

Women's Participation in the International
Criminal Tribunal for the Former Yugoslavia
(ICTY): Transitional Justice for Bosnia and
Herzegovina

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With Olja Hocevar Van Wely

Women Waging Peace Policy Commission
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PROJECT BACKGROUND

Wars and internal conflicts do not end simply with the signing of peace agreements. To avoid a resurgence of violence, it is necessary to develop and support measures for strengthening the governance, security, justice, and socioeconomic capacities of a state. This is a complex task in any society, but daunting in post-conflict situations. While the international community can provide assistance and valuable resources, the local population, which has no “exit strategy,” has the greatest commitment to building sustainable peace. It is therefore essential to draw on the assets, experiences, and dedication at the local level and among all sectors of society. One sector often overlooked and underestimated is women. In most post-conflict societies, women are more than 50 percent of the population and are actively engaged in peace building while addressing the basic survival needs of their families and communities. Yet they are often portrayed as passive victims, and little regard is given to their actual and potential roles in fostering security.

In October 2000, for the first time in its history, the UN Security Council acknowledged that women have a key role in promoting international stability by passing Resolution 1325 on Women, Peace, and Security. It called on all parties to ensure women’s participation in peace processes, from the prevention of conflict to negotiations and postwar reconstruction. The Women Waging Peace Policy Commission was established to examine peace processes with a particular focus on the contributions of women.

This study, *Women’s Participation in the International Criminal Tribunal for the Former Yugoslavia (ICTY): Transitional Justice for Bosnia and Herzegovina*, highlights the significant contributions women have made to the ICTY despite the overall challenges and limitations it faces. It demonstrates that the inclusion of women and gender expertise at the ICTY was vital not only for the prosecution of crimes committed against women, but also for the broader pursuit of justice and the advancement of international law.

KEY FINDINGS AND RECOMMENDATIONS

Key Findings

1. Reports of mass rape and other gender-based crimes galvanized the international community into creating the International Criminal Tribunal for the former Yugoslavia (ICTY).
2. Sexual violence—against women *and* men—was a deliberate strategy of the war, designed to target ethnic groups. The ICTY has significantly advanced international law by recognizing these violations as war crimes.
3. Women have composed only 21 percent of witnesses at the court, yet they have provided critical testimony. Women often heard and saw things that men did not, including mass murder and rape.
4. Of the 18 judges serving on the Tribunal, at any given time no more than 3 have been women; yet in every ICTY case resulting in significant redress of sex crimes (perpetrated against women *and* men), women judges were on the bench.
5. ICTY staff with gender expertise have significantly improved court procedures and affected the substance of the proceedings.
6. Local Bosnian women's organizations have been instrumental in finding and preparing witnesses, collecting testimony, and counseling those who give evidence at the court.
7. The ICTY has not realized its potential as a mechanism for transitional justice because of its weak outreach; it could improve its credibility and effectiveness by working with local women's groups to reach the general population.

Recommendations

To improve the ICTY, the International Criminal Court, and future war crimes tribunals, the following are recommended:

1. In war and criminal tribunals, women must be equally represented at all levels—as judges, prosecutors, defense attorneys, and investigators—and gender expertise must be valued and integrated.
2. All professional court employees should be briefed on gender issues; for example, war crimes investigators must be trained to deal with rape and sexual assault. Local women's organizations are well poised to provide such training, drawing on their understanding of the local cultural context(s).
3. Witness support programs should ensure adequate counseling and provide more extensive family protection and resettlement packages.
4. Internationally mandated courts such as the ICTY should proactively establish links with local communities to ensure that:
 - local populations understand the nature and function of the court;
 - international justice contributes to collective healing; and
 - organizations that collect testimony, identify witnesses, and promote reconciliation are financially and technically supported.

EXECUTIVE SUMMARY

This study, *Women's Participation in the International Criminal Tribunal for the Former Yugoslavia (ICTY): Transitional Justice for Bosnia and Herzegovina*, highlights the significant contributions women have made to the ICTY despite the overall challenges and limitations it faces. It demonstrates that the inclusion of women and gender expertise at the ICTY has been vital not only for the prosecution of crimes committed against women, but also for the broader pursuit of justice and the advancement of international law.

Background

In 2004, Bosnia and Herzegovina (BiH) remains a divided country facing significant challenges in reconstruction and reconciliation. While the 1995 Dayton Peace Accords provided a framework to end the conflict and established new political structures, it did not create an atmosphere conducive to building long-term peace. The international community's High Representative for BiH remains the most senior political authority in the country; governing decisions are made (with varying degrees of collaboration) with local political institutions. Domestic nationalist parties, blamed by many for the wars of the mid-1990s, remain the strongest political force in BiH and shape public debate to this day.

