

FEMALE PERPETRATORS IN THE FORMER YUGOSLAV REPUBLIC AND RWANDA

Disrupting Common Understandings

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1. INTRODUCTION

Female perpetrators do not feature prominently in the mainstream narratives surrounding the armed conflicts in the Former Yugoslav Republic (FYR) and Rwanda. Women's involvement in both of these conflicts has been primarily relegated to that of victims of sexual violence.¹ This particular understanding of women's roles in armed conflict was perpetuated and reaffirmed through Western feminist interventions into international criminal law in the 1990s,

¹ See D. BUSS, 'Expert Witnesses and International War Crimes Trials: Making Sense of Large-Scale Violence in Rwanda' in D. ZARKOV AND M. GLASIUS (eds.), *Narrative of Justice In and Out of the Courtroom Former Yugoslavia and Beyond*, Springer International Publishing 2014; K. ASKIN, 'Gender Crimes Jurisprudence in the ICTR: Positive Developments' (2005) 3 *Journal of International Criminal Justice* 1007; D. BUSS, 'The Curious Visibility of Wartime Rape: Gender and Ethnicity in International Criminal Law' (2007) 25 *Windsor Yearbook of Access to Justice* 3.

which focused on sexual violence against women, and was made visible through the work of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). The lack of attention afforded by the international media to the range of women's activities in armed conflict further contributed to this limited account. However, women were documented to have been involved in the hostilities in the FYR and Rwanda.² Women were accused of murder, torture and sexual violence.³ They participated in crimes against humanity, war crimes and genocide.⁴ Some women were in positions of leadership which granted them the ability to use their status to affect great harm. Other women, who were not in particular positions of power, still significantly contributed to the violence of war.⁵ Despite this information, the existence of women who actively took part in the hostilities is not evident in the mainstream narratives around the conflicts or in the jurisprudence of the Tribunals: Biljana Plavšić was the only woman tried by the ICTY⁶ and Pauline Nyiramasuhuko was the only woman brought before the ICTR.⁷ Women were also understood to have contributed to the violence of each armed conflict, evidenced by their prosecutions locally;⁸ however, knowledge regarding the participation of female perpetrators has not influenced mainstream understandings of women in armed conflict.

The reason it is beneficial to engage with the experiences of female perpetrators in the conflicts in the FYR and Rwanda is twofold. First, the existence of female perpetrators leads to questions about the system of international criminal law (ICL). The focus on these particular conflicts' narratives has predominantly developed around sexual violence against women and the loss of life or brutality of the violence perpetrated by men. However, in order for ICL to be its most

² See K. ENGLE, 'Judging Sex in War' (2008) 106 *Michigan Law Review* 941; N. HOGG, 'I Never Poured Blood: Women Accused of Genocide in Rwanda', LLM dissertation, McGill University 2001.

³ International examples include: Biljana Plavšić, ICTY; Pauline Nyiramasuhuko, ICTR; Ieng Thirith and Im Cheam, ECCC; and Simone Gbagbo, ICC. Some other cases include: K. RICHBURG, 'Rwandan Nuns Jailed in Genocide' *Washington Post*, New York 2001; E. MARTINEZ, 'Kentucky Woman Indicted for Bosnian War Crimes' *CBS News*, New York 2011; 'Dutch Yvonne Basebya Jailed for Rwanda Crimes' *BBC News*, London 2013 <<http://www.bbc.co.uk/news/world-africa-21632819>> accessed 28.09.2015; A. CERKEZ, 'US Extradites War Crimes Suspect to Bosnia' *NBC News*, New York 2011; K. SEGUEGILA, 'Women Lied About Role in Rwanda Genocide, U.S. Jury Says' *CNN News* 2013; 'Bosnia Arrests "Female Monster" – Wife of Warlord "Serb Adolf"' *Mirror*, London 2011 <<http://www.mirror.co.uk/news/uk-news/bosnia-arrests-female-monster---98517>> accessed 28.09.2015; BBC News – Rwanda Jails Journalist Valerie Bemeriki for Genocide' *BBC News*, London 2009 <<http://news.bbc.co.uk/1/hi/8412014.stm>> accessed 28.09.2015.

⁴ *ibid.*

⁵ HOGG, above n. 2, pp. 67–71.

⁶ See section 4 'Biljana Plavšić as a Female Perpetrator'.

⁷ See section 6 'Pauline Nyiramasuhuko as a Female Perpetrator'.

⁸ For further discussion, see Smeulders and Simić in this volume.

effective, it must acknowledge the wider range of women's and men's experiences in armed conflict. What currently occurs in ICL is a continual reproduction of binaries and stereotypes around men's and women's roles, which prevent the overall growth of the legal system. When a female perpetrator becomes visible in ICL, she is often spoken about and referred to with shock and condemnation, based on the fact she is a woman and should know better. Studying female perpetrators disrupts these presumptions, as it is only when the larger range of human experience in armed conflict is recognised that ICL can make long lasting gains.

Second, looking at female perpetrators can highlight the ways in which gender is understood, from both an international legal perspective and a feminist perspective. The lack of confrontation by Western feminists with female perpetrators seems to signal a naïveté or uncomfortableness with issues that involve women who perpetrate violence. By focusing on women as victims, which has been the primary aim of the Western feminist interventions in both the ICTY and ICTR, discussions become too centred on the harms committed against women. Due to this, women are limited to strict gender roles. If women who commit violence and engage in hostilities are recognised, then it is usually in relation to the sexual violence they sustained. This was the case in the FYR, where many feminists assumed that women only took up arms because they were mentally impaired by the sexual violence they experienced.⁹ By avoiding a discussion around the varying roles women inhabit, gender norms continue to remain rigid and incapable of dealing with the aftermath of armed conflict. Improving the lives of women or a community and ushering in justice cannot occur if the understanding of the hostilities remains tied to actions that rest along narrow gender lines: men fight and women suffer without recourse. The dialogue that incorporates women as perpetrators sits alongside the understanding that sexual violence does occur in armed conflict and often in greater proportion against women than against men. However, if feminists only include women in legal initiatives when they are recognised as victims, then the entirety of the project to aid women, rebuild a community or bring justice is suspect. Additionally, feminist interventions cannot operate without also acknowledging that much of the success of Western intervention is reliant upon the work of Third World women, on whose behalf Western feminists have tended to speak. Looking at female perpetrators exposes the differences in feminist goals, evident in what 'women issues' get elevated to the international plane.

