture in DRC, I understand the need to promote women's rights and gender equality. I consider myself an ally, and want to use my privilege- coming from the United States and Sweden, being a Caucasian woman, and being able to receive a Bachelor's Degree at a higher institution- to defend the rights of others during conflict. I do not argue (within this piece) that all human rights are universal and inalienable. I view human rights, human security and freedom from sexual violence during conflict, an inalienable human right. Disregarding this human security aspect shows a failure of the state, and emphasizes the need to incorporate this human right into universal human rights discourses around the globe.

Nonetheless, it is equally as important in realizing how history, structural adjustment policies and colonization has contributed to the inability of the state to provide protection of a person human security.

Some of this research is selfish on my part. My undergraduate honors thesis is part of my application to Clark University's Graduate School so I can continue studying International Development and Social Change. While writing this research paper started from the desire to receive an accelerated master's degree, learning the complexities of conflict, gender, sexual violence and prosecution has made me realize the need to further expand this discourse. In the future, I want to be able to conduct primary research on gender roles during conflict and gendered reactions towards sexual violence during conflict. Nevertheless, this was not possible given the scope of this research paper and my availability in conducting primary research given the time frame. As a result, I use other investigations to provide the influential voice of victims from conflict.

# Chapter 1: Introduction

## *Brief History of the Democratic Republic of the Congo*

Located in the heart of the African continent, the Democratic Republic of the Congo (henceforth DRC) is one of the most resource rich countries in the world. It is estimated that DRC holds sixty percent of the world's coltan (abbreviation for columbite–tantalite), along with other natural resources such as gold, tin and tungsten (Diggs 2012, 37). Over \$1 million worth of coltan is exported out of the country every day (Meger 2010, 118). Coltan is necessary for the production of electronics, smart phones, etc. While DRC is wealthy in various aspects of society, it has been plagued by colonization and therefore the decolonization process (Central Intelligence Agency: The World FactBook, 2016). Originally established as a private colony of King Leopold II of Belgium, DRC (then Zaire) received colonial independence in 1960s (Diggs 2012, 25-36). The First Congolese War started in 1996. The Second Congolese War (1998-2003) is often referred to as Africa's World War. These two conflicts claimed over 5 million lives (Diggs 2012, 25-36). Active fighting in the eastern regions of the country has been prevalent since 2004. The conflicts in eastern DRC have become known as the Kivu Conflicts. While there have been reoccurring ceasefires and peace treaties, fighting has essentially been continuous since the First Congolese War in 1996. The recent encounters in the eastern regions of DRC are the bloodiest battles seen since World War II (Diggs 2012, 25-36; ITUC International Trade Union Confederation 2011, 8). The competition for resources contributes to the constant warfare. Political instability, the central government's complacency in human rights violations and its inability to control rebel groups, contribute to the instability seen in the eastern regions of the country and has eternalized the fighting (Diggs 2012).



Rape is widespread within the Congolese society and is used as a weapon of war. It has been stated that DRC is the “worst place in the world to be a woman or child” (Sawyer and Van Woudenberg 2009, 10). It has also been labeled “the rape capital of the world” (Loko Roko, et al. 2014, 2). Gender-based violence and rape as a weapon of war is a violation of a person’s human security and human rights. Furthermore, rape as a weapon of war is a violation of international humanitarian law (Rule 93 ICRC), as well as the Congolese Domestic Criminal Code (Article 170) (International Committee of the Red Cross, 2016). Rape rates go severely underreported as a result of stigma and lack of access to hospitals and judicial proceedings. In 2009, the United Nations announced estimates that over 200,000 women and girls had been assaulted in the past twelve years in DRC (Kelly 2010, 2). The United Nations High Commissioner for Refugees (UNHCR) documented 1,244 women as victims of sexual assault in the first three months of 2010 (Kelly 2010, 2). Organizations fluctuate in their reported rape and sexual assault cases, but data shows an overwhelming prevalence of reported sexual violence and assault towards women and children. The politics of numbers as it relates to rape rates and the conflict in DRC will be discussed in depth towards the end of this chapter.

The types of rape seen in DRC are extremely violent and can lead to death. Due to the presences of rape as a weapon of war in conflicts such as Bosnian and Herzegovina, Sierra Leone and the Rwandan genocide, the international community has begun to recognize the implications of this form of human rights violation on the individual level, as well as the societal level. It is imperative that the international and domestic communities, as well as individuals begin to address the implications of rape in DRC. Perpetrators who violate this form of human security are not being prosecuted. Impunity is widespread. The state is implicit in immortalizing this tactic of war. As Van Woundenberg states, “[t]he culture of impunity for sexual violence and

## Breaking the Legacy

other serious crimes is at the heart of why rape continues... Military commanders are powerful figures in Congo, [and are] perceived as being untouchable” (Van Woudenberg 2012, 133-134). Until women and men’s rights are restored and justice is seen for victims, the people of DRC will not receive complete justice or an end to the conflicts. A more comprehensive analysis of the history and conflict in DRC is given in Chapter Three. The use of rape as a weapon of war in DRC is also addressed in Chapter Three. The history of rape as a weapon of war on the international level is discussed later in this chapter.

This work will aim to answer the primary research question: Given the challenges present in prosecuting sexual violence after the conflict in Bosnia, what can the Democratic Republic of the Congo learn, and what are the existing policies aimed at prosecuting alleged war criminals for sexual violence? Additional research questions were asked and addressed throughout the paper. These include: How can impunity be reduced and justice achieved? What aspects of society need to be included and addressed in the transitional justice system during the future post-conflict period in DRC? Chapter One outlines the research process, methodology, and literature collected throughout the research process of this paper. Important definitions and policies are given in this chapter to assist the reader for the future chapters. Chapter Two provides a literature review of common themes present in previous research and how it contributes to this paper, as well as limitations from these individual’s research and papers. Chapter Three focuses on the history of the conflicts in DRC by providing an important timeline. It also outlines the actors involved in the conflict. Chapter Three highlights the extent to which rape as a weapon of war is seen in DRC. It provides some perspectives of perpetrators, as well as victims of wartime rape.

Chapter Four gives an important analysis of the conflict of Bosnia, the use of rape as a

weapon of war during this conflict, the creation of the ethnic cleansing, and the post-conflict restorative justice procedures. The motivation towards electing to analyze Bosnia in this research project is due to the nature of the conflict, as it is commonly depicted as an ethnic conflict where sexual violence was widespread. After the Bosnian conflict, the international community acknowledged the extent to which rape had been used as a weapon of war and incorporated rape into the definition of crimes against humanity and a violation of human rights law. Preexisting International humanitarian laws were also expanded upon as a result of this conflict. Prior to the conflict in Bosnia, individuals discerned rape as an inevitable consequence of war. The landmark cases during the International Criminal Tribunals for the Former Yugoslavia (ICTY) changed this perspective. The justice process in Bosnia is given in-depth analysis in order to determine what policies should be applied to DRC and the limitations of the peace process.

Chapter Five outlines existing international policies regarding sexual violence, gender, international human rights laws, international humanitarian laws, ethnic cleansing, justice and prosecutions. Chapter Five looks at human rights treaties and the status of the treaties. It pulls articles from the treaties to emphasize the need to address women's rights in conflict settings. Chapter Five reiterates the international community's affirmation towards addressing sexual violence during conflict. Chapter Six focuses on the policies within the Democratic Republic of the Congo in order to understand what policies are missing, what is enforced and what needs to be enforced. This chapter analyzes the change in policies addressing sexual violence within the Congolese context. Chapter Six investigates domestic court cases that have provided justice as well as failed justice for victims of human rights violations. The conclusion asks what the DRC can learn from these policies. It weighs the pros and cons iterated throughout the entire thesis. It asks questions for future research and address the limitations seen. Recommendations towards

the international community, Government of the Democratic Republic of the Congo, and African Union will be discussed in the final chapter.

While no specific chapter is dedicated towards the efforts of either non-governmental or international organizations, the work these groups do is referenced throughout the chapters. The work these advocacy groups do is important to incorporate into the text throughout in an effort to raise awareness for the issues seen in DRC. International organizations (IOs) and non-governmental organizations (NGOs) can hold a significant amount of power in applying pressure to the governments (national and international) in enforcing policies or implicating individuals involved in human rights violations. Including the voice of the international organizations is important as it is often unbiased (or biased in a different way) and provides a different perspective than the one provided by the governments.

Overall, this study emphasizes why research within the field of sexual violence during conflict and post-conflict reconstruction is important. This paper adds to the greater literature on rape as a weapon of war, the conflict in DRC and international human rights law in general. Peace will not be achieved without listening to the voices of victims during any and all conflicts. Incorporating women into the decision-making and peace process is imperative for a successful post-conflict transition. Reintegration techniques for soldiers returning from conflict need to be improved, as well as reintegration for victims of conflict and sexual violence.

The use of rape as a weapon of war targets women (and men) for their bodies during times of conflict. This tactic is becoming increasingly present in contemporary wartime. As Sara Meger states, “[i]n order to deter the use of sexual violence as an instrument of resource warfare, the international community must hold the chain of individuals, corporations and industries that fund resource-driven conflicts accountable for their role in incentivizing sexual violence” (Meger

2011, 126). This form of violence needs to be acknowledged and stopped. Action taken to protect and prosecute the individuals involved needs to be seen within the context of the conflict in the Democratic Republic of the Congo. Furthermore, there is an issue within the context of framing human rights violations in regards to rape as a weapon of war, human rights security during conflict, and ‘normalized’ rape. While these phrases represent the same violation of one’s body and human security, they appeal to different audiences. Some are deemed more important (rape as a weapon of war) and others are seen as inevitable (‘normalized’ rape or “lust rape” as discussed below).

This chapter begins by discussing the scope of the investigation, what will be addressed and the timeline researched. After discussing the scope and methodology, the research process will be discussed. The methodology section discusses how research was conducted, what type of sources were used, and the importance of understanding representation in discussing numbers and statistics as they are presented throughout the paper. The final section outlines necessary definitions and distinctions. Providing the definitions at the beginning of the paper is important as the definitions present the fundamental backbone to understand the complexities of the situation and the framing of my argument. A conclusion section is given to deliver a summary and link this chapter to the next, the Literature Review.

### **Scope of Investigation**

Rape has been present in conflict since the beginning of time. Prior to the conflict in Bosnia, researchers, politicians, civilians, etc. perceived rape to be an inevitable consequence of war and conflict (Meger 2011, 102-108). The modern international criminal and human rights institutions were created following World War II and the Nuremberg War Crime Trials. Nonetheless, during

## Breaking the Legacy

these trials, sexual violence was overlooked and not addressed. At the Tokyo Tribunals, “rape” was only mentioned once, in passing, despite the widely acknowledged presence of “comfort women” and in other conflict instances, i.e. Nanking (Aydelott 1993, 585-631). The lack of addressing sexual violence during conflict in these tribunals has contributed to the lag in acknowledging individual’s bodies can be targeted during conflict. Between 1991 and 2003, Jennifer Green conducted research identifying the widespread and systematic use of rape as a weapon of war around the world. She found that this violation of human rights was employed in twenty-four conflicts (Maedl 2011, 129-130). Rape has been present in the three contemporary conflicts in the Democratic Republic of the Congo. However, this project focuses on sexual violence in the eastern regions of DRC. These violent outbreaks have become known as the Kivu Conflicts. The reason for limiting the scope of research and time frame is not because the rapes that occurred during the First Congolese War and Second Congolese Wars are not important. Rather, the current conflict has witnessed “widespread” and “systematic” rape rates. Furthermore, amnesties and pardons were granted for the first two conflicts. As the conflict in eastern DRC is active, there is a higher likelihood that restorative justice aimed towards the victims of conflict and sexual violence will be effective if implemented from a gender-central approach.

Since the 1990s, the world has seen a change in the way conflicts are being fought. This created a new phrase: “new wars” was coined by Mary Kaldor (Kaldor 1999).<sup>1</sup> Historically, fighting occurred between official state armed groups, and not non-state actor groups or guerilla

---

<sup>1</sup> Kaldor’s theory of “new wars” versus “old wars” has seen some criticism in recent years. Stathis Kalyvas argues the labeling of “new” and “old wars” is rooted in a misunderstanding of the historical research on “new wars” and how there is no significant difference between these types of conflicts (Kalyvas 2001, 99-108). However, Kaldor’s perspective of “new” versus “old wars” is still used in the paper to highlight the difference in protecting versus targeting civilians throughout the history of conflicts.

groups. There were designated battlefields, and fighting did not occur within the neighborhoods and civilians were not targeted. Old wars are rooted in *jus in bello* which aims to provide protection of non-combatants. Non-combatants are usually women, as historically women are excluded from fighting. New wars, however, have seen a change in how they are fought. They are fought by non-state actor groups, rebel groups, local warlords, etc. One of the main goals is to receive political control of the territory or state, rather than physical control of the land. New wars increase the rates of refugees and internally displaced persons as people flee from their homes. The conflicts tend to be rooted in identity-based politics and are financed by the black market and shadow networks. Furthermore, active fighting occurs within civilian territory (Kaldor 1999). New wars are significantly more destructive than old wars as casualties are higher, infrastructure is destroyed and there is a disregard for international humanitarian law. WWII was fought between multiple states and official armed groups. Yet, compared to WWII, the conflict in DRC has seen similar death rates. The conflicts in DRC are fought in large part by non-state actor groups. Civilians are intentionally targeted as a tactic of war for intimidation and torture. The shift in where and how conflict is being fought affects civilians and peacekeepers. It has foregrounded the need to reform international policies. The international community has created an abundance of resolutions and treaties aimed at protecting civilians and peace in an effort to end the conflicts. These policies are constantly reaffirming the need to protect the rights of civilians, usually women and children, during conflict. Furthermore, there is a focus on granting amnesties to end fighting and reintegrate combatants.

There are many factors that have contributed in my choosing to investigate post-conflict justice in the former Yugoslavia, particularly Bosnia and Herzegovina (1992) (henceforth Bosnia). As mentioned above, the types of crimes seen in Bosnia established an international

## Breaking the Legacy

precedence that included rape as a weapon of war as a form of ethnic cleansing. Furthermore, the conflict in Bosnia created the *ad hoc* international criminal justice court, the International Criminal Tribunal for the Former Yugoslavia (1993) (ICTY). The ICTY enhanced upon the global precedence set during the Nuremburg Trials on the prosecution of individuals for war crimes. The ICTY also paved the way for the Rome Statute (1998), and the formation of the International Criminal Court (2002). The conflict in Bosnia expanded the discourse on sexual violence as it provided a much needed distinction between the definitions of rape and genocidal rape.

Another motivation in choosing to examine the conflict in Bosnia is due to the type of transitional justice that was present during the post-conflict process. Prosecution of individuals charged with war crimes occurred at the international courts, and then merged into the national courts. While this structure has many limitations, analyzing the successes and weaknesses is important when trying to decide the best process for the victims of the conflict in the Democratic Republic of the Congo. One might inquire why the Rwandan Genocide was not chosen to act as the other case study. The reasoning for this is because many Rwandan *génocidaires* are responsible for the conflict in eastern DRC and are active in the rebel non-state actor groups.

The Democratic Republic of the Congo was chosen for this thesis because the conflict is ongoing. As a result, post-conflict reconstruction and prosecution of alleged sexual abusers can potentially have more of an impact, as there is room for improvement. Rather than analyzing the failures of past conflicts, the best way to improve the situation for survivors of sexual violence is approach wartime sexual violence as a violation of one's human right and human security in order to improve their future. Gender-central policies need to be incorporated into the disarmament, demobilization and reintegration (DDR) programs. Moreover, the extensive use of



individuals (mostly women's) bodies as a weapon of war is destructive to many aspects of society. It is crucial that the ongoing conflict comes to a timely end. Women and men must be incorporated into the peace talks. The question remains: which women and which men should be incorporated into the peace talks? All women and all women (especially civilians) should be incorporated into the peace talks. Every individual has a different perspective of conflict, and it is important to have civil society involvement in peace talks. One of the aims of this report is to show the deficits of the incorporation women in the Bosnian peace process and the ultimate failure at achieving complete justice for all victims of sexual violence from conflict. There has been an overall lack of incorporating women into the peace process in conflict around the world. Prior tribunals, mandates and post-conflict reconstruction have been gender blind. But the deliberate targeting of women reemphasizes the need to incorporate gender dialogues into peace negotiations. Hopefully, when peace occurs in DRC, other states can use the model of incorporating gender and women into the greater parts of society.

### **Methodology**

This research work has been collected and gathered exclusively from secondary sources. The aim was to provide historical evidence of the conflicts and understanding of the gender roles and implications of wartime rape from a theoretical standpoint. The use of secondary sources assists in removing my own personal biases. The majority of the research used to support the argument and expand upon literature came from previous research conducted by others. The documents used are found either in research books or periodicals. Websites were consulted when addressing current statistics or official newspaper articles from the United Nations. Official government documents were analyzed to look at current policies addressing the tactical use of rape as a weapon of war. Analyzing government documents will allow for an understanding of how the

## Breaking the Legacy

government of DRC views the security threats and rape rates. Other states' policies are also addressed in order to understand their response to the conflict in DRC and the widespread sexual violence. These policies highlight the states' reactions to the ongoing security threats. This is significant as it allows for an understanding of the areas of improvement, the gaps in legislation, and implementation of the legislation.

In some instances, the research cited was based on primary research and was ethnographic in nature. This has allowed for some personal perspective of sexual violence. The personal perspectives are used to support arguments, as well as allow the reader an understanding of the people and their involvement in the conflicts. It is imperative that people are listened to when constructing peace and post-conflict transitional justice as they are the ones who are affected most by the conflict. It is important to note that while these personal perspectives are included, they are not used to generalize experiences of everyone within the DRC or other contexts. Every individual, man/woman/child, experiences life in different ways. While some women might be victims of rape, not all are victims of rape. Some men might not be victims of rape, while other men might be. It is exceptionally important not to create and perpetuate these generalizations. Maintaining these overviews do not allow for a development in the understanding of implications of sexual violence within the community and greater society.

Furthermore, the information collected is based on various documents published by international organizations and local organizations. Works by organizations such as the United Nations, various UN departments, Human Rights Watch, Amnesty International, SIDA, etc. were consulted. Publications from non-governmental organizations are able to provide unbiased statistics and reports of ongoing security concerns. Amnesty International and Human Rights Watch send examiners to investigate ongoing abuses and as such have an international reputation

of being trustworthy, groundbreaking and factual. Organizations based in the DRC have also been consulted as they provide local perspectives as to obstacles that need to be overcome.

### *Politics of Numbers*

Numbers are not always reliable. As will be noticed throughout the thesis, it has been hard to find reliable numbers. Not everyone reports their rape or sexual violations. As such, most rape rates are significantly under-reported. This has to do with the stigma towards acknowledging that you have been raped. Furthermore, within the context of DRC, the rural locations of rapes contribute to the underreporting of the crimes. The notion that the national justice institutions is ineffective also contributes to the lack of reporting human rights violations. Moreover, research projects on the rates of rape in DRC are not continuously ongoing. This means there will not be automatic updates as to rape rates. Statistics will only be published when the organization or researcher publishes the statistics.

Numbers are often used for political gain. People interpret numbers and rely upon numbers in order to determine policies and objectives. When the international community is deciding whether or not an act constitutes genocide, they look at the numbers. Focusing on the statistical numbers, rather than the experiences places a hierarchy of importance on crimes and incidents seen during conflict. Additionally, not all numbers are accurate. Often times, the original numbers reported will stick and remain as the 'label' of the conflict, even if they have been proven inaccurate (Andreas 2010, 1-22). As will be discussed in Chapter 3, the rape rates during the Bosnian conflict are estimated to be severely underreported. Skjelsbæk states the number of victims of sexual violence is significantly higher than 20,000 as the estimates originate from the beginning of the conflict and do not incorporate violations that occurred after 1992. However, this is the number that has been emphasized by the international community.

## Breaking the Legacy

This contributes to the “stickiness” of numbers, as Andreas claims (Andreas 2010, 1-22). Despite the international community’s realization that this number is most likely inaccurate, the number will not be changed. The statistical numbers given throughout the thesis represent the most recent, and reliable, numbers regarding the subject matter.

As such, it is critical that as a reader, you realize the likely inaccuracy of these numbers. When statistics are given, it is important to ask who reported those statistics and the political motivation the agency might have had for those exact numbers. Additionally, asking questions such as: Which individuals reported the crimes? How did they report the crimes? Where did they report the crimes? Did they get approval from the male in their family? These questions are pertinent to be asked and will promote developments on the discourse on justice in DRC. If individuals are uneducated or unaware of the resources accessible to them, they will likely not report the crimes. This links to the discussions of prosecutions and accountability. This is because individuals might not fully comprehend the amendments to the Congolese Constitution in regards to rape prosecutions (discussed in depth in Chapter 6).

### **Important definitions and distinctions**

#### *Fundamental definitions*

Social constructs of gender, masculinity, femininity, rape, hegemonic masculinity, conflict, etc. all contribute to perceptions of rape and women. Sex is defined as the biological characteristics of an individual. Words that correlate with sex are male and female. Gender, on the other hand, is how an individual chooses to identify. Gender does not necessarily have to correlate with one’s biological sex. Gender has to do with one’s personal identity and expression. Gender determines the “roles, responsibilities, opportunities, privileges, expectations and limitations for

males and for females of any culture” (United Nations High Commissioner for Refugees 2003, 19). Words that correlate with gender include woman, man, transgender, etc. There are important distinctions between man and male, along with woman and female. These tend to be used synonymously, but have different meanings.

There is an inherent association when individuals discuss rape, to automatically assume rape can only occur between a male and a female. However, as will be discussed in future chapters, this perception needs to be amended. Rape does not have to occur between a male and female. Furthermore, rape does not necessarily need to include penetration from a sexual organ to another sexual organ. An individual can be raped with other objects, i.e. guns, knives, bottles, etc.

The language present when discussing rape and sexual violence also needs to be addressed. Rape is associated with penetration, and can often exclude other forms of sexual violence or the structural inequalities that have allowed for an imbalance of gender dynamics. Sexual violence can still occur without penile-vaginal penetration and without consent. While wartime rape and wartime sexual violence have varying academic and legal definitions, they are used interchangeably throughout the paper but *do not* reinforce the phallo-centric/gender-specific meaning behind the words (Henry 2011, 131). Instead they are used to show the violations of one’s agency and body, regardless of the gender perpetrating the crime, or the gender of the victim.

Gender-based Violence (GBV) has been defined by the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) Committee as “violence that is directed at a person on the basis of gender or sex. It includes acts that inflict physical, mental or sexual

## Breaking the Legacy

harm or suffering, threat of such acts, coercion and other deprivations of liberty” (United Nations High Commissioner for Refugees 2003, 10). Violence against women is considered “any act of gender-based violence that results in, or is likely to result in, physical, sexual and psychological harm to women and girls, whether occurring in private or in public” (United Nations High Commissioner for Refugees 2003, 10). Sexual violence is defined as “any act, attempt or threat of a sexual nature that results, or is likely to result, in physical, psychological and emotional harm. Sexual violence is a form of gender-based violence” (United Nations High Commissioner for Refugees 2003, 10). Sexual and Gender-based violence (SGBV) are rooted in unequal power relationship, hegemonic masculinity and power structures.

The distinction between peace-time sexual violence and conflict-related sexual violence is important to note. Congolese domestic law, as well as international human rights and humanitarian law differentiates between these two forms of human rights abuses. While sexual violence is a violation of one’s human right, during times of peace it is not used as a weapon of war, or as a form of crime against humanity. Sexual violence during periods of ‘peace’ is seen as a crime against the state. The crime is then prosecuted by the national courts (Zongwe 2012, 46). Sexual violence as a form of crime against humanity or ethnic cleansing is “widespread” and “systematic.” This systematic widespread targeting of individuals is a concern for the international community as well as the domestic community. It is then a concern of the national courts as well as the international courts (Zongwe 2012, 47). While it is particularly important to provide a distinction between systematic sexual violence and sexual violence not during conflict, it is important to understand the structural inequalities that have allowed sexual violence to persist. Zongwe cites Breton-Le Goff in a claim to realize the importance of understanding the “social, economic and cultural discriminations that nurture sexual violence when conflict breaks

out” in order to grasp the factors that have fueled in the conflict in DRC, especially its use of sexual violence (Zongwe, 2012, 47). While sexual violence is present in the conflict in DRC, there are underlying inequalities that have allowed this human security abuse to persist. As present day rapes in DRC are classified as widespread and systematic, we can categorize the sexual violence as a form of ethnic cleansing and crime against humanity. The conflict in DRC is not solely an ethnic conflict. However, the Hutu *génocidaires* from the Rwandan genocide are still actively targeting Tutsis in DRC and inciting fear into the civilian populations. Therefore, the prosecution of perpetrators of this crime can occur in international courts and domestic courts.

#### *Gender-Mainstreaming versus Gender-Centrality*

Gender-mainstreaming is the mode of action of “assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels” (Ní Aoliáin, et al. 2011, 11-15). Gender-mainstreaming aims to ensure women are included in all conversations. Gender-mainstreaming is used in producing conversations in attempts to understand the structural inequalities that have lead to discrimination/abuse in attempts to add more women to active roles within the society. The best example of gender-mainstreaming is seen in UN Security Council Resolution 1325. One of the biggest critiques of gender-mainstreaming is the “add women and stir” approach to incorporation of gender in society (Ní Aoliáin, et al. 2011, 11-15).

While women need to be incorporated into policies, programs and legislation, I take the gender-centrality approach in this paper. Gender-centrality addresses the need to provide equal opportunity for women, as well as emphasizing overall equality, in order to advance society.

## Breaking the Legacy

Gender-centrality emphasizes the importance of gender to be central to any, and all, discussions. Ní Aoláin, et al. state that there are two important aspects of gender-centrality to ensure that transformation is most effective for society. The first strategy is: “relying on external actors who may promulgate mandatory or voluntary standards” (i.e. quotas) (Ní Aoliáin, et al. 2011, 15). The second strategy is: “relying on internal actors, such as nongovernmental organizations... or voters or pressure through the legal system” (Ní Aoliáin, et al. 2011, 15). For gender-centrality, gender must be incorporated into the hard (political, civil) and soft (social, cultural and economic) rights in order to ensure that equality is reached in all aspects of society. As mentioned above, gender-centrality is the approach I take throughout the paper in regards to sexual violence. Until male victims of sexual violence can feel comfortable coming forward and acknowledging their rape, or involvement in rape, equality will not be reached. While special attention needs to be paid towards women who are victims of sexual violence, we cannot ignore the experiences of men in raising awareness for women.

### *Hegemonic Masculinity*

As Sara Banwell defines it, hegemonic masculinity as the “aggressive, ruthless and competitive” reinforcement of society’s perceptions of the social position of males. Hegemonic construction of masculinity reaffirms the need for male heterosexuality and occasional aggression. In Western societies, white heterosexual men hold the most amount of power, followed by a ladder of intersectional identities, where people who do not fit the norm of society progressively have less and less power and privilege. R. W. Connell and James Messerschmidt state that hegemonic masculinity requires men to position themselves in relation to other men who are considered to be most powerful, in order to legitimate the marginalization of women within society (Connell and Messerschmidt 2005, 829-859). They argue that hegemony is most



powerful when men passively use their position within patriarchy but inherently receive the benefits of the patriarchy. Connell and Messerschmidt argue that in order to understand social struggles, society needs to stop treating gender and masculinity as a “one-dimensional treatment of hierarch[ies],” and shift to a more complex understanding of gender hierarchies and masculinity studies (Connell and Messerschmidt 2005, 829-859). Addressing power relationships within masculinity and femininity is imperative in understanding While my research did not include determining *which* groups of men in DRC control the most amount of power, along with the hierarchy of power and the construction of the power ladder, it is important to note that not all men have the same amount of power. This is essential to determine in the future as it then translates back into who is involved in the conflict. What groups do they belong to? Which men are involved in initiating sexual violence? Which men are being violated? How does this relate back to the concept of masculine hierarchies and hegemonic masculinities? These questions all relate back to hegemonic masculinity, and provide questions for future research, outside the scope of this paper.

In the construction of this hierarchy of masculinities and femininities, men will almost always rank higher than women on the ladder and use (and abuse) their power over women. It is this power over women that constructs power-dynamics imperative to address when discussing conflict and rape as a weapon of war. Men are expected to have high physical, economic and social power as a result of society’s preconceived perspective of someone due to their sex (Banwell 2014, 3-7). But what happens when this is not the case? Where do they fall on the ladder? Banwell and Kitharidis argue that understanding hegemonic masculinity is imperative in understanding the gender dynamics of the conflict in DRC. Both articles quote the same researcher, who states that hegemonic masculinity is tied to phallo-centrism (Banwell 2014, 53;

## Breaking the Legacy

Kitharidis 2015, 463). Hegemonic masculinity, in DRC, is reinforced within the framework of the national armed forces. Men who are ranked highest on the masculinity ladder, are able to maintain this societal power over others through dominance (Banwell 2014, 53). Hegemonic masculinity addresses the power structure of men and women, but emphasizes that not all men have the same power.

### *Victimization*

The victimization discourse perpetuates the ‘men as perpetrators, women as victims’ stereotype. Victimization, for the context of this paper, blames the victim for their involvement in the crime, rather than the structure that has allowed the crime to persist, or the individual complacent in the crime. One of the goals of this paper is to deconstruct ‘victimization,’ in regards to sexual violence during the conflict in DRC. Hopefully, by deconstructing the victimization discourse, stigma around sexual violence will disappear. This will hopefully lead to an increase in reporting when these crimes occur, for both men and women. One important aspect in victimization is the reference as victims of sexual violence, rather than survivors of sexual violence. While ‘victims of sexual violence’ is used throughout, it is not used to enforce their involvement in the crime. Rather, it enforces the concept that there can be multiple victims of sexual violence- the perpetrator, the individual who was abused, as well as the community in general; a survivor is perceived to solely be the individual whose rights were violated. The reason for the use of this word is the extent to which the community is affected by rape, as rape is used as a weapon to target the community, as well as the individual. In order to shift the discourse on victimization and rape as a weapon of war, the international community needs to stop targeting local communities through women’s (and men’s) bodies.

*Policy Definitions- Refugee versus Internally Displaced Persons*

The definition of a refugee is also important to provide, as it relates to conflict and justice. A refugee is a person:

owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it (UN General Assembly 1951, Article 1.2)

A refugee is an individual who has been recognized by international law. States are supposed to ensure the individual is given protection. They are not allowed to send a refugee home (refoulement). Non-Refoulement is defined as:

[n]o contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion (UN General Assembly 1951, Article 33.1)

The United Nations High Commissioner on Refugees is the international body in control of processing refugee applications and providing protection for the vulnerable populations.

Internally Displaced Person are:

[p]ersons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human right or natural or human-made disasters, and who have not crossed an internationally recognized State border (United Nations High Commissioner for Refugees, 1998)

This definition was originally given by Francis Deng within the United Nations. The distinction between refugees and internally displaced persons are important to understand when discussing civil wars and how they affect populations. Each conflict takes on a different approach, and

## Breaking the Legacy

civilians are targeted in various ways. As a result, people might leave the country and cross an international border, or they might not have access to leave the country, and as such are considered internally displaced. Internal displacement is an area of international aid and research that needs more attention. There is no specific organization dedicated to assisting those who are most vulnerable from conflict or disaster, but IDP protection is being unofficially incorporated into the UNHCR mandate.

### *Intra-State Wars versus Inter-State Wars*

Furthermore, understanding the distinction between types of conflicts that can be fought is important to understand, especially when discussing the conflicts in Bosnia and DRC. Intra-state wars are fought between various groups within the same state. They are typically defined as a form of civil war, as the armed actor groups originate from the state. Fighting occurs within the territories of the state. Inter-state wars are fought by two or more member states of the inter-state system (Sarkees, Wayman and Singer 2003). The type of war fought affects international aid and whether states are violating multiple national laws.