Despite such challenges, several positive trends have emerged. Numerous postwar elections have been held without significant disruptions and have been judged largely free and fair by the international community. While there have been some instances of violent attacks, especially on returned refugees, there has not been a resurgence of war, and the overall security situation has been stable since the Dayton Accords were enacted. Perhaps most importantly, there has been enormous growth in civil society in postwar BiH. Non-governmental organizations (NGOs) have met needs not addressed by the state and have filled gaps in services. In particular, women's organizations have emerged as leaders in the provision of basic economic and social services and in promoting democratization.

Women played a pivotal role in the creation and operation of the International Criminal Tribunal for the former Yugoslavia (ICTY)—the first such war crimes court since Nuremberg and Tokyo. The court's very existence can be credited in large part to the efforts of local and international women human rights advocates,

who viewed it as essential for addressing human rights violations and violence, and for providing mechanisms for justice and reconciliation.

Despite the Tribunal's operation for more than a decade, transitional justice remains a key challenge for BiH. Some of the most notorious war criminals, including Radovan Karadzic and Ratko Mladic, remain at large. Such impunity presents enormous practical and symbolic challenges to postwar reconciliation. Furthermore, despite international attention and funding for the ICTY, little effort has been made to establish links between the Tribunal and local communities; the court has had no formal role in supporting or promoting reconciliation *within* BiH. Local women's groups have tried to fill these gaps. They have played a critical role in identifying and supporting witnesses for the ICTY and in initiating reconciliation projects within communities.

This study highlights the significant contributions women have made to the ICTY despite the overall challenges and limitations it faces. It draws on over thirty-five interviews and eight focus groups conducted on two field missions to Bosnia and The Hague, as well as interviews conducted in the United States and Canada.

Establishment of the Court

Rape and other gender-based crimes are widely recognized as key catalysts for the establishment of the ICTY. Reports of wartime atrocities in the former Yugoslavia began circulating at the onset of the conflict, and well-documented evidence of rape and other sexual violence in the summer and fall of 1992 spurred widespread public outrage against the ineffectiveness of international responses. For the first time in history, the UN Security Council issued a declaration condemning wartime rape, calling the rapes taking place in the former Yugoslavia "massive, organized, and systematic."¹ Under intense public pressure to respond to the atrocities, the Security Council issued Resolution 808, expressing "grave concern" over the "treatment of Muslim women in the former Yugoslavia,"² and declared that "an international tribunal shall be established for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991."³

Bosnian women human rights advocates demanded that wartime sexual violence be treated as a grave violation of international law and not as merely a byproduct of war. They pushed for the inclusion of gender expertise at all stages and levels of the ICTY's organization. The pressure they exerted on the judges and prosecutors—both men and women—was critical to raising consciousness regarding gender-based crimes and ensuring that these issues were prioritized. Chief Prosecutor Richard Goldstone, for example, claims that if women had not been involved with the Tribunal in its early years, there might not have been any indictments for gender-based crimes.

Improving Procedures

The involvement of women in the ICTY provides important lessons for other current and future international tribunals. An international criminal court functions better when women are included in all roles and at all levels. Male and female judges interviewed for this report agreed that some witnesses (frequently women in sexual violence cases, but at times men as well) speak more freely to a woman judge. Male defense attorneys often speak more respectfully to female witnesses when a woman judge presides.

Women judges have drafted rules of procedure for the Tribunal, requiring not only a higher level of sensitivity to gender issues but also greater sophistication in witness protection and evidentiary precision than found previously in international processes. Women investigators and prosecutors played key roles in gathering and presenting evidence in historic cases that would refine international humanitarian law on several issues, from command responsibility for wartime abuses to the international definition of the crime of rape. And, significantly, these cases were driven by the resolve of women witnesses and the translators, counselors, and other individuals in The Hague and BiH who supported them. In the words of Patricia Sellers, the gender adviser for the Office of the Prosecutor, “the involvement of women in the Tribunal is a good example of a case where women’s presence changed the course of history.”⁴

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Male and female investigators interviewed for this report agreed that women witnesses also add valuable perspective at the Tribunal because—in the words of one investigator—“women see things that men don’t.” Broadly speaking, because of differences in lived experiences, social roles, and other gender-based distinctions, women view the world through a different lens than men. Women witnesses also *literally* saw things that men did not. Nancy Patterson, a lawyer who worked at the Tribunal nearly seven years, found that “while the male prisoners [in concentration camps] were kept in windowless rooms, huddled on the floor, blindfolded with their heads in their hands, the women were kept in places where they could see everything.” In the early days of the Tribunal, “whenever the prosecutors thought about women witnesses, it had to be some kind of sexual violence case,” Patterson recalls,

“but over time, they learned that women can be central witnesses in all kinds of cases.”