The aim of this chapter is not to understand the way women involved in armed conflict see their own actions or to suggest specific ways prosecutors or investigators should approach the aftermath of armed conflict. Instead, this chapter identifies and critiques the ways in which conflicts are seen and

⁹ K. ENGLE, 'Feminism and Its (Dis)Contents: Criminalizing Wartime Rape in Bosnia and Herzegovina' (2005) 99 *American Journal of International Law* 788, 795.

appropriated, by feminists, advocates, academics and the media. The chapter critiques the way these groups situate themselves within surrounding debates and simultaneously decide what aspects of a crisis retain value and deserve primacy. Female perpetrators must be recognised as part of a mainstream conflict narrative, from the perspective of the international response to a crisis. By approaching armed conflict from the viewpoint of female perpetrators, feminists and international law practitioners and scholars alike can 'hold a mirror up to themselves' in order to better discern future conflicts and identify the gaps in the work done thus far. In an effort to prevent the Global North from speaking on behalf of the Global South, this work situates itself as a critique of the way women in armed conflict have been spoken about in international law and in Western feminist dialogues. Through the continued use of gender as a way to highlight female perpetrators in the media, and the use of gender to encourage protection of women, as well as gender being utilised to understand female perpetrators from a feminist perspective, gender becomes ultimately unhelpful when used as the only mode of analysis. Much like ICL cannot be solely responsible for repairing all of the harms done during armed conflict, neither can gender be thought of as the only way to understand women in conflict situations.

Addressing the two benefits of engaging with female perpetrators listed above will be carried out as follows. In the second section, examples of female perpetrators will be sifted through, citing the common narratives present when women engage in hostilities. This will identify tendencies to rest on stereotypical gendered assumptions of 'women's character' and role in war, in both ICL and feminist discourses. This section will also develop more fully the reasons why female perpetrators are a relevant topic of study. The third section will examine the ICTY, Western feminist interventions into ICL and the media, which can be argued to be the beginning of victim feminism. The case of Biljana Plavšić will be detailed in the fourth section. The fifth section will highlight the media representation of the Rwandan genocide, and move to a critique of Western feminist interventions and its perception of race in and around the ICTR.

Pauline Nyiramasuhuko's case will be examined in section six. Analysing the only two female perpetrators indicted by the Tribunals will demonstrate nuances in the responses to female perpetrators, as well as the larger issues present when engaging in a solely gender based analysis. The final section will synthesise the information from the Tribunals, providing links to international criminal law's development. The last section will also examine why many feminists are reluctant to properly address female perpetrators. This chapter will demonstrate that ICL projects fail to realise the benefits from studying female perpetrators due to the Western feminist focus on sexual violence against women, which has avoided addressing the areas of women's experiences that confront stereotypical assumptions. This work continues a dialogue that acknowledges the necessity of critically engaging with the female perpetrator from both a gendered and

a legal perspective, while recognising the breadth of women's participation in armed conflict.

2. COMMON NARRATIVES

When detailing the actions of female perpetrators, common or stereotypical notions of women often tend to interplay within understandings of armed conflict and violence. There are three general narratives that appear in ICL, mainstream feminist interventions and armed conflict history that support a limited perspective of both female perpetrators and women, which include notions that women are: predominantly peaceful and non-violent, victims of sexual violence, or do not hold levels of leadership that would necessitate their inclusion in ICL proceedings. Each of the three narratives will be described while highlighting the assumptions they imply. The relevancy of studying female perpetrators from both ICL and feminist perspective will also be discussed. Positioning these two conversations in the same section is especially helpful, in order to simultaneously question the motives behind feminist interventions and the aims of ICL.

2.1. JUSTIFYING ACTS OF VIOLENCE

One of the narratives that affect the way female perpetrators are understood details women in general as non-violent, inherently peaceful and on the side of the 'good'.¹⁰ The work of Sjoberg and Gentry details the characteristics that women are assumed to inhabit and how the realities of women's lives and women's actions, which can include violence, confronts these ideas in a manner that begs for justification.¹¹ Headlines centre on women's 'femaleness' and often imply traditionally female roles. A reason is needed when women step outside of the strict binaries set to encompass acceptable behaviour. Even though feminists understand that women are capable of a violence, they still imply that women should work for 'good' once in traditional male careers and spaces.¹² Examples of women committing acts of violence are often reported in the media with links to gender; an article on Rasema Handanovic, found to have committed acts of torture and abuse in the FYR, read, 'The US single mother who was actually a war criminal'.¹³ The article's headline disassociates the ability of being a mother with

¹⁰ See L. SJOBERG and C.E. GENTRY, *Mothers, Monsters, Whores*, Zed Books 2007.

¹¹ *ibid.*

¹² See B. EHRENREICH, 'Feminism's Assumptions Upended' (2007) 24 *South Central Review* 170.

¹³ A. OLIVER, 'The US Single Mother Who Was Actually a War Criminal: Killer Becomes First Woman to Be Convicted of Bosnian War Crimes' *Mail Online* 2012.

the ability to commit war crimes; being a mother is about caring and nurturing and cannot exist within someone who also commits crimes. Her criminal behaviour prevents her from fully claiming her title as a mother.

When women are tried before international courts and tribunals their actions are related to their gender in ways men's actions are not. Sjoberg and Gentry point to gender norms as a way of punishing women for denying their gendered role.¹⁴ Female perpetrators who are brought before either local or international courts are shamed within the media. When Pauline Nyiramasuhuko was on trial in the ICTR, the media commented on her dress and appearance as contradicting the violence that she had perpetrated.¹⁵ Nyiramasuhuko was cited as looking like a 'dear aunt' during courtroom proceedings.¹⁶ The fact that her son was also on trial was often referred to, and this reiterated her role as a mother and her ability to steer her son towards committing crimes.¹⁷ Being tried as women, then, is another sort of punishment; women who are tried are shamed because they are women and because their gender would dictate that they should not have been involved in actions that would lead to criminal proceedings. Reports of male perpetrators do not typically include commentary on their crime as a violation of their masculinity or role as a father – if anything, war crimes would solidify evidence of their gendered identity.¹⁸ War and violence has continued to reinforce and often mirror traditional displays of masculinity, albeit toxic, which makes it unnecessary to cite male acts of violence in relation to their gender. Violence committed by men in armed conflict is then expected and allowed. Criminal acts become masculine by definition, which leads to an assumption that men are the default perpetrators and cannot be involved in the promotion of peace.

These assumptions need to be analysed further, as there is a recognised link that the international media has with the ideals in a given society. The media's inferences also point to an idea that is based within a Western notion of gender. Defining 'the West' is not particularly straightforward, but in this case it is referring to a predominately white, Christian mindset evident within states in the global north. The way women are described in the Western media relies upon stereotypical notions of peace and non-violence, within a larger Western conception of women and men. The work around female perpetrators needs to also accept that there exists great nuance in the way female perpetrators are seen across the societies they inhabit. Scenes of women carrying machine guns engaging in violent combat is not necessarily shocking to those who have grown up with stories of female fighters, possibly in the Global South, and therefore

¹⁴ SJOBERG and GENTRY, above n. 10, p. 15.

¹⁵ D. HARMAN, 'A Woman on Trial for Rwanda's Massacre', *The Christian Science Monitor*, 2003 <<http://www.csmonitor.com/2003/0307/p09s01-woaf.html>> accessed 27.09.2015.

¹⁶ *ibid.*

¹⁷ *ibid.*

¹⁸ Engle, above n. 1, pp. 956–57.

women who then commit crimes in these roles may not seem out of place. The idea is to be mindful of the spaces in which female perpetrators are situated when analysing individual reactions in relation to ICL.