### *Transitional Justice and the Six Aspects of Justice*

Transitional justice is a phrase defined by Moghalu within Klosterboer and Hartmann-Mahmud's work that refers to "the phenomenon and process by which a society utilizes legal and quasi-legal institutions to facilitate fundamental change from one political order to another or the construction of a new reality against the background of a profound historical memory" (Klosterboer and Hartmann-Mahmud 2013, 57). Transitional justice aims to "promote accountability, (trials, truth commissions, and lustration policies), methods of victim-oriented restoration (reparations, memorials, and public memory projects), and processes for promoting

peace and stability (amnesties, pardons, and governmental reform)” (Klosterboer and Hartmann-Mahmud 2013, 57). The justice cascade, as coined by Sikkink and Kim, is the global trend of international criminal justice aimed at holding political leaders liable for the human rights violations that have occurred through international and domestic prosecutions. This ‘cascade of justice’ has resulted in an increased occurrence of human rights violators being held accountable for the crimes they have committed (Sikkink and Kim 2013). In order to effectively allow for domestic prosecutions, countries in transition must make significant structural changes to their legal system, which can be seen within the context of DRC.

There are six themes of transitional justice, as presented by Phil Clark. While these themes are presented through discussing the Gacaca Courts in Rwanda, they are applicable to the future transitional justice framework needed in DRC. The six forms of justice are: truth, peace, justice, healing, forgiveness and reconciliation (Clark 2010, 31-46). The first theme, truth, is needed in order to understand what happened and why. Within the context of sexual violence, truth can be used to deconstruct why rape was used, and who used these tactics. Truth is often used within three truth processes: truth-telling, truth-hearing and truth-shaping. These three processes should be employed within DRC. Truth is also often used within truth and reconciliation commissions (TRC), and are used for the purpose of seeking the truth, not for holding individuals legally responsible for the crimes committed. The most notable TRC occurred in South Africa after the end of the Apartheid rule.

Peace is needed when talking about transitional justice. If peace is not achieved and maintained, conflict is likely to erupt again. The lack of peacebuilding and peacekeeping in DRC is a major reason why conflict has been ongoing since the 1996 First Congolese War. Peace must be maintained and incorporated into the transitional justice framework. Justice, the third theme,

## Breaking the Legacy

has three modes: retributive justice, deterrent justice and restorative justice. Retributive justice states that perpetrators of war crimes must be held accountable. Deterrent justice says that while perpetrators must be held accountable, the accountability should be used to stop the same crimes from occurring in the future. Unlike retributive and deterrent justice, restorative justice states punishment is needed, in addition to the community attempting to allow for relationships between the perpetrators and victims to be established. Reparations are usually incorporated into restorative justice (Clark 2010, 31-46). Throughout the paper, while the phrase justice is used, the type of justice I advocate for is deterrent justice in regards to sexual violence and the DRC.

The fourth aspect of transitional justice is healing. As the name suggests, healing addressing the emotional, psychological and physical toll conflict can take on a person (Clark 2010, 31-46). The need to incorporate healing into transitional justice is especially crucial within the DRC as communities and individuals have been greatly affected by violence and human rights violations. Healing is also needed to deconstruct the concept of victimization, an aspect that is prevalent when discussing conflict and sexual violence (Clark 2010, 31-46). The fifth aspect of transitional justice, as presented by Clark, is forgiveness. In order for the society to move past the conflict, forgiveness and understanding of the crimes is needed. However, it is important to note that forgiveness and reconciliation are different. Forgiveness is needed for the society to move past and understand the events that transpired during conflict (Clark 2010, 31-46). Understanding why rape was used as a weapon of war, and (potentially) forgiving the perpetrator is different than becoming friends having a relationship with the perpetrator. Someone can forgive someone for the crimes committed but not want to be involved or communicate with them. Forgiveness can be difficult in conflicts similar to DRC, where sexual

violence is widespread. I am not necessarily proposing survivors forgive their abusers, but proposing forgiveness be incorporated into the transitional justice to a certain extent.

The final aspect of transitional justice is reconciliation. Reconciliation tends to be the main aspect of transitional justice, as it involves “the rebuilding of fractured individual and communal relationships after conflict” (Clark 2010, 44). Reconciliation involves active involvement, acceptance and forgiveness of people and the crimes they have committed. It aims to provide a society where former combatants and civilians interact peacefully with one another. Another important feature of reconciliation is the need to address the root cause of the conflict in order to honestly and truthfully provide a space for future development and an understanding of the crimes committed (Clark 2010, 45). Reconciliation differs from peace and healing, as peace and healing are prerequisites for reconciliation to occur.

These six themes of transitional justice were outlined in order to provide an understanding of the complexities of transitional justice. In an attempt to achieve long lasting peace, but also hold individuals accountable for the crimes committed, all six forms of transitional justice must be utilized and incorporated into the post-conflict resolution and reconstruction of DRC. While these themes of justice are presented in regards to the Gacaca Courts, they are also applicable to the context of the DRC. Similarly, as the conflict in DRC has its roots in the Rwandan genocide (as discussed in-depth in Chapter 3), a similar form of community understanding and justice could be applied to justice in the DRC.

Another important aspect of post-conflict reconstruction is the disarmament, demobilization and reintegration process (DDR). DDR processes are particularly important in order to maintain peace and the stabilization of the state. DDR processes must be incorporated

## Breaking the Legacy

into the reconstruction in order to ensure long-term development of the state, people and economy. The United Nations defines disarmament as “the collection, documentation, control and disposal of small arms, ammunition, explosives and light and heavy weapons from combatants and often from the civilian population” (United Nations 2016b). Demobilization is defined as “the formal and controlled discharge of active combatants from armed forces and groups, including a phase of “reinsertion” which provides short-term assistance to ex-combatants” (United Nations 2016b). Reintegration is “the process by which ex-combatants acquire civilian status and gain sustainable employment and income. It is a political, social and economic process with an open time-frame, primarily taking place in communities at the local level” (United Nations 2016b). Overall, DDR techniques aim to improve stability of the state after conflict and ensure peace is maintained. DDR can sometimes be abbreviated as DDRRR, which also includes repatriation and resettlement.

### *Human Rights Law and Policies*

In addition to definitions and important distinctions of words and phrases, it is important to outline international treaties that are relevant to the topic and will be discussed in greater detail throughout the paper. Human Rights Law consists of a series of international treaties that outline the international human rights norms and standards states must provide. The principal human rights doctrine is the Universal Declaration of Human Rights (UDHR), established by the United Nations in 1949. While the UDHR is not a legally binding doctrine, all states must have ratified the Declaration before becoming member states of the United Nations. The UDHR outlines the inalienable rights all individuals have, and the need to protect these rights. In addition to the UDHR, there are seven conventions that have created standard international human rights laws. Ratifying the conventions causes states to incorporate protectionary measures into their own



constitutions in order to ensure security for all citizens. The seven core international human rights treaties are as follows: International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (1965), International Covenant on Civil and Political Rights (ICCPR) (1966), International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (1984), Convention on the Rights of the Child (CRC) (1989), International Convention on Protection of the Rights of All Migrant Workers and Members of Their Families (ICMRW) (1990) (United Nations Population Fund, 2004). These treaties outlined above provide important provisions and mandates that nation states must provide in protecting their citizens. The DRC has ratified all documents except ICMRW. Bosnia and Herzegovina has ratified all documents listed above.

### **Conclusion**

This chapter was formulated to provide an understanding of the greater context of the thesis and the roadmap for the future chapters. It provided valuable definitions that will be expanded upon throughout. The next chapter addresses the common themes seen in the literature used to formulate the findings present in the thesis. It will address the strengths and weaknesses of the arguments presented in the different articles, along with how I expand upon the research.

## Chapter 2: Literature Review

When analyzing the conflict in the Democratic Republic of the Congo through preexisting literature, it is important to synthesize common themes seen throughout the works. Moreover, the fundamental sources that are constantly referenced throughout the project will be analyzed and their importance in formulating the final result. Literature on gender roles during conflict specific to the Democratic Republic of Congo and Bosnia will be presented. Research and literature on general information of how hegemonic masculinity is reinforced through conflict, affecting power dynamics and hierarchies, will also be referenced throughout the paper. While most authors approach the subject matter by emphasizing the need for gender-mainstreaming,<sup>2</sup> the researchers are still not asking which women and which men are involved. What roles do people play? How do they play them? Who is in charged? How do they take these positions? In trying to formulate a peace process, it is important to have these questions answered, as it will shape which women will be incorporated in peace. Furthermore, these questions are imperative in understanding the hierarchies of power and authority, an aspect one needs to understand in deconstructing the hegemonic masculinity concept seen during conflict. Not all individuals have the same motives, so perpetuating generalizations that support society's preconceived gender roles and norms do not allow for these societal changes to occur. For the purpose of this literature review, overarching themes across the research will be discussed pointed out, with subthemes from the individual works discussed in depth.

---

<sup>2</sup> Gender-mainstreaming was defined under Important Definitions and Distinctions in Chapter 1.

**Deconstructing Rape as a Weapon of War and Victimization**

**Compacency and the Normalization of Sexual Violence.** Maria Eriksson Baaz and Maria Stern are two human rights researchers who have investigated sexual violence in the Democratic Republic of the Congo. Maria Eriksson Baaz and Maria Stern conducted primary research within DRC as a result of their positionality and relationship with the national army and their language skills. As the authors state, in conflicts such as the one in the DRC, there is little attention paid to understand why perpetrators involve themselves in violent crimes, as well as a lack of understanding on behalf of the researchers about motives of the crimes (Baaz and Stern 2009, 296). Understanding the soldier's involvement in the crime is exceptionally crucial because it helps to ultimately deconstruct the concept of victimization of survivors of sexual violence. The report outlines how the soldier differentiates between "lust rape" and "evil rape" (Baaz and Stern 2009, 495). Another strength of this article and their interviews is the soldier's understandings of the complexities of "evil rape" during the conflict. Labeling rape as a weapon of war simplified the gendered dynamics and power hierarchies that have allowed for this form of violence to persist. Furthermore, this study concluded soldier's understanding that "lust rape" is a result of needing to satisfy a soldier's sexual needs. This form of rape has become "ethically palatable" and society is beginning to normalize this human rights violation.

One limitation of this study was the sole perspectives of FARDC members. The study was unable to incorporate soldiers from rebel groups. It is important to understand how rebel forces view rape, and how it may or may not be similar to the perspectives of FARDC members. As rebel forces are not recognized by the state, and may have different motivations as to their involvement in conflict, they might also have different motivations towards why they are involved in violent crimes, such as rape.

**Victim's Perspective.** Research conducted by Anna Maedl contrasts some of the findings by Baaz and Stern. In "Rape as Weapon of War in the Eastern DRC? The Victim's Perspective," Maedl interviews twenty-five survivors of rape. The survivors supported the claim by Baaz and Stern that labeling rape as a weapon of war oversimplified the structural inequalities that have allowed for this act to occur. However, they felt as though rape has become a key factor of the conflict, and there is no longer a differentiation between "lust rapes" and "evil rapes" (Maedl 2011, 128-147). One limitation of this article and the interviews contained within were the lack of using gender explicit terms. The author explains how the women involved in the survey were selected after receiving medical assistance at Panzi hospital. The result of selecting victims from a hospital will skew the data in attempting to understand the victim's perspective.

Male victims of sexual violence might have a very different perspective as to the use of rape as a weapon of war in DRC. Excluding this voice will only perpetuate the women as victims, men as perpetrators, stereotype seen around the world. Furthermore, selecting a sample of women from the hospital only reaches a certain demographic of sexual violence victims. Not all victims are able to access the hospital. Individuals living in more rural parts of eastern Congo might have different perspectives as they might not be able to access healthcare. The author addresses these limitations, but this data is still relevant in determining how to prosecute perpetrators of human rights violations and the needs of the victims. Not all women and/or men will need *or want* the same type of justice.

**Combatant's Perspective.** Providing a place to publish the voices of combatants involved in sexual violence is imperative. This is crucial to include in analyze the most effective way to deconstruct the victimization stereotype. "Former Combatants on Sexual Violence During Warfare: A Comparative Study of the Perspectives of Perpetrators, Victims and Witnesses" by

Roos Haer, Tobias Hecker and Anna Maedl addresses combatants and their perspective.

Comprehending the thought process an individual has when being told to participate in rape as a weapon of war is especially important when trying to determine how to resolve the conflict. It is also imperative to understand who should be held accountable. One must recognize the perspective and thought process in an attempt to create effective and lasting measurements towards identification of perpetrators. If policymakers and peacekeepers are able to understand why rape is used, and who instructs others to use rape within the context of DRC, it will be beneficial when determining who is responsible for committing these crimes. The international community has been struggling with how to prosecute war criminals and the difficulty of determining who is to be held culpable for all acts committed.

While soldiers may employ sexual violence, one can wonder if they should be held responsible, or if their commanding officer who instructed this form of torture should be held accountable? And who is more responsible? While these articles do not link the perspectives with the need for justice and prosecution the articles build off other articles in determining who should be held responsible for the crimes committed. Weakness of the study include the gender dynamics and distributions of combatants interviewed. Out of 224 combatants, only two were women (Haer et al. 2015, 619). It is important to have more perspectives of women who have been involved with armed groups, as well as been involved in violence during conflict, specifically GBV. This significantly improves the ability for a paradigm shift in terms of addressing victimization and understanding of the conflict. Most of the interviews were conducted at UN demobilization camps. Conducting interviews at the formal camps will exclude individuals who have not gone through official demobilization processes. This type of study asks questions as to who has access or understanding of the demobilization camps, and the

implications it will have on the findings from the study. Furthermore, most combatants were from Mai Mai groups, with only 5 percent of the combatants were FARDC members (Haer et al. 2015, 619). The gender dynamic, location of interviews and insurgent group dynamic could have implications of the findings.

**Women and Peacebuilding.** When constructing post-conflict institutions and peace, it is critical to include the voices of women and their involvement during conflict. Anne Jenichen's article on "Women and Peace in a Divided Society: Peace-building Potentials of Feminist Struggles and Reform Processes in Bosnia and Herzegovina" addresses Bosnian women's involvement, feminism versus women advocacy and promotion of women's rights through effective advocacy on behalf of women's groups. This article addresses women's unofficial involvement during the peace process in Bosnia. Jenichen found an interesting dynamic within women's groups in Bosnia. The author frames her argument that feminist groups, not women's advocacy groups have been successful in promoting peace and integration into post-conflict society (Jenichen 2010). However, Jenichen's scope did not address whether or not men's advocacy groups existed in promoting women's rights. While women's rights groups have been applauded for their ability to cross ethnic divides (as enforced throughout the conflict), excluding men's advocacy groups promoting women's rights perpetuates the discourse of 'men as perpetrators, women as victims.' Moreover, Jenichen reflects on the advancement women have made to society, but does not address limitations to their work, or areas that still need significant amounts of development.

**Institutional Responsibilities**

**International Community's Complicity.** In her analysis of gender-based violence from the macro-level, meso-level and micro-level, Stacy Banwell addresses the need to incorporate these power hierarchies into the discussion of rape as a weapon of war in DRC. Banwell adds a vital understanding of the implications of rape as a weapon of war on various levels of society in her article "Rape and sexual violence in the Democratic Republic of Congo: a case study of gender-based violence" (Banwell 2014). While individuals are directly affected by this form of human security violation, there are additional implications. The international community and national community are affected by this epidemic. Despite the creation of international policies aimed at protecting humanitarian law, women's rights and sexual violence during conflict, there is a lack of active participation from the international community at ending the conflict in DRC. Banwell addresses how rape in DRC needs to be stopped, but the most successful way of ending violence is by listening to the people (Banwell 2014, 45). This is fundamental in improving equality between men and women in a gender-centralized aim towards improving the roles of women and the need to incorporate them into peace talks.

**Fight Over Natural Resources.** Sara Meger's article on "Rape in Contemporary Warfare: The Role of Globalization in Wartime Sexual Violence," links the rates of sexual violence in DRC to globalization and the need for natural resources. The article addresses themes such as the involvement of shadow network in mining and the conflict in DRC, the shift from just to unjust wars, and globalization's contributions towards allowing rape to persist during conflict. The author links these themes to the context of the conflict in DRC, the abundance of coltan and the prevalence of violent crimes, such as sexual violence. Meger provides crucial information in realizing the international community's involvement in the conflict. There is an

## Breaking the Legacy

overall lack of aggressive measure and realization that coltan has contributed to the preservation of the conflict and human rights abuses. While action has been taken to stop the illegal trade of coltan, assertive and proactive measures have not been initiated to the extent they needed. The article also highlights the involvement on behalf of the government of DRC in not actively stopping the exportation of coltan through shadow networks.

Considering the widespread human rights abuses exhibited by the FARDC forces, one questions how they might be benefiting from the sale of coltan? While FARDC soldiers might not participate in shadow networks within their official capacity as armed service members, they still represent government forces, and might use the power over others to get what they want. Addressing this power dynamic FARDC soldiers have is critical when discussing the extraction of natural minerals and human rights abuses associated with this exploitation. This is an aspect that is not addressed throughout the literature, but could affect armed groups involvement in commodity exchanges.

**Politics of International Justice.** Jelena Subotić's book *Hijacked Justice: Dealing with the Past in the Balkan*, provides an in-depth understanding of the transitional justice phase seen post-conflict within Serbia, Croatia and Bosnia. Subotić's overall thesis is that the influence the international political system has over the criminal justice system led to a failure of justice in the former Yugoslavia. This (extreme) international involvement in the former Yugoslavia allowed for political instability. It emphasized arresting alleged war criminals, rather than addressing social institutions and the structural inequalities present in the post-conflict societies. Subotić provides a very comprehensive analysis of complex issues prevalent in the post-conflict structure of Bosnia. This text acted as an important foundation in understanding and outlining transitional justice in Bosnia.



One important limitation exists throughout Subotić's work. Subotić claims that everyone in the former Yugoslavia felt as though the justice system in the ICTY was flawed. However, this is a generalization, and there are differing views present on the effectiveness of the ICTY. Eric Stover's *The Witnesses: War Crimes and the Promise of Justice in The Hague* provides a different perspective on the ability of a local court in achieving justice. Subotić argues justice failed because it was at the international level and excluded the needs and voices of people affected by conflict. Witnesses who were interviewed in Stover's book and participated at the ICTY argue justice would have failed if it occurred at the local/national level (Stover 2007, 114-115). Understanding the positionality of Subotić and her claims is important when referencing her and her work. Not everyone has the same perspective of the success or failure of the DPA and the ICTY. Subotić's claims, however, support my thesis that justice was not entirely served in Bosnia as a result of not listening to the people (and women's) needs.

### **Construction of Gender and Gender Roles**

**Hegemonic Masculinity.** It is important to unpack the relationship that hegemonic masculinity has with the responsibility of the international community when addressing GBV during conflict. We cannot expect structural inequalities to be resolved in the DRC when structural inequalities regarding gender relations exist throughout the globe. Nevertheless, this only emphasizes the need for gender relations and society's preconceived concepts on masculinity, femininity and gender roles to be deconstructed. One limitation of Banwell's argument is not addressing how masculinity and hyper-masculinity affect men who are victims of rape. Banwell's article makes the reader infer that only women are victims of rape, when this is not the case. Hyper-masculinity can have the same impact on victims who are men, as they could be reluctant to acknowledge this form of violation has occurred towards them. Addressing

## Breaking the Legacy

men and women who have been victims (and survivors) of rape is exceptionally important in the stance this paper takes. Rape will continue to be stigmatized until communities realize it can occur to anyone, regardless of age, gender, ethnicity, income, etc. An understanding of the gender hierarchies/power ladder is needed for future discussions on conflict in DRC. Which men hold power? Which men are involved in active conflict? Which women hold power? Which women are involved in active conflict? Which men and women are excluded and marginalized? Furthermore, a gap in the literature exists in understanding the specific impact hegemonic masculinity has on women in the DRC who are combatants and potentially involved in initiating acts of sexual violence. How is hyper-masculinity translated when women involve themselves in sexual abuse as the abuser? What are the reasons why women might engage in sexual violence? Who are they engaging with?

### **Legal Themes and Prosecution**

**Constitutional Amendments.** Dunia Prince Zongwe's article on "The New Sexual Violence Legislation in the Congo: Dressing Indelible Scars on Human Dignity" outlines the strengths and weaknesses of the amendments to the Penal Code of DRC and their sexual violence policies. This article emphasizes the need to hold the government accountable for sexual violence. The article addresses the legal development and legal ramifications of the sexual violence policy while being aimed at non-legal scholars. The article helps to deconstruct the barrier to understanding legal policies and understanding the rights Congolese citizens have in regards to sexual violence.

**Gender-Blind Approaches towards Justice.** Klosterboer and Hartmann-Mahmud outline how transitional justice needs to be seen in DRC, but through an African Model in order to ensure effective justice is achieved. "Difficult to Repair": Applying African Models for

Transitional Justice to Peace and Restoration Prospects in the Democratic Republic of Congo” compares the restorative justice seen in Rwanda and Sierra Leone to what is needed in the Democratic Republic of Congo. (Klosterboer and Hartmann-Mahmud 2013, 56). Themes discussed throughout the text include needing to listen to the cultural approaches in applying justice, educating civilians on justice and improving their accessibility to the court. The authors of this article emphasize the need to inform civil society of the justice process, an aspect that is often overlooked during transitional justice. One of the strengths of this article is its application of justice in DRC from the justice systems seen post-conflict in Rwanda and Sierra Leone. Critics comment on how Western concepts are applied to non-Western countries, which is why certain development projects are seen as failures. Understanding how justice was received post-conflict in Rwanda and Sierra Leone makes it easier to apply theories to the context in DRC. The authors’ overall thesis statement is the need to prioritize local voices and their experiences during conflict within local, national and international institutions aimed at transitional justice and government (Klosterboer and Hartmann-Mahmud 2013, 59).

A serious limitation within this text is the exclusion of any discussion of gender and gendered experiences during conflict. “Rape” is only mentioned three times throughout the text and “gender-based violence” is mentioned a couple times in passing (Klosterboer and Hartmann-Mahmud 2013, 59). Furthermore, when contrasting the justice system in Rwanda post-genocide, it is important to analyze the restorative justice aimed at sexual violence survivors. The authors overlook this aspect of justice. While overlooking gendered experiences during conflict might not be intentional, this article further supports the need to incorporate gender-centralization into conversations regarding post-conflict justice. In an attempt to be gender neutral, the lack of

explicitly discussing gender makes one a bystander in perpetuating gender inequality and a lack of incorporation into dialogues and institutions.

### **Limitations of the Research**

While the research is effective in providing an overview of conflict, legislation, gaps in legislation, experiences during conflict, etc. there are still chasms in the research. The biggest limitation is the lack of voice from all types of victims. As a result of using secondary data, certain questions were not asked and could not be included within this research. Articles based on other individuals' research are inherently biased as the authors have the ability to determine which data to include and which to exclude. In spite of this limitation, it was important to incorporate these articles as it provides an understanding from a perspective that is often overlooked. Listening to the voices of the victims as well as the voices of the perpetrators assists in understanding why sexual violence is used, and the consequences of these actions. Another limitation is the lack of accurate statistics on prevalence and rates of rape, for both men and women. There are social and cultural stigmas surrounding men admitting to being raped, and until recently they were not allowed to prosecute their perpetrators in the courts of DRC (Zongwe 2012, 41-45).

The aim of this paper is to fill this void, in emphasizing the need to incorporate sexual violence during conflict into everyday language, in an effort to de-stigmatize this crime. Another aim of this paper is to highlight the importance of including sexual violence and experiences of women during conflict into conversations on peace. Moreover, none of the research has linked the criminal procedure in post-conflict Bosnia, to the present conflict in eastern DRC, the prevalence of sexual violence and the national and international policies aimed at providing

protection for the civilians. This lack of research is what has been compiled into this project and created the final document. The researchers and articles applied to this project were validated through other research. In most articles, previous articles had been referenced that interwove the arguments and provided the foundation in their original article(s).

Additional questions arose from conducting this research, and there are questions that were not included in regards to women's active involvement within the conflicts in the DRC. How are women assisting in security of other women? Which members of society act as hosts for IDPs when they are forced to flee? What type of medical assistance do men who have been raped receive? How can this be de-stigmatized? These questions were not answered in other's research, nor were they discussed throughout this research. Nonetheless, understanding these aspects of society are equally as important when discussing post-conflict reconstruction. While it is imperative to incorporate sexual violence into the reconstruction process, it cannot be the only consequence of conflict addressed.

## Chapter 3: Conflict in the DRC

In order to comprehend the current conflicts in eastern DRC, it is essential to have an understanding of the history of the two prior conflicts in DRC. Explicitly, it is imperative to grasp the connection the conflicts in DRC have had to the 1994 Rwandan genocide. Furthermore, prior to September 1997, the Democratic Republic of the Congo was known as Zaire. As such, until the official name change in the timeline of events, the country will be referred to as Zaire. This chapter starts off by providing a historical background to the conflicts in the DRC. After a brief explanation of the two Congolese wars, an analysis of the Kivu Conflicts will be given. The Kivu Conflicts are the ongoing conflicts and instability seen in eastern DRC. It is these conflicts where rape is currently being used as a weapon of war, and where people's human security are constantly being violated. The next section of the chapter is an understanding of the human security violations being seen. This section provides empirical evidence for the widespread displacement and security concerns seen, as well as an understanding of the type of displacement present in DRC. After discussing displacement, a shift to discussing how soldiers abuse their power over others is present. This section is important as many individuals in DRC have commented how there is no security, and the people who are supposed to be protecting them (the government and national army) are not protecting them, and contributing to the fear seen within society. The last section of the chapter discussing rape as a weapon of war and sexual violence. This section provides an analysis of the perception of rape in Congolese society, as well as the rates of rape. Understanding the current situation of rape and how it is used as a weapon is important before discussing the policies and holding perpetrators accountable. The policies will be discussed in Chapter 5 and Chapter 6.

*Conflicts in DRC*

Academics, policymakers and global citizens have diverging perspectives as to why the conflict in Rwanda erupted. The most noted hypothesis is the concept behind the “fear of small numbers,” which resulted in ethnic tensions between the Hutus and Tutsis. Fearing ethnic marginalization, conflict eventually erupted. Others trace the conflicts to factors such as: the population density for such a small country, the collapse of its biggest export (coffee), or the Structural Adjustment Policies (SAPs) the International Monetary Fund (IMF) placed on the state (Diggs 2012, 20-24). While stipulating which factor ultimately caused the Rwandan genocide, the ruthlessness of the 100-day conflict has left lasting implication on Rwanda and the international community. It is estimated that 800,000 to 1,000,000 Hutus and 200,000 Tutsis were brutally murdered between April 1994 and July 1994. Between 250,000 and 500,000 women were raped as a form of ethnic cleansing and weapon of war (Survivors-Fund 2016).

The political and human instability seen in Rwanda caused a drastic influx of refugees to Zaire. Within a matter of days, over one million people fleeing the genocide crossed into the North Kivu region and were placed in one of four UNHCR camps in Goma and/or Bakavu. Disguised as refugees, many Hutu *génocidaires* fled to camps in Zaire as well, hoping to avoid accountability for the crimes they committed (Diggs 2012, 25- 27). It is estimated that six percent of the refugees that escaped to Zaire were *génocidaires* (fifty to sixty-five thousand people) (Diggs 2012, 27). The inability to address the crimes these *génocidaires* committed allowed tensions to rise in the eastern regions of Zaire. In particular, the Kivu regions were prone to violence as forms of intimidation and control. To further complicate matters, there were already 700,000 internally displaced persons (IDPs) from the Shaba region and 500,000 refugees from Angola, Burundi, Rwanda, Sudan and Uganda. These numbers, coupled with the massive

## Breaking the Legacy

influx of Rwandan refugees, added an exorbitant amount of instability within the eastern region and further strained the government's resources (Diggs 2012, 26-36). Political instability and attempts at improving stability in DRC after the Rwandan genocide occurred between 1994-1996, but specific analysis of this time period is not important to the overall discussion of the Congolese Wars and ongoing conflict.

The First Congolese War began in 1996. This conflict was strategically planned between the governments of Rwanda, Uganda and the Alliance of Democratic Forces for the Liberation of Zaire (AFDL). The AFDL, led by Laurent-Desire Kabila, wanted to overthrow the Mobutu regime. Mobutu was the current leader of Zaire; most citizens and international states perceived him to be a military dictator. Rwanda and Uganda wanted to provide protection for the Tutsis (an already marginalized group) in North and South Kivu. Rwanda and Uganda also sought control over the natural resources found in the eastern regions of Zaire. After a period of conflict, these forces managed to overthrow the Mobutu regime. On May 17, 1997, Laurent-Desire Kabila declared himself President. He later renamed the country the Democratic Republic of the Congo (Diggs 2012, 26-36; Reyntjens 2007, 307-3011). It is important to note this is an extreme oversimplification of the First Congolese War. The main scope of the paper is not to analyze the First or Second Congolese War, but the current conflict in the eastern regions of the country. Nevertheless, it is critical to provide limited understanding of the first two conflicts as they have played important roles in the ongoing conflict. This background is vital to include in order to provide an accurate portrayal of the role *génocidaires* have played, and continue to play, in the conflict in DRC (Diggs 2012, 13-36; Reyntjens 2007, 307-3011).

On August 2, 1998, a rebellion was sparked in Goma, North Kivu. The governments of Uganda and Rwanda felt as though they had gained the right to access DRC's natural resources



because they assisted with overthrowing Mobutu. President Kabila, on the other hand, proclaimed that all armed groups return to their countries of origin, forcing Ugandan and Rwandan troops out of the country. The Rally for Congolese Defense (RCD) and the Movement for the Liberation of Congo (MLC) were formed as a result of these disputes. In response to the increased violence and instability in Goma, Kabila gathered forces to target the Tutsis from the MLC and RCD.<sup>3</sup> Kabila received further assistance from Angola, Namibia and Zimbabwe. As a result of the success of the MLC and RCD in escalating the violence, the United Nations deployed peacekeeping troops. This created the United Nations Organization Mission in the Democratic Republic of Congo (MONUC) through United Nations Security Council Resolution 1279 (UNSCR)<sup>4</sup> (Diggs 2012, 30).

In January 2001, President Laurent-Desire Kabila was assassinated. His son, Joseph Kabila, became interim President. He has remained President since 2001. The international community has stated that the elections since have been fair and free overall (Reyntjens 2007, 308-309). Eventually, President Kabila agreed to participate in the inter-Congolese Dialogues. The peace talks ultimately led to the Lusaka Peace Accord (LPA). The Second Congolese War lasted from August 1998 until July 2003. Over four million people were killed during the Second Congolese War. It is estimated that over five million people have been killed from the combined Congolese Wars. Most of the people killed have been civilians (Diggs 2012, 36; ITUC International Trade Union Confederation 2011, 8). After the signing of the LPA, DRC was made a *de facto* international trusteeship in order to prevent the state from collapse (Reyntjens 2007,

---

<sup>3</sup> DRC has a similar ethnic history as Rwanda and similar ethnic groups, the Hutus and Tutsis, Diggs states that the similarities between the two states provides evidence that the Rwandan Genocide is rooted in more than just ethnic hatred, as the genocide did not also occur in DRC (Diggs 13-26, 2012).

<sup>4</sup> On May 28, 2010 UNSCR 1925 was passed and MONUC was renamed the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO).

310).