Finally, the experience of the ICTY has revealed the importance of developing connections between international

bodies and indigenous groups. In BiH, local women’s groups were particularly active in counseling and materially supporting survivors of wartime abuses. Because they had already forged relationships with victims and survivors, members of these groups were in the position to serve as witnesses. Investigators interviewed for this report spoke of Bosnian women’s groups as important “communication links” between The Hague and the Bosnian people and, in many cases, as “partners” in the investigatory process.

Shaping International Law

“The ICTY was a watershed when it comes to the valuing of gender expertise,” says Kelly Askin, an international lawyer who served as a consultant to the Tribunal. Never before had an international body of great stature incorporated gender expertise in its central operations from the outset. The “gender focal point,” an official in the Office of the Prosecutor, is charged with ensuring that prosecutors frame successful arguments in sexual violence cases. ICTY staff with gender expertise helped identify witnesses, analyze evidence, elicit testimony, and support those who testified. “If it were not for these [experts] coming in really

knowing about sexual violence cases,” says one man who served both in the Office of the Prosecutor and as a defense lawyer, “we would not have done so many things we did.”

Equally significant, the inclusion of individuals (male or female) with gender expertise—ranging from the gender focal point to legal interns—was crucial for building capacity throughout the prosecutor’s office on related issues. Although far from perfect (“just think what could have happened if the gender mainstreaming had really been complete,” says Sellers), an effort was made to integrate gender issues throughout the investigatory teams and in other parts of the Tribunal. “After a while,” Sellers says, “[the ICTY legal staff and investigators] didn’t have to consult us on everything pertaining to sexual violence.” For both successful prosecutions in specific cases and long-term staff development, insisting on gender analysis has had a lasting impact.

The inclusion of gender expertise and the focus on gender-based crimes in the ICTY set a series of precedents for international jurisprudence. The ICTY oversaw the first international criminal trial of perpetrators charged exclusively with sexual crimes and the first international judgment in which the offense of enslavement was applied to the practice of female sexual slavery. It also oversaw the first cases addressing sexual violence against men. As a result of cases tried at the ICTY, rape is now recognized as a crime against humanity. In addition, notions of liability for rape have expanded; individuals can be held responsible for planning, instigating, abetting, ordering, and committing rape. Commanders can also be held responsible for knowing about rape and failing to stop it. Also at the ICTY, key changes were made to the rules of procedure and evidence that govern the operations of the court that protect women’s interests. For example, defendants in sexual assault cases cannot use a woman’s “consent” as part of their defense if she was subjected to or threatened with physical or psychological abuse.

Conclusions: Maximizing Women’s Contributions

The critical contributions of women to the ICTY belie their relatively small numbers at all levels of the court system. Few investigators and attorneys have been

women, and, at any one time, only 3 of the 18 judges have been female. Although court employees recognize the value of women witnesses, only 21 percent of witnesses to date have been female. A key challenge to increasing women’s representation in the Tribunal relates to the demand for a certain skill set and level of experience. Investigators are required to have an average of 10–15 years of criminal investigation experience, but there is not a demand for experience in domestic violence or other transferable gender expertise.

Although Bosnian women have served as witnesses, investigators, and advocates, their participation in the activities of the ICTY has been rare and is declining as the Tribunal continues to lose the confidence of the population it was established to serve. Focus group research supports the conclusion that the Tribunal still lacks legitimacy among the local population and that there is little knowledge among people in BiH of how the Tribunal operates. Though Bosnian women’s groups helped to locate and prepare many ICTY witnesses, the Tribunal has failed to develop fully its relationship with these organizations. To improve the Tribunal going forward, the communication process could be viewed as a two-way process in which ICTY staff not only supports and teaches local activists more about the court, but also learns *from* them about the community and issues facing potential witnesses.

As the first international tribunal in 50 years, the ICTY has made significant contributions to international justice. In lobbying for the establishment of the court, and through their presence in its creation and operation, women have helped set important precedents. The inclusion of women and gender expertise at the ICTY has been vital not only for the prosecution of crimes committed against women, but also for the broad pursuit of justice and the advancement of international law.

Endnotes

¹United Nations Security Council. *Resolution 798*. New York: UNSC, 1992.

²United Nations Security Council. *Resolution 808*. New York: UNSC, 1993.

³ *Ibid.*

⁴Unless otherwise noted, all quotations in this report are from interviews conducted by the authors, November 2003–April 2004.

INTRODUCTION

In 2004, Bosnia and Herzegovina (BiH) remains a divided country facing significant challenges in reconstruction and reconciliation. While the 1995 Dayton Peace Accords provided a framework to end the conflict and established new political structures, they did not create an atmosphere conducive to building long-term peace. The international community's High Representative for BiH remains the most senior political authority in the country; governing decisions are made (with varying degrees of collaboration) with local political institutions. Domestic nationalist parties, blamed by many for the wars of the mid-1990s, remain the strongest political force in BiH and shape public debate to this day.