2.2. JUSTIFYING THE PRESENCE OF WOMEN IN INTERNATIONAL CRIMINAL LAW

Another common critique against the work around female perpetrators is that women do not commit the same level of violent crime as men. Focusing on the lack of prosecution of female perpetrators in ICL is making an issue about something that is not a denial of women's participation. This narrative does not necessarily assume women are less capable of violence than men in a given society, but rather that women do not typically commit violent crimes with the same occurrence as men and are therefore tried with less frequency. Further, it can be argued that this is not a denial of agency, but based on facts and figures. The problem with this argument is that it dismisses the existence of female perpetrators and seems to support the assumed stereotype of peacefulness and non-violence. What this narrative also assumes is that the binaries that exist in ICL are valid, with no need to be challenged. In ICL there is an assumption of what gender means, irrespective of culture, race, religion or ethnicity. What is also overlooked are the deeply embedded biases that limit the types of questions that are asked by prosecutors and judges, and the ways in which a given conflict is understood from the 'outside'. This work is not suggesting that women commit a greater number of violent acts during armed conflict than men or that the level of violent crime committed by men and women is equal. It is not being suggested that, given the opportunity, women would commit more violent crimes. However, women do commit crimes and it is possible that many such crimes go unnoticed due to the perception that women remain the victims during armed conflict.

Charlesworth discusses the roles of men and women in crisis situations and argues that women are only recognised as being a part of the crisis when they are violated, and when that violation is seen as harming their social group.¹⁹ Charlesworth writes that men are the main focus, as they were in the ICTY and ICTR, acting in various ways, while women enter only as an afterthought. Women are on the other side of the binary, and are predominately focused upon when they are victims of sexual violence. Charlesworth rightly states that while men are often seen as perpetrators, they are also simultaneously viewed as the 'saviour' who solves the crisis, 'saving' women in the process.²⁰ This only leaves

¹⁹ See H. CHARLESWORTH, 'International Law: A Discipline of Crisis' (2002) 65 *Modern Law Review* 389.

²⁰ *ibid.*

room for women on the margins, to be included when men deem it appropriate. While this view is especially limiting for women, it captures the view from mainstream conflict narratives.²¹

ICL's main goals are to end the impunity of leaders and punish violations of *jus cogens* norms and, like the domestic law, both realms operate on a basis of wrong and right and the finality of their judgments. ICL must not only follow the general principles of criminal law, but also reconcile itself as a part of the international system, dealing with the critiques on the lack of enforcement, state consent and legitimacy. ICL incorporates different societies, cultures and legal systems while predominately entering into a situation post conflict, accommodating extreme levels of violence and longstanding feuds. The characteristics that make ICL a unique form of criminal law also limit how much nuance it can contain in its judgments. While ICL's unique characteristics can be a reason for its limiting gender binaries, ICL's goals and measures of effectiveness are the main issue for its reliance on binaries. By reimagining what ICL's end goals should be it may be possible to gain a better understanding of the roles and relationships that exist within an armed conflict.

The international criminal legal system, instead of focusing on punishing leaders for violations of *jus cogens*, should also recognise its part in history telling as well as contributing towards repairing a community. ICL is already implicated in both activities, but because these are not sufficiently focused on during proceedings it misses the opportunity to develop. The critique to this argument might underscore that ICL is not designed to complete all of these goals. It cannot punish leaders, while telling an accurate history, bringing charges against people from each side of a conflict, and rebuilding the relationships within a given society. However, whether or not ICL's goals include providing a more nuanced view of gender within a conflict, ICL is already implicated in this practice. ICL's role as an international project, and the normative value placed upon it by the international community, are very much a part of shaping the way gender, race, culture and ethnicity are understood by the mainstream post conflict. The background provided in each court case judgment, the media focus, the way in which prosecutors pick cases and conduct trials, the witnesses who are chosen to tell their stories, and the way in which the public responds to all of these actions, situate ICL as an authority when trying to decipher the nuances of an armed conflict. While ICL is only one part of the justice process and work needs to be done post conflict at a local level, ICL must acknowledge that it carries responsibility internationally and, therefore, must address the issues that occur within its framework. Female perpetrators offer a way into this discussion. ICL can question how the stories of those outside the main conflict

²¹ C. COULTER, 'Female Fighters in the Sierra Leone War: Challenging the Assumptions?' (2008) 88 *Feminist Review* 54, 55. Coulter notes that 10–30 per cent of all fighters in the Sierra Leone War were women.

narratives can be included, and what can be learned about the conflict, as well as identifying the biases of those who work within the legal system.

2.3. FOCUS ON SEXUAL VIOLENCE

By critiquing the international community's focus on crisis, Charlesworth highlights the binaries in the broader area of IL. Moving to ICL specifically, Charlesworth's analysis lends itself to unpacking the Western feminist interventions into crisis found in the ICTY and ICTR, which especially focused on women as victims of sexual violence, and subsequently reinforced a male and female binary. This push to identify and punish various forms of sexual violence was an important step, but it did not come without negative after effects. Western feminists involved in this dialogue continued a narrative that unintentionally limited the roles women were able to inhabit. Charlesworth continues her discussion by identifying the sets of contrast that exist within international law. Binaries of, 'objective/subjective, legal/political, logic/emotion, order/anarchy, mind/body, culture/nature, action/passivity, public/private, protector/protected', are listed as distinctions having both male and female characteristics.²² Charlesworth argues that international law primarily values the first (male) characteristic.²³ Through the focus on sexual violence in the ICTY, the binaries of man and woman, perpetrator and victim are seen as synonymous. Without highlighting the different roles of women in the conflict, examples of female perpetrators like Plavšić and Nyiramasuhuko are seen as anecdotal.

Another problem with the rhetoric of victim feminism and highlighting the sexual violence in the conflict, besides that it ignores the other roles women inhabit, it also identifies rape as special to a particular armed conflict. Engle states that when female activists, journalists, and scholars were trying to ascertain stories of rape after the conflict in the FYR, they employed the assumption that all women were victims of rape.²⁴ Engle further stated that the ICTY, at the urging of Western feminists, has limited women's stories and denied sexual, political and military agency.²⁵ Many feminists in and around the ICTY tended to portray Bosnian Muslim women as victims and continued to deny women's participation.²⁶ Journalists and feminists were frequently frustrated with women's lack of cooperation as they tried to elicit stories of sexual violence, which made many interpret women's silence as evidence of sexual violence.²⁷

²² CHARLESWORTH, above n. 19, p. 390.

²³ *ibid.*

²⁴ ENGLE, above n. 9, pp. 795 and 803.

²⁵ *ibid.*, p. 807.

²⁶ *ibid.*

²⁷ *ibid.*, p. 795.