International relations scholars have labeled DRC a “failed state” (Trautman 2, 2013). They claim the state is unable to function as a result of the fragmentation, the geographic structure of the country, the differing political structures and the lack of addressing reconstruction after two large conflicts (Trautman 45-56, 2013; Meger 2011, 115-124). Fighting in the eastern region of DRC has been ongoing since 2004. The civilian’s personal desire for natural resources and wealth is a contributing factor as to why peace has been unattainable (ITUC International Trade Union Confederation 2011, 8-10; Meger 2011, 115-124). Additionally, the geographical distance between the capital and the eastern parts of DRC contribute to the instability and abundance of violence. This is due to the lack of infrastructure throughout the country and lack of communication between the different parts of the country. The ongoing conflicts in eastern DRC have allowed for the use of rape as a weapon of war and sexual violence as a form of terror and torture (Baaz and Stern 2009). Therefore, this is the time frame that has been investigated within this paper in regards to human security risks and rape as a weapon of war. Since these conflicts began in 1996, civilians have been disproportionately marginalized and vulnerable to human rights abuses. Individuals have been internally displaced as well as having sought refuge in other countries. In October 2015, it was estimated that over 1.6 million people are still classified as IDPs. Over 1 million IDPs are located in North and South Kivu (United Nations Office for the Coordination of Humanitarian Affairs 2015). These are the provinces that are located in the eastern regions, and also have the highest rates of rape. Approximately 900,000 IDPs have returned home as of October 2015. Over ninety percent of IDPs flee due to conflict and seventy-five percent of IDPs live with host families as a result of displacement. (United Nations Office for the Coordination of Humanitarian Affairs 2015). A

map of eastern DRC with provinces is available in Appendix A.

### **Kivu Conflicts**

Conflict in the Kivu regions of eastern DRC erupted shortly after the peace agreements in 2003.

The conflicts are not rooted in any one aspect of society. Factors that have allowed the conflict to flourish include: corruption, the distance between the eastern regions and the capital, ethnic tensions due to the previous conflicts, as well as the desire to control the natural resources located in the area (Diggs 2012, 118-124; Meger 2011, 115-124). One undeniable aspect about the conflict is that it is fought with complete disregard to international humanitarian law.

Civilians have no security and safety. Civilians (men, women and children) are being raped, abducted, killed and tortured by the rebel groups, as well as the Congolese Armed Forces (*Forces armées de la République démocratique du Congo*; henceforth FARDC) (Amnesty International 2008). A compiled list of active participants in the conflict can be found in Appendix B. Children are forcibly recruited to join armed insurgent groups. The use of child in conflict reached an all time high when approximately 30,000 children were being used by various insurgent groups. UNICEF reports DRC as the country with the highest use of children in combat. The CNDP, FDLR, FARD and Mai Mai forces all have reported using children as combatants (Diggs 2012, 75). Not all children involved in insurgent groups act as soldiers. Some may be trafficked and become sexual slaves, wives or husbands. Children who are forcibly recruited are vulnerable to sexual exploitation and are easily manipulated (Diggs 2012, 75-103). Children's involvement in conflict is a violation of international human rights law and is discussed in more depth in Chapter 5.

While conflict in the Kivu Regions had been ongoing since 2004, the resurgence of fighting in August 2007 between FARDC and CNDP caused severe human rights abuses (Amnesty International 2008, 2-4). The National Congress for the Defense of the People (Congrès national pour la défense du peuple; henceforth CNDP) is commanded by Laurent Nkunda. This rebel group has been the driving force behind the Kivu Conflicts. The CNDP's main goal has been to defend the Banyamulenge (ethnic groups, also referred to as Tutsi Congolese) in eastern DRC. The CNDP has been protesting the requested integration into the FARDC army, as commanded by President Kabila. Nkunda has stated his desire to overthrow Kabila as the country's leader and rejects the current government (Diggs 2012, 25-36). The Mai-Mai military group<sup>5</sup> and the FDLR actively fight in opposition to the CNDP and their desired mandate.

During the 2007 conflict, MONUC peacekeepers were deployed to the regions, but were unable to assist in protecting civilians and end the fighting (Amnesty International 2008, 2). The FDLR, a Rwandan based insurgent group was dismantled in March 2008 after the passing of a UNSCR which dictated the need for the soldiers to disarm and return to Rwanda.

In 2008, the Conference on Peace, Security and Development was convened in Goma, North Kivu. The conference was held in an attempt to bring national reconstruction and development to the eastern regions (Amnesty International 2008, 4). A ceasefire was signed by the armed insurgent groups in North and South Kivu. It called for an immediate end in fighting,

---

<sup>5</sup> Mai-Mai is a phrase used to describe a community-based insurgent group. The Mai-Mai differentiate depending on their location as they are formed to defend the local territory against the other insurgent groups (Amnesty International 2007, 24-28; Amnesty International 2008, 3; Diggs 2012, 136). As such, the Mai Mai's allegiances shift depending on who is fighting and what their ultimate goal is (Diggs 2012, 136; Kelly 2010). The constant shifting of the Mai Mai's allegiance can impact whether or not people perceive them as allies or as enemies and fear their presence. This adds another dimension to the difficulties in ending the conflict, as all Mai Mai groups have different desires, and there is no united goal.

as well as the compulsory demobilization of the battalions. Furthermore, it emphasized the need to observe humanitarian law and refrain from any continued violations of civilians' human rights. By signing the ceasefire, the Congolese government granted blanket amnesties towards combatants for any crime committed, excluding war crimes, genocide or crimes against humanity (Amnesty International 2008, 4). This conference also created the Amani Programme, which is a government-led program "for security, pacification, stabilization and reconstruction of the Kivus" (Amnesty International 2008, 4). The Amani Programme:

aims to negotiate and secure the demobilization of the armed groups and their integration into the national army, establish accountability for violations against human rights and humanitarian law, including violence against women and children, resort state authority in the Kivus, and assure the return of the internally displaced and refugees, community reconciliation and the rehabilitation of essential social services, including health centres and schools (Amnesty International 2008, 4)

While the ceasefire was eventually signed, conflict has not concluded. Rape and sexual violence are widespread in the eastern regions. Individuals are fleeing their homes in hopes to find safety elsewhere. Civilians are still being killed and/or tortured. International humanitarian law is continuously being violated. The international community needs to assist when human rights are being violated to the extent that they are. This is usually done through the presence of peacekeeping troops.

In addition to the presence of the rebel groups and FARDC, the United Nations Organization Mission in the Democratic Republic of Congo (MONUC) has had an active presence in DRC. MONUC is mandated by the UN to protect civilians, provide security and prevent violations of humanitarian law by "using any means necessary" (Amnesty International 2008, 5). As dictated by their mandate, MONUC's main objective is to promote human rights and investigate claims of human rights violations. Their authorization emphasizes the need to

## Breaking the Legacy

protect women and children, as well as other vulnerable groups of individuals in DRC (Amnesty International 2008, 5). Many critics claim MONUC is unsuccessful in providing protection to the people of DRC. There have been multiple allegations and reports that MONUC peacekeepers have been collaborating with the CNDP. Reports have also been filed that argue that peacekeepers have been complicit in the raping women and children (Diggs 2012, 56).

Furthermore, the operation costs for peacekeeping missions are substantial for the international community. MONUC is strained financially, so, providing the necessary protection and promoting peace are challenging objectives. In a strategy presented to the UN Security Council in December 2007, MONUC outlined the difficulty it was having at ensuring protection, peace and stability are reached. Overall, the mandate was not being achieved (Amnesty International 2008, 5). On July 1, 2010 MONUC was renamed the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) after the original mandate lapsed. The name was adjusted in an effort to focus on the stabilization of the state and actively promote an end to the conflict (United Nations News Center, 2016).

### **Human Security Risks**

During the 2007 conflict in Goma, North Kivu, over 500,000 people were forced to flee their home due to the lack of security. Being an IDP during conflict adds substantial insecurity and individuals are at enlarged risk of vulnerability and human rights/human security violations. The IDP population reached its high at 3,400,000 in 2008 during the height of the conflict. Since then, numbers have been slowly decreasing as some individuals have perceived it to be safe to return home. In a report published May 2014, there were over 2.9 million IDPs in DRC (International Displacement Monitoring Centre, 2014). However, by December 2015, the

number decreased to 2,658,000 internally displaced persons in (United Nations High Commissioner for Refugees, 2016). As of September 2015, 900,000 IDPs have been reported to have returned home in the last 18 months (United Nations Office for the Coordination of Humanitarian Affairs 2015). While the numbers are decreasing, a substantial amount of the population remains internally displaced. Research has shown displacement, sexual violence rates, poverty, political instability, structural inequalities and discrimination all factor into one another. These aspects of society are visibly present within the context of DRC. It is hard to determine which of these human security factors has allowed for the other violations of one's human rights. Therefore, it is important to ensure all these obstacles are addressed during post-conflict reconstruction in an attempt to guarantee conflict does not relapse.

In 2013, over 65 percent of IDPs in DRC are located in the North and South Kivu Provinces, with 1.9 million people displaced in North and South Kivu, Orientale Katanga and Equateur Provinces (United Nations Office for the Coordination of Humanitarian Affairs, 2013). There is a strong correlation between conflict and people fleeing due to security threats. Eighty-seven percent of the individuals globally displaced in 2013 were displaced as a result of armed conflict (United Nations Office for the Coordination of Humanitarian Affairs, 2013). The International Displacement Monitoring Centre stipulates over four percent of the population of DRC faces displacement (Internal Displacement Monitoring Centre, 2014).

In a report published by Human Rights Watch (HRW) entitled: "Always on the Run: The Vicious Cycle of Displacement in Eastern Congo," the leading human rights organization analyzed causes of displacement in DRC between late-2008 and mid-2010 in North and South Kivu. Contained in this report were interviews with many individuals who gave personal narratives as to why they fled their homes. One woman told HRW "she fled her village in

## Breaking the Legacy

September 2008 because the FDLR soldiers were raping women in the fields during the day and in the houses at night. She fled from place to place, escaping the shifting front line” (Simpson 2010, 25). This woman feared for her safety and security. For her, fleeing was the best alternative. The state and MONUC were not successful in their obligations to protect her safety, so she was forced to take her own personal initiative. Another woman reports:

My older sister was raped in her house that month [September 2008]. We fled to the fields, but the FDLR followed us there and so we fled to Kirumba. We went back in November but the same thing happened again and we fled again in January, to Bingi. We tried to go back in March [2009] but then we heard the Congolese army was coming and we were afraid the FDLR would punish us so we fled again, back to Kirumba (Simpson 2010, 25).

As these quotes portray, along with others in the report, there is a direct causation between people fearing their human security and the resulting displacement in the DRC. As women (and men) fear they might be raped or taken advantage of, they leave their homes. In the quote directly above, the woman felt compelled to flee multiple times, after her sister was raped.

The Internal Displacement Monitoring Center (IDMC) has identified three varying degrees of displacement as witnessed in DRC: short-term and short-distance; long-term and long distance; and pendular (Lauten and Kesmaecker-Wissing 2015, 8). Pendular displacement occurs when an individual returns home during the day in order to maintain their livelihood. As a result of the insecurity and threats their home face during the night, these individuals will flee to a temporary residence (Lauten and Kesmaecker-Wissing 2015, 8-15). This form of displacement is highly prevalent in DRC. The constant movement of IDPs in eastern DRC contributes to the high rates of sexual violence. As IDMC has reported, women and girls are especially vulnerable to sexual violence when they collect water or firewood, or when they use the bathroom (International Displacement Monitoring Centre 2014; Diggs, 2012). The type of pendular



displacement seen in DRC is seen to have a correlation to the high sexual violence rates.

Furthermore, the frequent lull in fighting seen in eastern DRC provide individuals with a false sense of security and perception that the conflict is over. When they observe fighting to have ceased, they might return home, only to have fighting erupt once again. One consequence is that individuals get stuck in the poverty cycle, where systematic violence and human rights abuses are perpetuated (Simpson 2010, 24).

According to the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), the DRC is mandated to address the root causes of displacement (African Union 2009). The convention also obliges the state to assist individuals in reducing the possibility of displacement reoccurring. The DRC has signed but not ratified the document (International Displacement Monitoring Centre 2014). The government is not doing an adequate job at addressing the root causes of displacement, ensuring and promoting the rights individuals have to return to their homes, and be free from violence and other safety-threats. In addressing root causes of displacement, it is important to understand the power-dynamics seen within Congolese societies. Power's connection to displacement and rape, and will be discussed in more depth below.

### **Power Relationships**

Implicit power relationships present during conflict are imperative to discuss. Hegemonic masculinity examines these unequal gender power dynamics seen during conflict, which men have power, and which women have power. Hegemonic masculinity was discussed more in Chapter 1 and proposed additional questions of research to conduct to determine which men have the power, and what they do with the power. When discussing sexual violence during conflict, it

## Breaking the Legacy

is imperative to figure out who is being abused, and who is doing the abuse. These questions often link back to hierarchies of power and masculinity, but were unable to be answered within the scope of this paper.

According to Banwell, men in Congolese societies are supposed to have hyperactive sex drives, economic power and social status. “The man” fulfills “the mans” role and is allowed to use force and violence over women. By using this power over others, and the perception of the hegemonic masculinity and cultural perspectives have created “conditions where rape and sexual violence [have] become permissible and justified within the conflict zone” (Banwell 2012, 53). These assessments allow for the perception that human rights abuses can perpetuate. The armed groups in DRC hold a substantial amount of power over the civilians. These groups control aspects of society that they should have no authority to regulate. They dictate when to attack, where to attack and who to attack. This fear is translated as people flee their homes for their protection. As women and children tend to encompass the largest percentage of civilians, and are at greatest risk of abuse. Furthermore, the insurgent groups abuse their power by violating women’s and men’s rights through sexual violence. One woman who was fleeing her home expressed the power relations the FARDC abuses. She said:

The Congolese army stopped us on the road near NyabIondo and said, “Why are you fleeing? We are coming to save you.” Then they stole all our things. —A 30-year-old woman who lost everything as she fled her village in April 2009 (Simpson 2010, 35)

IDPs should be able to maintain power and authority in controlling their actions and safety. They need to have the ability to dictate when they want to leave and/or return. However, they are still not able to do so. Power dynamics are furthermore important to analyze within this context, as they directly affect gender dynamics during conflict and post-conflict. Yet, power discussions are

often overlooked when discussing displacement and consequences of conflict. The internally displaced populations will not be successfully integrated until power dynamics are addressed and the experiences of women and men during conflict and displacement are publically addressed and de-stigmatized.

### **Rape as a Weapon of War**

In the Democratic Republic of Congo, two in five women are victims of sexual violence. One in four men are victims of sexual violence (Melhado 2010, 210). It is perceived that estimates are conservative and actual rates are higher, but remain low as a result of underreporting. Social stigma and fear of being ostracized by the community and/or family members also contribute to an individual's reluctance to report these crimes. Seventy-six percent of female victims are raped in broad daylight (Diggs 2012, 118). Furthermore, there is a lack of awareness that sexual violence is a violation of one's human rights and human security, as well as a violation of the Congolese Constitution (Zongwe 2012, 52). Some important factors that contribute to the underreporting of these crimes include: the weak justice systems, the lack of access to health centers, the location of the crimes and the social stigma attached towards the crime (ITUC International Trade Union Confederation 2011, 26). These elements contribute considerably to the low statistics from men who are victims. As AI points out, when men and young boys are raped, it is used as a means to attack and threaten the family or community (Amnesty International 2008). Fear of being labeled a homosexual and community perceptions make men less inclined to report rape than women in DRC. Men are more vulnerable to being forced into recruitment (Baaz and Stern 2013, 35). There have been reports of men being raped by other men, as well as being raped by women in DRC (Baaz and Stern 2013; Haer, Hecker and Maedl 2015).

## Breaking the Legacy

While sexual violence exists in almost all conflict, the prevalence rates seen in the DRC are significantly higher than in other conflicts. The International Rescue Committee (IRC) reported over 40,000 cases of gender-based violence in DRC between 2003 and 2006 (Banwell, 2014). The UN estimated that 100,000 women were raped between 2004 and 2005 in eastern DRC (Meger 2011, 116). The numbers have continued to rise. More than 30,000 cases of sexual violence and rape were reported to have occurred between 2005 and October 2007 solely in South Kivu (Meger 2011, 117). The United Nations Population Fund (UNFPA) reported 5,485 cases of sexual violence in North Kivu and 2,928 in South Kivu in 2010. There were over 8,000 cases reported between 2009 and 2010 in eastern DRC (ITUC International Trade Union Confederation 2011, 26). One report states there have been over 1.7 to 1.8 million women affected by sexual violence in DRC and over 400,000 new cases each year with 760,000 men reporting claims of sexual violence (Loko Roka et al. 2014, 2).

Individuals as young as six months and old as eighty-nine have been reported to be victims of rape (Meger 2010, 116; Diggs 2012, 67). In a study conducted by Ohambe et al., the group of researchers found that gang rape is the most common form of rape in South Kivu. An average of 4.5 attackers were present for each victim of rape interviewed in the study (Meger 2011, 117). Many women were re-raped or assaulted in order to ensure that they would not inform others of their rape. Ohambe, et al. also reported that over seventy percent of the individuals interviewed believed their rape had been planned in order to assert dominance and fear. Seventy percent of the respondents experienced some form of torture, mutilation, beating, and/or insertions of objects “such as sticks, bottles and rifle barrels into their genitals” (Meger 2011, 117). Furthermore, AI reports that victims of rape are often threatened with death. Some have had a “rifle, a knife, a sharpened piece of wood, glass or rusty nails, stones, sand or peppers

inserted into their vaginas. Others have been shot during or after rape, sometimes in their genitals” (Amnesty International 2004, 31). Ninety-eight percent of rape victims in the Kivu’s have had some form of vaginal trauma caused by the rape (Diggs 2012, 66). Estimates as to the extent of people affected by sexual violence during conflict varies extensively.

In a 2010 study conducted by K. Johnson, et al., 74 percent of women interviewed said they were sexually assaulted as a result of the conflict. In contrast to that, 65 percent of men involved in the study said their assault was related to the conflict. Victims who were women said their assaulters were 59 percent male and 41 percent female. Males, in contrast, stated 91 percent of their perpetrators were male. Fifty-one percent of female victims were raped as the form of assault, while 21 percent of males were raped (Melhado 2010, 210). Other forms of sexual violence found in this study included “molestation, sexual slavery and being forced to undress” (Melhado 2010, 210). The study conducted by Johnson, et al. was the first study documenting the widespread implications of sexual violence and human rights abuses seen in the eastern territories of DRC.

In addition to the widespread occurrence of rape and other forms of sexual violence, additional health implications and trauma can affect victims. Most victims of sexual violence were abused in the rural areas of DRC (Diggs 2012, 66-67). This translates towards further obstacles the individual must overcome when they seek medical treatment. Less than 30 percent of the Congolese population have access to basic healthcare. Reaching health centers in the eastern regions of the country is considerably demanding as a result of the poor infrastructure. Many of the women who experience debilitating injuries after their rape are unable to access health care, which can be life threatening. Some of the health complications that can arise from rape, other than vaginal trauma associated with forceful insertion, include: STI and/or HIV

## Breaking the Legacy

infections, uterine prolapse, injuries to the rectum or uterus, broken bones, infertility, psychological trauma, pregnancy, difficult pregnancy and birth, internal or external bleeding, and fistula (Amnesty International 2004, 31). All of these health risks can have serious effects on the individual's emotional and physical state. Health implications are seeing a surge in their presence and cause greater concern for those who suffer from fistulas. These health implications have further weight on whether or not the victim's community will accept or them (Benfield et al. 2015; Diggs 2012, 70-75).

In a study conducted by Verelst et al., the researchers concluded individuals who did not labeled their experiences as "rape" suffered from higher rates of PTSD and mental health issues than the individuals who acknowledged it as rape (Verelst et al. 2014b). This association shows the relationship between sexual violence and mental health, along with the role stigmatization of rape has on the society of DRC. In another article written by Verelst et al., the researchers concluded that victims of sexual assault face obstacles of mental health as a result from the stigmatization of the assault, not the abuse itself (Verelst et al. 2014). This correlation emphasizes the need to deconstruct this social stigma in order for successful reintegration of victims into the community, assisting in dealing with the trauma and accepting that it happened.

At Panzi Hospital, in South Kivu, girls three years of age and women eighty-nine years of age have sought medical assistance after being raped by different insurgent groups. Panzi Hospital is one of two hospitals in eastern DRC with the ability to provide assistance and surgeries to victims of sexual violence. The other hospital is located in North Kivu and is a Doctors on Call for Service/Heal Africa (DOCS) Hospital (Maedl 2011, 133). Dr. Mukwege, who founded Panzi Hospital, performs approximately ten reconstructive surgeries to victims of rape each day (Diggs 2012, 68). He has stated:

[I]mpunity is the worst factor because militias know they will not be identified or judged. That is one of the main reasons why they keep loitering, raping and killing. In addition, the aggressors know that the more violent the crime is, the more shameful and scared the victims are, the less willing they are to talk about it. Many of these rapes are not inflicted upon these women because of a sexual desire, but with the purpose of showing them that they are nothing (Diggs 2012, 68).

This perspective is further supported by Vénantie in an interview by AI. Vénantie, 56, was raped on January 25 2008 in the Beni territory. She stated:

I was at home when a young FARDC soldier came to the house. He pushed me into the bedroom and started to hit me. He strangled me so that I could not cry out, then he raped me. When the rape was over, the soldier was so drunk that he stayed on the bed and didn't move. I got up and started to scream. My neighbours went to the military camp to report the attack. The commander came to my house with three soldiers, and took the man away. I was told later that he was whipped as punishment, but the soldier is still at the camp and I see him regularly. When I see him, he tries to joke with me. He frightens me. I feel very anxious and depressed. I would like to press charges, but what could I really do to a soldier? (Amnesty International 2008, 9)

Post-traumatic stress disorder (PTSD) is high among victims of sexual violence (Diggs 2012, 72). Diggs interviewed one woman who killed her baby after it was born, so she would not have to be forced to relive the rape every time she saw her child (Diggs 2012, 64). Another woman who was interviewed by AI stated:

It would be better if I died with the baby in my womb- Sanguina, (Amnesty International 2004, 31)

The stories of the experiences of the victims are infinite and powerful. But, perpetuating the victim stereotype needs to be terminated. There needs to be a paradigm shift in how we view victims. We should no longer call them victims, but survivors. They have survived heinous acts, violations of their human rights, violations of their bodies and their human security. By calling them victims, we do not allow for their personal development and growth of what has occurred. Calling them survivors might allow for more individuals to speak up, and acknowledge what has

## Breaking the Legacy

happened to the individual person, as well as to the community. Prosecution of these crimes must be achieved and perpetrators must be held accountable. Survivors should receive reparations and discrimination against women needs to be tackled.

### Conclusion

When women are raped, it is seen as an attack on the entire community (Banwell 2014, 52).

When a woman is raped or assaulted, it shows the husband and community that they failed at protecting her. Furthermore, any assault on a woman has a direct impact on her physical and mental health, and not just the community (Banwell 2014, 52). “Rape is not inevitable in war,” (Wood 2009, 131) but the impunity and lack of addressing power relations seen in DRC have perpetuated this weapon of war. In a study conducted by Anna Maedl, the victim’s perspective of sexual violence stated rape *is* the war, not a consequence of the war (Maedl 2011, 56).

The next chapter will discuss the conflict in Bosnia and Herzegovina. It will provide an understanding of the emergence of addressing sexual violence as a form of ethnic cleansing and a weapon of war on the international level, and domestic level. It will also point out the limitations of the post-conflict reconstruction process in Bosnia in regards towards addressing women’s rights and sexual violence in conflict. These limitations will then be applied in the final chapter in determining the best alternative for DRC.



## Chapter 4: Bosnia and Rape as a Weapon of War

The conflict in Bosnia and Herzegovina (henceforth Bosnia) and throughout the former Yugoslavia were the last wars seen in Europe during the twentieth century.<sup>6</sup> Analyzing the global precedence of rape as a weapon of war during and after the conflict in Bosnia (1992-1995) is critical. This was the first conflict that established international recognition of sexual violence as a weapon of war, specifically as a tactic of ethnic cleansing. Ethnic cleansing and sexual violence occurred prior to Bosnia, and continues to occur after the conflict of Bosnia. But comprehending how sexual violence became incorporated into international discussions and policies is integral. This can only be done by dissecting the conflict and post-conflict situation of Bosnia. The use of sexual violence is widespread in DRC and understanding past and present international responses to sexual violence are imperative for improving the security of individuals during the conflict and post-conflict periods. The transitional justice structure and criminal justice hybrid system constructed during the post-conflict period in Bosnia will be addressed, as well as the international policies that have resulted from this conflict. Overall, academics, policymakers and individuals can learn a substantial amount from Bosnia in a post-conflict analysis of rape as a weapon of war.

The international community and domestic post-conflict community has made progress and improvements in addressing women's rights and rape as a weapon of war, but failed in other areas. As researcher Jelena Subotić advocates in her book *Hijacked Justice: Dealing with the Past in the Balkans*, the best way to learn how to address post-conflict reconstruction is to learn

---

<sup>6</sup> The conflict in Kosovo (1995) was the last conflict seen in Europe. However, Kosovo was also an autonomous unit of the former Yugoslavia.

## Breaking the Legacy

about the mistakes seen in Bosnia and the former states of Yugoslavia. Understanding the flaws in partitioning Bosnia is important in guaranteeing that the same mistakes do not occur again. This will ensure better reconstruction, reintegration and guarantee that prosecution is applied to other conflicts. This chapter will provide an analysis on the partition and post-conflict tribunals in Bosnia, as well as policies that have been created to address rape as a weapon of war and human security. The next chapter will apply these policies, what has worked and what did not work, what needs to be promoted, addressed, etc. to the context of DRC.

### **Understanding the War in Bosnia and Herzegovina**

The Republic of Yugoslavia was founded after World War I. Under Josip Broz Tito's communist control, between 1945-1980, the multi-ethnic state had six republics Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia, along with two autonomous provinces, Kosovo and Metohija and Vojvodina (Mojzes 2011). Tito's motto was "brotherhood and unity" (*bratstvo i jedinstvo*) and strived for a state without nationalist sentiments and was fully unified as Yugoslavia. Tito's death in 1980, coupled with the fall of the Soviet Union, sparked the drive for independence from the different republics. The first independence movement started in 1991, with the Republic of Slovenia (Mojzes 2011). As the different republics were declaring their independence, conflicts of different degrees of intensity and gruesomeness were instigated. One of the longest, and most violent, was the conflict in Bosnia.

The Republic of Bosnia within Yugoslavia had the most complex mix of ethnicities. Forty-four percent of the population was Muslim/Bosniak, 33 percent of the population was Serbian, 18 percent Croat, and 5 percent considered themselves Yugoslav or other (Mojzes 2011). The Bosniaks, Serbs and Croat ethnic groups comprised the major factions in Bosnia and

were in dispute over the future state of Bosnia. The Croats and Bosniaks wanted to hold a referendum to determine the future, while the Serbs wanted to claim Bosnia as a part of Serbia. When the referendum was held, the Bosnian Serbs boycotted the results that Bosnia would become an independent country. The Serbs in the region felt as though they had been victimized and threatened by the Bosniaks and Croats, and were thus entitled to this claim (Mojzes 2011; Moodie 1995, 107-110). The war in Bosnia began in April 1992 after the country officially declared its independence from Yugoslavia. It lasted until December 14, 1995 with the signing of the “General Framework Agreement for Peace in Bosnia and Herzegovina,” also referred to as the Dayton Peace Accords (DPA) (Jenichen 2010, 141-143). As the combating ethnic groups sought to gain control over the territory of Bosnia, a new phrase was coined that described their weapons tactic: *ethnic cleansing*.

The conflict in Bosnia was also highly gendered, involving tactics that were used in combination with the targeting of people’s ethnicities. Women (and men) were targeted because of their bodies and became sexualized weapons of war (Jenichen 2010, 141-143). Originally, women’s bodies were targeted to dilute the bloodlines and ensure Serbian dominance and ethnic homogeneity. The use of “rape camps” suggests that individuals (mostly women) were held because of their ethnic identity, not because of their political identity (Skjelsbæk 2011, 67-70). These rape camps became essential components as to why the international community deemed rape to be a form of ethnic cleansing and as a weapon of war during the conflict in Bosnia. Women were put into camps, imprisoned during their pregnancy and forced to carry their babies to full term. The exact number of children born as a result of rape will never be known. The Serbian militants believed rape, pregnancy and subsequent births would result in mixed ethnicities. This would increase the majority of Serbian individuals. However, rape and ethnic

## Breaking the Legacy

cleansing was used on behalf of all participants. While people often discuss the Serbian tactics and the gruesome techniques employed by the Bosnian Serbs, the Bosniaks and Bosnian Croats used the same weapons of war and crimes against humanity. The Bosniaks and Bosnian Croats often claimed they only participated in acts of genocide and crimes against humanity because they were being targeted and were being threatened. However, genocide and crimes against humanity cannot be considered self-defense and are never excusable. The Bosniaks and Bosnian Croats need to be and should be held accountable to the same extent as the Bosnian Serbs for the crimes committed and the sexual violence seen throughout the war.

The three and a half years of fighting resulted in approximately 100,000 casualties. Over 2.2 million individuals from Bosnia were internally displaced or sought refuge in neighboring Balkan countries (Moratti and Sabic-El-Rayess 2009, 6). The exact number of victims of sexual violence during this conflict will never be known. Estimates of the number of victims of rape vary, ranging from 10,000 to 60,000. However, most individuals, organizations, governments, etc. have agreed that there were approximately 20,000 victims of rape (Skjelsbæk 2011, 69).<sup>7</sup>

While the targeting of women's bodies was a factor of war during this conflict, women were not the only victims of sexualized violence. Men were also victims. Addressing the needs of men who were abused is equally as important in post-conflict reconstruction and reintegration. Nonetheless, as seen in DRC, men tend to not report these rapes. It is therefore difficult to have a comprehensive understanding of men who are raped, and the motives behind those rapes.

Historically, women have not been actively involved in wars as soldiers, and tend to comprise

---

<sup>7</sup> The typical number cited of victims of sexual violence in Bosnia tends to be around 20,000. This number was reached after an investigation was launched by the European Commission at the beginning of the conflict. As Skjelsbæk suggests, using this number suggests that rapes only happened at the beginning of the conflict, and stopped after the first year. The likelihood of this is slim, and estimates of rape are significantly higher.

the largest percentage of civilians.<sup>8</sup> As a result, they are disproportionately more affected by the post-conflict reconstruction of states than their male counterparts (Cohn and Jacobson 2013, 105). In the conflict in Bosnia, women were more than passive victims of sexual violence. Within the context of Bosnia, many women crossed ethnic lines in order to provide assistance to female victims of sexual violence (Jenichen 143-146; Kaufman and Williams 2010, 67). It is important to actively deconstruct the victimization stereotype and highlight that women were involved in combat and conflict in Bosnia. Their involvement was in an attempt to break these gender boundaries and generalizations. The levels of activism seen are important to highlight when attempting to discuss gender roles during conflict and how gender was addressed during post-conflict reconstruction.

The conflict in Bosnia was the preliminary stage where the international community took action focusing on women's bodies being targeted and the use of rape as a weapon. Numerous policies have been established at the international level to ensure this tactic is not used again. Examples of policies include the involvement of women directly in peacekeeping operations and post-conflict rebuilding (Raven-Roberts 2005, 44-48; Keaney-Mischel 2010, 112-114). Another important outcome of the conflict in Bosnia is the inclusion of rape as a weapon of war and ethnic cleansing into the mandate of the Rome Statute, and therefore under the control of the International Criminal Court. The first individuals prosecuted for ethnic cleansing and the use of women's bodies as weapons of war were men involved in the conflict in Bosnia (Akhaven 1998).

### **Dayton Peace Accords and Post-Conflict Bosnia**

The flaws in post-conflict reintegration and development began at the creation and signing of the

---

<sup>8</sup> There are examples of women being involved as soldiers and actively fighting for the cause. However, historically, women tend to be excluded from active involvement.