Despite such challenges, several positive trends have emerged. Numerous postwar elections have been held without significant disruptions and have been judged largely free and fair by the international community. While there have been some instances of violent attacks, especially on returned refugees, there has not been a resurgence of war, and the overall security situation has been stable since Dayton was enacted. Perhaps most importantly, there has been enormous growth in civil society in postwar BiH. Non-governmental organizations (NGOs) have met needs not addressed by the state and have filled gaps in services. In particular, women's organizations have emerged as leaders in the provision of basic economic and social services and in promoting democratization.

Women played a pivotal role in the creation and operation of the International Criminal Tribunal for the former Yugoslavia (ICTY)—the first such war crimes court since Nuremberg and Tokyo. The court's very existence can be credited in large part to the efforts of local and international women human rights advocates who viewed it as essential for addressing human rights violations and violence, and for providing mechanisms for justice and reconciliation.

Despite the tribunal's existence for more than a decade, transitional justice remains a key challenge for BiH. Some of the most notorious war criminals, including

Radovan Kardzic and Ratko Mladic, remain at large. Such impunity presents enormous practical and symbolic challenges to postwar reconciliation. Furthermore, despite international attention and funding for the ICTY, little effort has been made to establish links between the Tribunal and local communities; the court has had no formal role in supporting or promoting reconciliation *within* BiH.

Local women's groups have tried to fill these gaps. They have played a critical role in identifying and supporting witnesses for the ICTY, and in initiating reconciliation projects within communities. This study highlights the significant contributions women have made to the ICTY despite the overall challenges and limitations it faces.

Rationale

This study is part of a larger body of research that examines women's contributions to transitional justice in the context of international courts, national truth commissions, and local reconciliation initiatives. As the first international war crimes tribunal in fifty years, the ICTY provides an important vehicle for examining the role of the international community in promoting accountability, justice, and reconciliation in post-conflict countries.

Further, an evaluation of the ICTY is an appropriate study of the importance of including women, as well as men with appropriate gender expertise, in institutions and mechanisms investigating and prosecuting claims of sexual violence in conflict.¹ Reports of rape and widespread sexual violence were a catalyst for the creation of the court. At the urging of international and local activists, the ICTY has addressed gender-based violence as a crime of war and been attentive to gender issues at the court. The Beijing Platform for Action, which emerged from the 1995 World Conference on Women, for instance, urged governments and inter-governmental organizations to "aim for gender balance when nominating or promoting candidates for judicial and other positions in all relevant international bodies,

The court's very existence can be credited in large part to the efforts of local and international women human rights advocates.

such as the ICTY, the ICTR [International Criminal Tribunal for Rwanda], and the International Court of Justice, as well as other bodies related to the peaceful settlement of disputes.”²

Lastly, the findings of this study provide important guidance to future war crimes tribunals and the International Criminal Court (ICC) with regard to women’s contributions, the relevance of a gender perspective for international justice, and mechanisms and structures that support women’s participation.

Assumptions

This study does not assume that women are more peaceful by nature than men or that their mere presence guarantees justice. Empirical evidence suggests, however, that women experience conflict differently from men, both as casualties and caretakers.³ This paper assumes that because of their experiences in times of conflict, their increased responsibilities in communities, and their vulnerability to insecurity and violence, women often bring new perspectives to post-conflict reconstructions and issues of transitional justice. In the context of peacemaking and peace building, women should therefore be recognized as active agents rather than passive victims. As mothers, wives, and sisters of combatants, as victims and survivors, and as individuals with powerful community networks, women are essential to rebuilding society, establishing justice, and promoting reconciliation.

An additional underlying assumption of this study is that post-conflict transitional justice efforts should include and address gender-based crimes committed during war and that drawing on women witnesses improves the effectiveness of international courts. Furthermore, this study presupposes that mechanisms designed to promote accountability and deliver justice are only one component of a much longer-term reconciliation process.

Research Methodology

This study included a literature review on issues of women in transitional justice in general, and BiH in particular, including an analysis of relevant academic literature, reports, and UN publications. Primary research was conducted in August and November 2003 during two field missions to BiH and The Hague and in interviews in the United States and Canada.

In addition to semi-structured interviews, focus groups were conducted in Sarajevo, Banja Luka, Belgrade, and

Novi Sad. In each case, college students and social activists were targeted as separate groups. The focus group results are limited, but nevertheless enabled the formulation of a typology of responses to the ICTY, one that conveys clearly the variety of concerns that people in the region have about the work of the Tribunal.

These qualitative research methods were complemented by “participatory” research. This approach to fieldwork envisions a collaborative and mutually beneficial research *process* linked to action. In applying a consultative methodology, control and ownership of the research process is shared among all participants, rather than imposed. The present research agenda is the result of sustained dialogue between Women Waging Peace, members of the research team, and women from BiH and other conflict areas where transitional justice mechanisms are in place. The goal of this research was not only to test a hypothesis about the role of the ICTY, but also to provide a process for building awareness among participants about their circumstances and generate recommendations for future action.