Serbian men were then seen as the 'typical' sexual perpetrator.²⁸ Feminists further limited women's participation by suggesting that if a woman took up arms after she was subjected to sexual violence, then she must have only done so due to the rape she had experienced.²⁹

MacKinnon was an advocate of ICL's work on aiding women who have been victimised by sexual violence. She advocated for a stricter reading of crimes that dealt with violence against women.³⁰ Engle has stated that advocates carried large assumptions about the ethnic differences between Serbs, Croats and Bosnian Muslims.³¹ Many of the advocates in the ICTY wanted rape to be seen as genocide and believed that rapes by Serbian men of Croatian and Bosnian Muslim women constituted genocide. As the conflict continued and Croatia became more of an aggressor, these same advocates shifted their definition of 'rape as genocide' to only the rape of Bosnian Muslims. The work done around the Tribunal concerning women in conflict reinforces the idea that women are victims,³² generally acknowledged to be in continual need of protection.³³

Women involved in the armed conflict as combatants were seen as reactionary, limiting the possibility that women can support the ideals of either side of a conflict and become motivated to take up arms. Sexual violence in armed conflict is seen as an attack on women as a group because they are women, and while that has been the case in certain instances, it also misses the way sexual violence can be used against both women and men because of their ethnicity or class. Studying cases of female perpetrators and incidents of female violence is not to suggest that these are somehow equal to or similar to the crimes men commit in every instance. It is important to recognise these women's actions in order to better understand violence and the nature of armed conflict. The following sections demonstrate the wide array of factors that influence the ways in which female perpetrators are understood.

3. THE FORMER YUGOSLAV REPUBLIC

Interventions into the ICTY were largely focused upon the push to recognise sexual violence in armed conflict, as well as to encourage protection for women

²⁸ *ibid*, pp. 785 and 786.

²⁹ *ibid*, pp. 795 and 796.

³⁰ See C. MACKINNON, 'The ICTR'S Legacy on Sexual Violence' (2008) 14 *New England Journal of International and Comparative Law* 101.

³¹ ENGLE, above n. 9, p. 794.

³² See R. KAPUR, *Erotic Justice: Law and the New Politics of Postcolonialism*, Glass House Press 2005, p. 120.

³³ Notable cases: *The Prosecutor vs Tadić*, *The Prosecutor v. Mučić et al.*, *Prosecutor v. Kunarac*, *Prosecutor v. Krstić*. Icty.org, 'ICTY – TPIY: Crimes of Sexual Violence' <<http://www.icty.org/sid/10312>> accessed 27.09.2015; ENGLE, above n. 9, p. 952.

in international law. This section will look at Western feminist engagement with the ICTY as well as the development of ICL. In doing so it will highlight the way binaries such as male/female and perpetrator/victim were solidified in and around the tribunal.

The role of feminists, lobbyists and non-governmental organisations (NGOs) was paramount in the successful prosecution of sexual violence crimes in the ICTY.³⁴ Feminists, especially within NGOs, credited themselves with the development of law.³⁵ However, Engle stated that many assumed that all women were powerless, victims, incapable of defending themselves, taking sides and participating in war.³⁶ Revenge was seen as a product of the sexual violence that women experienced. If women wanted to join the army or expressed vengeance, they were seen as exceptional or pathological.³⁷ Journalist Alexandra Stiglmeier equated the desire for revenge with atypical behaviour.³⁸ She stated that most women who were raped were broken and unable to think about revenge; therefore, those who did so were not normal.³⁹ If revenge is considered to be pathological, potential mothers who were victims of rape are believed to be suicidal, and rape is assumed to leave women 'broken', then there are few options for women to express themselves within the parameters of armed conflict without their actions being explained by a type of trauma. However, focusing on sexual violence against women in armed conflicts in the FYR and Rwanda highlighted the experiences of women which had not received primacy until this point in ICL. The Nuremberg trials did not prosecute sexual violence as such, and the Tokyo trials overlooked the enslavement of comfort women,⁴⁰ but both the ICTY and ICTR contributed by increasing the attention to sexual violence and developing jurisprudence. In order to bring the issues facing women in armed conflict to the attention of ICL, feminists needed to continually stress the importance of defining sexual violence terms, identify criminal acts within the conflict, and underscore the harm felt by women who experience sexual violence. Western feminist interventions also had to contend with violence against women due to their gender in societies where women did not, in their estimation, hold positions of power or agency. Considering all of these factors, it is not difficult to understand why there were continual efforts by feminists to highlight these issues.

³⁴ See J. HALLEY ET AL., 'From the International to the Local in Feminist Legal Response to Rape, Prostitution / Sex Work and Sex Trafficking: Four Studies in Contemporary Governance Feminism' (2007) 29 *Harvard Journal of Law and Gender* 335.

³⁵ *ibid.*

³⁶ ENGLE, above n. 9, p. 795.

³⁷ *ibid.*

³⁸ *ibid.*, pp. 795 and 796.

³⁹ *ibid.*

⁴⁰ *Crimes of Sexual Violence*, available at <<http://www.icty.org/en/in-focus/crimes-sexual-violence>>.

However, continually reaffirming women's role as victims of violence again establishes that women are connected to a specific view of femininity. Criminal courts should be disrupting these binaries and encouraging the understanding of the nuances of women's and men's roles. This would do more to promote women as active participants in conflict and prevent assumptions that women remain helpless during times of violence. Males were considered the aggressors: strong, powerful and a forceful representative of the nation.⁴¹ As a result, men who were victims of sexual violence remain outside the mainstream understanding of sexual violence in the conflict of the FYR.⁴² By framing the Tribunal along the same gender lines as the conflict, ICL runs the risk of reproducing similar gendered outcomes. If women are argued to be disadvantaged during armed conflict, which produces distinct understandings of masculinity and femininity, then creating a tribunal that also predominately focuses on women as victims and men as perpetrators, reaffirms the gender binaries from the conflict and does not allow the possibility that human experience during the conflict may be nuanced and varied.

The way Western feminists have shaped the understanding of sexual violence and gender can be directly linked to the media representation of the conflict. Zarkov discusses the Western feminist response to the conflict, stating that in the summer of 1992 the international media began focusing on the sexual violence in the FYR.⁴³ Zarkov highlights the shift in Western feminist engagement from a discussion of war to an emphasis on war rapes and a limited understanding of ethnicity.⁴⁴ The classification of sexual violence as a result of ethnic identities was problematic; instead, there should have been more effort to ascertain the way in which a certain identity may become elevated and seen as desirable in a given society.⁴⁵ The former approach does not question the structures of the conflict, but rather upholds and perpetuates their existence. Zarkov states that female survivors of rape and rape camps have also been a part of the efforts to deal with the aftermath of rape, as well as other conflict-related issues.⁴⁶

⁴¹ A. JONES, 'Gender and Genocide' (2002) 4 *Journal of Genocide Research* 65, 66–69.

⁴² The case of *Prosecutor v. Mučić et al.* is an example where sexual violence against men is noted. The account of Mučić's actions included a description of him forcing two male detainees to engage in fellatio with each other. See *Prosecutor v. Mučić et al.* (Judgment), IT-96-21-T, ICTY, 16 November 1998; *Prosecutor v. Tadić* (Judgment), IT-94-1, ICTY, 26 January 2000; *Prosecutor v. Češić* (Judgment), IT-95-10/1, ICTY, 11 March 2004; *Prosecutor v. Todorović* (Judgment), IT-95-9/1, ICTY, 31 July 2001; *Prosecutor v. Simić* (Judgment), IT-95-9/2, ICTY, 17 October 2002. See A.-M. DE BROUWER, *Supranational Criminal Prosecution of Sexual Violence*, Intersentia 2005.