## Breaking the Legacy

Dayton Peace Accords (DPA). The DPA reinforced the ethnic boundaries that were being fought over by creating two separate republics within the states' boundaries. The country is comprised of two ethnically defined entities, Republika Srpska (RS) and the Federation of Bosnia and Herzegovina (FBiH). Republika Srpska is comprised of almost 100 percent Bosnian Serbs while the Federation of Bosnia and Herzegovina is shared between the Bosniaks and the Bosnian Croats. One critique of the DPA is its acknowledgement of land gain during the conflict by the Serbs as it became incorporated into the peace document as well as the constitution (Subotić 2009, 123-125). Furthermore, heavy criticism has been aimed at the DPA because it reinforces the ethnic identities that were at the roots of the conflict and the displacement seen throughout the conflict (Subotić 2009, 123-131). RS and FBiH have separate constitutions, citizenships, police, armies, political parties, presidents, etc. while still remaining within the same state (Cockburn 2013, 27; Subotić 2009, 123-131). The division of these two entities to the extent present in Bosnia have proven to be also extremely costly. The official separation of these two entities has reinforced the ethnic divisions the war was grounded on, especially that of the patriarchal, nationalistic institution (Cockburn 2013, 27). Separating these two entities to the extent present in Bosnia is also remarkably damaging. The World Bank claims over 50 percent of Bosnia's GDP goes towards financing this government hybrid (Subotić 2009, 125).

Another characteristic of the DPA that affected Bosnia's post-conflict reconstruction is the level of international involvement. Bosnia became an International Protectorate under the control of the United Nations Office for High Representative (OHR) (Subotić 2009, 125). As an International Protectorate, the OHR was granted unconditional control in organizing almost all aspects in creating a newly independent state and constitutions, including but not limited to designing the flag, elections, the police force, the license plates, human rights monitoring, etc.

(Subotić 2009, 125). OHR had so much authority and control over the state of Bosnia that the domestic government and state institutions were essentially nonexistent. The Bosnian elites took advantage of this lack of power, and “political irresponsibility” has continually contributed to the ineffective government structure and power seen currently (Subotić 2009, 125). The international participation, failures and successes were all used to further personal political careers in Bosnia. Power structures and relationships are important in analyzing the post-conflict structure of Bosnia. Individuals are continuously using the ICTY failures, as well as the international involvement in the Bosnian state, to further their own political agendas (Subotić 2009, 125).

The demobilization, demilitarization and reintegration (DDR) processes implemented in post-conflict Bosnia affected the structure of the new Bosnia.<sup>9</sup> The DPA did not address any specific provisions in the post-conflict Bosnian society for the use of these mass rapes and the gender-based crimes. The DPA overlooked the issues of gender-based crimes as well as the ramifications of children born as a result of rape in the reconstruction process of post-conflict Bosnia (Djurić, Drezgić and Žarkov 2008, 282-284). This omission has led to ongoing international pressure to continue criminal war tribunals in order to restore some sense of justice (Djurić, Drezgić and Žarkov 2008, 282-284). At one point during the post-conflict period, there were talks of holding a Truth and Reconciliation Commissions (TRC).<sup>10</sup> The law that was proposed would have addressed the human rights violations that occurred between November 1990 and December 1995 (Subotić 2009, 146-149). While a draft law was proposed to the Bosnian constitution, it never passed. Most advocacy groups in Bosnia were against the idea of the TRC as they felt it would be used for individual political gain and personal agendas. It would

---

<sup>9</sup> DDR was defined under Important Definitions and Distinctions in Chapter 1.

<sup>10</sup> TRC was defined under Important Definitions and Distinctions in Chapter 1.

not provide any closure (Subotić 2009, 146-149).

**Transitional Justice: What is Justice for Bosnia?**

The transitional justice structure of post-conflict Bosnia was seen as a hybrid system where prosecutions and court cases were tried on the international level as well as the domestic level. Originally, the international community created an ad hoc criminal tribunal, the International Criminal Tribunal for the Former Yugoslavia, which will be addressed below. After it was perceived that the criminal tribunal was not providing enough justice, cases were transferred to the domestic level, and the War Crimes Chamber was established. At the same time as these international court proceedings, domestic and local courts were prosecuting low-ranking individuals. Another obstacle seen in the Bosnian case was the involvement of the international community. After the signing of the DPA, various international actors were involved in peacekeeping missions, including but not limited to OHR, UN Mission in Bosnia and Herzegovina, UNHCR, OSCE and an abundant number of NGOs (Subotić 2009, 126).

Human Rights Watch and the United Nations Development Program are examples of organizations that are becoming increasingly worried about the future of the state of Bosnia. They are warning the international community that the country is developing a “two-tiered war-crimes justice system” where an impunity gap is being created and individuals are not being held accountable and responsible for the crimes they committed. High-ranking officials are being tried at the International Criminal Tribunal for the Former Yugoslavia or the War Crimes Chamber while low-ranking individuals are being tried at the domestic/local levels. However, there is a lack of efficiency and in reality, no one is being tried. The transitional justice efforts are ineffective and political instability is left in a continuous cycle (Subotić 2009, 132-136).



**International Criminal Tribunal for the Former Yugoslavia**

The OHR was also given authority over supervising Bosnia's involvement with the International Criminal Tribunal for the Former Yugoslavia (ICTY). The ICTY was the first international war crimes court held after World War II. In May 1993, the ICTY was established at the passing of UN Security Council Resolution 827 (Skjelsbæk 2011, 72-76). Located in The Hague, the mandate of the ICTY includes “bring[ing] justice [to] those responsible for serious violations of international humanitarian law committed in the former Yugoslavia since 1991 and thus contribute to the restoration and maintenance of peace in the region” (United Nations International Criminal Tribunal for the Former Yugoslavia 2016). The ICTY established and enacted Rules of Procedure and Evidence which help to defend the rights of witnesses during prosecution of rape trials, including Rule 96 (Niarchos 2006, 304-309). Specifically, Rule 96 states:

- i. No corroboration of the victim’s testimony shall be required’
- ii. consent shall not be allowed as a defense if the victim
  - a. has been subjected to or threatened with or has had reason to fear violence, duress, detention or psychological oppression, or
  - b. reasonable believed that if the victim did not submit, another might be so subjected, threatened or put in fear;
- iii. before evidence of the victim’s consent is admitted, the accused shall satisfy the Trial Chamber *in camera* that the evidence is relevant and credible;
- iv. prior sexual conduct of the victim shall not be admitted in evidence (Niarchos 2006, 306)

The tribunal consists of eleven judges, only two of which were women (Niarchos 2006, 300-305). An individual can be investigated and tried under the ICTY if they are seen to have violated various offenses, including: “grave breaches of breaches of the 1949 Geneva conventions, violations of the laws or customs of war, genocide and crimes against humanity” (United Nations International Criminal Tribunal for the Former Yugoslavia 2016). The ICTY has

## Breaking the Legacy

the authority to investigate any claims of violations that have occurred in Yugoslavia since 1991. It does not focus its investigations individualized to Bosnia, but to any territory that comprised the former Yugoslavia. Yet, Bosnia was the country where most of the ICTY cases originated from as a result of the ruthlessness of the crimes committed (Subotić 2009, 126-127). The ICTY was the first international tribunal where rape was included within the mandate as a weapon of war and a form of crime against humanity. This created an international precedence in how to prosecute perpetrators of rape and sexual violence.

The first shortcoming of the ICTY is in how it was structured. As mentioned above, the DPA created two different republics within Bosnia, each with their own police force and government infrastructures. The two republics had differing perspectives on cooperation with the ICTY and their investigation. RS was very reluctant to assist the ICTY in any form, while the FBiH wanted to assist the ICTY. This was because they felt the international community was going to solely punish the Bosnian Serbs for the crimes they committed. RS publically denied any acknowledgement as to where individuals accused of war crimes were located and openly impeded ICTY investigations of these war crimes. As Subotić states, the ICTY actively worked to undermine its own authority and findings (Subotić 2009, 127-128). Another factor that influenced RS and their involvement in the ICTY was the collaboration between RS and Serbia. Individuals originating from Serbia hiding from the ICTY would go to RS, while individuals originating from RS hiding from the ICTY would go to Serbia (Subotić 2009, 127-128). These two entities collaborated greatly in aiding suspected fugitives in order to avoid exposing potential ramifications of any crimes committed including prosecution as war criminals. Despite a law passed in September 2001 that ensured RS would cooperate with the ICTY, assistance was not seen until 2005. In 2005, RS eventually began arresting individuals charged with war crimes

and transferring them to The Hague (Subotić 2009, 127-128). The only reason RS officials started to cooperate was because OHR threatened to halt international reconstruction aid to the region. OHR also fired many “extreme nationalists” employed in the RS government, as they were hindering these investigations.

The interaction between the international community and RS demonstrates the power the international community has over the state of Bosnia and RS. RS realized the bargaining power they held, and how they could “commercialize” assistance with reconciliation and the Tribunal (Subotić 2009, 127-128). Many of the individuals involved in the military and armed forces during the conflict have become members of the police force and government. Tensions between individuals in RS still exist as many individuals who committed war crimes walk freely on the streets (Subotić 2009, 127-128). The people responsible for making arrests need to be arrested themselves, but are protected by the government. This has created a level of intimidation and fear within the people of Bosnia and RS.

The FBiH felt Serbs should be the main and only focus of the ICTY. This was due in large part to the aggression employed by the Serbs onto the Bosniaks and Bosnian Croats. There was also a lack of assistance from the international community in providing protection and security. The first individual arrested under ICTY jurisdiction was a Bosniak commander which made the people of FBiH unsatisfied with the structure of the prosecutions of war criminals under the ICTY. They felt that they were once again being targeted and the ICTY was creating a “false ethnic balance” of individuals being prosecuted to appease RS (Subotić 2009, 129-130). Unlike RS, the FBiH allowed for international presence in investigating individuals potentially involved in war crimes. NATO troops and UN peacekeepers assisted in arresting and transferring individuals to The Hague.

## Breaking the Legacy

The ICTY has been highly criticized in how the legal structure was set up in trying and prosecuting suspected war criminals. The people of Bosnia were not educated as to the Western structure of the legal system. Education of western law and prosecution was not seen as a priority for the international community from the beginning. It took several years for the ICTY mandate to be translated into the languages in Bosnia. As a result, most people in Bosnia did not understand the proceeding and what was needed to hold the trials. There was a constant misinterpretation of events, as no one completely understood the process. Most people relied on the media to get their information, and the majority of events were misinterpreted, which perpetuated the ethnic tensions and biases (Subotić 2009, 131-136).

The concept of a plea deal was troubling to individuals who did not understand how a time-frame could be given to pay for the types of crimes committed. The victims of Bosnia felt as though they were not receiving adequate justice. Their rapists and criminals would get plea deals and only go to prison for a short period of time. One interviewee stated, “we really do not expect justice from them [the ICTY]” (Subotić 2009, 133). The same views are echoed in Stover’s *The Witnesses: War Crimes and the Promise of Justice in The Hague* where witnesses from the ICTY trials discuss their involvement with the court and the process of testifying. The advocates and activists in Bosnia had given up on the international justice system. Many citizens of Bosnia were frustrated that the ICTY held the trials in The Hague and only prosecuted high-ranking perpetrators. The time frame has also been a barrier to successful post-conflict development. Many victims gave up hope that they were going to receive reconciliation and closure for the acts they witnessed and endured. Subotić states that “Bosnian sociologists have argued that the popular disillusionment with the ICTY has contributed to further re-traumatization of the population, who are continuing to be prey to nationalist ideologists that are

in abundant supply” (Subotić 2009, 134-135).

The ICTY was so too political and gave too much attention in ensuring that the process ran smoothly, rather than the greater goal of focusing on the needs of victims and the crimes that were committed. The justice system was orchestrated by the international community to a certain extent. The people of Bosnia and the voices of the victims were overlooked. There can never be sufficient punishment for the crimes committed in Bosnia, but the ICTY put time limits on the prison sentences of war criminals. There was a general lack of addressing civil society organizations, and the process did not incorporate women’s groups and women’s needs in rebuilding of the society (Moratti and Sabic-El-Rayess 2009, 27-28). As the International Center for Transitional Justice (ICTJ) states, the “international community was not concerned with bringing the war criminals to justice, but rather with bringing them to the negotiating table” (Moratti and Sabic-El-Rayess 2009, 11). The reintegration needs of combatants and civilians were not addressed and the reconstruction process and prosecution of those committed war crimes has been extremely lackluster.

Another disappointment of the ICTY was in its mandate to only investigate high- ranking officials and not the lower-ranking individuals. These individuals were to be investigated by the lower ranking domestic courts. It was these failures of the ICTY, along with the financial expense, that allowed for the establishment of the War Crimes Chamber, which also prosecuted individuals in Bosnia. The War Crimes Chamber will be addressed below.

Despite its obstacles, the ICTY established some landmark cases for international human rights law and international humanitarian law in regards to sexual violence’s incorporation into the legal sphere. *Duško Tadić* was the first person ever tried for sexual violence against men;

## Breaking the Legacy

Mucić et al. concluded that rape constitutes torture; *Furundžija* was the first person to be charged solely of sexual violence and no other crime; *Kunarac et al.* concluded that certain acts can be construed as sexual enslavement and that rape can be considered a crime against humanity; the *Krstić* case was an important international criminal justice landmark, which established the link between rape and ethnic cleansing (United Nations International Criminal Tribunal for the Former Yugoslavia 2015b). These international trials and convictions have helped to incorporate sexual violence within the mandate of the International Criminal Court and as a crime against humanity.

### **War Crimes Chamber**

Prior to the official establishment of the 2005 special War Crimes Chamber (WCC), domestic trials for war crimes in Bosnia were flawed. There was an overall lack of security as many lawyers were killed, or displaced, witnesses were not protected, ethnic biases were severe, witnesses were intimidated, and other obstacles were present. There was a lack of cooperation between the two republics, as well as an underutilization of evidence from the ICTY trials (Subotić 2009, 140). Furthermore, the constitutional framework was not conducive to trials of these magnitudes and complexity. Conviction rates in RS were exceptionally low; twelve years after the end of the conflict only 18 indictments had been issued with 7 verdicts reached (Subotić 2009, 141). The domestic trials in FBiH did not have as many ethnic tensions as in RS.

Individuals were prosecuted with less bias and at a higher frequency. In the same time period, over 144 verdicts had been reached (Subotić 2009, 141). The domestic courts were tasked with the investigation and prosecution of individuals involved in lower-ranking crimes and suspects. In 2005, the OHR and ICTY established the WCC.

The WCC was designed to try to phase out the ICTY to address these institutional deficiencies (Moratti and Sabic-El-Rayess 2009, 19-20). It was the first of its kind, and it created a hybrid court between an international tribunal and a domestic court. Initially, the WCC was to be staffed by both the international community and local judges and prosecutors to help ease the transition (Subotić 2009, 141). At present, the WCC is primarily staffed by the local judges and lawyers. It is located within the State Court of Bosnia and Herzegovina with a guiding principle of “accountability for war crimes [as the ultimate] responsibility of the Bosnian people” (Subotić 2009, 141). The international community had hoped that the creation of the WCC would appeal to the victims of the conflict. The WCC would not only investigate claims of high-ranking officials, but also lower and middle-ranking officials (Subotić 2009, 141).

While WCC tried to appeal to the citizens of Bosnia, there was a lot of criticism as to how the WCC was constructed. AI asserted the WCC was designed based on budgetary constraints as well as constructed on a short-term plan (Subotić 2009, 142-143). Presently, there is also still a lack of civil-society involvement as it was not incorporated into the original mandate of the WCC. Many of the criticisms that were levied at the ICTY were also directed at the WCC (Subotić 2009, 143). Plea bargains are used, which upsets individuals in Bosnia. The WCC was established by international players, not domestic actors, just like the ICTY. There had also been a concerns that the WCC would use all the financial resources and no money would not be available to support the district and cantonal courts that are designated with prosecuting “sensitive” cases (Subotić 2009, 143). The lack of education and communication between the people of Bosnia and the WCC’s work was also problematic. Furthermore, and arguably most importantly, there was a lack of suitably trained lawyers who specialize in war-crimes legislation. There was also poor communication between the different republics (Subotić

2009, 144). Basically, all the problems that were present at the ICTY have also been present at the WCC.

The creation of the WCC has allowed for the incorporation of sexual violence during conflict into the Bosnian Criminal Code. The ICTY had a statute of limitations and could only try people who violated humanitarian laws between 1991 and 1995 (TRIAL: Track Impunity Always, 2015). The WCC does not have a statute of limitations. They are able to sentence individuals found guilty to a minimum period of ten years in jail. This incorporation of sexual violence into the Bosnian Criminal Code is a positive aspect of the WCC which is often overlooked when analyzing the WCC. The WCC is still in operation and is the primary court responsible for war crime prosecution within Bosnia. At the end of 2011, there were still 50 pending trials at the WCC for individuals involved in war crimes (TRIAL: Track Impunity Always, 2015).

### **ICTY and the Establishment of the International Criminal Court**

The ICTY was established to prosecute major perpetrators liable for the serious crimes and violations of humanitarian and human rights laws in cases labeled “highly sensitive” (Skjelsbæk 2011, 72-76; Subotić 2009, 143). In 1998, after the ad hoc tribunals for the ICTY and International Criminal Tribunal for Rwanda (ICTR) had been established, the international community created the Rome Statute and the International Criminal Court (ICC) (Banwell 2014, 45). The ICC is a permanent international body that investigates crimes against humanity, acts of genocide, war crimes and ethnic cleansings, as defined in Article 5 of the Rome Statute (Skjelsbæk 2011, 75). The ICTY and ICTR directly influenced the foundation of this international criminal and legal system. The ICC has investigated various claims of aggression



and war crimes for various individuals in the DRC (Kaye 2011, 4).

The experience of the ICTY and ICTR helped to formulate the mandate and integration of gender into the structure of the ICC. Expressly, the ICC has highlighted gender concerns in four aspects of its mandate and scope for protecting individuals. First, the ICC “ensures that victims of sexual and gender-based violence will be safe both physically and psychologically, and that their dignity will be safe-guarded by being spared harassing and intimidating questions in courts” (Skjelsbæk 2011, 75). While security of witnesses was incorporated into the ICTY structure, many individuals were still intimidated and threatened. As a result, witnesses were reluctant to participate in the trials. Ensuring witness protecting is an important step in legitimizing these courts and rulings. Anonymity and security also need to be promoted. The second condition is contingent on the fact that the witness/individual’s past sexual history is not allowed to be discussed. The issue of consent is also emphasized in this clause. The definition of consent for the ICC is taken directly out of the ICTY mandate. The international community indicated the “coercive circumstances” associated with rape during conflict while defining consent in regards to conflict and wartime rape (Bedont 2005, 93-98; Niarchos 2006, 292-300; Skjelsbæk 2011, 75).

The third condition the ICC places is the need for full-time employment of legal advisors that specialize in gender-based crimes. Furthermore, there must also be equal representation of women and men engaged as judges, prosecutors, and registrars (Bedont 2005, 93-98; Skjelsbæk 2011, 75). This was another factor that has affected the failure of the ICTY in addressing gender issues. Niarchos states that only two of the eleven judges are women, as well as the first and second prosecutors (Niarchos 2006, 300). The Tribunal does not represent gender equality, as there was/is not an equal representation of gender from the people employed, and therefore

## Breaking the Legacy

was/is hypocritical in the message it taught/teaches to the people of Bosnia. The final condition that is incorporated into the gender integration of the ICC is the need to establish a safe place for women's voices to be heard when regular legal proceedings are not necessarily taking place (Bedont 2005, 93-98; Skjelsbæk 2011, 75). As Skjelsbæk has outlined, these gender-mainstreaming policies are devised after learning of the mistakes from the ICTY and ICTR in their gender-blind approaches to crimes against humanity and prosecution of rape as a weapon of war, despite the gendered component to this tactic. However, there are many limitations to the ICC and its effectiveness. State sovereignty is the biggest obstacle towards prosecuting individuals responsible for war crimes (Bedont 2005, 99-102)

One improvement the ICC made, after learning the limitations of the ICTY, was granting the institution authority to provide reparations directly to the victims. The ICTY did not have this mandate, and was a limitation, especially for victims and witnesses of conflict. Rule 105 of the ICTY states victims could make a motion to recollect any property that was stolen during the conflict. However, this can only be requested after a conviction (Stover 2005, 50). The authority the ICC has in being able to reward reparations directly to a victim is an improvement in realizing the hardships witnesses have had to overcome. Rewards can be in three different forms, "restitution, compensation and rehabilitation" (Stover 2005, 149). The court appoints experts to determine which form of reward and the extent of damage, loss and/or injury to the survivor, and how to assist them (Stover 2005, 149).

### **Feminism and Gender-Centralization**

Another issue seen in the situation in Bosnia is the lack of feminist voices. Anne Jenichen highlights the importance of including feminist voices in peace-building and post-conflict reform in Bosnia. She differentiates between incorporating women's groups and feminist groups in

Bosnia. It is important to incorporate feminist's advocacy groups into the peace-building process as it will ensure that women's involvement in conflict situations will be equally addressed (Jenichen 2010, 143-151). Women were left out of the peace discussions in Bosnia. Having a gender-blind approach to conflicts such as Bosnia becomes insulting to the victims of the conflict. As a result of its efforts to be gender-neutral, the reconstruction process actually became gender-biased and disregarded the women. Not addressing issues of gender perpetuates gender norms and power hierarchies. Despite women being targeting during the conflict, they were overlooked during the peace process, resulting in a gender-biased reconstruction process (Kaufman and Williams 2010, 110). Since the failed rebuilding of the state of Bosnia, the international community has since then implemented United Nations Security Council Resolution (UNSCR) 1325 (and later UNSCR 1820) which states that women must be present during peace-time talks. While it is debated as to whether this is helpful, it is a step in the right direction and something that was needed during the peace-talks in Bosnia.

The failure of the ICTY provided a space for civil society to speak up. Non-governmental organizations (NGOs) within Bosnia and outside Bosnia have started to raise awareness for sexual violence and gender-based violence. As a result of feminist activism, incorporating gender equality in various elements of the Bosnian state structure has started to become a reality. After campaigning for gender equality in the parliament and government structure, a quota system was implemented into the political system and representation (Jenichen 2010, 146-148). Another accomplishment was the adoption of a gender equality law and the development of state institutions for gender equality, known as the National Action Plan. Women have been striving for equality in societies, and the women in Bosnia want to increase their agency, political and economic representation within society (Jenichen 2010, 143-151). The

## Breaking the Legacy

final achievement women's groups have attained has been accessing reparations for victims of sexual violence by the state. This triumph has been crucial in the development of global precedence for victims of sexual violence. Through the campaign "For the Dignity of the Survivors" women's groups are once again addressing the issues of sexual violence in Bosnia (Jenichen 2010, 148-150). These groups have understood the ramifications of sexual violence, the effects of conflict, the personal suffering to growth, and development of the individual as well as the community. By officially being recognized as war victims, this campaign and official recognition has helped to de-stigmatize victims of rape, as well as the use of rape as a weapon of war. This movement has helped with integration of individuals into Bosnia society, something that was seriously lacking in the international involvement and the policies aimed at post-conflict reconstruction.

### Conclusion

The conflict in Bosnia and Herzegovina was marred by exceptionally high rates of sexual violence inflicted mostly on women, but also on men. Bodies were targeted in order to dilute the ethnic composition of the Republic of Bosnia and Herzegovina. This chapter focused on the post-conflict analysis of the reconstruction and peacebuilding efforts seen in Bosnia. The international community declared Bosnia a protectorate and was in charge of establishing an International Tribunal to investigate the crimes against humanity. The ICTY has completed one hundred and sixty-one indictments, eighty sentences, ten cases are still outstanding on appeal, four are ongoing on trial and thirteen have been transferred, ten of which have been transferred back to Bosnia. There are over twenty-seven cases of individuals being held in contempt (United Nations International Criminal Tribunal for the Former Yugoslavia 2015). The ICTY has stated that 78 out of 161 individuals accused have had sexual violence incorporated into their

indictment. Of these individuals, 30 have been found guilty for being involved in sexual violence as of February 2014 (United Nations International Criminal Tribunal for the Former Yugoslavia 2014). The War Crimes Chamber has completed a total of 250 cases since it became operational in 2005. By the end of 2014, 33 cases had been completed within the year (Human Rights Watch 2015). While individuals are being held accountable for the crimes they have committed, these cases are still being heard 20 years after the end of the war. There needs to be expedited response time in prosecuting convicted perpetrators of wartime sexual violence. Furthermore, addressing sexual violence outside of the legal system needs to be incorporated into post-conflict reconstruction of states such as Bosnia. Many victims of sexual violence do not feel as though the legal system is capable enough in providing justice. Legal proceedings are the only type of justice addressed in the aftermath of the conflict in Bosnia. This perspective could contribute to reasons as to the ICTY's failure in providing reintegration and development of Bosnian society.

The conflict in Bosnia emphasized the need for international policies addressing human security, specifically gender security, during conflict. Various UN Security Council Resolutions have been established that now address the rights of women, violence against women and other human security issues. These policies, along with other international policies addressing sexual violence against individuals during conflict will be addressed in the next chapters. The limitations and gaps in gender mainstreaming seen in Bosnia will be applied to understanding what needs to be addressed to the context of the DRC. It is crucial for gender to be incorporated and the needs of all individuals affected by conflict to future international tribunals in order to set global precedence's and norms. Violating an individual's autonomy is never okay, especially during times of conflict. Letting these abusers continue to contribute to civil society without answering for the crimes they committed will not improve the overall human society and

## Breaking the Legacy

understanding of these crimes. People should have been held responsible after Bosnia. The biggest take-away message from the conflict in Bosnia is the need to incorporate and actively prosecute sexual violence claims in post-conflict society's. The international community needs to end the impunity of perpetrators of rape in DRC, and around the world.

## Chapter 5: International Policies

In recent years, the international community has enhanced the quantity and quality of the policies directed at addressing gender discrimination. As a result of the “new wars” phenomenon, the United Nations (UN) has actualized the urgency in creating documentation that reaffirms women, children and civilian’s rights, ensuring they are protected during conflict. As a result, the UN has passed numerous Security Council Resolutions focused on safeguarding that these rights are promoted and protected. This chapter focuses on the policies that have been created for the purpose of ensuring equality for women. This chapter addresses policies aimed at the securitization of civilians during conflict, as well as the creation of an international justice system. It highlights how rape as a weapon of war violates more than one’s personal autonomy. Rape during conflict is a form of crime against humanity, which violates international human rights law and international humanitarian law. A chart of policies and ratification status can be found in Appendix C for a simplified layout of the information.

### **International Policies**

*Geneva Conventions*: The backbone of international humanitarian law (IHL), the Geneva Conventions provide explicit rules states must obey during conflict. There are four individual conventions and three optional protocols (International Committee of the Red Cross, 2010). The concept of international humanitarian law is founded after The Hague Convention, along with other international treaties regarding war, methods of warfare and weapons. Geneva Convention I addresses the roles combatants must adhere to. Article 3 distinctively addresses civilian involvement and the rights granted towards them. Article 3 states:

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 (United Nations 1949, Geneva Convention I).

Written in 1949, Article 3 of Geneva Convention I reaffirms the constant need to protect civilians during armed conflict. As mentioned in Chapter 1, “new wars” have begun to disregard the need to protect civilians and their security. This fundamental human right is being overlooked. As such, new laws underscoring civilian protection and the promotion of these rights need to be enacted.

Geneva Convention IV discusses the unequivocal protection granted towards civilians during conflict and the roles civilians can occupy during conflict. In regards to sexual violence and rape, Article 27 states:

**Article 27:** “Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity.

2 Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault” (United Nations 1949, Geneva Convention IV).



Including rape and sexual violence within the Geneva Convention enshrines the international community's commitment towards maintain this human right. It demonstrates the obligation states have at enforcing humanitarian laws. The International Committee of the Red Cross (ICRC) follows IHL during times of conflict. This NGO provides protection for people who have been harmed as a result of conflict. ICRC has a mandate of guardianship created under the Geneva Conventions which grants it the authority to promote its independence and neutrality in providing protection for individuals during armed conflict and violence. One facet of the ICRC mandate is its guarantee to focus on sexual violence during times of conflict (International Committee of the Red Cross, 2014). As the Geneva Convention was written in 1949, the inclusion of rape as a violation of IHL invalidates any claim that rape is an inevitable consequence of conflict. Sexual violence's incorporation into the Geneva Convention reaffirms that women's bodies have been targeted in all wars, despite only recent recognition of this phenomenon.

Customary international humanitarian law is applicable to conflicts that cross internationally recognized borders, as well as domestic conflicts. Rule 93 of customary international humanitarian law addresses sexual violence, rape, and other forms of sexual assault. It also discusses the states involvement in prohibiting rape and other forms of sexual violence. Rule 93 enforces the states obligation towards providing security and promoting the protection of an individuals' sexual rights, guaranteeing that they are not violated. Rule 94 of customary international humanitarian law address slavery, which incorporates sexual slavery. Rule 134 addresses an assorted set of needs that women require access to during conflict situations. These needs include: protection of health and freedom of sexual violence (Tunamsifu 2015, 486). In the context of the DRC, Rule 93, 94 and 134 are being violated. It is these customary international

## Breaking the Legacy

humanitarian laws that the ICRC use to base their services on. When these rights are violated, ICRC has the right to intervene in order to protect and promote human rights.

*Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW):*

Adopted by the United Nations on December 18, 1979 and entered into force on September 3, 1981, CEDAW outlines the dire need to ensure women are not discriminated against in any form. As an internationally legally binding document, states that have signed and ratified the document can be held legally accountable for not enforcing equality between the sexes. States that have signed and not ratified the document are not required to implement the laws to the same extent as states signatories. CEDAW is one of the basic human rights documents established by the United Nations. No article solely addresses the rights of women during conflict and the need to protect women and children from forms of sexual violence. Overall, the document aims at ensuring equality between the sexes. The prevalence of actively targeting women's bodies shows a states failure to adequately promote women's rights. The preamble of the convention reiterates distinct discriminations women face and the critical obligation states face in safeguarding and enforcing equality. Paragraph ten of the preamble states:

Emphasizing that the eradication of apartheid, all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women (United Nations General Assembly 1979, CEDAW).

The preamble continues:

Affirming that the strengthening of international peace and security, the relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and

colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women (United Nations General Assembly 1979, CEDAW).

These two excerpts show the realization on behalf of the international to include women in *all* aspects of society. It underlines the importance of enshrining women's issues into policies during the transitional periods of government, such as post-colonization and peace-processes. The lack of women's complete incorporation in all elements of society is seen as a failure in striving to achieve full equality between all human beings.

One significant limitation of CEDAW is the absence of a clause explicitly addressing the presence of sexual violence during conflict and need to provide additional security for women. While UNSCRs have been passed emphasizing the need to provide protection for sexual violence during conflict, there is no international law outlining the same protections. If these claims are incorporated into international law, UNSCRs might have improved legitimacy and protection against sexual violence could be attainable. Furthermore, there are seven states that have not ratified this core human rights treaty, the United States being one of them. The United States claims CEDAW does not provide sufficient policies towards reducing discrimination aimed at women. Moreover, similar to most UN Conventions, another limitation of CEDAW is the lack of enforcing the policies outlined. This lack of enforcement is a result of state sovereignty, an inherent political construct that states have absolute control over their actions and people within their borders. The Optional Protocol to CEDAW allows for the establishment of the Committee on the Elimination of Discrimination against Women. When states prepare and present the CEDAW Committee status reports, the UN has limited control over guaranteeing women's rights are actively being promoted and protected. The Optional Protocol was entered

## Breaking the Legacy

into force on December 22, 2000 (United Nations General Assembly 1999). The biggest critique of CEDAW, along with all international treaties and human rights policies, is the lack of jurisdiction and control due to state sovereignty. Therefore, there is a lack of effective implementation and application of these policies. The international community does not have the power to ensure these policies are being executed.

The Democratic Republic of the Congo signed CEDAW on July 17, 1980 and ratified the document on October 17, 1986. Bosnia and Herzegovina signed CEDAW while still an entity of Yugoslavia. It ratified the treaty on September 1, 1993 when it became an independent state. BiH accepted the amendments to CEDAW as proposed on December 22, 1999. The DRC has not accepted the amendment. However, the amendment has not entered into force as not enough UN member states have agreed to them. BiH ratified the Optional Protocol to CEDAW on September 4, 2002. DRC has not signed or ratified this treaty (United Nations Treaty Collection, 2016b; United Nations Treaty Collection, 2016; United Nations Treaty Collection, 2016d).