Definitions

Transitional Justice

Transitional justice refers to the judicial and non-judicial mechanisms established to address a legacy of human rights abuses during a society’s transition from conflict or authoritarian rule to democratic systems.⁴ The goals of transitional justice may include addressing divisions in society caused by human rights violations; healing the wounds of individuals and society; providing justice for victims and accountability for perpetrators; restoring the rule of law; reforming institutions by promoting human rights and democratization; and ensuring that human rights violations are not repeated.⁵ International policymakers and human rights organizations contend that transitional justice is a critical element in any peace process and that it is essential for sustainable post-conflict development. Transitional justice mechanisms can be initiated from within the state (e.g. South Africa’s Truth and Reconciliation Commission) or from outside by the international community (e.g. the International Criminal Tribunal for Rwanda), and can take many different forms. Models of transitional justice typically fall into one or a mixture of the following categories: international tribunals, national tribunals, traditional or

indigenous conflict resolution systems, trials, truth commissions, lustration, amnesty, and reparations.

Gender

The term “gender” refers to the socially constructed—as opposed to biologically determined—identities of men and women. Gender is not the same as “sex,” and gender differences are not the same as sex differences. For instance, the ability of women to bear children is a sex, or biologically determined, difference from men; that women, in many societies, are responsible for food preparation and household chores is a gender, or socially constructed, difference.

Gender roles are assigned to men and women in early socialization. They cut across public and private spheres; are specific to a given culture at a given time; are affected by other forms of differentiation such as race, ethnicity, and class; and can change in different sociopolitical and economic contexts within a society. World Bank literature notes that in any given society, gender shapes the definitions of acceptable responsibilities and functions for men and women in terms of “social and economic activities, access to resources, and decision-making authority.”⁶

In any gender analysis, two basic factors emerge for consideration. The first, gender **mainstreaming**, high-

lights the implications of policies and programs for both men and women. This means that, in the construction of policies and programs, it is necessary to consider how implementation will impact and affect men and women differently. As defined by the United Nations Development Programme (UNDP), gender mainstreaming is “taking account of gender concerns in all policy, program, administrative and financial activities, and in organizational procedures, thereby contributing to a profound organizational transformation.”⁷ UNDP further notes that, “if gender mainstreaming is done effectively, the mainstream will be transformed into a process much closer to true democracy.”⁸

The second factor relates to gender **balance**. Men and women in decision-making positions can have a differential impact on policy and program development; thus, both men and women must be included in policy formulation. In order to integrate gender considerations comprehensively, mainstreaming and balance are both important.

This report is careful not to conflate the terms “gender” and “women.” It examines both how gender considerations (mainstreaming and balance) affect transitional justice and how the participation of women has contributed to the process.

PART ONE: HISTORICAL CONTEXT

The Bosnian war broke out in the spring of 1992 against the backdrop of post-Berlin Wall changes in Europe. It had several root causes, including the decline of economic and political conditions over several decades, the collapse of the one-party communist system and the resulting power struggles, the rise of nationalist politicians and policies, and competition between various political oligarchies in the republics that then comprised the former Yugoslavia. The exact cause of the destruction of Yugoslavia is hotly disputed, but there is no doubt that the nature of the violence in BiH, the third republic to secede from the former Yugoslav federation, was particularly virulent. Report after report of observers documented violations of human rights and humanitarian law, including the deliberate targeting of civilians for massive forced removal, murder, rape, and other atrocities.

The major parties to the conflict in BiH were the Bosnian Serbs, heavily supported by Serbian President Milosevic and the remnants of old Yugoslavia (quickly reduced to Serbia and Montenegro); the Bosnian Croats, supported by Croatian forces; and the Bosnian Muslims, also known as Bosniaks. There were numerous attempts—by the United Nations, the European Union, and the Contact Group (United States, United Kingdom, Germany, Russia, and France)—to reach a negotiated solution, but these were unsuccessful. In the meantime, on the ground, the ethnic composition of the country changed severely as 250,000 people died and half of the population was internally displaced or sought refuge outside the country. The discovery of concentration camps and mass rape in 1992 drew the international community's attention. However, an end to the armed conflict did not come until 1995, several months after the fall of the last UN-protected enclave, Srebrenica, in which approximately 8,000 Muslim men and boys were massacred.

The Dayton Peace Accords were signed in November 1995; it resulted in the creation of two entities within BiH: the Federation (populated largely by Bosnian Muslims and Croats) and the Republic of Srpska (populated largely by ethnic Serbs). Dayton provided a framework for the cessation of hostilities and succeeded in addressing the immediate security situation, but over the last decade it has proven insufficient for the creation of long-term sustainable peace, particularly with regard to political and economic stability.