⁴³ D. ZARKOV, 'Ontologies of International Humanitarian and Criminal Law: "Locals" and "Internationals" in Discourses and Practices of Justice', *Narratives of Justice In and Out of the Courtroom Former Yugoslavia and Beyond*, Springer 2014, p. 7.

⁴⁴ *ibid.*, p. 8.

⁴⁵ *ibid.*

⁴⁶ *ibid.*, p. 7.

Yet, the international media and Western feminists have depicted these women as helpless and silent,⁴⁷ and while sexual violence came to the forefront of international feminist study, the work of local feminists was not recognised.⁴⁸

Before the conflict began, Benderly noted that Yugoslav feminism was directly opposed to nationalism and expressed solidarity among the different territories.⁴⁹ After it was clear that the conflict would continue, many local feminists began working to end the conflict; they established anti-war groups, groups for women refugees, centres for those affected by violence, and telephone lines for support.⁵⁰ Feminists on all sides had difficulty in defining the perpetrators and the victims during the conflict. Some groups did acknowledge that their own ethnic forces were also involved in acts of sexual violence;⁵¹ others focused their work on all women harmed by the conflict and established links with other states as well.⁵²

Through the combination of both local and international presumptions about women's personal experiences within the armed conflict, the narrative around women's roles was restricted to that of passive victims. Zarkov comments on this point as well, stating that feminists, local and international, assumed that women were powerless and that men were active players.⁵³ Women who were capable of perpetrating or permitting violence and men who were powerless were not acknowledged.⁵⁴ From this perspective it is possible to see why female perpetrators have remained on the fringes of the armed conflict's narrative.

4. BILJANA PLAVŠIĆ AS A FEMALE PERPETRATOR

The statistics on the work of the ICTY included only one case involving a female perpetrator, Biljana Plavšić. Plavšić was the Serbian representative to the collective Presidency of Bosnia and Herzegovina, a member of the collective and expanded Presidencies of the Bosnian Serb Republic, and had de facto control and authority over members of the Bosnian Serb armed forces.⁵⁵

⁴⁷ *ibid.*

⁴⁸ See D. ZARKOV, 'Feminism and the Disintegration of Yugoslavia: On the Politics of Gender and Ethnicity' (2003) 24 *Social Development Issues* 1.

⁴⁹ *ibid.*, p. 2.

⁵⁰ *ibid.*

⁵¹ *ibid.*, p. 8, 'Croatian anti-nationalist feminists, for example, were the first to explicitly accuse Croatian forces of raping Serb and Muslim women, and to condemn national and international demonization of Serb men and the Serb nation'.

⁵² *ibid.*, 'Serbian anti-nationalist feminists also directed their activities towards all women, regardless of their ethnic background. They were among the few to establish links with Albanian women from Kosovo, for example'.

⁵³ *ibid.*, p. 13.

⁵⁴ *ibid.*

⁵⁵ *Case Information Sheet Biljana Plavšić* (1st edn., The International Criminal Tribunal for the Former Yugoslavia) <http://www.icty.org/x/cases/plavsic/cis/en/cis_plavsic_en.pdf> accessed 25.09.2015.

The charges included genocide and murder. Plavšić pleaded guilty to crimes against humanity.⁵⁶ The Trial Chamber gave weight to Plavšić's guilty plea as well as the statement she made in court, signifying her remorse.⁵⁷ She was eventually sentenced to 11 years' imprisonment, but only served two-thirds of her sentence.⁵⁸

What is particularly interesting about Plavšić's case is her admission of guilt in front of the ICTY, which helped to reduce the charges against her as well as her sentence. What was not within the purview of the court was the redaction of her confession, published while in prison.⁵⁹ Plavšić was the only high ranking officer to admit guilt, yet this seems to have only been an attempt to lower her sentence. The reason Plavšić's case is useful is because her behaviour and attitude while serving her sentence cast aside preconceived notions of how women are presumed to feel and act, especially after committing a crime, yet the way her actions were framed in the media reaffirms her role as a woman.

The connection between remorse and gender seems to presume that women will be more likely to feel guilty after committing a crime.⁶⁰ Therefore, when Plavšić retracted her statements in prison and instead displayed that she had not benefited from any rehabilitation, she contrasted herself to stereotypical gender roles. However, Plavšić's case does not offer an alternative understanding of women's roles in conflict or the ways in which gender influences armed conflict. This work suggests that Plavšić's situation was read and interpreted along strict gender lines and did more to reaffirm stereotypical notions of gender. Plavšić was seen as an aberration of the way women should act, while at the same time she still maintained her femininity. The crimes Plavšić committed were highlighted in the media, describing her as the 'Iron Lady' or 'female Mengele', along with stories of her sexual relationships or ability to encourage displays of violence.⁶¹ Both are characteristics that reference her feminine sexual appeal and her nurturing mothering side. When Plavšić was serving her sentence, her good behaviour was praised, as was her cooking and baking – signs she that she was readjusting to 'proper' womanly life.⁶² Plavšić never seemed to slip outside designated female roles, and even when her actions were less than desirable they were still set within feminine or gendered language.

⁵⁶ Trial Chamber of ICTY, Sentencing Judgment, Biljana Plavšić (IT-00-39 & 40/1) 27 February 2003, Section 2.

⁵⁷ Trial Chamber of ICTY, Judgment Summary, Biljana Plavšić (IT-00-39 & 40/1) 27 February 2003.

⁵⁸ *ibid.*

⁵⁹ Biljana Plavšić, *Svedočim* [I Testify], 2005, (Banjaluka: Trioprint).

⁶⁰ See K.E. NIEDERMEIER, I.A. HOROWITZ and N.L. KERR, Exceptions to the Rule: The Effects of Remorse, Status, and Gender on Decision Making (2001) 31 *Journal of Applied Social Psychology* 604.

⁶¹ SJOBERG and GENTRY, above n. 10, p. 156.

⁶² J. SUBOTIĆ, 'The Cruelty of False Remorse: Biljana Plavšić at The Hague' (2012) 36 *Southeastern Europe* 39, 49.

It is not strange that Plavšić's actions were framed from a gender biased lens or that her actions do more to support the 'female identity' than to disrupt it. This work is arguing that to suggest female perpetrators somehow *actually* break the idea of what it means to be women would be false. Women have always committed violence and disruption. Maybe that is why when highlighting the ways specific women buck ideas of gender, it is actually doing more to support limited notions regarding women's abilities. Every action 'outside' strict gender binaries can be explained back through femininity. If Plavšić is encouraging genocide, then she is like a mother encouraging children. If Plavšić is corrupt and viscous, then she is somehow enthralled in an influential sexual relationship and also a female monster. Every 'wrong' action can be attributed back to a traditional female role. Even when Plavšić is in prison serving a sentence for international crimes, she is still described as being on good behaviour by baking in her leisure time. Considering the limited amount that has been learned from analysing Plavšić's case along gender lines, it may be more useful to use ethnicity, race, or in this case a mix of ethnicity and nationalism, to understand Plavšić's actions as a female perpetrator. If the goal is to offer a full narrative of an armed conflict, then gender cannot be utilised as the only tool, as it seems to reaffirm a strict reading of women's actions in conflict.