*Convention on the Rights of the Child (CRC)*: Adopted on September 2, 1990, CRC outlines the vulnerability children face. It also provides a framework on how the state should treat children. The Convention emphasizes children as human beings. As a result, children have the same inalienable rights as other human beings. The CRC is “the most rapidly and widely ratified international human rights treaty in history” (UNICEF, 2016). This statement demonstrates member states realization towards making a commitment in advancing children’s rights. The CRC includes rights granted to children during times of conflict. Article 38 states:

**Article 38(1)** States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

(2) States Parties shall take all feasible measures to ensure that persons who have

not attained the age of fifteen years do not take a direct part in hostilities.

(3) States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

(4) In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict (United Nations General Assembly 1989, CRC).

Article 38 outlines the states responsibilities in ensuring children are protected during conflict. It also addresses the states obligation at ensuring children under the age of fifteen are not involuntarily conscripted into armed conflict. This phenomenon, known colloquially as ‘child soldiers,’ is principally prevalent in areas where children may forcibly be recruited into rebel armies, or join the armies because there is no other alternative. The NSAG, the Lord’s Resistance Army (LRA) lead by Joseph Kony, is reported to be using forcible recruitment in an effort to control land and invoke fear onto civilians. The LRA has recruited children from the Democratic Republic of the Congo. There are other NSAGs within DRC which have been reported to used children as soldiers. Prior to the deconstruction of the CNDP in 2009, NGOs and the UN found evidence supporting the claim that CNDP forcibly recruited boys and men from Goma’s IDP camps (Amnesty International 2008, 15). Forcible recruitment is particularly common for IDPs; another vulnerability they face. IDPs in DRC were discussed in more depth in Chapter 3.

Another essential human right the CRC promotes and protects is the right not to be involved in sexual exploitation. Rape as a weapon of war is considered a form of sexual exploitation, regardless of the individuals’ gender, age, ethnicity, etc. This inalienable right is outlined in numerous articles and refers to sexual exploitation during times of peace as well as times of conflict. Moreover, it affirms the need to incorporate legislation that will allow for a sufficient amount of protection and promotion of this right. A lack of legislation and

enforcement highlights the state's inability to protect children's human security and basic human rights.

**Article 19(1).** States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

**Article 34** States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent: (a) The inducement or coercion of a child to engage in any unlawful sexual activity; (b) The exploitative use of children in prostitution or other unlawful sexual practices; (c) The exploitative use of children in pornographic performances and materials.

**Article 37** States Parties shall ensure that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

**Article 39** States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child" (United Nations General Assembly 1989, CRC).

The continual references to sexual exploitation and the need to protect children from human rights violations portrays the importance in ensuring children are not exploited.

Sexual exploitation can be rampant during conflict. The states lack of promoting security from this is another failure of the state and international community.

Furthermore, the health risks associated with rape, especially violent rapes as seen in DRC, is a violation of CEDAW and CRC as adequate health services are not provided.

**Article 3(3).** States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision (United Nations General Assembly 1989, CRC).

This right is notably overlooked in the DRC, as there is a lack of access to healthcare, which was addressed in more detail in Chapter 3. The lack of access to health care has significant ramifications for those who experience trauma associated with their rape, or have had complications as a result of pregnancy from rape.

In addition to the legally binding conventions, the international community authored two Optional Protocols attached to the CRC. The first Optional Protocol is aimed at the rights of children during armed conflict. This Protocol focuses almost exclusively on forced conscription and is aimed at reducing the presence of ‘child soldiers’ (United Nations General Assembly 2000). The Optional Protocol does not address sexual violence children experience during conflict. This is a major limitation of the Protocol. It is perpetuating the presence of gender blind dialogues, instead of attempting to incorporate gender-mainstreaming and gender-centrality into conversations on rape and sexual violence. In some ways, the Protocol also victimizes all children involved in conflict. It does not address the structural inequalities that may lead children to take up arms. Instead, it states all children involved in conflict have been forced to fight. Allowing for the constant victimization of children during conflict does not add to the discourse on conflict, security, peace, gender, etc. It perpetuates victimization of all actors, instead of addressing reasons why individuals acted the way they did or why they took up arms.

The Second Optional Protocol attached to the CRC is in relation to the sale of children, child prostitution and child pornography. This includes sexual exploitation seen during conflict as often children will be involved in forced labor, or sold for profit. As stated in the Protocol:

**Article 3(1)** Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether these offences are committed domestically or transnationally

or on an individual or organized basis:

- (a) In the context of sale of children as defined in Article 2:
  - (i) The offering, delivering or accepting, by whatever means, a child for the purpose of: a. Sexual exploitation of the child; b. Transfer of organs of the child for profit; c. Engagement of the child in forced labour;
  - (ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;
- (b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in Article 2 (United Nations General Assembly 2001)

The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography outlines the importance of protecting children from exploitation. It also addresses the need to approach crimes committed against children cautiously. Furthermore, it outlines the need to provide support, rehabilitation and assistance to victims in ensuring criminals are prosecuted to the full extent of the law. It emphasizes the importance of successful community reintegration of child victims of sexual violence. It obliges states to provide access to services to assist with integration needs (United Nations General Assembly 2001).

Bosnia and Herzegovina ratified the Convention on the Rights of the Child on September 1, 1993. The Democratic Republic of the Congo ratified the document on September 27, 1990. The Optional Protocol on Conflict were signed by DRC and BiH on November 11, 2001 and October 10, 2003, respectively. The Optional Protocol on the sale of children was ratified by DRC on November 11, 1002 and Bosnia on September 4, 2002 (United Nations Treaty Collection, 2016c; United Nations Treaty Collection, 2016e; United Nations Treaty Collection, 2016f). It is important to understand DRC's positionality and status of the CRC as children are involved in the conflict, and the state is failing at providing their protection and security.

Research could not be found that addresses children involved in the conflict in DRC, and



their understanding of rape as a weapon of war. This is an area that should be researched more in the future. It would be interesting to determine if there is a generational difference between children and older combatants on the use and/or abuse of people's security and rape as a weapon of war. Furthermore, in attempting to understand the power hierarchies, and which men and which women are involved as perpetrators or victims of sexual violence, it is important to also address children's positionality within the conflict and sexual violence. These aspects are not included in this paper, but should be included within future research. Understanding Bosnia's ratification is not as important as DRC's position on Child rights, but is still important to note.

Moreover, individuals have the right to justice. This right to justice is summarized in a variety of international treaties. These treaties include: The International Covenant on Civil and Political Rights (ICCPR) 1966 (Article 2); the Convention against Torture and Other Cruel, Inhuman, Degrading Treatment or Punishment (CAT) 1984 (Articles 4, 5, 7 and 12); and the International Convention for the Protection of All Persons from Enforced Disappearance 2007 (Articles 3, 6 and 11) (Tunamsifu 2015, 488).

*Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power*: The United Nations passed a declaration entitled the *Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power*, adopted on November 29, 1985 (Stover 2005, 139). Within the declaration, the international community defined what a victim of a crime is. A victim is a:

“persons who, individually or collectively, have suffered harm, including physical and mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power” (Stover 2005, 208).

## Breaking the Legacy

The international community formalized the basic principles of justice for victims of crime, specifically the right these victims have to access information and the judicial process. Victims are supposed to receive compensation for harm suffered. While reparations were lacking in Bosnia, there is still time to improve access to reparations in DRC.

Consequently, a victim of sexual violence does not necessarily have to be abused physically, but also mentally. Mental sexual violence during conflict is an area that is lacking significant amounts of research. But until this aspect is addressed, understanding and stopping conflict-induced sexual violence will not be attained. Victims, according to the definition, can also be the community at large, which is often the case seen in DRC.

Moreover, this declaration also defines “victims of abuse of power” as a:

“persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights” (Stover 2005, 208).

Within the context of DRC, victims of wartime rape would not constitute “victims of abuse of power” as rape has been incorporated into the national criminal law, as well as international human rights law. While rape has been incorporated into these legal statures, the systematic inequalities that has lead to these occurrence of sexual violence is not addressed within the national criminal law. Therefore, one could make the argument that victims of sexual violence are also victims of abuse of power.

Furthermore, the declaration states the needs of victims, especially during trial. These rights include:

- (a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;
- (b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;
- (c) Providing proper assistance to victims throughout the legal process;
- (d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
- (e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.

Disregarding the rights of victims might create a cycle of decreased cooperation of witnesses and victims. It is imperative to ensure that victims are adequately educated as to the aspects of trial, as well as the situation post-trial. This declaration was created in 1985, but the rights of victims still applies. The declaration was not written in regards to victims of sexual violence, but it can be extended to anyone who fits the description and definition of victim or victim of abuse of power. It is important that the international community still enforces this declaration during the international tribunals. These rights should also be emphasized within local and national court cases within DRC, and other states as well. However, as this document is just a declaration, it is not legally binding. Similar to the Universal Declaration of Human Rights, ratification of Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power shows a states commitment towards protecting and promoting victim's involvement in justice and their security.

### **United Nations Security Council Resolutions**

*United Nations Security Council Resolutions 1325*: Adopted on October 31, 2000, UNSCR 1325 addresses women, peace and security (United Nations Security Council 2000). 1325 addresses the disproportionate impact war has on women. It emphasizes the need to incorporate women

## Breaking the Legacy

into the peacemaking process (United Nations Security Council 2000; United Nations Peacekeeping 2016). The passing of the landmark international resolution 1325 is a direct consequence of the lack of women seen in peacemaking from the former Yugoslavia, notably Bosnia. As addressed in Chapter 4, women were distinctively targeted in Bosnia because of their gender. But women were then excluded from the peace process (Kaufman and Williams 2010, 110). The four “pillars” of the resolution are: “Participation, Protection, Prevention and Relief and Recover” (United States Institute of Peace 2016). It re-emphasizes the need to protect women and girls from sexual and gender-based violence during conflict. It is imperative that states address these four pillars and provide protection for men, women and children during conflict. Until all four pillars are achieved, post-conflict negotiations will continue to be gender-biased and equality will never be reached.

Bosnia and the Democratic Republic of the Congo both launched National Action Plans in 2010 aimed at ensuring UNSCR 1325 is being implemented. The NAPs are aimed at identifying the priorities needed in how to implement 1325. They also address where the responsibilities lie and what resources are needed (United States Institute of Peace 2016).

*United Nations Security Council Resolutions 1820*: Adopted on June 19, 2008, UNSCR 1820 addresses sexual violence and protection (United Nations Security Council Resolution 2008). 1820 creates a zero-tolerance policy in regards to peacekeepers sexual exploiting the civilians they are supposed to protecting. It acknowledges the increased use of sexual violence as a weapon of war and the dire need to protect women and children from sexual exploitation during conflict. It emphasizes the need to train peacekeepers to prevent and respond to incidences of sexual violence. It addresses the importance of reporting cases of sexual violence (United Nations Peacekeeping 2016; United States Institute of Peace 2016). One strength of 1820 is the

use of precise gender language, which is exceptionally important in gender mainstreaming. It is essential to use gender explicit language in future policies as it does not disregard the role and involvement of women and children during conflict. While it is laudable that this language is included, there is inadequate implementation of policies addressing women and children during conflict. Rates of wartime violence are at an all time high. These policies are not effective in ensuring the state will provide sufficient security and protection of the women. Additionally, grouping all women and children as vulnerable victims of war does not allow for suitable representation of the experiences women have during war. Not all women are victims of war, some are active participants of conflict. There needs to be a shift in the discourse on women and children's involvement in war.

*United Nations Security Council Resolution 1888*: Resolution 1888 reaffirms resolution 1820. It was unanimously adopted on September 30, 2009. Once again, 1888 dictates the need for UN peacekeepers to protect women and children during conflict from any form of sexual violence. 1888 invites the UN Secretary-General to create and appoint a special representative to a post specializing on sexual violence during armed conflict. The person appointed to this position would be located within the Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict (Security Council Report 2016; United Nations Peacekeeping 2016; United Nations Security Council Resolution 2009). The current Special Representative on Sexual Violence in Conflict is Zainab Hawa Bangura of Sierra Leone (United Nations 2016a).

*United Nations Security Council Resolution 1889*: UNSCR 1889 was adopted on October 5, 2009. Reaffirming prior UNSCR 1325 and other resolutions as stated above, 1889 aims to reform the role women play in the peace process. 1889 highlights the importance of empowering women

## Breaking the Legacy

to be involved in post-conflict reconstruction. It also restates the dire need at ensuring security of women (United Nations Peacekeeping 2016; United Nations Security Council Resolution 2009).

*United Nations Security Council Resolution 1960:* Resolution 1960 was adopted by the Security Council on December 16, 2010. It aims to establish better mechanisms at monitoring, reporting and analyzing sexual violence during conflict (Security Council Report 2016; United Nations Security Council Resolution 2010).

*United Nations Security Council Resolution 2106:* Resolution 2106 calls for an end of sexual violence during armed conflict. Adopted on June 24, 2013, 2106 reaffirms the need for the ICC to take sexual and gender-based crimes committed during conflict seriously. It stresses the need for member states to assist in fighting impunity and prosecuting war criminals responsible for human security violations. It additionally requests improved monitoring of these types of crimes by the international community in order to ensure human rights are being promoted and protected (United Nations Security Council Resolution 2013).

*United Nations Security Council Resolution 2122:* UNSCR 2122 addresses the gap between policies addressing women during peace and security dialogues with the implementation of these policies. It was adopted on October 18, 2013 as a result of the Secretary-General's report highlighting these discrepancies (Security Council Report 2016; United Nations Meetings Coverage and Press Releases 2013; United Nations Security Council Resolution 2013b).

### **African Union Policies**

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol) enforces the need to protect women from all forms of violence. The Protocol was drafted in March 1995 and entered into force on November 25, 2005

(Women in Law and Development in Africa, 2003). There is a special emphasis on protecting women from sexual and verbal violence. Article 3 of the Protocol states:

- “Every woman shall have the right to dignity inherent in a human being and to the recognition and protection of her human and legal rights;
- Every woman shall have the right to respect as a person and to the free development of her personality;
- States Parties shall adopt and implement appropriate measures to prohibit any exploitation or degradation of women;
- States Parties shall adopt and implement appropriate measures to ensure the protection of every woman’s right to respect for her dignity and protection of women from all forms of violence, particularly sexual and verbal violence”  
(African Commission on Human and Peoples' Rights 2003, Article 3)

The African Union’s inclusion of sexual violence reaffirms the protection and promotion of women’s rights at the regional level. Article 4 of the Protocol continues to discuss the measures needed to protect, enact and enforce laws regarding violence against women. Article 4 states:

1. Every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited.
2. States Parties shall take appropriate and effective measures to:
  - a. enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public;
  - b. adopt such other legislative, administrative, social and economic measures as may be necessary to ensure the prevention, punishment and eradication of all forms of violence against women;
  - c. identify the causes and consequences of violence against women and take appropriate measures to prevent and eliminate such violence;
  - d. actively promote peace education through curricula and social communication in order to eradicate elements in traditional and cultural beliefs, practices and stereotypes which legitimise and exacerbate the persistence and tolerance of violence against women;
  - e. punish the perpetrators of violence against women and implement programmes for the rehabilitation of women victims;
  - f. establish mechanisms and accessible services for effective information, rehabilitation and reparation for victims of violence against women;
  - g. prevent and condemn trafficking in women, prosecute the perpetrators of such trafficking and protect those women most at risk;
    - i. prohibit all medical or scientific experiments on women without their informed consent;

- ii. provide adequate budgetary and other resources for the implementation and monitoring of actions aimed at preventing and eradicating violence against women;
- iii. ensure that, in those countries where the death penalty still exists, not to carry out death sentences on pregnant or nursing women.
- iv. ensure that women and men enjoy equal rights in terms of access to refugee status, determination procedures and that women refugees are accorded the full protection and benefits guaranteed under international refugee law, including their own identity and other documents” (African Commission on Human and Peoples' Rights 2003, Article 3)

The explicit inclusion of justice within this protocol underlines regional acknowledgment that women are more vulnerable to sexual violence. Additionally, it supports the need for victims of sexual violence in the DRC to seek justice from their perpetrators. It is imperative that these rights are protected and promoted. The DRC has signed and ratified this convention (African Commission on Human and Peoples' Rights 2016).

### **International Justice, the ICC and the Rome Statute**

*The Rome Statute:* On July 1, 2002, 60 countries ratified the Rome Statute and was officially entered into force. the International Criminal Court (ICC) was created (International Criminal Court 2016b). The ICC is an independent organization aimed at helping to prosecute perpetrators of: genocide, crimes against humanity, ethnic cleansings and war crimes (a more in-depth analysis of the ICC was given in Chapter 4 when discussing the creation of the international criminal justice system due to the conflict in Bosnia). In addition to the creation of the ICC, the Rome Statute also established global definitions of genocide, crimes against humanity, ethnic cleansings and war crimes. Furthermore, crimes against women, including rape, is included within the ICC mandate (International Criminal Court 2016). This means that the ICC can prosecute war criminals for sexual violence. Article 7 of the Statute addresses crimes against humanity, within the jurisdiction of the court. Article 7 (1(g)) states that “[r]ape, sexual slavery,



enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity” are considered crimes against humanity (United Nations General Assembly 1998). Article 8 addresses war crimes and incorporates many elements of sexual violence within the jurisdiction of war crimes. Within the mandate under Article 54(1), the ICC also states that it will ensure it takes appropriate measures to apply gender analyses to all crimes committed and presented to the court (United Nations General Assembly 1998).

One significant limitation of the ICC is only highest ranking officers can be investigated for war crimes. Another limitation is the financial cost of running the court, and the lengthy time in prosecuting individuals. It took ten years for the first sentence to be handed down. The first sentence was towards Thomas Lubanga of the Democratic Republic of the Congo. He was indicted for recruiting child soldiers into his army. Many critics have condemned the verdict issued by the ICC because sexual violence was missing from the list of crimes Lubanga was prosecuted under (Amnesty International, 2012). The lack of including sexual violence shows the politics of the international criminal justice system. As individuals have to be committed of crimes beyond a reasonable doubt, it can be hard to prosecute individuals for sex crimes. Additionally, victims might be reluctant to come forward. There needs to be a paradigm shift in how sex crimes are processed. It should not have to rely on the testimonies of the victims, especially if they do not want to face their accuser in court or are worried about admitting to the crimes.

### **Conclusion**

As has been outlined in this chapter, a substantial number of international policies have been established that address women’s rights. There are policies that endeavor to take into account, address and reaffirm the need to protect women and children as civilians during conflict. These

## Breaking the Legacy

policies correspond towards what the government of DRC is doing in addressing the rates of sexual violence. The next chapter outlines the domestic policies enacted by the government of DRC. The objective of the chapter is to show the disparity between the official establishment of policies and law, and the lack of enforcing them. Overall, the lack of policy enforcement is due, in large part, to the absence of legitimacy that international institutions hold. This lack of validity translates to the impunity gap seen, and the ineffective attempts at trying to establish an international criminal justice system that prosecutes war criminals who have been complicit in human rights violations.

## Chapter 6: Congolese Domestic Policies and the Transitional Justice Approach in Prosecuting Rape as a Weapon of War and Sexual Violence during Conflict

This chapter addresses the policies relevant to domestic law in DRC. It looks at various relevant court cases. These court cases emphasize the need for an ameliorated prosecution of sexual violence claims as a result of conflict situations. While some adjustments have been made in regards to the definition of rape, the Minova Rape case, as discussed in the end of the chapter, highlights the substantial road ahead for the Democratic Republic of the Congo in its attempts to provide justice for victims of sexual violence.

### *Cultural Understanding of Rape in DRC*

The status of women in DRC is not as equal as the status of men. Family law in the Democratic Republic of the Congo dictates that women are seen as property of the men. If a woman plans to take legal action against someone or something, she must have the prior approval of her husband. If she does not have a husband, she must have the approval of another male in the family. Furthermore, women need the permission of their male family member (husband or otherwise) to perform certain activities (Diggs 2012,70). This possessive control over a person is a violation of the woman's human rights. Until women have control over their personal autonomy and actions, equality will not be achieved in the DRC.

Correspondingly, women must get the approval of their husbands and/or family to prosecute someone in the court of law. Requiring approval and acceptance from men in order to prosecute one's rapist will have significant ramifications on societal gender norms. Many men abandon their wives upon the discovery that their wife has been raped. Women may be reluctant

## Breaking the Legacy

to ask for permission to prosecute their rapist. Additionally, rape carries shame to the community. The husband or male figure might not want the entire community to become aware of the rape as this could cause the family to be socially ostracized or ‘othered.’ Diggs states in Congolese families, fathers teach their children that rape is a betrayal of your loyalty and trust (Diggs 2012, 70-75). As such, when a woman admits to being raped, some would argue that she has betrayed her family’s loyalty and trust. Chapter 3 touches on the mental health implications associated with reluctance in labeling someone’s experience as rape. This is further complicated when the victim is worried about society’s reaction to this human rights abuse.

The cultural perspective in admitting and prosecuting rape is slowly shifting, primarily attributed to the widespread use of rape as a war tactic. Yet, an impunity gap still exists as a result of the low reporting rates. A significant number of perpetrators are still not being held liable for the crimes they have committed. Traditionally, within the context of the DRC, perpetrators were not tried in court, but punished in a variety of ways, such as paying compensation or through shaming (Baaz and Stern 2009, 500-503). With the increased presence of rape and the slow shift in recognizing rape as a violation of one’s human security, these traditional systems have begun to disintegrate. This dissolution of traditional approach, coupled with a lack of legal prosecution, has generated a level of impunity for perpetrators. It is this gap that needs to be addressed going forward in unpacking conflict, and the transitional justice period after conflict has halted.

### **Penal Code and Military Code of Congo**

In 2006, the *Palais du Peuple* (the Congolese Parliament) amended the 1940 Penal Code and the 1959 Penal Procedure Code to incorporate sexual violence amendments, prosecution procedures

Chapter 6: Congolese Domestic Policies and the Transitional Justice Approach in Prosecuting Rape as a Weapon of War and Sexual Violence during Conflict

and legalize the violation of sexual violence and rape (Zongwe 2012, 40). Prior to the amendments of the Penal Code and Penal Procedure Code, the justice system in DRC was gendered-biased. Furthermore, preceding enacting the amendments to the constitution, the crimes outlined in international law were not incorporated into the domestic policies in DRC (Mattioli-Zeltner 2015, 77-79). Incorporating sexual violence into IHL strengthens the validity of international humanitarian law. However, DRC is a monist country. This means once an international treaty has been signed, ratified and entered into force, the treaty will have a higher legal status than the national legislation and laws. These international laws will have become domestic laws without explicit incorporation into the constitution or criminal codes. The national courts can then apply these international laws. Some judges in DRC have applied the provisions of the Rome Statute to relevant cases in collaboration with national legislation to effectively prosecute war criminals (Mattioli-Zeltner 2015, 64-65).

During the 2003 Songo Mboyo trials, eight soldiers were accused of raping over thirteen individuals. Among the victims was one male. During the trial, one of the defendant's lawyers tried to actively disregard the rape of the male victims. The accused's lawyer claimed the male victims had no validity in pressing criminal and civil charges. The lawyer stated Congolese law was designed to protect women from rape, not men (Zongwe 2012, 44-45). Nonetheless, the Military Tribunal in charge of this case contested the statement made by the lawyer and found the individuals guilty of crimes against humanity. They stated that the ICC and Rome Statute has a gender-neutral definition of crimes against humanity, and as such, men can *also* be victims of mass rape as a form of crime against humanity. The recognition of this underlying gendered bias in an individuals' definition of rape is monumental. As has been emphasized throughout,

## Breaking the Legacy

equality will never be reached until men *and* women are treated equally. Until individuals realize that men can be raped during conflict, equality will never be attained.

While the court made strides in improving equality by recognizing men can also be raped, there were limitations seen in the trial. The soldier accused of raping the man was not found guilty (Zongwe 2012, 44-45). Within the context of this trial, the judge ordered all rape victims to testify against the defendants as to the nature of the crimes. This was because the defense claimed the medical evidence was not enough to prove crimes against humanity occurred through rape. Testifying can be humiliating to a victim, as they have to answer notably personal questions and have to face their accuser(s). Male victims are less likely to testify as they often become excluded in their communities. In this example, the male victim refused to testify and so the accused rapist could not be held legally responsible (Zongwe 2012, 44-45). While the judges approached these crimes through a gender-neutral lens, significant progress still needs to be made. The government of the DRC realized the visible gaps in the legal system after witnessing the failure of the justice system for the male victim. The government then amended the Penal Code to provide a concrete definition of rape to be added to the Constitution.

The definition of rape and sexual violence preceding the amendments were exceptionally vague. They never defined definitively what constituted rape. After the 2006 amendment, DRC has been applauded with its extraordinarily detailed classification of rape, and its gender-neutral legal characterization. Article 170 of the amended Penal Code states a person:

Shall have committed rape, either by aid of violence or grave threats or by coercion against a person, directly or through a third person, or by surprise, psychological pressure, or at the occasion of a coercive environment, or by abusing a person who due to illness, alteration of faculties or any other accidental reason has lost the use of his/her senses, or who has been deprived of them by artifice:

## Chapter 6: Congolese Domestic Policies and the Transitional Justice Approach in Prosecuting Rape as a Weapon of War and Sexual Violence during Conflict

- a) any man, whatever his age, who has inserted his sexual organ, however slight, into that of a woman, or any woman, whatever her age, who has forced a man to insert, if only superficially, his sexual organ into hers;
  - b) any man who has penetrated, however slight, the anus, mouth or any other orifice of the body of a woman or a man with a sexual organ, with any other part of the body, or with any object whatsoever;
  - c) any person who has inserted, however slight, any other part of the body or any object whatsoever into the vagina;
  - d) any person who has forced a man or a woman to penetrate, however slight, his anus, mouth or any orifice of the body with a sexual organ, with any other part of the body, or with any object whatsoever;
- Whoever is found guilty of rape shall be punished with a penalty of penal servitude between five and twenty years and a fine of not less than 100,000 Congolese francs (International Committee of the Red Cross 2016).

The amended definition of rape has been celebrated by the international community in a positive light. The Congolese definition is more detailed than the definition previously set forth by the Rome Statute, which is what the ICC uses to prosecute war criminals. Furthermore, this definition is not gender-neutral and highlights how rape can be inflicted by any individual, irrespective of gender, onto any individual regardless of gender (Zongwe 2012, 45-46). Prior to the amendments, a legal definition of rape was not given, other than that rape was crime and could be used with violence (Zongwe 2012, 47-50). Articles succeeding Article 170 in the Penal Code outline legal justification for why a sentence might be doubled. Reasons addressed include, but are not limited to: death, gang rape, the acts are committed by public agents who abused their power, the victim's health (physical or mental) is severely affected or if the acts were committed as a form of weapon or threat (International Committee of the Red Cross 2016). The amendment also states court cases are not to exceed three months (Tunamsifu 2015, 488; ITUC International Trade Union Confederation 2011, 28). This is important when discussing transitional justice and justice in general as it needs to be achieved in a timely fashion in order to provide closure.

Another important amendment to the Penal Code of DRC is the use of the word "to introduce" rather than "to penetrate" (Zongwe 2012, 45-46). The use of the phrase "to introduce"

## Breaking the Legacy

removes the gendered connotation “to penetrate” has in regards to rape. As Zongwe states, “[r]ape no longer solely means penetration of the victim’s sexual organ, but equally any orifice of her or his body” (Zongwe 2012, 49). This societal shift in how rape is perceived is fundamental to the development of the rape discourse, both during times of conflict and out of conflict. If we can tackle the gendered perceptions of rape, emphasizing how rape can occur to anyone, we can try to deconstruct the social stigma surrounding “rape.” Until this stigma is unpacked, equality between the sexes will not be reached. Furthermore, successful prosecution of perpetrators will not occur, as unrecognized gender biases and stereotypes exist within everyone’s mind.

Article 169 of the Military Code reaffirms rape as a weapon of war within the Military Code. While it criminalizes rape as a form of crime against humanity, it does not define what rape is. Specifically, it states:

**Article 169:** Any of the following acts, perpetrated as part of a widespread or systematic attack knowingly directed against the Republic or the civilian population, equally constitutes a crime against humanity and is punished by death, whether committed in time of peace or in time of war:

7. Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and other forms of sexual violence of comparable gravity (International Committee of the Red Cross 2016).

As one might notice, the Penal Code Amendment definition was not incorporated into the Military Code. The Military Code’s definition of rape is still exorbitantly vague. As individuals involved in war crimes are prosecuted based on the Military Code, there is an inconsistency between legislation for sexual violence during peace and sexual violence during conflict. In DRC, the military courts have the exclusive jurisdiction over cases involving crimes against humanity (Article 161, Military Code). While one could relate the definition of rape seen in the Penal Code to the Military Code, the definition has no legal binding within military courts



Chapter 6: Congolese Domestic Policies and the Transitional Justice Approach in Prosecuting Rape as a Weapon of War and Sexual Violence during Conflict

(Zongwe 2012, 48). This is a major limitation in prosecuting individuals who have violated international humanitarian law and committed crimes against humanity through the tactical use of rape. This ambiguous definition will allow for gendered stereotypes to perpetuate.

Along with the amendment of the Penal Code, the Government of DRC created a National Strategy to Combat Gender-Based Violence (GBV). This strategy works in collaboration with the Comprehensive Strategy to Combat Gender-Based Violence operated by MONUSCO. With assistance from five sub-UN agencies, the Comprehensive Strategy aims to address five main goals. The five pillars include: 1. Protection and Prevention (UNHCR), 2. Ending impunity for perpetrators (Joint Human Rights Office- MONUC/OHCHR), 3. Security Sector reform (MONUC SSR), 4. Assistance for victims of sexual violence (UNICEF), 5. Data and mapping (UNFPA) (MONUSCO, 2016). These UN departments provide compensation to facilitate the overall mandate in combating GBV. The Government of DRC created a National Strategy to Combat Gender-Based Violence to collaborate with the Comprehensive Strategy. The mandate of this national strategy includes addressing reparations to survivors of rape (Zongwe 2012, 45). Funding for the national strategy is provided by the international community. The Government works closely with the UN and the Ministry of Gender, Family and Children to ensure that these pillars are met (MONUSCO 2016).

**Mobile Courts**

In collaboration with various non-governmental organizations, the Congolese government has established mobile courts to assist with prosecutions. These mobile courts travel around the rural areas of North and South Kivu in order to prosecute soldiers and civilians involved in GBV crimes. Established in October 2009, the mobile courts are comprised entirely

## Breaking the Legacy

of local judges and attorneys and with a mandate of enforcing the Congolese Constitution. Within the first 20 months of their establishment, the courts heard 248 cases and issued 140 convictions for rape. There were 49 additional convictions for murder and theft. Forty-four individuals were acquitted (Klosterboer and Hartmann-Mahmud 2013, 69). The use of Congolese lawyers in the mobile courts is immensely important in prosecuting individuals of these crimes. One of the biggest critiques of the ICC and the ICTY is/was the use of international judges and lawyers. People claimed individuals did not understand the culture, and therefore the crimes committed were acceptable. Using Congolese lawyers to enforce and promote human rights shows the community that human rights are universal, regardless of where they occur, and under what conditions. Individuals are not able to disguise human rights abuses under the claim of cultural relativity. As former UN Special Rapporteur on Sexual Violence in Conflict Margot Wallström has stated, “rape is not cultural, but criminal” (ITUC International Trade Union Confederation 2011, 30). Using local lawyers and judges provides an important cloud of validity to these cases and the prosecutions. The courts, which have been applauded by the international community, are professional, not biased and prompt in delivering their decisions (Klosterboer and Hartmann-Mahmud 2013, 69). Some claim that the mobile courts have been the most successful tool aimed at justice in DRC (ITUC International Trade Union Confederation 2011, 29).