Although reports of wartime atrocities in the former Yugoslavia began circulating at the onset of the conflict in 1991, it was not until news stories began featuring evidence of widespread rape and sexual violence that the general public began to pressure their leaders to “do something” effective in response.⁹ On December 18, 1992, the UN Security Council issued a declaration condemning wartime rape, describing the rapes taking place in the former Yugoslavia as “massive, organized, and systematic”¹⁰ and implicitly threatening military intervention should the violations continue. This did little to end the violations. As Gabrielle Kirk McDonald, the first American to serve as an ICTY judge, recalls, “when [the international community] witnessed the horrific methods of ‘ethnic cleansing’ and . . . [were] either unable or unwilling to stop this carnage, the decision was made to establish a tribunal to prosecute persons responsible for these crimes.”¹¹ Unwilling to take military action, the Security Council issued Resolution 808, expressing “grave concern” over the “treatment of Muslim women in the former Yugoslavia,”¹² and declaring that “an international tribunal shall be established for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991.”¹³

While public attention continued to focus on wartime rape and other forms of sexual violence, the historic Tribunal that emerged considered other prominent gender concerns as well (as described below), both in individual cases and within the structure and operation of the court itself. The degree of success that the Tribunal would enjoy would depend in large part on its ability to respond to and draw from international and indigenous NGOs. Local groups working with survivors, for example, would prove particularly useful for locating and supporting witnesses. But to only a limited extent did the Tribunal draw on local resources to support its endeavors, and the nascent civil society in Bosnia remained largely an untapped resource.

The purpose of this section is twofold. First, it provides background on the structure of the Tribunal and the role of international advocates in its formation. Second, it seeks to explain the historic roots of Bosnian civil society and explore the kinds of indigenous civil society organizations that were capable of participating in transitional justice mechanisms.

Women's Advocacy and the Formation of the ICTY

The establishment of the ICTY reflected the results of years of organizing by human rights advocates seeking to draw attention to sexual violence in wartime and to the need to address gender issues in international institutions. As Kelly Dawn Askin has written, "of pivotal importance during this period, women's groups around the world were involved in mobilizing, strategizing, and lobbying efforts on behalf of prosecuting gender-based violence."¹⁴

The UN Office of Legal Affairs drafted the Statute of the ICTY in 1993 after soliciting comments from state governments and NGOs, with international women's rights advocacy groups playing a key role. Approved by the Security Council on May 25, 1993 as Resolution 827,¹⁵ the Statute grants the Tribunal the authority to prosecute persons who committed or ordered the commission of grave breaches of the Geneva Conventions of 1949, violations of laws or customs of war, genocide, and crimes against humanity.¹⁶

Located in The Hague, the Tribunal operates through three organs: 1. the Chambers (comprised of three trial Chambers and one Appeals Chamber), where the judges preside and cases are tried; 2. the Office of the Prosecutor, where evidence is investigated and attorneys assemble cases and issue indictments; and 3. the Registry, which serves as an administrative clerk to both the Chambers and the Office of the Prosecutor and oversees the Tribunal's Detention Unit and the Victims and Witnesses Section.¹⁷ The independent prosecutor submits an indictment against an accused to a judge, who then determines whether the case is strong enough to go forward.¹⁸ Trials are conducted by a panel of three judges without a jury¹⁹ with the assistance of an independent prosecutor who is charged with initiating investigations and formulating indictments. The UN General Assembly elects judges from a pool of candidates nominated by member states. Judges hold posts for a four-year term and are eligible for re-election.²⁰ National courts have "concurrent jurisdiction" with the Tribunals, so war crimes cases can still be heard in local courts in Bosnia, but the Tribunal has the authority to request national courts to defer cases to their jurisdiction, and their request is to be given priority.

It is not an exaggeration, attests long-time women's rights advocate Charlotte Bunch, to say that "women's groups were more active in the formation of the new

international institution than ever in history."²¹ Aided by a communications revolution and the power of the Internet, fueled by increased financial resources, and building on years of organizing and training, advocates for women's rights were well situated for an international campaign of great magnitude. Preparations around the 1993 UN Conference on Human Rights in Vienna provided a focus and opportunity for the advocates seeking to draw attention to sexual violence in the Balkan wars, but the groundwork for the advocacy campaign began before and reached far beyond the Vienna meeting. Transnational networks in solidarity with the women of Yugoslavia provided the backbone for the campaign, which emerged in 1992 under various banners, including the influential New York-based Women's Coalition Against Crimes Against Women in the Former Yugoslavia.²²

While their goals differed within and between coalitions, in general, women's human rights advocates active in the establishment and monitoring of the ICTY sought to

- Ensure the worldwide participation of women's human rights advocates in the negotiation of the ICTY Statute;
- Add specific language on witness protection and gender equity;
- Promote prosecution of wartime rape and other forms of sexual violence in conflict scenarios;
- Use the historical event as a means for popular education on women's human rights and to raise public *awareness* of the horrific nature of crimes committed against women;
- Mark the end of impunity for sexual violence in wartime and to deter potential perpetrators; and
- Provide a model for the treatment of gender issues before a future permanent international criminal court.