The fact that only one female was tried in the ICTY would suggest that women's involvement as perpetrators did not become a part of the narrative that surrounded the conflict, established through Tribunal proceedings.⁶³ Of the prosecuted persons in local judiciaries, women have been among those indicted, charged and sentenced, with more frequency than in the ICTY.⁶⁴ Identifying that women were charged with crimes in the FYR and other conflicts not only draws attention to their existence, but also allows a deeper discussion into the way other identities interact. It is beneficial to give evidence of female perpetrators, but beyond this little else can be gained from mere identification. Work needs to be done to unpack the nuances of female perpetrators and the way their actions are framed. Plavšić's case displayed a different story from the mainstream account of women's experiences during the conflict in the FYR, but also unearthed the way gender is interpreted and reaffirmed through both media and biased analysis. While it is useful to dissect the ways in which gender is used to understand Plavšić's actions, it may be more beneficial to step away from a gender analysis. The following section on Rwanda and Pauline Nyiramasuhuko will build upon the work in this section in order to demonstrate how focusing on gender only or women as victims misses potential opportunities for new understandings. This underscores the benefit of using ethnicity and race to critique the actions of female perpetrators in Rwanda.

⁶³ This is referring to an international perspective gained through the ICTY. Local courts have produced more examples of women engaging in acts of violence.

⁶⁴ See Smeulers and Simić, in this volume.

5. RWANDA

The response to the Rwandan genocide by Western feminists, the international media and the ICTR, shaped and gave meaning to the way women and their actions were viewed during the conflict. Rwanda offers a unique opportunity to see the way ethnicity and gender are interwoven into the way the conflict was interpreted and how this interpretation links to Rwanda's past. While this work will not attempt to discuss the colonial history of Rwanda, it will demonstrate how limited understandings of race, ethnicity and gender influenced the narrative of the genocide and thereby limited the way women were presumed to take part. The desire to include sexual violence in ICTR cases by Western feminists and an uncertainty on the part of international law, in general, to give issues affecting women primacy in an international legal context are highlighted. The international media's portrayal of the sexual violence against women during the Rwandan genocide affirmed assumptions around brutality and savagery, which further influenced the perception of the conflict. This section will give an overview of the Western feminist response to the Rwandan genocide, and also identify the major issues preventing the recognition of female perpetrators by mainstream narratives.

Misinterpretation of the armed conflict in Rwanda influenced the stories and headlines of news reports.⁶⁵ However, despite the shift from disinterest to intense scrutiny of victims,⁶⁶ international audiences knew little about Rwanda's colonial past. Reports centred on descriptions of excessive violence and brutality, which distanced Rwanda from 'civilised' viewers, as well as shaping the way people involved in the Rwandan genocide were seen and understood. The international media has continually overlooked Africa and when they do report it is done with limited attention or rather specific attention to certain topics, as was the case with the Rwandan genocide,⁶⁷ especially surrounding the ICTR.

The Tribunal also contributed to further misunderstandings by remaining focused on a very narrow jurisdiction.⁶⁸ The ICTR and global interest ignored the ongoing conflict that surrounded Rwanda's colonial past, as well as its decolonialisation, and focused only on the 100 days of the genocide. By reinforcing the genocide as a singular 100-day period, it projects notions of brutality and chaos onto Rwanda specifically and Africa generally. Spivak's work elaborates how colonialism in India can be seen as justifiable by the British,

⁶⁵ See G. CAPLAN, 'Rwanda: Walking the Road to Genocide' in A. Thompson (ed.), *The Media and the Rwanda Genocide*, Pluto Press 2007.

⁶⁶ See A. THOMPSON, 'Introduction' in A. THOMPSON (ed.), *The Media and the Rwandan Genocide*, Pluto Press 2007.

⁶⁷ See S. CARRUTHERS, 'Tribalism and Tribulation: Media Construction of "African Savagery" and "Western Humanitarianism"' in S. ALLAN and B. ZELIZER (eds.), *Reporting War: Journalism in Wartime*, Routledge 2004.

⁶⁸ International Criminal Tribunal for Rwanda (ICTR) Statute.

due to the presence of barbaric practices,⁶⁹ which then equates colonialism with an expulsion of the barbaric and harmful. The presence of 'Western' mediated justice after the Rwandan genocide reproduces this similar colonial aspect.⁷⁰ If the genocide, with what is described as extreme violence and a high death toll, is a standalone event, then it is unpredictable. This unpredictability encourages a perception that another wave of violence might break out without any pretext, thus maintaining the concept that the genocide is a part of Africa's barbaric climate and further relegates this to an 'African issue'.

Western feminists along with NGOs urged the indictments in the ICTR to include rape and other sexual violence crimes as they did in the ICTY.⁷¹ The ICTR made significant advances in jurisprudence relating to genocide and crimes against humanity in the *Akayesu* case,⁷² and many other cases that have contributed to sexual violence jurisprudence.⁷³ Considering how common sexual violence was during the armed conflict, many feminists and advocates felt that the jurisprudence and prosecution of sexual violence, outside of the *Akayesu* case, was far from adequate.⁷⁴ However, Askin noted that judges would often discuss crimes of sexual violence in the judgments of cases that did not include crimes of a sexual nature in the original indictment.⁷⁵ MacKinnon encouraged the prosecution of rape even when murder charges were present, due to the frequency of focusing on murder and dropping 'lesser' sexual violence charges.⁷⁶ Her work showcased that the ICTR found it difficult to charge men with inciting rape, as they would be charged with acts that other men committed on behalf of their superiors.⁷⁷

This brief review of the work of feminists in the ICTR displays the overarching focus on securing sexual violence jurisprudence. While it is evident that sexual

⁶⁹ See S. MORTON, 'Subalternity and Aesthetic Education in the Thought of Gayatri Chakravorty Spivak' (2011) 17 *Parallax* 70; *Sati* referring to traditional Indian widow sacrifice.

⁷⁰ Critiques around the ICTR, i.e. proximity to the conflict, handling of witnesses, lack of political will. See Makau Mutua's work on the topic, M.W. MUTUA, 'A Critique of Rights in Transitional Justice: The African Experience' in G. ORE AGUILAR AND F. GOMEZ ISA (eds.), *Rethinking Transitions: Equality and Social Justice in Societies Emerging from Conflict*, Intersentia 2011, pp. 31–45, Buffalo Legal Studies Research Paper No. 2012-032.

⁷¹ See J. HALLEY, 'Rape at Rome: Feminist Interventions in the Criminalization of Sex-Related Violence in Positive International Criminal Law' (2008) 30 *Michigan Journal of International Law* 1.

⁷² 'The Cases – United Nations International Criminal Tribunal for Rwanda' <<http://www.unictr.org/Cases/StatusofCases/tabid/204/Default.aspx>> accessed 24.09.2015.