The mobile courts have been commended for the timely prosecution of the New Year’s Day case. On January 1, 2011, over 30 women were raped in Fizi, South Kivu (Banwell 2014, 49). The New Year’s Day case was an exceedingly speedy case, where the trial began one month after the rapes occurred. The trial lasted eleven days (Zongwe 2012, 52). This case portrays the feasibility to provide justice in a speedy manner. If enough effort is applied to the process in the

Chapter 6: Congolese Domestic Policies and the Transitional Justice Approach in Prosecuting Rape as a Weapon of War and Sexual Violence during Conflict

future, all cases will be resolved quickly. This is beneficial for victims of the crimes, as they might be able to have some form of closure if a verdict is reached in a speedy manner. This will also be less costly to the government, or international community sponsoring the trial. The mobile courts found Lt. Col. Kibibi Mutware of the FARDC guilty of committing crimes against humanity when he ordered his troops to rape, beat and loot the people of Fizi (Banwell 2014, 53). He was sentenced to twenty years' imprisonment (Banwell 2014, 53). However, there is still need for significant advancements in the structure of the mobile courts and an increase in financial resources.

While the mobile courts have been successful in their initial prosecution of individuals, there are still thousands of cases that have not been tried. Additional resources are needed to address all claims of criminal misconduct by civilians and military members during conflict. The successes of the mobile courts could be refined if the mandate of the mobile courts are expanded and strengthened (Klosterboer and Hartmann-Mahmud 2013, 68-73). It is equally important to restructure the judicial system of DRC on the national level. While mobile courts have been essential in providing justice to individuals in the rural areas of North and South Kivu, the national justice system needs to be advanced within the Congolese context. Furthermore, there needs to be an increase in the number of lawyers from DRC who are able to participate in these cases. Training needs to be revised in order to combat the high rates of claims and cases that are being filed (Klosterboer and Hartmann-Mahmud 2013, 68-73).

In August 2011, the Congolese Senate rejected the proposal for a mixed court initiative. The mixed court initiative would provide the Congolese judicial system with assistance from the international community. The senate rejected the proposal on the grounds of state sovereignty. They did not want the international community to undermine its jurisdiction and authority. As

## Breaking the Legacy

Klosterboer and Hartmann-Mahmud speculate, the rejection could also stem from the reluctance to create a mixed court system. This mixed-court would allow the judicial branch the ability to prosecute and investigate members of the government for war crimes, and other criminal acts (Klosterboer and Hartmann-Mahmud 2013, 68-73). The rejection could be a political move to protect high-level government officials.

As suggested, there are inherent disadvantages to creating a mixed court system, as suggested. No international financial assistance is free. There would be conditions attached indirectly attached to the money allocated towards justice in DRC. The question is what are the ramifications of these ‘grants’ and who is going to be affected the most by them? Furthermore, where is the money coming from? The mixed court system that was seen in Bosnia was not seen as effective in addressing all types of crimes, at all levels (as addressed in detail in Chapter 4). Only high ranking individuals were tried, and many victims of sexual violence were not able to get closure for the crimes inflicted upon them. Twenty years after the conflict ended, the justice system in Bosnia is still prosecuting individuals accused of participating in war crimes. The length of these cases and the classification of Bosnia as an international protectorate has not assisted in allowing the state to provide effective and acceptable post-conflict reconstruction and reconciliation techniques. It is imperative that DRC prosecutes individuals for the crimes committed but in a more effective way than was prosecuted in Bosnia.

As the conflict in eastern DRC is still ongoing, enforcing a justice system and prosecuting human rights violators could substantially improve the validity of transitional justice and rape as a weapon of war. Article 19 of the Constitution of the DRC (2006 and revised 2011) emphasizes the right to justice. An individual, regardless of their gender, has the right to justice, and the proper administration of equal and fair justice (Tunamsifu 2015, 488-489). Addressing

Chapter 6: Congolese Domestic Policies and the Transitional Justice Approach in Prosecuting Rape as a Weapon of War and Sexual Violence during Conflict

the implications of conflict from a top-down approach can improve the incorporation justice will have in a transitional sense into local, national and international laws in DRC. It will also ensure all individuals human rights are being promoted and protected (Klosterboer and Hartmann-Mahmud 2013, 73-75). Eighty percent of respondents in a study in the Ituri District of North and South Kivu stated that “justice can be achieved” (Klosterboer and Hartmann-Mahmud 2013, 73). It is extremely important that justice and reconciliation is incorporated into the peacebuilding process. The primary reason for finding peace in eastern DRC should not be to end conflict. It should be to stop the violation occurring to civilian lives. It should also allow the opportunity for individuals who have been victim of conflict, individuals who have been forced to flee their homes and individuals whose livelihoods have been destroyed to find justice. This, coupled with the legitimate desire for peace and stability, will ensure the cyclical reoccurrence of conflict does not transpire. Furthermore, in conflicts similar to DRC where civilians are being directly targeted, it is disrespectful to disregard the people’s voices during the later stages of peacebuilding and reconstruction. Marginalized groups must be at the forefront of the transition process. Forgetting the experiences of civilians during conflict will not allow for development of the structural inequalities that have allowed for the conflict to be perpetuated.

The reason for including mobile courts within the paper is to contrast some of the critiques present from Bosnia and the ICTY. Subotić claims that justice failed in Bosnia because of the lack of national involvement in justice and reconciliation, and important prosecutions occurred solely at the international level (Subotić 2009, 127-128). The mobile courts in DRC provide evidence that the government is attempting to provide justice on the national level, and not just internationally. While there are financial restraints to the mobile courts and therefore, national justice, justice is being provided for sexual violence survivors to a certain degree. In

order to test the efficiency of these mobile courts, they should be replicated in areas of DRC that are more stable, and not facing conflicts, but where human rights abuses have occurred. These mobile courts could provide justice for individuals that are survivors of conflict on a more national and widespread scale. Streamlining of the mobile courts and the potential benefits and limitations of this approach is outside of the paper, but provides additional areas for future research. In order for justice to be reached in DRC, justice needs to be addressed in all aspects of society, and throughout the country, not just the eastern regions.

### **Limitations of the Judicial System in Prosecuting Wartime Sexual Violence**

While the incorporation of sexual violence into the Penal Code is admirable, the bigger question is whether or not the laws are enforceable and if people are being held responsible for any crimes being committed. In 2012, the government claimed two percent of the Congolese army (FARDC) had been arrested for criminal misconduct. However, it is hard to determine how the new legislation on sexual violence is being enforced. There is no correlation between the rate of occurrence versus the rate of arrests. There appears to be a lack of arresting all individuals involved. There needs to be an adjustment in the prosecution rates. There is also a lack of human resources, such as prosecutors and judges who are able to adequately defend and judge the cases, without biases (Zongwe 2012, 50). Furthermore, there is a lack of financial resources. Judicial trials are financially costly to the state, as the trials need to provide protection and security to the individuals accused of the crimes as well as the person testifying. There are also other expenses associated with holding a trial. The state is supposed to cover the price of transportation for those testifying. This can be expensive as the eastern region is very large and infrastructure is lacking. Transportation disbursements are not sufficient and witnesses find it hard to travel to the courts to testify.

## Chapter 6: Congolese Domestic Policies and the Transitional Justice Approach in Prosecuting Rape as a Weapon of War and Sexual Violence during Conflict

In 2011, only one percent of the budget for DRC went to the judicial system (Zongwe 2012, 51). This number is outstandingly low, especially considering the importance of holding war criminals accountable for their actions trying to end the conflict. The remarkably low budget for the judicial branch in DRC shows the politics involved in justice in DRC. In 2014, Transparency International ranked DRC 154<sup>th</sup> out of 175 countries for corruption (Transparency International 2016). This raises the question as to where the government is spending its money? Who is benefiting (financially and personally) from the limited judicial budget? It is imperative that corruption levels decrease. This will allow for better allocation of money, towards areas of society, such as judicial processes, education and security of people. More money to the judicial system will boost the prosecution rates, and human resource limitations. Furthermore, many of the individuals involved in alleged acts of sexual violence either work for the government or have connections to individuals in the government. If the state wants to follow its “zero-tolerance” policy for sexual violence, corruption must be tackled. Individuals, regardless of military or government rank, need to be held liable for any crimes they commit.

Another important limitation of the Congolese Judicial system in protecting victims of sexual violence is the lack of awareness of or understanding the amended Penal Code by the victims of sexual violence. With an adult literacy rate of 61.2 percent (2012) (UNICEF 2013), many individuals in DRC might not completely understand the human rights that are inherent. Women are statistically less literate than men, and as women are disproportionately affected by sexual violence at a higher rate than men, as such women are continuously faced with disadvantages and discrimination. Furthermore, individuals might not understand the judicial process and their rights as citizens of DRC. As citizens, they have the right to prosecute human rights violators. As Zongwe highlights, there is also a discrepancy between the published

## Breaking the Legacy

languages of the documentation and the language individuals speak and/or read. The government needs to translate the amended Penal Codes into local languages in order to reaffirm accepted dissemination and comprehension of these laws. The government must also actively advocate for criminal prosecution of perpetrators rather than allowing impunity and not enforcing the laws established to protect its citizens.

### **Minova Court Case**

In April 2012, the M23 forces held a rebellion and fighting erupted between the Congolese army and the rebel force. The M23 rebel group was formed by former CNDP members and led by Bosco Ntaganda. By November 20, 2012, the M23 has seized control of Goma (Mattioli-Zeltner 2015, 14). More than 500,000 Congolese had to flee as a result of the bloodshed and insecurity seen by the M23 (March 23) rebel movement. The violence that erupted in the eastern region after a lull in fighting was extraordinarily gruesome and severe human rights violations occurred. The M23 rebels are known for the extreme use of sexual violence towards women as a form of intimidation and torture (Kitharidis 2015, 492). FARDC forces retreated after the M23 group advanced in their territorial control. During the retreat, the FARDC moved to Minova. The events that occurred in Minova between November 20-30, 2012 show the extent to which the army uses their power over others. Over 76 women and girls were raped, homes were looted and IDP camps were destroyed. The government forces were implicit in their involvement in sexual violence towards women and girls. In December 2013, 14 officers and 25 rank-and file soldiers were held accountable for their actions in Minova. Human Rights Watch has stated that the events that transpired during the Minova Court Cases demonstrate the failure to provide justice for all individuals who are victims of sexual violence. Only two low-ranking soldiers were each convicted of having raped one individual. No one else was charged, and the high-ranking officers



## Chapter 6: Congolese Domestic Policies and the Transitional Justice Approach in Prosecuting Rape as a Weapon of War and Sexual Violence during Conflict

were not condemned for their participation. They were not held responsible for their lack of action in stopping these crimes from being committed. International law dictates an individual can be held equally liable for action, or inaction. This case shows the flaws in providing fair impartial justice to the victims of conflict. The system failed and justice was not reached for 74 women and girls in Minova.

### **Conclusion**

Article 19 of the Constitution of the DRC (2006) guarantees the right to justice. Individuals are still struggling to be able to have this right reached (Tunamsifu 2015, 488). While the mobile courts have done an impressive job in improving the rates of conviction for war criminals, there are still gaps in the legislative framework and ensuring justice is reached for everyone (Mattioli-Zeltner 2015, 71-76). Human Rights Watch and Amnesty International highlighted the failure of justice after witnessing the decisions of the Minova Court Case. While there have been reforms in DRC, namely the incorporation of rape into the criminal code, the creation of mobile courts, the gender-neutral definitions of rape and the New Year's Day decisions, there are still significant steps that need to be made in order for justice to be reached for all involved. There are many political aspects that factor into deciding who gets tried for what crime, and most of the responsibility gets placed on the low-ranking individuals rather than the high-ranking officials. This perceived immunity affects the prosecution and fight to defend an individual's human rights.

The next chapter addresses where to go from here. It ties in the policies, international, regional and domestic, and emphasizes the need to address sexual violence during conflict in DRC. Constructing an effective transitional justice regime in DRC is imperative in order to set a

## Breaking the Legacy

legal precedence regarding sexual violence during conflict. There needs to be significant enhancement made in prosecuting individuals on the domestic level for the crimes they commit. Reliance on the ICC and international community will further support researchers claim that the Democratic Republic of the Congo is a failed state. Unless women's rights are addressed in the post-conflict reconstruction and peace process, the human rights equality seen in DRC will be a failure.

## Chapter 7: Where to go from here?

The question remains, what can the DRC learn from Bosnia in how to prosecute human rights perpetrators and achieve lasting peace?

This chapter begins by providing information on the most important recommendations and justification for reasons as to why the recommendations were given. A compiled list of all recommendations is given at the end of the chapter.

### *International Criminal Justice*

The mobile courts, as explained in the previous chapter, have been relatively successful at providing legal justice and uncovering perpetrators of rape. However, the failure to convict individuals during the Minova Cases highlights to the international and domestic community the significant number of obstacles that need to be tackled. The justice system in DRC is severely underfunded. Yet, Kabila rejected the proposal to create mixed courts with the help of the international community. These mixed courts might have helped with the financial strain. After an analysis of the mixed courts seen in Bosnia, one can see the limitations of international justice and the application of international justice applied at the national level. The national trials in DRC have discouraged victims from speaking out about the crimes that have been perpetrated. The failure to hold individuals accountable for committing such crimes creates an air of incompetence for the judicial system. The lack of a functioning judicial system and the impunity gap further supports the claims that high level commanders can get away with their actions and be involved in committing crimes against humanity. Trials need to be fair and impartial. High-ranking officers who condoned crimes need to be prosecuted (Mattioli-Zeltner 2015, 1-4).

## Breaking the Legacy

International law stipulates that military and civilian supervisors can be held equally as obliged for the crimes others commit when the supervisors do not take action to stop the crimes. There is joint-criminal responsibility, and guilt by association in regards to widespread human rights abuses is equally as important to prosecute as individuals actively involved in committing the crimes. Human Rights Watch reports that many of the people who were arrested and prosecuted for the Minova Case were low-ranking scapegoats that were singled out in an effort to show some accountability (Mattioli-Zeltner 2015, 1-4). Incorporating the international justice system into DRC is needed in order to ensure investigations of crimes against humanity and rape as a weapon of war are not met with the same failed results as in the Minova Case. The international justice system needs to be cautious of its implementation. Education and awareness of the system needs to reach the people who have been affected the most by the conflict. The mandates and other information should be translated into the local languages, and community-based discussions need to be included into the transitional justice framework.

The international criminal justice system is inherently subject to political pressure. Although, political incorporation into the justice system can be beneficial in the DRC. It is imperative that high-ranking individuals are held culpable, and low-ranking soldiers are not the sole individuals to take the blame. Naturally, it is equally important for lower-ranking individuals to answer for the crimes they committed. While it might be hard to disobey direct or indirect orders, soldiers who disregard international laws and the Geneva Conventions need to be held liable for any human rights their actions might violate. In her article, Christine Bell emphasizes the need to shift the focus of transitional justice from a primarily legal one towards a system that incorporates many fields. She stressed the need to make it “multi-disciplinary” rather than “inter-disciplinary” (Bell 2009). This multi-disciplinary shift would incorporate more voices

from people affected by conflict, as well as fields such as anthropology, history, sociology, etc. The incorporation of these disciplines is immensely important as transitional justice will then be relevant to the context of DRC. It will take into account the history of the conflicts, the structural inequalities and the needs of the people. These aspects are often overlooked when there is an exclusive focus on the application of law and human rights law. Bell continues to state that gender dynamics will be incorporated into transitional justice more effectively if this multi-disciplinary shift occurs. This is because often times gender critiques are rooted in power dynamics and the inclusion of women in dialogues, an aspect that is not necessarily prevalent during prosecutions or discussions about human rights law (Bell 2009, 11-12). Creating this “multi-disciplinary” approach to transitional justice rather than the “inter-disciplinary” approach will further remove the politics from transitional justice. Rather than prosecuting individuals for political gain, or to make political statements, incorporating other disciplines into the transitional justice analysis re-emphasizes the need to listen to the people and their demands. Impunity will be addressed from a personal perspective, rather than a political one.

### **Demobilization, Demilitarization and Reintegration Process and Peacebuilding**

The prior DDR attempts have failed, and conflicts keeps erupting. A different technique for peacetime in DRC needs to be utilized. The qualified individuals who have been referenced throughout are the individuals and organizations that need to be listened to when discussing conflict resolution in DRC. They are the individuals who have done extensive research, spoken to the civilians, conducted studies, written policy recommendations pressuring the government and international community to enforce international human rights law, etc. These individuals coupled with the civilians, rebel groups, national army, NGOs, etc. will be the best at achieving long-last peace, something the Democratic Republic of the Congo has not had for a long time.

## Breaking the Legacy

The Government of DRC must emphasize the process of demobilizing, demilitarizing and reintegrating (DDR) in any attempt at peace in the region. As Baaz and Stern note, in 2009, the Government of DRC was attempting to integrate individuals into the FARDC. But, there was no mechanism to distinguish between individuals who committed war crimes and ensure that they were not incorporated into the national army (Baaz and Stern 2009, 501). Furthermore, there is a failure to socially assimilate the individuals into the national army. Combatants tend to respect their original commanders more than their new FARDC commander. They are not incorporated into the command structures. Training is also inadequate. There needs to be an adequate process in getting all weapons from civilians. Collecting and disarming combatants will reduce the likelihood for conflict to reoccur. The lack of addressing these needs is critical to the development of society as conflict is more likely to occur if civilians retained their arms and have access to them. An effective DDR process needs to be applied in DRC. Mental health needs, such as PTSD for combatants, as well as civilians, is needed. Health implications of war extend to emotional health. It is imperative this is incorporated into the DDR mandate.

Addressing the needs of civilians is essential in the DDR process. Too often, combatants' needs are the sole individuals addressed in DDR processes. In the conflict seen in DRC, everyone is affected. Millions of people have been forced to flee their homes, and violence is inflicted upon civilians in ways other than through sexual violence. Poverty rates are exceptionally high. Not incorporating these structural inequalities into the DDR process will most likely result in an eruption of conflict again as people will see no other alternative in maintaining their livelihood. Furthermore, many soldiers who suffer from mental health trauma are seen returning to combat roles as a result of society lacking a successful reintegration process. This coupled with the access to arms as a lack of disarmament, continues to fuel the

conflict. The relapse rate in regards to active/inactive combatants contributes to the rates of sexual violence seen. Baaz and Stern aim to understand the structural inequalities that have allowed for sexual violence to occur in DRC and emphasize the need to address these structural inequalities when discussing conflict and post-conflict resolution. Solely focusing on instances of sexual violence will limit the success of peace (Baaz and Stern 2010). Moreover, it is critically important to address the reintegration of children who were forcibly conscripted into armed service (Leatherman 2011, 169-170). MONUSCO currently has a DDRRR mandate (Disarmament, Demobilization, Repatriation, Reintegration and Resettlement) of foreign armed groups. However, only troops originating outside DRC are incorporated into this mandate. It is crucial that the same services that are made available to foreign soldiers are also accessible to indigenous DRC combatants, and the services of these kinds are funded and made available throughout the nation.

The lack of addressing human rights abuses from the two previous conflicts contributes to the sense of urgency in addressing these crimes. Signing of the Pretoria Accord, which brought an end to the Second Congolese War, created a Truth and Reconciliation Commission (TRC). This TRC attempted to provide truth and closure for crimes committed. The commission did not conduct any investigations and the TRC was seen as “cosmetic at best” (Klosterboer and Hartmann-Mahumd 2013, 58). Be that as it may, individuals still want to find out the truth of the crimes that were committed during these conflicts. The non-governmental organization (NGO) the Enough Project has proposed for the establishment of community-based TRC aimed at reconciliation and fostering community dialogue on the crimes committed. When civilians in eastern DRC were polled, 88 percent of them stated their desire to know more the events that transpired during the wars (Klosterboer and Hartmann-Mahumd 2013, 68).

## Breaking the Legacy

The creation of a community-based TRC could be beneficial to provide closure for victims of certain crimes, or at least allow for a public understanding as to why certain individuals acted in a distinct way during the conflicts. In any event, community-based TRC's should not be the sole way of prosecuting individuals involved in rape and sexual violence. The failure of the TRC following the Second Congolese War leads to the current recommendation that this method of transitional justice is not to be employed for the current conflict. TRC are aimed at providing a space for non-judgmental dialogue. While dialogue is important at understanding why events transpired and who was involved in the events, it is still imperative that the community (international and domestic) focus on the prosecution of grave human rights violations. Amnesties passed in May 2009 pardons crimes committed in North and South Kivu since June 2003. These amnesties were granted in the hope that non-judgmental dialogue would occur in the future. Soldiers would, theoretically, be able to acknowledge the truth and would not have to fear arrest or conviction for crimes committed (Klosterboer and Hartmann-Mahumud 2013, 68-69). The amnesties excluded crimes of war, crimes against humanity and acts of genocide. These crimes should still be prosecuted to the fullest extent of the law.

### **Combating Sexual Violence During Conflict**

Sexual violence during conflict has still not been addressed. As Baaz and Stern reported, gender-based violence has become normalized in DRC as a result of the conflicts. Furthermore, their study showed that civilians are becoming increasingly involved in gender-based violence and crimes towards women. Baaz and Stern state that this normalization of rape by civilians is rooted in society's perception of men's natural urges, thereby justifying the occurrence of these rapes. The community reinforces the patriarchy and male dominance (Baaz and Stern 2009). This normalization of GBV emphasizes the importance of addressing sexual violence during



conflict within the context of DRC. If military leaders and insurgent group members are held accountable for the crimes they commit (regardless of the degree of the crime), then civilians will realize their actions are also subject to prosecution. As such, violence committed by civilians towards other civilians will be seen as unlawful and punishable by the judicial system.

In 2014, President Kabila appointed a representative to actively combat sexual violence and the recruitment of child soldiers. An office was established in order to facilitate in providing education to prevent sexual violence. This office also assists victims in reporting crimes of sexual violence. Furthermore, the FARDC adopted a national action plan aimed at reducing sexual violence in conflict in September 2014. The Congress is in the process of drafting a law that will create a trust fund for reparations for victims of sexual violence (Mattioli-Zeltner 2015, 60-64). Allowing victims to receive reparations is important when attempting to construct reconciliation and a post-conflict society.

### **Improvements for the Congolese Judicial System**

One significant limitation of the Congolese judicial system that needs to be advanced is the lack of transfer of information between the civilians and government officials. There is no compiled public record of judgments the national courts reach. Thus, it is hard to determine exactly how many trials and convictions have been reached for war crimes and crimes against humanity. Human Rights Watch estimates there to be about only 30 trials in total from the past ten years. This is excluding the convictions received through the mobile courts (Mattioli-Zeltner 2015, 2). Most of these trails involved members of FARDC, but some civilians and members of various insurgent groups have also been tried for war crimes and crimes against humanity. Access to information and policies regarding sexual violence and judicial protection is a human

## Breaking the Legacy

right the state must guarantee. Incorporating and educating people of this right is imperative in ensuring civilian involvement in post-conflict reconstruction. Awareness of the crimes and cases are also important in order to ensure that individuals know what happened during the conflicts, and justice was reached. Similar to the need to translate mandates into local languages, public records should be available in local languages. This ensures that certain groups will not continue to be systematically marginalized.

It is recommended that sexual violence and gender-based violence be incorporated into the school curriculum to ensure understanding of the rights guaranteed to an individual. If you can teach children about the ramifications and implications of rape and sexual violence during times of conflict and peace, then you could see a change in societal perspectives of rape. This is critical in DRC because of how widespread rape is. Furthermore, it could help to destigmatize rape on a national level, as well as an international level. It is also important to address the gender dynamics within society and highlight the fact that sexual violence is not exclusive to women. Addressing gender is important in order to achieve gender equality and reform the overall situation of women within society.

### **Limitations from Bosnia- What the DRC Should Improve Upon**

The biggest limitation of the Bosnian post-conflict restorative justice process was the disregard of women's voices and involvement in conflict and peace. In both conflicts, women were specifically targeted as a weapons tactic. The lack of addressing their experiences will prevent further development within the communities. Civilians are affected by conflict in different ways than soldiers are. In the future, during the post-conflict reconstruction of DRC, women need to be present. Local NGOs should send representatives to the conference in order to

provide another voice. The peace talks should occur in DRC, or somewhere close to DRC. Far too many peace talks occur in other countries, which makes attending the peace talks financially straining. This will impact the civilians who are going to ensure their voices are heard and their demands are met. As Klosterboer and Hartmann-Mahmud states, “[n]ational and international mechanisms will have little impact on local populations unless marginalized groups are included at the forefront of transitional processes” (Klosterboer and Hartmann-Mahmud 2013, 74).

Another limitation seen in Bosnia was the primary focus on prosecuting high-ranking individuals who authorized large-scale crimes. While prosecuting the high ranking commanders for the crimes that were committed is desirable, the international community and national community must apply the same force and prosecution techniques to the low-ranking commanders. The low-ranking commanders of Bosnia were almost unilaterally pushed aside in terms of prosecution, and the national courts were in charge of prosecuting these individuals. It is imperative that the mixed-court system in DRC does not take on the same fate as Bosnia. The courts in DRC that will prosecute the low-ranking individuals need to ensure that their cases are publicized in the same way and justice is received for all individuals.

One important critique of the ICTY and the post-conflict reconstruction situation in Bosnia is in regards to how witnesses/survivors were treated after they had testified at the ICTY. In Stover’s book *The Witnesses: War Crimes and the Promise of Justice in The Hague*, many witnesses were disheartened by the fact that the prosecutors and the court did not keep in contact with them after their testimony. Some of the witnesses received thank you notes in the mail, but other than that there was limited/no follow up to ensure they understood the court process and the decision that was made. Furthermore, there was no assistance in reassuring they were welcomed back into their community after their involvement in testifying in The Hague. The

## Breaking the Legacy

prosecutors did not follow up with the witnesses after verdicts had been reached, which could affect the societies overall perception of the ICTY and its efficiency (Stover 2007). The question of justice for whom needs to be asked when discussing the ICTY's success or failure. The ICTY might be perceived as have reached justice in international standards, but it failed to address other aspects of justice. There was a narrow scope on focusing on the legality of war crimes, and holding individuals liable for their actions under Western concepts of justice. It is this legal focus on transitional justice that Bell has emphasized needs to be "de-colonized." This de-colonization, Bell states, is needed in order to apply transitional justice through other aspects of society, such as looking at the history, culture and needs of the people, rather than a focus on the law (Bell 2009).

Transitional justice and reconstruction in Bosnia were solely focused on legal justice for victims/survivors of conflict and holding perpetrators accountable. There was no aspects of reconstruction and justice outside of law that occurred in Bosnia, by the people or the international community. Since the international community labeled Bosnia an international protectorate post-DPA, it was up to the international community to address justice and reconciliation in all aspects of society. The failure to address non-legal aspects of transitional justice shows the failure of the international community in providing complete justice for all individuals in Bosnia. This is an aspect that must not be repeated within the context of the DRC. If individuals are involved in testifying for the crimes they have witnessed, participated in, or been victims to, the international community must realize their importance and courage. The value added by witnesses to trials is important, and thinking their involvement with justice ends after testifying is naïve. The prosecutors, international community, etc. needs to certify that witnesses were reintegrated into society successfully after testifying. Furthermore, they need to

reach out to the witnesses after the final verdict has been reached, to safeguard that the witnesses understand the verdict. They must ensure through all means possible that re-traumatization does not occur after their involvement with the court. It can be stressful to relive events through testifying to provide evidence, and disregarding the lived experiences of survivors might make individuals less willing to participate in justice through legal actions. While a witness's involvement with court cases might end after testimony, their experience with the conflict and abuse is something they will have to live out through the rest of their life.

### **ICC Investigations in DRC**

The International Criminal Court (ICC) decided to open an investigation into the Democratic Republic of the Congo on June 23, 2004. The ICC is investigating grave crimes committed since July 1, 2002 with an “interest of justice” for the victims of the conflict (International Criminal Court 2004). On March 12, 2012, the ICC found Thomas Lubanga Dyilo guilty of war crimes and conscripting child soldiers. He was sentenced to 14 years of imprisonment (International Criminal Court 2016h). Sexual violence was excluded from the conviction. The ICC found Germain Katanga guilty of being an accessory to one count of a crime against humanity (murder) and four counts of war crimes (murder, attacking a civilian population, destruction of property and pillaging). Germain Katanga was sentenced to 12 years of imprisonment, but the court counted his imprisonment during trial as part of his time served. His sentence was set to be completed on January 18, 2016 (International Criminal Court 2016e). Once again, sexual violence was excluded from the conviction. The failure to prosecute high ranking war criminals of sexual violence is perpetuating the impunity for rapists. It sends a message to others, that commanders and soldier can continue to use rape as a weapon tactic of war.

## Breaking the Legacy

The ICC is currently prosecuting Bosco Ntaganda for: “13 counts of war crimes (murder and attempted murder; attacking civilians; rape; sexual slavery of civilians; pillaging; displacement of civilians; attacking protected objects; destroying the enemy's property; and rape, sexual slavery, enlistment and conscription of child soldiers under the age of fifteen years and using them to participate actively in hostilities) and 5 counts of crimes against humanity (murder and attempted murder; rape; sexual slavery; persecution; forcible transfer of population)” (International Criminal Court 2016c). The trial is ongoing.

Callixte Mbarushimana was investigated for five counts of crimes against humanity (murder, torture, rape, inhumane acts and persecution) and eight counts of war crimes (attacks against the civilian population, murder, mutilation, torture, rape, inhuman treatment, destruction of property and pillaging). However, on December 16, 2011, the ICC released Mbarushimana from custody as they declined to confirm the charges against him (International Criminal Court 2016d). Mathieu Ngudjolo Chui was prosecuted by the ICC for committing three crimes against humanity (murder; sexual slavery and rape) and seven war crimes (forced conscription of children; deliberately directing an attack on a civilian population as such or against individual civilians or against individual civilians not taking direct part in hostilities under article; willful killing; destruction of property; pillaging; sexual slavery and rape). Chui was acquitted on December 18, 2012 for all his charges (International Criminal Court, 2016f). Once again, justice was not reached for the crimes Mbarushimana and Chui committed and peace was not given to the victims of their crimes. A warrant has been issued for the arrest of Sylvestre Mudacumura. He is allegedly responsible for: nine counts of war crimes (attacking civilians, murder, mutilation, cruel treatment, rape, torture, destruction of property, pillaging and outrages against personal dignity) (International Criminal Court 2016g). He is still at large.

**The Structure of the Court and Witness Involvement in Prosecution**

The ICTY was constructed as the first international criminal tribunal since the Nuremburg Trials. Since it was the first time the international community convened, they were still trying to figure out how to structure the court. The result was that the judicial structure of the ICTY was a mix between common law and civil law. Adversarial law, also known as common law, is common in the United States of America, the United Kingdom, and other former colonies of the British Empire. This type of legal system occurs between the prosecutorial team and the defense team, where the judge acts as a referee and the jury reaches the verdict. Within this type of law, prosecutors and defense attorneys are supposed to prepare the witnesses for their testimony, which can be used to support evidence. Not assisting in preparing the witness can result in misconduct of the lawyer. Inquisitorial law, also known as civil law, is used as a way to determine facts, rather than interpretation of events. Examples of countries using civil law include France, Germany, and most other European states. In the civil law system, the judge takes a more active role in conducting investigations and asking questions during the trial. There is no jury, and the decision is up to the interpretation of the judge or judges. Civil law is based on written legal constitutions and laws and the disputes are grounded in interpretation of the laws. Within the civil law, attorneys are not allowed to prepare the witnesses for their testimony. This would be considered leading a witness, and can result in a mistrial. The common law approach is used more frequently, but civil law has its presence. However, because the ICTY had not established a specific type of law to practice, the court would use both at different times. This constant shift in the legal system affects a witness's testimony ability, as they might not be adequately prepped for testimony, or not allowed to get ready for their testimony (Stover 2005, 33-50). While the ICC also employs this mixed approach to prosecution, it is important that the

## Breaking the Legacy

domestic courts of DRC only apply one constant judicial perspective. This will allow for uniformed trial preparation and testimonies for victims of sexual violence. The DRC mostly employs civil law, but also uses customary and traditional law (CIA World Factbook 2016). The use of three approaches to the legal system will only further cloud individual's perspectives on the success of transitional justice and justice outside the legal context.