Although these demands came from an international campaign led by groups outside the Balkans, meeting the demands required the tribunal's cooperation with a wide range of local human rights and humanitarian groups. The notion held by many outside the region that the people of the former Yugoslavia were inexperienced in civic activism was false. On the contrary, they were in fact well prepared to participate in the workings of the Tribunal. Also contrary to the assumptions of outside advocates, women in the region had experi-

ence organizing as women on social and political matters and were ready to cooperate with transitional justice mechanisms.

A Foundation for the ICTY: The Tradition of Civic Activism

Yugoslavia has a long history of civic activism.²³ Although the government was controlled by a single political party, the Communist Party, through the 1980s, “there were other ‘organizing forces’ with some role in mobilizing people and resources for various social goals.”²⁴ A Yugoslav law on “social organizations and citizens’ associations” specifically provided for the existence of “nonpolitical” activism of citizens through “interest communities.” Self-help community organizations proliferated, as well as trade unions, professional associations, athletic clubs, women’s and youth groups, and other social organizations. Through working with these organizations at a community level, people gained experience in developing projects to address specific social problems and mobilizing people and resources to see their projects through to completion.²⁵

The experience gained through civic engagement in the state-prescribed “interest communities,” however, was still tied to the state, and very few projects could function autonomously. Eric Gordy explains that, “for the most part, ‘interest communities’ could function only with the formal sponsorship of a local party organization, and [they] often depended on state institutions for most types of funding.”²⁶ Thus the problem in BiH and other parts of Yugoslavia as the region turned to war in the early 1990s was not the complete absence of participatory social organizations. Rather, it was the inability—or, in some cases, the unwillingness—of civil society to respond to the political forces in their society that were manipulating and destroying it for personal gain.

In the early 1990s, Yugoslav society was in a downward spiral. As Silvano Bolcic explains: “the fate of civil society was closely linked to that of society in general, which was destroyed in its *fundamentals*.”²⁷ In other words, the destruction of rules systems and social norms had an impact on all of society, and civil society was no exception. Instead of challenging the particularly virulent forms of nationalism prevalent at that time, many social organizations were either actively complicit in spreading nationalism or were indirectly supportive, by failing to offer direct challenges and by organizing themselves exclusively on ethnic lines.²⁸

Civil society certainly cannot be blamed for the instigation of war and for the violent atrocities committed. Nonetheless, the underdeveloped civil society did not respond effectively to the virulent chauvinism spreading throughout the country in the 1990s, first as social and political breakdown and then as all-out war.²⁹

The cultural templates of a postwar Bosnian civil society were drawn from these prewar experiences. On the one hand, Bosnians who participated in civic organizations were skilled in self-help organizing at the grassroots level. But on the other hand, many organizations and individuals were marked by their activities during wartime and unable or unwilling to cooperate across ethnic lines. It is within the context of these two conflicting trends that women’s organizing emerged in the former Yugoslavia and developed during the wars of the 1990s and their aftermath.

An Untapped Resource: Women’s Organizing

Women have a long history of participating in political, economic, and civil spheres of society in the former Yugoslavia, albeit on a less-than-equal basis with men. Men have enjoyed leadership positions, while women have been encouraged to assist male leaders and be caretakers for the young and nurses for the weak. During and after WWII, women were encouraged to teach literacy and civil defense courses, to perform “communal work” in clearing the ruins, and to aid the handicapped, war orphans, and wounded. This trend continued even as equality between men and women was mandated in post-WWII Yugoslavia. As Slavenka Drakulic, a prominent Croatian novelist and journalist, notes, “despite the relative openness of Yugoslavia to a wider world, under patriarchal socialism within, women were mostly unable to imagine themselves as autonomous political subjects, let alone as political actors.”³⁰

The Antifascist Women’s Front (AFZ) served as the liaison between the Communist Party and Yugoslav women.³¹ With help from the AFZ, significant women’s health care reforms were launched, as well as campaigns for improving the education of women and girls. Although the AFZ was disbanded in 1950s, official programs for women continued and new laws addressed women’s concerns establishing, for example, the legal right to one year’s paid maternity leave.³² Nevertheless, gender policies and laws favoring women were regarded as separate, special “women’s issues” and were never fully incorporated and applied by the predominantly male leadership.