⁷³ See *Prosecutor v. Semanza*, Judgment, Appeals Chamber (ICTR-97-20, 20 May 2005); *Prosecutor v. Gacumbitsi*, Judgment, Appeals Chamber (ICTR-01-64, 7 July 2006); *Prosecutor v. Nahimana et al.*, Judgment, Appeals Chamber (ICTR-99-52, 28 November 2007). This work is not dismissing the importance of prosecuting sexual violence crimes and the need to include definitions of sexual violence in international law.

⁷⁴ ASKIN, above n. 1, pp. 1007–08.

⁷⁵ *ibid.*, p. 1013.

⁷⁶ MACKINNON, above n. 30, p. 104.

⁷⁷ *ibid.*

violence was a large part of the genocide, by limiting women's roles in conflict to victims of sexual violence, the ways colonialism, race, ethnicity and gender interplay within the ICTR cannot be adequately addressed. From the lack of initial indictments with sexual violence charges and the seeming lack of will, the ICTR came at a time where there was an increased awareness of sexual violence in armed conflict by Western feminists, coupled with a lack of effort from the international legal community to push women's issues.⁷⁸ Bedont and Martinez cite the publicity surrounding the 'mass rapes' in both Yugoslavia and Rwanda as the driving force in the creation of the ICTY and ICTR.⁷⁹ While this was a large part of the Tribunals' creation, the concern the international community had over the sexual violence, or mass rapes, did not extend into the interworking of international law at the time, which still remains a product of a patriarchal creation. However, by publicising the violence women endured in both conflicts, the predominant narrative of women's experience was one of sexual violence, at the cost of all other forms of women's participation.

Concepts of race and ethnicity in the ICTR and within the genocide itself entered debates by influencing the perception of the violence, but not as a tool of analysis. The international media effectively 'othered' those involved in the armed conflict and referred to 'ethnic issues', but did not recognise the extent to which this influenced the actions of those involved in the violence. One's ethnicity, although an extremist manifestation, was often the main mode of identification. Therefore, instead of focusing on sexual violence, as something done to women because they are women, there needed to be more work done around the way Hutu and Tutsi extremist ethnicities and military extremism influenced the perception of vulnerability during the conflict. This would have allowed for a reading of the conflict that incorporated both men and women as victims of sexual violence, and both women and men as perpetrators of violence. By limiting the narrative to women as victims, Western feminists centred upon gender as a mode of analysis and thereby ignored the other factors that influenced the conflict. This leads to missed opportunities to gain valuable insights into the ways in which gender intersects with other identities and power structures.

6. PAULINE NYIRAMASUHUKE AS A FEMALE PERPETRATOR

Pauline Nyiramasuhuko was the Minister of Family and Women's Development in the Interim Government of Rwanda at the time up to her indictment

⁷⁸ This is referencing the current UN Women Peace and Security agenda.

⁷⁹ B. BEDONT and K. HALL MARTINEZ, 'Ending Impunity for Gender Crimes under the International Criminal Court' (1999) 6 *The Brown Journal of World Affairs* 65.

in the ICTR.⁸⁰ She was a member of the National Republican Movement for Democracy and Development (MRND) and a political figure in Butare prefecture.⁸¹ Nyiramasuhuko, tried in conjunction with her son Arsène Shalom Ntahobali,⁸² used a roadblock, set up near her home, to identify, abduct and kill Tutsis.⁸³ Nyiramasuhuko encouraged the killing of Tutsis on multiple occasions, and engaged in crimes of a sexual nature by inciting rape.⁸⁴

Nyiramasuhuko was charged with crimes against humanity and genocide, and eventually sentenced to life in prison, which was later reduced to 47 years. Nyiramasuhuko was the first woman to be tried by an international court and was the first woman ever to be indicted and convicted for rape as a crime against humanity.⁸⁵ Nyiramasuhuko was considered by Prime Minister Kambanda as one of the 'inner circle' responsible for organising the genocide,⁸⁶ and was the main instigator of the genocide in Butare.⁸⁷ News reports, writers, scholars, victims, Nyiramasuhuko herself and her family all had a difficult time connecting her actions with her being a woman and a mother, and reports often commented on her contradicting appearance and dress.⁸⁸ Writers and scholars expressed shock or pointed to sexist notions in order to explain Nyiramasuhuko's actions.⁸⁹ Victims and Nyiramasuhuko's family all signalled to motherhood, as either something that made her crimes worse or as a defence.⁹⁰ Nyiramasuhuko said she had no power, no capability and was therefore not guilty.⁹¹ Nyiramasuhuko also cited sexism as the reason she was being prosecuted, because she was an educated woman.⁹² Sperling has noted that either Nyiramasuhuko chose to use gender as a means of casting doubt onto her actions, or she believed that women truly did not have the capacity to commit acts that would require a substantial amount of power.⁹³ Nyiramasuhuko's case is not the only time women were involved in the Rwandan genocide.

⁸⁰ Trial Chamber II of ICTR, Amended Indictment, *Nyiramasuhuko et al.* (ICTR-97-21-I, 1 March 2001) para 4.2.

⁸¹ *ibid.*

⁸² *Ibid* para 4.3.

⁸³ *Ibid* para 6.27.

⁸⁴ *Ibid* para 6.30-1, 6.37, 6.53 and 6.56.

⁸⁵ P. NYIRAMASUHUKE, 'The Hague Justice Portal' <<http://www.haguejusticeportal.net/index.php?id=10482>> accessed 24.09.2015.

⁸⁶ C. SPERLING, 'Mother of Atrocities: Pauline Nyiramasuhuko's Role in the Rwandan Genocide' (2005) 33 *Fordham Urban Law Journal* 637, 637.

⁸⁷ *ibid.*

⁸⁸ D. MOSHENBERG, *The Rwandan Glass Ceiling*, (June 2011), available at <<http://africasacountry.com/2011/06/29/when-does-being-a-rwandan-woman-matter/>>.

⁸⁹ SPERLING, above n. 86, pp. 651-2.

⁹⁰ See M. DRUMBL, '"She Makes Me Ashamed to Be a Woman": The Genocide Conviction of Pauline Nyiramasuhuko' (2013) 34 *Michigan Journal of International Law* 559.

⁹¹ SPERLING, above n. 86, pp. 650-1.

⁹² *ibid.*

⁹³ *ibid.*, pp. 650-53.