Testimony for victims or witnesses of sexual violence (or any crime) can be difficult to navigate. As mentioned previously, testifying can have a great emotional impact on someone as they will have to relive their trauma. But there are more obstacles towards testifying, other than the potential emotional trauma the witness/victim/survivor might experience. Individuals testifying might be considered, unreliable if they appear too traumatized and are unable to answer the questions posed to them in court. However, individuals might also be deemed erratic if they are too composed and recite their experience of the event rehearsed and unemotional. There is a double-bind that contradicts a witness in providing information of events that occurred (Stover 2005, 137-138).

Moreover, as prosecutors try to show grave crimes have been committed, they tend to select witnesses that show extreme crimes, rather than the more "normalized" crimes. They will ask individuals who will be able to testify as to the gruesomeness of the crimes, the systemic, and the widespread intent of these crimes, rather than the crimes that might occur more frequently but are not necessarily as gruesome. While it is important to show the widespread and systematic use of rape as a weapon of war, the tactical use of only using witnesses that show this crime delegitimizes individuals who have been victims of crimes that are not "systematic and widespread." It is imperative for all victims/survivors to be treated with the same respect, and for their experiences to be approached with equal representation.



***The Call to Incorporate Sexual Violence Crimes in all Prosecutions***

It is imperative that crimes involving sexual violence, rape, sexual slavery, etc. are prosecuted by the international community. Only two of the six individuals prosecuted by the ICC have been convicted for rape and sexual violence. Impunity needs to be dismantled and all individuals, implicit or otherwise, need to be convicted of the crimes they have committed. There is an urgent call on the international community and national Government of the Democratic Republic of the Congo to address this human rights and human security violation. Justice needs to be achieved for all.

As a result of politics in the construction of the international criminal justice system, plea deals are utilized to ensure successful prosecution of crimes. Similarly, unless the prosecutor is able to effectively provide evidence that a crime has been committed, they might exclude that specific crime from the indictment. This aspect was seen in the Germain Katanga case. Katanga was only prosecuted for forcible recruitment of children. The prosecutor had enough evidence to convict Katanga of this charge, but not for acts of sexual violence and rape. Rape and other acts of sexual violence can be hard to provide sufficient evidence to support the victims claims these human rights violations occurred. The international community must reconsider how it deals with individuals who have been allegedly involved in sexual violence. Prevalence rates of rape in DRC provide evidence for itself and witnesses should not be used to provide the sole evidence of the abuse, but act as supplemental evidence to ensure conviction. The studies conducted by Baaz and Stern, along with other anthropologists, support the claim that rape has become normalized- both in and out of the conflict. Rather than relying on the victims and/or witnesses, the courts should reference studies conducted as it will not have the same ramifications on the individual whose rights were violated. This shift might even allow for a more accurate statistic on the extent

## Breaking the Legacy

to which rape is seen in eastern DRC. People might not be as worried to report their crimes if they do not fear the emotional stress associated with testifying, or being seen as an unreliable witness.

Furthermore, while plea deals can be beneficial in understanding what events transpired, often times plea deals do not include sexual violence crimes. There needs to be a demand in incorporating these crimes into the plea deals. The court system needs to shift its perspectives on the victim for testimony. While DRC and the ICC have changed the procedural rules addressed as victim testimony, we should not expect an individual to be able to confront their perpetrator. This act might increase possibilities of PTSD, or other mental health obstacles. Furthermore, victims might be intimidated upon their return to the communities because of their involvement in the judicial system. These consequences of testimony have the ability to be destigmatized with the expansion of sexual violence proceedings. Until this occurs, it is essential that the international community and domestic community realize witnesses and victims need to be given additional support (physical and mental).

### **Recommendations**

Included below is a compiled list of additional recommendations towards the international community and Government of DRC. The recommendations mentioned above are also included below, but were discussed in greater detail above to outline the importance of implementing policies to provide protection for survivors of sexual violence in the DRC. The suggestions below range from realistic to less realistic and again to utopian. Some recommendations are unlikely to be implemented, but are suggested in the hopes that some day they will be achieved. Furthermore, all recommendations to DRC can be applied to the entire

international community to aid in ensuring sexual abuse and rape as a weapon of war is not seen in other contexts.

*To the International Community*

- The ICC needs to improve its investigations into violations of humanitarian laws in DRC.
- Improve the legitimacy of CEDAW. The Committee on the Elimination of all Forms of Discrimination Against Women must pressure states to submit their status reports on the situation of women. Providing these reports will give a more general understanding of the status of women throughout the world, including Bosnia and DRC. These reports can then be used as a baseline in understanding what actions can be taken to further improve the status of women.
- The creation of an additional Optional Protocol under CEDAW is recommended. This optional protocol should specifically address sexual violence during conflict, and the actions a state is obliged to follow in order to ensure protection for its civilians. Creating a legally binding Protocol will also improve the efficiency of UN Security Council Resolutions aimed at improving the security and protection of women and children during conflict.
- While it is commendable that two Optional Protocols exist on the rights of the child, an additional Option Protocol specifically outlining sexual violence towards children during conflict should be enacted. This will reduce confusion and ensure that states are aware of the rights of children, and the right not to be sexually violated during conflict. The Protocol should also outline steps the state will take to ensure additional protection is provided during conflict aimed directly at children.

## Breaking the Legacy

- The international community needs to improve monitoring of resource extraction from Central Africa. Records need to be kept to ensure minerals are not illegally exploited from DRC and sold on the market. More effective ways at monitoring resource and commodity chains need to be implemented. Resource extraction aids the conflict, and until this role is addressed and taken extremely seriously, conflict will most likely continue. It is recommended that the international community put sanctions on countries and corporations that buy and sell resources illegally extracted from the DRC.
- UN peacekeepers must be held accountable for their involvement in human rights abuses and sexual violations. Relocation of the peacekeeping troops is not the answer. Accountability needs to be seen for the survivors of sexual violence. Furthermore, better training needs to be provided for peacekeeping troops in how to report and provide protection for survivors of sexual violence.
- The community of Bosnia and the international community needs to start addressing rape during the Bosnian conflict. It needs to be taught in schools, in order to teach individuals of the consequences of violating human rights, in attempts to deter these crimes from happening again. It is never too late to address crimes, to learn from the crimes, and to demand accountability.
- The War Crimes Chamber in Bosnia needs to actively prosecute individuals. While they demonstrate a large capacity to prosecute alleged war criminals, many have yet to be prosecuted. Pressure needs to be applied to the War Crimes Chamber to ensure these cases are tried to the fullest extent possible.

- Improve education on all aspects of the Bosnian conflict, within Bosnia. This is necessary in order to deter future conflicts from erupting due to the ethnic divides still present within the society.

*To the Government of The Democratic Republic of the Congo*

- It is imperative that the discourse shift to consider all individuals as survivors, rather than victims.
- The needs of IDPs must be addressed. IDPs are some of the most vulnerable individuals during conflict, and their protection and security needs to be emphasized. Sexual violence rates may decrease if displaced persons are given protection and shelter.
- It is imperative that the DRC reaffirms its commitment to children and the CRC. The use of children as combatants and victims of conflict during combat is widespread within the DRC, representing another violation of children's human rights. This further adds to the presence of sexual violence as already exploited children are increasingly vulnerable due to the lack of security.
- Reparations for victims of sexual violence need to be established in DRC. While there has been discussion about the creation of a trust for survivors, action needs to be taken to create this trust.
- Psychological support needs to be provided for all individuals of conflict. This will assist in de-stigmatizing the topic of mental health for everyone and will benefit survivors of sexual violence.
- There needs to be improved access to healthcare, specifically hospitals. More hospitals need to be opened, especially in the rural areas of eastern DRC. Furthermore, additional

## Breaking the Legacy

doctors need to be trained in how to operate on and treat women who have suffered trauma as a result of sexual violence.

- Infrastructure needs to be improved throughout the state. This is especially important in regards to improving access to healthcare and roads to hospitals. This will reduce the time it takes to receive medical help for physical implications of violent abuses.
- Transportation to and from trials and testimonies need to be improved for witnesses. Their security and anonymity needs to be protected.
- Citizens of the DRC need to be educated regarding policies and laws that could assist in finding justice for crimes committed against them. Improving education and access to these policies will increase the likelihood alleged war criminals will be held accountable for their actions.
- Education on sexual violence needs to be incorporated into schools. This will change the generational understanding of sexual violence and the implications it has within society.
- Formal and informal education needs to address rape. “Evil rape” and “lust rape” need to be deconstructed and shown that there is no difference between these types of rape. Rape is rape, and a violation of one’s autonomy and human right. There is no excuse or justification for this form of human rights violation.
- There needs to be an increase in specialized lawyers for Mobile Court Cases. Furthermore, an increase in lawyers, judges, registrars, etc. needs to occur for court cases outside the Mobile Courts to be as affective and efficient as possible in providing justice in all aspects of society.
- The timing and importance of expeditious court cases needs to be implemented into all proceedings. Cases should adhere to having all testimonies and verdicts reached within

three months of the start date, coupled with a timely manner in starting the trials.

Providing a speedy trial is helpful to the defense and witness(es) as it has the potential to reduce trauma and be less emotionally exhaustive. This will aid in reducing the cost of trials.

- During trials, there needs to be active communication between witnesses and lawyers. This includes communication in all phases of the trial, especially post-decision. It is imperative that witnesses understand the decisions that have been handed down. A position should be created that relays, informs and communicates important information between the lawyers and witnesses. This is particularly important after verdicts have been reached to ensure that witnesses understand the implications of the verdict, and how it may or may not affect them.
- Witnesses need to be educated on all aspects of their participation in trials. The use of plea deals needs to be explained to individuals interested in testifying, so the same misinterpretations seen in Bosnia are not seen in DRC.
- If plea deals are arranged for the defendant, it is imperative that sexual violence crimes are not removed from the charges. Sexual violence needs to be seen with the same weight as all other human rights violations.
- It is suggested that the mobile courts be applied to more stable regions of the state in order to provide justice outside the eastern regions. This will streamline justice in attempts to hold all individuals accountable for crimes against humanity and sexual violence, not just individuals that are presently involved in conflict.
- Increase funding for Mobile Courts in order to improve their effectiveness.

## Breaking the Legacy

- FARDC needs to be investigated for allowing and perpetrating human rights violations. Holding the government and national forces accountable for human rights violations will act as a deterrent to ensure other individuals do not abuse human rights.
- Corruption within the state needs to be addressed. The budget of the judicial system needs to be increased to more than 1% of the entire state budget. Addressing corruption will also lead to a better understanding of what may be fueling the conflict and who is benefiting from the ongoing conflict.
- All records need to be provided for the public. These records should include, but are not limited to, court records and records of attacks that have been reported. The proceedings should be translated into all local languages. This will help to deconstruct and destigmatize sexual violence if communities understand the widespread reoccurrence of this tactic.
- Peace talks need to be revisited. While this process may be complex, the NSAGs and the Government of the DRC need to come to an agreement regarding what needs to occur within the state of DRC to ensure peace is achieved and conflict ends.
- Gender must be at the center of the peace process. Disregarding gender will not provide for improvements in the discourse of rape as a weapon of war. Women should not be ‘added into the conversation’ but should actively participate in the conversations and be actively involved in the decision making.
- The DDR procedures need to emphasize demobilization to ensure that arms and weapons are collected. Financial assistance can be provided to ensure people give up their weapons. Conflict will likely erupt if people retain their weapons. Reconciliation and



reintegration of combatants into society is important as it will ensure that combatants feel comfortable returning, and do not feel the need to return to fighting.

- The reintegration of survivors of sexual violence into society is also exceptionally important to address within the DDR mandate. Ensuring sexual violence victims are not ‘othered’ by the community will assist in deconstructing the stigma on rape.
- Addressing the mental health of civilians and combatants needs to be incorporated into society, and the DDR process.
- When discussing how the peace process and transitional justice structure of DRC should look, experts from all fields, domestic and international, should be consulted, not just policy makers or UN officials. Receiving perspectives from various fields will ensure that transitional justice and peace will be achieved in the most productive and efficient manner. This will help to guarantee as many aspects of society as possible are included.
- Civil society organizations need to be incorporated into the peace talks and peace processes. Training and collaboration between organizations should be seen in order to unite on common themes to ensure incorporation into reconstruction and the overall post-conflict society.
- When peace talks do occur, they need to occur close to DRC. This will ensure that all civil society organizations and individuals have a greater chance of participating. Additionally, when peace talks do occur, the government should provide financial assistance to ensure that anyone who wants to participate can, without fear of financial constraints. The peace talks must also be publicized to ensure equal access.
- Legal justice should occur close to the DRC. Similar to the need to have peace talks close to DRC, holding trials within the Congolese society will ensure that people who cannot

afford to attend the trials or participate as witnesses are not excluded. This will also improve the understanding of ongoing events during trial, as it could be easier to relay information to more rural areas if the events are occurring relatively close geographically.

- When transitional justice is implemented within the Congolese society, there must be a regulated form of common or customary law approach. Fluidity and lack of a concrete legal approach will affect the witness and their testimony the most, due to different approaches on witness involvement between customary and common law. The defendant will not be directly affected to the same extent as the witness, however the trial itself will take different forms without a common approach.
- Human rights violations and sexual violence needs to be addressed beyond the legal context. While the paper emphasizes prosecutions, it also emphasizes the need to de-victimize, deconstruct and change perspectives of rape as a weapon of war in DRC. Changing society's perspective on sexual violence will only come from an increase in the conversations of sexual violence and realizing that people that have survived attacks are human.
- Sexual violence must be incorporated into all aspects of peace, justice, forgiveness, reconciliation, healing, and truth, and all aspects of the transitional justice approach that taken during the reconstruction process.

### *Areas for further research*

- Hegemonic masculinity and gender relationships in DRC needs further research. Who are the assailants? Who are the victims? Which men? Which women? What is the gender of the victims? Which men are the assailants and which men are the victims- in regards to

male to male sexual violence? What is the power hierarchy and traits that have allowed for the assailants to perpetuate abuse and their dominance?

- What are children's positions within the conflict? Are children involved in sexual violence? Which children? What are some reasons children might voluntarily take up arms?
- What are the roles women take in active conflict? What are their rankings within formal fighting groups? Which women? How did they get there? Are they involved in aspects of sexual violence, as either the perpetrator or victim?
- What are the roles men take in active conflict? What roles do men take in civil society organizations? Do men actively try to destigmatize and raise awareness of sexual violence? Do they involve themselves in rape? Which men? Why?
- The de-stigmatization of mental health and rape is an area where additional research needs to be seen. How can this topic be approached? What tactic can be employed to re-humanize victims and survivors of conflict?
- The structural inequalities that have led to violence and sexual abuse also need to be researched. Understanding these inequalities will make achieving peace and maintaining peace more likely to occur.

### **Conclusion**

While there are still significant reforms that need to be made in justice in DRC, it is important to applaud the country for its efforts in attempting to address human rights violations and sexual violence as a result of conflict. Similar to the need to unpack the victimization discourse on survivors of sexual violence, it is imperative to deconstruct the perception of DRC

## Breaking the Legacy

as a failed state. Impunity is not a characteristic solely seen in the Democratic Republic of the Congo. In 2015, the most popular book at the United Nations Dag Hammarskjöld library in New York was *Immunity of Heads of State and State Officials for International Crimes* by Ramona Pedretti (Flood 2016). This shows the international communities complacency in immunity of crimes. Hopefully, after a successful post-conflict transitional justice period aimed at prosecuting all individuals of sexual violence, the DRC should be used as a model for future states and conflicts. No one should be given immunity for violating someone else's human rights.

There are countless international treaties solidifying women's rights and children's rights. The state has a responsibility to protect these rights, and when the state fails, the international community must step in. While state sovereignty is important within international relations, the international community also has a "right to protect," an aspect of the UN mandate that is not being enforced within the DRC. International laws and UNSCR's aimed at civilians in conflict will continue to have no legitimacy if they are not enforced. The DRC is the perfect context to start effectively applying these mandates and laws.

In the construction of the transitional justice system in DRC, it is hard to speculate what judicial proceeding layout will be most effective. A hybrid court could prove beneficial, despite its drawbacks. A TRC could also be effective at finding truth. Whichever form transitional justice prosecutions take; sexual violence needs to be incorporated. The voices of civilians affected by the conflict need to be incorporated. It is exceptionally crucial to actively involve women in peace conferences, and peacebuilding processes. There needs to be explicit gender language. Without it, women will be undoubtedly excluded. Furthermore, the transitional justice system in DRC needs to incorporate disciplines outside of law. This will allow for a more encompassing understanding of the implications of conflict and justice on the people.

As was mentioned in Chapter 3, we need to deconstruct the victimization stereotype. Perpetuating “victimization” of crimes will not positively contribute to the discourse of rape during conflict. The incidents experienced by individuals during conflict need to be acknowledged and publicized in order to decrease stigmatization of violence during conflict and resulting vulnerability. Until more accurate numbers of rape are published, it is impossible to determine how many individuals are not being held responsible for violating an individual’s human rights and human security. In the meantime, conflict will be eternalized as a result of the implications of rape within the Democratic Republic of the Congo.

Rape is a violation of one’s fundamental human rights, in times of conflict and times of peace. This human right needs to be actively protected and promoted for all: men, women and children. In the future, one can hope this issue is no longer relevant. Until that day occurs, awareness must be raised and perpetrators must be held accountable. The Democratic Republic of the Congo needs to realize the importance of human security, and the autonomy of a person, within the greater context of human rights and conflict. The country needs to continue to prosecute cases similar to the New Year’s Day case where war criminals and human rights violators were held accountable for their actions. Gender needs to be a central topic in regards to creating policies and achieving equality. A responsibility of the international community is to amplify the voice of the grassroots organizations to ensure human rights violations are not overlooked. In order for change to be most effective, it needs to continue to come from the grassroots level, as this represents the needs and desires of the people.

# Appendix A

**Figure 1: Map of Democratic Republic of the Congo**



Map No. 4007 Rev. 10 UNITED NATIONS  
July 2011

Department of Field Support  
Cartographic Section

Source: United Nations. 2011. Department of Field Support Cartographic Section- Democratic Republic of the Congo Map.

**Figure 2: Map of East-Central Democratic Republic of the Congo**



Map No. 4061 UNITED NATIONS  
June 1998

Department of Public Information  
Cartographic Section

Source: United Nations. 1998. Department of Field Support Cartographic Section- East-Central Democratic Republic of the Congo Map.

**Figure 3: Map of Internally Displaced Persons in DRC and Returns**

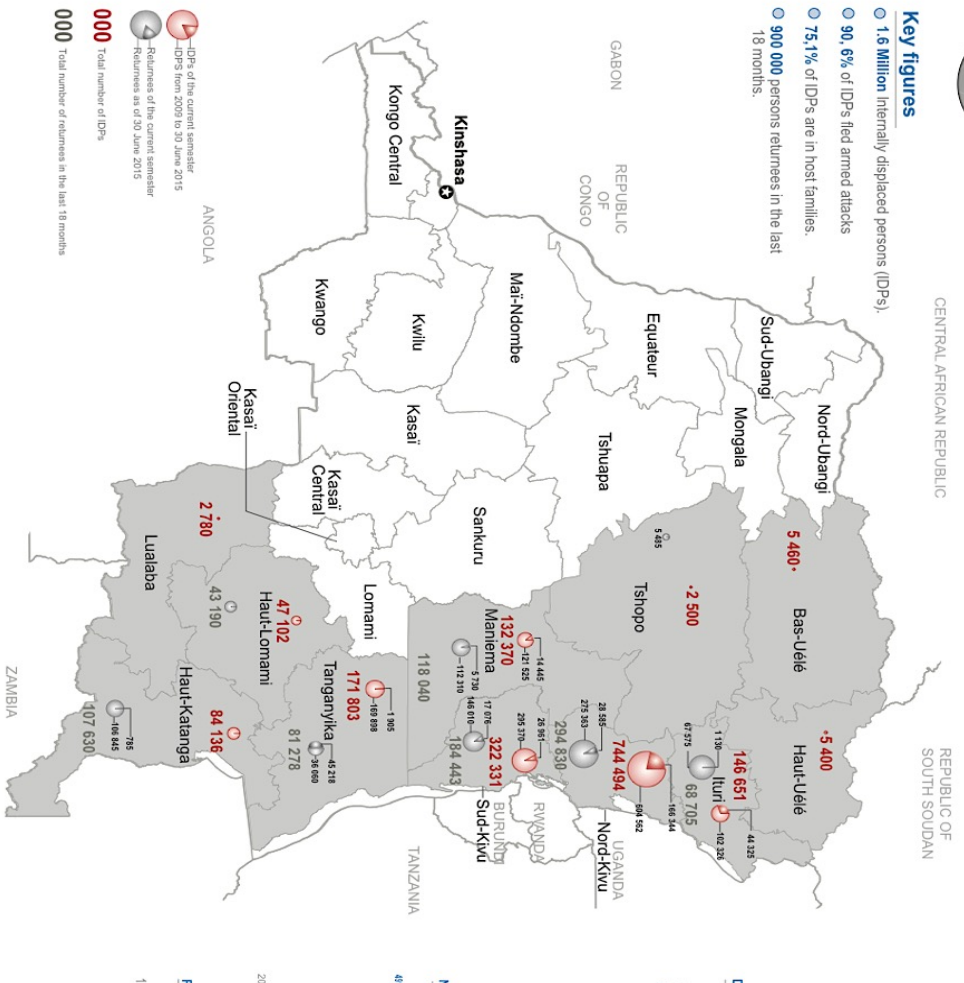
**Democratic Republic of Congo: Internally displaced persons and returns (September 2015)**



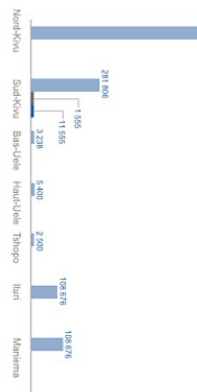
Eastern DRC continues to be the theatre of a complex and protracted humanitarian crisis affecting at least 1.6 million IDPs, of whom 90% are displaced due to armed attacks and violence. With more than 744,000 IDPs, North Kivu remains the most affected province. In the last 18 months, the number of people who have returned home has significantly decreased, an indication of the persistent insecurity that is haunting thousands of families. Major humanitarian hotspots remain in various parts of the country, notably across the north eastern parts of the country. However, pervasive and acute vulnerability means that humanitarian needs may emerge across the country.

**Key figures**

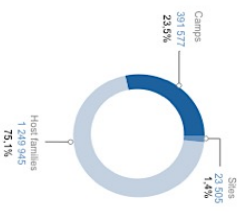
- 1.6 Million Internally displaced persons (IDPs)
- 90, 6% of IDPs fled armed attacks
- 75,1% of IDPs are in host families.
- 900 000 persons returns in the last 18 months.



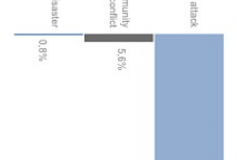
**Causes of displacement by province**



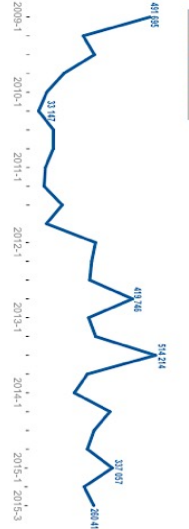
**Displaced people live in ...**



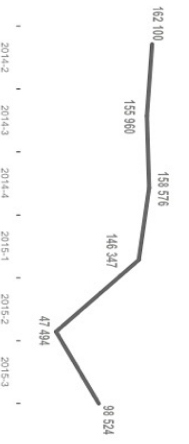
**They flee because of ...**



**New IDP evolution**



**Returns in the last 18 months**



Date of production: 26 October 2015. Sources: OCHA, UNHCR, IOM, and partners. Feedback: unohcr@drc.org. www.unocha.org/drc. www.refworld.org. Twitter: @UNOCHA\_DRC. The coordinates, names and designations used on this map do not imply official endorsement or acceptance by the United Nations.

Source: United Nations Office for the Coordination of Humanitarian Affairs. "Map: DR Congo - Internally Displaced Persons and Returnees." In *Humanitarian Response*. United Nations Office for the Coordination of Humanitarian Affairs



## Appendix C

### Who's Who in the Conflict in DRC

- FARDC: Congolese Armed Forces (*Forces armées de la République démocratique du Congo*): National army of DRC.
- CNDP: National Congress for the Defense of the People (*Congrès national pour la défense du peuple*): led by Laurent Nkunda and is the driving force behind the Kivu Conflicts. Mandate has been to defend the Banyamulenge (ethnic groups, also referred to as Tutsi Congolese) in eastern DRC. Demobilized in 2009.
- FDLR: Democratic Forces for the Liberation of Rwanda (*Forces démocratiques de libération du Rwanda*): Rwandan based insurgent group including Rwandan Genocidaires. Demobilized after passing of UNSCR in March 2008. Soldiers were forced to return to Rwanda. However, still active in DRC.
- Mai Mai: Also known as Mayi-Mayi or Mayi-Mayi. These groups are community-based militia groups formed to defend their territories.
- PARECO: Coalition of Congolese Patriotic Resistance (*Coalition des patriotes résistants congolais*): Emerged March 2007 to fight against CNDP
- AFDL: Alliance of the Democratic Forces for the Liberation of Congo: Led Laurent-Desire Kabila. Main objective was to overthrow Mobutu regime. When Kabila became president AFDL became FARDC.
- APR: Rwandan Patriotic Army
- MLC: Movement for the Liberation of Congo: Rebel group active during Second Congolese War
- RCD: Rally for the Congolese Democracy: Rebel force during Second Congolese War. Assisted by support from the Government of Rwanda.
- M23: March 23 Movement. Former CNDP members. Led by Bosco Ntaganda. Seized control over Goma in 2012, which led FARDC to control Minova. Led to Minova Court Case

Note: This list is not an exhaustive list of active forces in the conflict. At any given time, there can be over 60 armed insurgent groups. This list is just in reference to forces addressed throughout that have had important roles in the creation of these conflicts and/or use of rape as a weapon of war.

## Appendix D

Chart of Policies, Ratification Status and State Signatories

<i>Policy</i>	<b>Bosnia and Herzegovina</b>	<b>Status</b>	<b>Democratic Republic of Congo</b>	<b>Status</b>
<i>Universal Declaration of Human Rights (1949)</i>	----	----	----	----
<i>International Convention on the Elimination of All Forms of Racial Discrimination (1965)</i>	16 Jul 1993	Succession	21 Apr 1976	Accession
<i>International Covenant on Economic, Social and Cultural Rights (1966)</i>	1 Sept 1993	Succession	1 Nov 1976	Accession
<i>International Covenant on Civil and Political Rights (1966)</i>	1 Sept 1993	Succession	1 Nov 1976	Accession
<i>Convention on the Elimination of all Forms of Discrimination Against Women (1979)</i>	1 Sept 1993	Succession	17 Oct 1986	Ratification
<i>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)</i>	1 Sept 1993	Succession	18 Mar 1996	Accession
<i>International Convention on Protection of the Rights of All Migrant Workers and Members of Their Families (1990)</i>	13 Dec 1996	Ratification	----	----
<i>Convention on the Rights of the Child (1989)</i>	1 Sept 1993	Succession	27 Sep 1990	Ratification
<i>Convention on the Elimination of all Forms of Discrimination Against Women: Amendment Article 20(1)(1995)</i>	10 May 2012	Acceptance	----	----
<i>Convention on the Elimination of all Forms of Discrimination Against Women Optional Protocol (1999)</i>	2 Sep 2002	Ratification	----	----

<i>Convention on the Rights of the Child Optional Protocol: Children in Armed Conflict (2000)</i>	10 Oct 2003	Ratification	11 Nov 2001	Ratification
<i>Convention on the Rights of the Child Optional Protocol: Sale of Children (2000)</i>	4 Sept 2002	Ratification	11 Nov 2001	Accession
<i>Rome Statute</i>	11 Apr 2002	Ratification	11 Apr 2002	Ratification
<i>African Union Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (1995)</i>	----	----	9 Jun 2008	Ratification

Sources: African Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2016; United Nations Treaty Collection, 2016;

“Ratification defines the international act whereby a state indicates its consent to be bound to a treaty if the parties intended to show their consent by such an act” (United Nations 2015)

“‘Accession’ is the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. It has the same legal effect as ratification. Accession usually occurs after the treaty has entered into force” (United Nations 2015)

Succession: The Government of Bosnia and Herzegovina succeeds to treaties signed by the Socialist Federation Republic of Yugoslavia prior to 6 March 1992 (United Nations Treaty Collection, 2016).

**Chart of Important ICC and ICTY Cases**

<i>Case</i>	<b>ICC/ ICTY</b>	<b>Crime</b>	<b>Status</b>	<b>Verdict</b>	<b>Sentence</b>	<b>Notes:</b>
<i>Bosco Ntaganda</i>	ICC	13 counts of war crimes and 5 counts of crimes against humanity	On trial as of 2 September 2015	---	---	Charged for 5 war crimes: rape, sexual slavery of civilians and children and two counts of crimes against humanity for rape and sexual slavery
<i>Callixte Mbarushimana</i>	ICC	5 counts of crimes against humanity and 8 counts of war crimes	Declined to confirm charges 16 December 2011	Released from custody 23 December 2011	---	Included: one count of rape as a crime against humanity. One count of rape as a war crime
<i>Germain Katanga</i>	ICC	25(3)(d) of the Rome Statute: 1 count of crime against humanity and 4 counts of war crimes	Verdict reached 7 March 2014	Guilty, as an accessory, of one count crime against humanity and four counts war crimes	12 years of imprisonment. Transferred to DRC on 19 December 2015 to serve sentence	Sexual violence excluded from crimes
<i>Mathieu Ngudjolo Chui</i>	ICC	3 counts of crimes against humanity and 7 counts of war crimes	Acquitted of all charges	Ordered immediate release 18 December 2012	---	Included: 1 count of rape as a crime against humanity and 1 count of rape and sexual slavery as war crime

<i>Case</i>	<b>ICC/ ICTY</b>	<b>Crime</b>	<b>Status</b>	<b>Verdict</b>	<b>Sentence</b>	<b>Notes:</b>
<i>Sylvestre Mudacumura</i>	ICC	9 counts of war crimes	AT LARGE	---	---	Crimes include: rape
<i>Thomas Lubanga Dyilo</i>	ICC	8(2)(e)(vii) of the Rome Statute: Enlisting and conscripting of children under the age of 15 years into the FPLC	Verdict reached 14 March 2012	Guilty of committed, as co-perpetrator of war crimes	14 years of imprisonment. Transferred to DRC 19 December 2015 to serve sentence	Sexual Violence was excluded from the list of crimes
<i>Anto Furundžija</i>	ICTY	One count of grave breach of 1949 Geneva convention and two counts of violation of law or customs of war	Verdict reached 10 December 1998	Guilty of being a co-conspirator	20 years of imprisonment. Granted early release 29 July 2004 (served 7 years)	First case to focus explicitly on sexual violence. Reaffirmed rape may be used as a tool of genocide
<i>Dragoljub Kunarac</i>	ICTY	One count of crime against humanity and one count of violation of the laws or customs of war	Verdict reached 22 February 2001	Guilty of one count of crimes against humanity and violation of laws or customs of war and one count of enslavement	28 years of imprisonment. Still serving sentence.	Sexual enslavement and rape as a crime against humanity. Played prominent roles in establishment of rape camps. Comprised Kunarac et al.