Hogg states that of 'Category 1' genocide suspects, 47 are women.⁹⁴ This list includes those in leadership roles in the government, political parties, the military and religious organisations, as well as planners, organisers, instigators and direct perpetrators of genocide and crimes against humanity.⁹⁵ Examples of female defendants have been unearthed in the work of Adler, Loyle and Globerman, as well as Hogg's research in Rwanda.⁹⁶ Even though many of the participants in their studies are without names, it is evident that the number of women accused of genocide or genocide-related crimes is far higher than the ICTR would suggest. Hogg reported in 2010 that around 2,000 women were still awaiting trial in Rwanda for crimes related to the genocide.⁹⁷ What has also been a common occurrence is for those women involved to deny their crimes using gender as a defence. Hogg has also stated that women who were awaiting trial were actively denying their involvement due to the fact they were women.⁹⁸ If women are claiming that their gender equals a lack of power even while perpetrating violence, then it is possible that women do not see their gender as their primary mode of identity or associate the ability to participate in the genocide as a form of agency. Analysing Nyiramasuhuko's actions based on gender, highlighting her ability to break through gender ideals of typical 'female' behaviour, only provide part of the context. She only used her gender to deny allegations, or as a facade when holding a ministerial position. Nyiramasuhuko's actions were more closely related to her extremist Hutu ethnicity. Her place as a Hutu in Rwandan society mattered much more, and her ability to perpetrate acts resulted from her ethnicity and position and had little to do with her being a woman. It is possible then that feminists, news outlets and the ICTR did not ask the right questions. Extremist ethnicity, which was a main focus of the conflict itself, needed to become the central tool of analysis. Secondary to this, both feminists and ICL needed to be aware of the different understandings and definitions of terms. Rwandan women have disagreed with the perspective of Western feminists, that women who committed crimes in the Rwandan genocide had power, establishing that definitions of power are not absolute. What it means to be a woman in Rwandan society, and, indeed, an educated woman, may be very different from the perspective of the West.

⁹⁴ N. HOGG, 'Women's Participation in the Rwandan Genocide: Mothers or Monsters' (2010) 92 *International Review of the Red Cross* 69, 90.

⁹⁵ *ibid.*

⁹⁶ See R.N. ADLER, C.E. LOYLE AND J. GLOBERMAN, 'A Calamity in the Neighbourhood: Women's Participation in the Rwandan Genocide' (2007) 2 *Genocide Studies and Prevention: An International Journal* 209; also see Hogg's work (above n. 2).

⁹⁷ HOGG, above n. 94, p. 70.

⁹⁸ *ibid.*, pp. 89 and 90.

7. CONCLUSION: COMBINING INTERNATIONAL CRIMINAL LAW AND FEMINIST INTERVENTION

After shifting through the situations in the FYR and Rwanda, it is clear that understanding the nuances in armed conflict is essential in order to identify the complexities surrounding female perpetrators. This discussion has shown that while gender roles may influence the way in which women commit genocide, war crimes or crimes against humanity, it does not prevent women from being active participants during armed conflict. When the realities of a situation like the conflict in the FYR and the Rwandan genocide are ignored, namely the perpetration of crimes by women, then the history of the conflict is altered. Incorporating women into peace processes after a conflict, addressing post conflict justice, or providing services to women who engaged in hostilities cannot be achieved by reproducing the idea that women were not involved in perpetrating crimes. This limited mindset reinforces narrow notions of gender, race and ethnicity and prevents reconciliation.

One of the ways in which ICL can utilise the work on female perpetrators is by recognising the international versus local dichotomy. Zarkov discusses the difference between the 'local' and 'international' identity in the FYR. She suggests that although the acts that are associated with the conflict matter, the location of these acts is just as important.⁹⁹ The location of the armed conflict justifies the classification of 'local' men as sexual perpetrators and women as victims.¹⁰⁰ 'International' women and men are then signified as non-violent, non-rapists.¹⁰¹ By using these signifiers to separate the 'local' and 'international', sexual violence in the conflict becomes tied to the 'local'.¹⁰² Sexual violence is then considered to be unique to armed conflict and unique to the 'local', where the treatment of women is harmful. This binary elevates the position of the international and dismisses/essentialises the realities of the domestic. Discussing the international and local also relates to the way the Rwandan genocide was interpreted. The focus of the ICTR on a limited time frame, as well as the genocide's extremely high death toll, encourages the perception of Rwanda and then the whole of Africa as a barbaric, violent society.

The local and international dichotomy links to the Western feminist intervention in both the FYR and Rwanda. Kapur notes that '(t)hus, culture is invoked primarily to explain the different ways in which women experience violence – in the process often reinforcing essentialist understandings of culture

⁹⁹ ZARKOV, above n. 43, pp. 10–1.

¹⁰⁰ *ibid.*

¹⁰¹ *ibid.*

¹⁰² *ibid.*

and representing particular cultures as brutal and barbaric'.¹⁰³ In this case the female perpetrator's connection and active engagement with violence is related to a barbaric culture. The brutal nature of both conflicts, especially Rwanda, is tied to the culture of the state. Mohanty's scholarship counters the work done by the Western 'white middle class' feminist, as they have often been criticised for universalising their own experiences and projecting this onto the international community as a whole, as well as universalising 'Third World' women.¹⁰⁴ By projecting Western ideas on to women involved in armed conflict not only is there a presumption that women need to be saved, but that women who have perpetrated crimes have done so due to other uncontrollable factors at play, which deny their agency.

Kapur also discusses the interplay between Western feminism and postcolonial feminism, and cites the international women's rights movement as strengthening female victimisation rhetoric through a focus on violence against women.¹⁰⁵ Kapur notes that the discussion of 'metanarratives' around women as victims has equated all women with the same experience of sexual violence and objectification.¹⁰⁶ This was seen with the Western feminist work in the ICTY, which promoted a singular narrative about women as rape victims, as well as the international/local binary, where all women are victims and local men perpetrators. Kapur has critiqued MacKinnon's work for essentialising women and gender, assuming gender is the basis of women's oppression and that women must 'prioritise issues of sexuality and sexual violence'.¹⁰⁷

Engaging in discussions around female perpetrators often brings up questions about the larger aims of this work. The critique of sexual violence jurisprudence does not dismiss its importance or suggest that fewer cases of sexual violence should be prosecuted. Drawing out the actions of female perpetrators does not necessarily advocate a push to put more females on trial. However, looking at the instances of female perpetrators not only illuminates the gaps in ICL and feminist intervention, but also highlights what questions are asked about a conflict. Gender binaries and the acts traditionally associated with gendered roles were reinforced in and around the Tribunals. It has also been argued that the gender binaries permeate feminist intervention as well.

On one level, this chapter recognises the nuances of women's humanness instead of adding to the stereotypes around women and men. By limiting the view of women's roles in conflict to victims of sexual violence, the ways in

¹⁰³ See R. KAPUR, 'The Tragedy of the Victimization Rhetoric: Resurrecting The "Native" Subject in International/Post-Colonial Feminist Legal Politics' (2002) 1 *Harvard Human Rights Journal* 10.

¹⁰⁴ C. TALPADE MOHANTY, *Feminism Without Borders*, Duke University Press 2003 17–43.

¹⁰⁵ KAPUR, above n. 103, p. 5.

¹⁰⁶ *ibid.*, p. 10.

¹⁰⁷ *ibid.*, p. 9.

which ethnicity, race and gender interplay within the ICTY and ICTR cannot be adequately addressed. On a local scale, the importance of acknowledging female perpetrators in the ICTY and ICTR contributes positively to post conflict justice aims. ICL is aided by introducing further complexity into the legal system through local justice processes. Internationally, the benefit of confirming that women in fact commit crimes during armed conflict pushes towards a realisation of women as human beings.