<i>Case</i>	ICC/ ICTY	Crime	Status	Verdict	Sentence	Notes:
<i>Duško Tadić</i>	ICTY	Charged with crimes against humanity, breaches of 1949 Geneva Convention and violations of law or customs of war	Verdict reached May 1997	Guilty of violation of laws and customs of war and crimes against humanity	20 years of imprisonment. January 2000. Granted early release 17 July 2008 (served 14 years)	First trial where sexual violence against men was included as a crime
<i>Esad Landžo</i>	ICTY	Charged with grave breaches of 1949 Geneva Convention and violations of law or customs of war	Verdict reached 16 November 1998	Guilty of grave breaches of the Geneva convention	15 years of imprisonment. Granted early release 14 April 2006 (served 10 years)	Recognized rape as a form of torture. Comprised Mucić et al.
<i>Hazim Delic</i>	ICTY	Charged with grave breaches of 1949 Geneva Convention and violation of law or customs of war	Verdict reached 16 November 1998	Guilty of grave breaches of the Geneva Convention	18 years of imprisonment. Granted early release 24 June 2008 (served 12 years)	Recognized rape as a form of torture. Comprised Mucić et al.

<i>Case</i>	<b>ICC/ ICTY</b>	<b>Crime</b>	<b>Status</b>	<b>Verdict</b>	<b>Sentence</b>	<b>Notes:</b>
<i>Radislav Krstić</i>	ICTY	One count of genocide, one count of complicity to commit genocide, five counts of crimes against humanity, and four counts of violations of the laws or customs of war	Verdict reached 1 April 2001	Guilty of aiding and abetting genocide, aiding and abetting murder, extermination and persecution, and murder	35 years of imprisonment. Still serving sentence	Established the clear link between rape and ethnic cleansing
<i>Radomir Kovać</i>	ICTY	One count of crime against humanity and one count of violation of the laws or customs of war	Verdict reached 22 February 2001	Guilty of one count of enslavement, one count of rape as a crime against humanity and violation of laws or customs of war and one count of outrage upon personal dignity	20 years of imprisonment. Granted early release 27 March 2014 (served 14 years)	Sexual enslavement and rape as a crime against humanity. Played prominent roles in establishment of rape camps. Comprised Kunarac et al.
<i>Zdravko Mucić</i>	ICTY	Grave breaches of 1949 Geneva Convention and violations of law or customs of war	Verdict reached 16 November 1998	Guilty of grave breaches of the Geneva Convention	9 years of imprisonment. Granted early release 18 July 2003 (served 7 years)	Recognized rape as a form of torture. Comprised Mucić et al.

<i>Case</i>	<b>ICC/ ICTY</b>	<b>Crime</b>	<b>Status</b>	<b>Verdict</b>	<b>Sentence</b>	<b>Notes:</b>
<i>Zejnir Delalić</i>	ICTY	Grave breaches of 1949 Geneva Convention and violations of law or customs of war	Verdict reached 16 November 1998	Not guilty	---	Comprised Mucić et al.
<i>Zoran Vuković</i>	ICTY	One count of violation of laws or customs of war	Verdict reached 22 February 2001	Guilty of torture and rape as a crime against humanity and violation of laws or customs of war	12 years of imprisonment. Granted early release 11 March 2008 (served 8 years)	Sexual enslavement and rape as a crime against humanity. Played prominent roles in establishment of rape camps. Comprised Kunarac et al.



## Appendix E

### Abbreviations

AFDL	Alliance of the Democratic Forces for the Liberation of Congo
AI	Amnesty International
APR	Rwandan Patriotic Army
AU	African Union
BiH	Bosnia and Herzegovina
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CNDP	National Congress for the Defense of the People
CRC	Convention on the Rights of the Child
DDR	Disarmament, Demobilization and Reintegration
DOCS	Doctors on Call for Service
DPA	Dayton Peace Accords
DRC	Democratic Republic of the Congo
FARDC	Congolese Armed Forces
FBiH	Federation of Bosnia and Herzegovina
FDLR	Democratic Forces for the Liberation of Rwanda
GBV	Gender-based Violence
HRW	Human Rights Watch
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICMRW	International Convention on Protection of the Rights of All Migrant Workers and Members of Their Families
ICRC	International Committee for the Red Cross
ICTJ	International Center for Transitional Justice
ICTR	International Criminal Tribunal for Rwanda

## Breaking the Legacy

ICTY	International Criminal Tribunal for the former Yugoslavia
IDMC	International Displacement Monitoring Centre
IHL	International Humanitarian Law
IMF	International Monetary Fund
IRC	International Rescue Committee
LPA	Lusaka Peace Accords
LRA	Lord's Resistance Army
M23	March 23 Movement
MLC	Movement for the Liberation of Congo
MONUC	United Nations Organization Mission in the Democratic Republic of Congo
MONUSCO	United Nations Organization Stabilization Mission in the Democratic Republic of the Congo
NGO	Non-Governmental Organization
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
OHR	United Nations Office of High Representative
PARECO	Coalition of Congolese Patriotic Resistance
PTSD	Post-Traumatic Stress Disorder
RCD	Rally for the Congolese Democracy
RS	Republika Srpska
SAP	Structural Adjustment Policies
SGBV	Sexual and Gender-based Violence
TRC	Truth and Reconciliation Commission
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commissioner for Refugees
UNSCR	United Nations Security Council Resolution
WCC	War Crimes Chamber

## Bibliography

- African Commission on Human and Peoples' Rights. 2003. "Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa." Accessed 23 January 2016. <http://www.achpr.org/instruments/women-protocol/#3>.
- African Union. 2009. *African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa ("Kampala Convention")*. Accessed 12 December 2015. <http://www.refworld.org/docid/4ae572d82.html>.
- Akhaven, Payam. 1998. "Justice in The Hague, Peace in the Former Yugoslavia? A Commentary on the United Nations War Crimes Tribunal." *Human Rights Quarterly* 20 (4): 737-816.
- Amnesty International. 2004. *Lives Blown Apart: Crimes against Women in times of Conflict, Stop Violence against Women*. London: Amnesty International, International Secretariat, 2004. London: Amnesty International Publications.
- 2007. *Democratic Republic of Congo--Disarmament, Demobilization and Reintegration (DDR) and Reform of the Army*. London: Amnesty International, International Secretariat.
- 2008. *Democratic Republic of Congo: North Kivu: No end to the war against women and children*. London: Amnesty International Publications.
- 2012. "Landmark ICC Verdict over Use of Child Soldiers." Accessed February 21, 2016. <https://www.amnesty.org/en/latest/news/2012/03/landmark-icc-verdict-over-use-child-soldiers/>.
- Andreas, Peter and Kelly Greenhill. 2010. "Introduction: The Politics of Numbers." In *Sex, Drugs, and Body Counts: The Politics of Numbers in Global Crime and Conflict*, ed. Peter Andreas and Kelly Greenhill, 1-22. Ithaca: Cornell University Press.
- Aydelott, Denise. 1993. "Mass Rape During War: Prosecuting Bosnian Rapists Under International Law." *Emory International Law Review* 7: 585-631.
- Baaz, Maria Eriksson and Maria Stern. 2009. "Why Do Soldiers Rape? Masculinity, Violence, and Sexuality in the Armed Forces in the Congo (DRC)." *International Studies Quarterly* 53: 495-518.
- 2010. "The Complexities of Violence: A critical analysis of sexual violence in the Democratic Republic of Congo (DRC)." Sida: Nordiska Afrikainstitute.
- 2013. *Sexual Violence as a Weapon of War? (Africa Now)*. Zed Books. Kindle Edition.
- Banwell, Stacy. 2012 "Rape and Sexual Violence in the Democratic Republic of Congo: A Case Study of Gender-based Violence." *Journal of Gender Studies* 23: 45-58.

## Breaking the Legacy

- Bedont, Barbara. 2005. "The Renewed Popularity of the Rule of Law: Implications for Women, Impunity, and Peacekeeping." In *Gender, Conflict, and Peacekeeping*, edited by Angela Raven-Roberts Dyan Mazurana, and Jane Parpart, 83-108. Lanham: Rowman and Littlefield Publishers, Inc.
- Bell, Christine. 2009. "Transitional Justice, Interdisciplinarity and the State of the 'Field' or 'Non-Field.'" *The International Journal of Transitional Justice* 3: 5-27.
- Benfield, Nerys, Nichole Young-Lin, Christophe Kimona, Luc M. Kalisya, and Rogatien M. Kisindja. 2015. "Fistula after Attended Delivery and the Challenge of Obstetric Care Capacity in the Eastern Democratic Republic of Congo." *International Journal of Gynecology & Obstetrics* 130: 157-60.
- Central Intelligence Agency: The World Factbook. 2016. "Congo, Democratic Republic of The." Accessed 23 January 2016. <https://www.cia.gov/library/publications/the-world-factbook/geos/cg.html>.
- "Field Listing: Legal System." Accessed February 29, 2016. <https://www.cia.gov/library/publications/the-world-factbook/fields/2100.html>.
- Cockburn, Cynthia. 2013. "Against the odds: Sustaining feminist momentum in post-war Bosnia-Herzegovina." *Women's Studies International Forum* 37: 283-297.
- Cohn, Carol and Ruth Jacobson. 2013. "Women and Political Activism in the Face of War and Militarization." *Women and Wars: Towards a Conceptual Framework*. Edited by Carol Cohn. Cambridge: Polity.
- Connell, R. W. and James W. Messerschmidt. 2005. "Hegemonic Masculinity: Rethinking the Concept." *Gender and Society* 19: 829-859.
- Diggs, Mwamini Thambwe Mwamba. 2012. *The Untold Story of the Women and Children of the Democratic Republic of the Congo: Analysis of Violence in Eastern DRC*. Houston, Texas: Strategic Book Publish and Rights.
- Djurić, Tanja; Rada Drezgić; and Dubravka Žarkov. 2008. "Gendered War, Gendered Peace: Violent Conflicts in the Balkans and Their Consequences." In *Gendered Peace: Women's Struggle for Post-War Justice and Reconciliation*, edited by Donna Pankhurst, 265-291. New York: Routledge.
- Flood, Alison. 2016. "Most-browsed Book in the UN Library in 2015? A Primer on War-crime Immunity." *The Guardian*. Accessed February 20, 2016. <http://www.theguardian.com/books/2016/jan/08/un-library-united-nations-most-2015-war-crime-immunity-heads-of-state-officials-international-pedretti>.
- Haer, Roos, Tobias Hecker, and Anna Maedl. 2015. "Former Combatants on Sexual Violence During Warfare: A Comparative Study of the Perspectives of Perpetrators, Victims, and Witnesses." *Human Rights Quarterly* 37: 609-28.

- Henry, Nicola. 2011. *War and Rape: Law, Memory and Justice*. New York: Routledge.
- Human Rights Watch. 2015. *Bosnia and Herzegovina Country Summary 2014*. New York: Human Rights Watch.
- International Committee of the Red Cross. 2010. "IHL and Other Legal Regimes." Accessed 21 January 2016. <https://www.icrc.org/eng/war-and-law/ihl-other-legal-regimes/overview-other-legal-regimes.htm>.
- 2014. "The ICRC's Mandate and Mission." Accessed 21 January 2016. <https://www.icrc.org/en/mandate-and-mission>.
- 2016. "Customary IHL - Practice Relating to Rule 93. Rape and Other Forms of Sexual Violence." Accessed 21 January 2016. [https://www.icrc.org/customary-ihl/eng/docs/v2\\_cou\\_cd\\_rule93](https://www.icrc.org/customary-ihl/eng/docs/v2_cou_cd_rule93).
- International Criminal Court. 2004. "ICC - The Office of the Prosecutor of the International Criminal Court Opens Its First Investigation." Accessed 24 January 2016. [https://www.icc-cpi.int/en\\_menus/icc/press\\_and\\_media/press\\_releases/2004/Pages/the\\_office\\_of\\_the\\_prosecutor\\_of\\_the\\_international\\_criminal\\_court\\_opens\\_its\\_first\\_investigation.aspx](https://www.icc-cpi.int/en_menus/icc/press_and_media/press_releases/2004/Pages/the_office_of_the_prosecutor_of_the_international_criminal_court_opens_its_first_investigation.aspx).
- 2016. "ICC - About the Court." Accessed 21 January 2016. [https://www.icc-cpi.int/en\\_menus/icc/about\\_the\\_court/Pages/about\\_the\\_court.aspx](https://www.icc-cpi.int/en_menus/icc/about_the_court/Pages/about_the_court.aspx).
- 2016b. "States Parties to the Rome Statute." Accessed 23 January 2016. [https://www.icc-cpi.int/en\\_menus/asp/states\\_parties/Pages/the\\_states\\_parties\\_to\\_the\\_rome\\_statute.aspx](https://www.icc-cpi.int/en_menus/asp/states_parties/Pages/the_states_parties_to_the_rome_statute.aspx).
- 2016c. "The Prosecutor v. Bosco Ntaganda." Accessed 24 January 2016. [https://www.icc-cpi.int/en\\_menus/icc/situations\\_and\\_cases/situations/situation\\_icc\\_0104/related\\_cases/icc\\_0104\\_0206/Pages/icc\\_0104\\_0206.aspx](https://www.icc-cpi.int/en_menus/icc/situations_and_cases/situations/situation_icc_0104/related_cases/icc_0104_0206/Pages/icc_0104_0206.aspx).
- 2016d. "The Prosecutor v. Callixte Mbarushimana." Accessed 24 January 2016. [https://www.icc-cpi.int/en\\_menus/icc/situations\\_and\\_cases/situations/situation\\_icc\\_0104/related\\_cases/icc01040110/Pages/icc01040110.aspx](https://www.icc-cpi.int/en_menus/icc/situations_and_cases/situations/situation_icc_0104/related_cases/icc01040110/Pages/icc01040110.aspx).
- 2016e. "The Prosecutor v. Germain Katanga." Accessed 24 January 2016. [https://www.icc-cpi.int/en\\_menus/icc/situations\\_and\\_cases/situations/situation\\_icc\\_0104/related\\_cases/icc\\_0104\\_0107/Pages/democratic\\_republic\\_of\\_the\\_congo.aspx](https://www.icc-cpi.int/en_menus/icc/situations_and_cases/situations/situation_icc_0104/related_cases/icc_0104_0107/Pages/democratic_republic_of_the_congo.aspx).
- 2016f. "The Prosecutor v. Mathieu Ngudjolo Chui." Accessed 24 January 2016. [https://www.icc-cpi.int/en\\_menus/icc/situations\\_and\\_cases/situations/situation\\_icc\\_0104/related\\_cases/ICC-01-04-02-12/Pages/default.aspx](https://www.icc-cpi.int/en_menus/icc/situations_and_cases/situations/situation_icc_0104/related_cases/ICC-01-04-02-12/Pages/default.aspx).
- 2016g. "The Prosecutor v. Sylvestre Mudacumura." Accessed 24 January 2016. [https://www.icc-cpi.int/en\\_menus/icc/situations\\_and\\_cases/situations/situation\\_icc\\_0104/related\\_cases/icc01040112/Pages/icc01040112.aspx](https://www.icc-cpi.int/en_menus/icc/situations_and_cases/situations/situation_icc_0104/related_cases/icc01040112/Pages/icc01040112.aspx).

- 2016h. "The Prosecutor v. Thomas Lubanga Dyilo." Accessed 24 January 2016. [https://www.icc-cpi.int/en\\_menus/icc/situations and cases/situations/situation icc 0104/related cases/icc 0104 0106/Pages/democratic republic of the congo.aspx](https://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200104/related%20cases/icc%200104%200106/Pages/democratic%20republic%20of%20the%20congo.aspx).
- Internal Displacement Monitoring Centre. 2014. "Global Overview 2014: People Internally Displaced by Conflict and Violence." Geneva.
- ITUC International Trade Union Confederation. 2011. "Violence against Women in Eastern Democratic Republic of Congo: Whose Responsibility? Whose Complicity?" In *ITUC Violence in DRC*: ITUC International Trade Union Confederation.
- Jenichen, Anne. 2010. "Women and Peace in a Divided Society: Peace-Building Potentials of Feminist Struggles and Reform Processes in Bosnia and Herzegovina." In *Women, War and Violence: Personal Perspectives and Global Activism*, edited by Lihua Wang Robin M. Chandler, Linda K. Fuller, 137-154. New York: Palgrave Macmillan.
- Kaldor Mary. 1999. *New and Old War: Organized Violence in a Global Era*. Stanford, CA: Stanford University Press.
- Kalyvas, Stathis N. 2001. "'New' and 'Old' Civil Wars: A Valid Distinction?" *World Politics* 54: 99-118.
- Kaufman, Joyce P. and Kristen P. Williams. 2010. *Women and War: Gender Identity and Activism in Times of Conflict*. Sterling: Kumarian Press.
- Kaye, David A. 2011. Justice Beyond The Hague: Supporting the Prosecution of International Crimes in National Courts. In *Council Special Report*. New York: Council on Foreign Relations.
- Keaney-Mischel, Colleen. 2010. "A Gendered Approach for Policy in United Nations Peacekeeping Missions." In *Women, War and Violence: Personal Perspectives and Global Activism*, edited by Lihua Wang Robin M. Chandler, Linda K. Fuller, 99-116. New York: Palgrave Macmillan.
- Kelly, Jocelyn. 2010. "Rape in War: Motives of Militia in DRC", *United States Institute of Peace*, Special Report 243.
- Kitharidis, Sophocles. 2015. "Rape as a weapon of war: Combating sexual violence and impunity in the Democratic Republic of the Congo, and the way forward." *African Human Rights Law Journal* 15: 449-472.
- Klosterboer, Brian, and Lori Hartmann-Mahmud. 2013 "‘Difficult to Repair’: Applying African Models for Transitional Justice to Peace and Restoration Prospects in the Democratic Republic of the Congo." *African Conflict and Peacebuilding Review* 3: 56-80.
- Kohn, Elizabeth A. 1994. *Rape as a Weapon of War: Women's Human Rights During the Dissolution of Yugoslavia*. Republished in *Golden Gate University Law Review* 24: 199-221.

- Lauten, Brooke and Melanie Kesmaecker-Wissing. 2015. "IDP's Decision Making in the DRC: Defining A Framework to Support Resilience in Humanitarian Responses to Multiple Displacement." International Displacement Monitoring Centre.
- Leatherman, Janie L. 2011. *Sexual Violence and Armed Conflict*. Cambridge: Polity Press.
- Loko Roka J, Van den Bergh R, Au S, De Plecker E, Zachariah R, et al. 2014. "One Size Fits All? Standardised Provision of Care for Survivors of Sexual Violence in Conflict and Post-Conflict Areas in the Democratic Republic of Congo." *PLoS ONE* 9(10): 1-8.
- Maedl, Anna. 2011. "Rape as Weapon of War in the Eastern DRC? The Victims' Perspective." *Human Rights Quarterly* 33: 128-47.
- Mattioli-Zeltner, Géraldine. 2015. *Justice on Trial: Lessons from the Minova Rape Case in the Democratic Republic of Congo*. New York: Human Rights Watch.
- Meger, Sara. 2011. "Rape in Contemporary Warfare: The Role of Globalization in Wartime Sexual Violence." *African Conflict and Peacebuilding Review* 1: 100-32.
- Melhado, L. 2010. "Rates of Sexual Violence Are High in Democratic Republic of the Congo." *International Perspectives on Sexual and Reproductive Health* 36: 210.
- Mojzes, Paul. 2011. *Balkan Genocides: Holocaust and Ethnic Cleansing in the Twentieth Century*. Lanham: Rowman and Littlefield Publishers, Inc.
- MONUSCO. 2016. "Comprehensive Strategy." Accessed 23 January 2016. <https://monusco.unmissions.org/Default.aspx?tabid=10818>.
- Moodie, Michael. 1995. "The Balkan Tragedy." *Annals of the American Academy of Political and Social Science* 541: 101-115.
- Moratti, Massimo and Amra Sabic-El-Rayess. 2009. "Transitional Justice and DDR: The Case of Bosnia and Herzegovina " *International Center for Transitional Justice*.
- Ní Aoláin, Fionnuala, Dina Francesca Haynes and Naomi Cahn. 2011. *On the Frontlines: Gender, War, and the Post-Conflict Process*. New York, NY: Oxford University Press.
- Niarchos, Catherine N. 2006. "Women, War, and Rape: Challenges Facing the International Tribunal for the Former Yugoslavia." In *Women's Rights: A Human Rights Quarterly Reader*, edited by Bert B. Lockwood, 270-310. Baltimore: Johns Hopkins University Press.
- Raven-Roberts, Angela. 2005. "Gender Mainstreaming in the United Nations Peacekeeping Operations: Talking the Talk, Tripping over the Walk." In *Gender, Conflict, and Peacekeeping*, edited by Angela Raven-Roberts Dyan Mazurana, and Jane Parpart, 43-63. Lanham: Rowman and Littlefield Publishers, Inc.

## Breaking the Legacy

- Reyntjens, F. 2006. "Briefing: Democratic Republic of Congo: Political Transition and beyond." *African Affairs* 106: 307-17.
- Sarkees, Meredith Reid, Frank Whelon Wayman and J. David Singer. 2003. "Inter-State, Intra-State, and Extra-State Wars: A Comprehensive Look at Their Distribution over Time, 1816-1997." *International Studies Quarterly* 47: 49-70.
- Sawyer, Ida, and Anneke Van Woudenberg. 2009. *You Will Be Punished: Attacks on Civilians in Eastern Congo*. New York, NY: Human Rights Watch.
- Security Council Report. 2016. "UN Documents for Women, Peace and Security." Accessed 21 January 2016. <http://www.securitycouncilreport.org/un-documents/women-peace-and-security/>.
- Sikkink, Kathryn, and Hun Joon Kim. 2013. "The Justice Cascade: The Origins and Effectiveness of Prosecutions of Human Rights Violations." *Annual Review of Law and Social Science* 9: 269-85.
- Simpson, Gerald. 2010. *Always on the run: the vicious cycle of displacement in eastern Congo*. New York, NY: Human Rights Watch.
- Skjelsbæk, Inger. 2011. "Sexual Violence in the Post-Yugoslav Wars." In *Women and War: Power and Protection in the 21st Century*, edited by Chantal de Jonge Oudraat and Helga Hernes Kathleen Kuehnast, 65-84. Washington, D.C.: United States Institute of Peace Press.
- Stover, Eric. 2007. *The Witnesses: War Crimes and the Promise of Justice in The Hague*. Philadelphia: University of Pennsylvania Press.
- Subotić, Jelena. 2009. *Hijacked Justice: Dealing with the Past in the Balkans*. Ithaca: Cornell University Press.
- Survivors Fund. 2016. "Statistics: Survivors Fund." Accessed 21 January 2016. <http://survivors-fund.org.uk/resources/rwandan-history/statistics/>.
- Transparency International. 2016. "Corruption by Country/Territory- Democratic Republic of Congo." Accessed 21 January 2016. <https://www.transparency.org/country/#COD>.
- TRIAL: Track Impunity Always. 2015. "War Crimes Chamber in Bosnia-Herzegovina." Trial: Track Impunity Always, Accessed 5 November 2015. <http://www.trial-ch.org/en/resources/tribunals/hybrid-tribunals/war-crimes-chamber-in-bosnia-herzegovina.html>.
- Trautman, Adam Zachariah. 2013. "From Zaire to the DRC: A Case Study of State Failure." *Graduate Theses and Dissertations- University of South Florida*.
- Tunamsifu, Sophocles. 2015. "The Right to Justice: A challenge for survivors of conflict-related sexual violence in the Eastern Democratic Republic of the Congo." *African Human*



*Rights Law Journal* 15: 473-495.

UNICEF. 2013. "Statistics- Democratic Republic of Congo." Accessed 21 January 2016.  
[http://www.unicef.org/infobycountry/drcongo\\_statistics.html](http://www.unicef.org/infobycountry/drcongo_statistics.html).

-- 2016. "Convention on the Rights of the Child." Accessed 20 January 2016.  
<http://www.unicef.org/crc/>.

United Nations. 1949. *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*. Accessed 23 January 2016.  
<http://www.refworld.org/docid/3ae6b36d2.html>.

-- 1998. Department of Field Support Cartographic Section- East-Central Democratic Republic of the Congo Map.

-- 2011. Department of Field Support Cartographic Section- Democratic Republic of the Congo Map.

-- 2015. "What Is the Difference between Signing, Ratification and Accession of UN Treaties?" United Nations Frequently Asked Question- Dag Hammarskjöld Library. Accessed 18 February 2016. <http://ask.un.org/faq/14594>.

-- 2016a. "About the Special Representative." Accessed 18 February 2016.  
<http://www.un.org/sexualviolenceinconflict/about-us/about-the-srsg/>.

-2016b. "Disarmament, Demobilization and Reintegration." Accessed 20 March 2016.  
<http://www.un.org/en/peacekeeping/issues/ddr.shtml>.

United Nations General Assembly 1951. *Convention Relating to the Status of Refugees*. Accessed December 12, 2015. <http://www.refworld.org/docid/3be01b964.html>.

--1979. *Convention on the Elimination of All Forms of Discrimination Against Women*. Accessed 24 January 2016. <http://www.refworld.org/docid/3ae6b3970.html>.

-- 1985. *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*. Accessed 29 February 2016.

-- 1989. *Convention on the Rights of the Child*. Accessed 12 December 2015.  
<http://www.refworld.org/docid/3ae6b38f0.html>.

-- 1998. *Rome Statute of the International Criminal Court (last amended 2010)*. Accessed 12 December 2015. <http://www.refworld.org/docid/3ae6b3a84.html>.

-- 1999. *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women*. Accessed 12 December 2015.  
<http://www.refworld.org/docid/3ae6b3a7c.html>.

-- 2000. *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*. Accessed 12 December 2015. <http://www.refworld.org/docid/47fdfb180.html>.

-- 2001. *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*. Accessed 12 December 2015. <http://www.refworld.org/docid/3ae6b38bc.html>.

United Nations High Commissioner for Refugees. 1998. *Guiding Principles on Internal Displacement*. Accessed 12 December 2015. <http://www.refworld.org/docid/3cda07f7.html>.

-- 2003. *Sexual and Gender-based Violence against Refugees, Returnees and Internally Displaced Persons: Guidelines for Prevention and Response*. Geneva: UN High Commissioner for Refugees.

-- 2016. "Global Appeal 2015 Update - Democratic Republic of the Congo." Accessed February 20, 2016. <http://www.unhcr.org/5461e5fd16.html>.

United Nations International Criminal Tribunal for the Former Yugoslavia (ICTY). 2014. "In Numbers." Accessed 20 November 2015. <http://www.icty.org/en/in-focus/crimes-sexual-violence/in-numbers>.

-- 2015. "Key Figures of the Cases." Accessed 20 November 2015. <http://www.icty.org/en/cases/key-figures-cases>.

-- 2015b. "Landmark Cases." Accessed 20 November 2015. <http://www.icty.org/en/in-focus/crimes-sexual-violence/landmark-cases>.

-- 2016. "Mandate and Crimes under ICTY Jurisdiction." Accessed February 20, 2016. <http://www.icty.org/en/about/tribunal/mandate-and-crimes-under-icty-jurisdiction>.

United Nations Meetings Coverage and Press Releases. 2013. "Security Council Adopts Resolution 2122 (2013), Aiming to Strengthen Women's Role in All Stages of Conflict Prevention, Resolution." Accessed 21 January 2016. <http://www.un.org/press/en/2013/sc11149.doc.htm>.

United Nations News Center. 2016. "United Nations Organization Mission in the Democratic Republic of the Congo (MONUC)." Accessed 21 January 2016. <http://www.un.org/en/peacekeeping/missions/past/monuc/>.

United Nations Office for the Coordination of Humanitarian Affairs. 2013. "Map: Democratic Republic of Congo - Internally Displaced Persons and Returnees." In *Humanitarian Response*.

-- 2015. "Map: DR Congo - Internally Displaced Persons and Returnees." In *Humanitarian Response*. United Nations Office for the Coordination of Humanitarian Affairs.

- United Nations Peacekeeping. 2016. "Women, Peace and Security- United Nations Peacekeeping." Accessed 21 January 2016.  
<http://www.un.org/en/peacekeeping/issues/women/wps.shtml>.
- United Nations Population Fund. 2004. "Core International Human Rights Instruments." Accessed 21 January 2016. <http://www.unfpa.org/resources/core-international-human-rights-instruments>.
- United Nations Security Council. 2000. *Security Council resolution 1325 (2000) [on women and peace and security]*. Accessed 12 December 2015.  
<http://www.refworld.org/docid/3b00f4672e.html>.
- 2008. *Security Council resolution 1820 (2008) [on acts of sexual violence against civilians in armed conflicts]*. Accessed 12 December 2015.  
<http://www.refworld.org/docid/485bbca72.html>.
- 2009. *Security Council resolution 1888 (2009) [on acts of sexual violence against civilians in armed conflicts]*. Accessed 12 December 2015.  
<http://www.refworld.org/docid/4ac9aa152.html>.
- 2010. *Security Council resolution 1960 (2010) [on women and peace and security]*. Accessed 12 December 2015. <http://www.refworld.org/docid/4d2708a02.html>.
- 2013. *Security Council resolution 2106 (2013) [on sexual violence in armed conflict]*. Accessed 12 December 2015. <http://www.refworld.org/docid/51d6b5e64.html>.
- 2013b. *Security Council resolution 2122 (2013) [on women and peace and security]*. Accessed 12 December 2015. <http://www.refworld.org/docid/528365a44.html>.
- United Nations Treaty Collection. 2016. "Status on the Amendment to the Convention on the Elimination of All Forms of Discrimination against Women." Accessed 23 January 2016.  
<https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY>.
- 2016b. "Status of Convention on the Elimination of All Forms of Discrimination against Women." Accessed 23 January 2016.  
<https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY>.
- 2016c. "Status of Convention on the Rights of the Child." Accessed 23 January 2016.  
<https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY>.
- 2016d. "Status of Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women." Accessed 23 January 2016.  
<https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY>.
- 2016e. "Status of Optional Protocol to the Convention on the Rights of the Child." Accessed 23 January 2016. <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY>.

- 2016f. "Status of Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography." Accessed 23 January 2016. <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY>.
- 2016g. "Status relating to the Amendment to article 20, paragraph 1 of the Convention on the Elimination of All Forms of Discrimination against Women." Accessed 23 January 2016. <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY>.
- United States Institute of Peace. 2016. "What Is U.N. Security Council Resolution 1325 and Why Is It So Critical Today?" Accessed 23 January 2016. [http://www.usip.org/gender\\_peacebuilding/about\\_UNSCR\\_1325](http://www.usip.org/gender_peacebuilding/about_UNSCR_1325).
- Van Woudenberg, Anneke. 2012. "Confronting Rape as a Weapon of War in the Democratic Republic of Congo." In *The Unfinished Revolution: Voices from the Global Fight for Women's Rights*, edited by Minky Worden, 129-137. New York City, New York: Seven Stories Press.
- Verelst, An, Maarten De Schryver, Eric Broekaert, and Ilse Derluyn. 2014. "Mental Health of Victims of Sexual Violence in Eastern Congo: Associations with Daily Stressors, Stigma, and Labeling." *BMC Women's Health BMC Womens Health* 14: 106.
- Verelst, A., M. De Schryver, L. De Haene, E. Broekaert, and I. Derluyn. 2014b. "The Mediating Role of Stigmatization in the Mental Health of Adolescent Victims of Sexual Violence in Eastern Congo." *Child Abuse & Neglect* 38: 1139-146.
- Women in Law and Development in Africa. 2003. *Protocol to The African Charter On Human and People's Rights On the Rights of Women in Africa (Simplified)*. New York: Aldus Press.
- Wood, E.J., 2009. Armed groups and sexual violence: when is wartime rape rare? *Politics and Society* 37: 131-162.
- Zongwe, Dunia Prince. 2012. "The New Sexual Violence Legislation in the Congo: Dressing Indelible Scars on Human Dignity." *African Studies Review*. 55: 37-57.