As the movement for women's liberation began in the 1970s in the United States and in several European countries, the well-educated women of Yugoslavia began to participate in their own explorations of women's empowerment. As Maja Korac observes:

Such a context had opened a social space for a new generation of urban, educated, predominately young middle-class women, brought up in socialist Yugoslavia, and to articulate feminism publicly and to challenge the socialist patriarchy and the assumption that the women's struggle is synonymous with class struggle. . . . [However,] autonomous feminists groups in socialist Yugoslavia had remained tiny minority organizations whose activism took place outside the official political avenues and had no critical impact on lives and status of majority of women in the region.³³

This new generation of women's organizations was more likely to focus on intellectual endeavors—such as the reading and critique of women's literature and the holding of consciousness-raising groups—than on the delivery of social services and other volunteerism. This phase of organizing touched only a small number of women and was confined largely to city centers, with a Zagreb-Belgrade hub at the core.

The nature of women's organizing in Yugoslavia changed dramatically in late 1980s and early 1990s as women's groups began to respond to growing nationalism and the threat of war. While some women's groups organized themselves along national lines (i.e. Serb, Croat, Muslim, and Albanian) and supported military actions, others refused to be divided by their national group and opposed militarization and chauvinistic nationalism. Sonia Licht of the Open Society Institute in Belgrade notes that a great number of women's organizations were formed as a part of antiwar movements:

Women's NGOs in the successor countries to the former Yugoslavia undertook a number of initiatives including victim crisis centers, research and academic activities, human rights and peace activism, and humanitarian aid to refugees and IDPs. Many women in the Balkans turned to NGO work as a means of coping with the stress of war and maintaining a broader sense of identity in the face of strident nationalism and a dehumanizing focus on ethnicity.³⁴

Throughout the wars that began in 1991, humanitarian needs overwhelmed the government's capacity to address them, and newly formed NGOs started to address issues that their governments were not able to handle or did not view as important.

After the Dayton Peace Accords were signed and the fighting ceased in 1995, international organizations flooded into Bosnia. Post-conflict reconstruction plans initially paid little attention to gender equality and sidelined women's involvement. Refusing to accept mediocre efforts at addressing gender, more than 100 organizations in the region signed an appeal demanding a change in gender policies. In response, the Stability Pact Gender Task Force (SPGTF) was launched in July 1999 to further develop an awareness of gender equality in the region. Among the successes of this time period were the Women Can Do It I and II and the Women Mayors Link projects, and other endeavors undertaken by such organizations as the Organization for Security and Cooperation in Europe (OSCE) to promote the political empowerment of women.³⁵

The range of NGO activities operating today in Bosnia is impressive, with large numbers concerned with peace building,³⁶ civic education, and issue-oriented social services delivery (e.g. the provision of counseling for women). A disproportionate percentage of NGOs in Bosnia are staffed by women and have mandates to address concerns related to women. However, many organizations led by women do not target women exclusively.³⁷

The local NGOs at work in Bosnia can be divided into two broad categories: democracy NGOs and development or service NGOs.³⁸ As the name suggests, development or service NGOs provide services that the state either cannot or will not provide, such as psychosocial counseling, prenatal health care, or specific programs for the disabled, youth, women, or the elderly. In the short term, service-oriented NGOs energize the local population and encourage them to participate in their communities, thus readying them to be full citizens once their democratic state is up and running.³⁹ The issue, as one can predict, lies more in the long run, with civil society creating greater reliance on their services than on those provided by the state. This also means that to some extent, the state feels exempt from providing centralized public services to its constituencies. Consequently, when NGOs become cheap service providers and in some cases even replace the local

Women in Bosnia: New Faces at the Table

By Ambassador Swanee Hunt

In 1998, a student at Harvard's Kennedy School of Government, where I lead the Women and Public Policy Program, asked a State Department guest who had been in Bosnia for extended times in the thick of the war, how local women might have had more influence. "They should have organized," he answered.

With an apology, I contradicted our guest. In fact, during the war, Bosnian women created some 50 multiethnic associations across the country, and leaders of those grassroots organizations had united to form the Union of Women's Associations. I had spoken to a large gathering of the Union on an evening a few weeks after the peace was signed at Zena 21, a suite of club rooms up two flights of dank, dark stairs, near the river. I was mid-sentence in a rousing speech when the lights blinked off, then on, then off again. My hosts didn't seem to notice. There was no stir, no commotion. Candles simply appeared and were passed down the table as the meeting continued.

In fact, before, during, and after the war, women in Bosnia made great efforts to end hostilities and restore order. The war ended in the fall of 1995. In June 1996, Bosnian women from all ethnic groups attended a conference. We assisted in planning the event from the Embassy in Vienna; I keynoted the event and have in my archives tapes of the live television coverage, as well as a collection of newspaper articles.

The organizers had envisioned a broad-based all-Bosnia women's meeting. Bearing the stamp of those days of dreaming, they dubbed the conference nothing less than "Women Transforming Themselves and Society." The event was planned for 200 participants. Five hundred showed up, representing more than 50 women's associations from every corner of BiH, many spanning ethnic groups that, according to proponents of ethnic cleansing, could not co-exist. The women of Bosnia made history, gathering across war lines in the capital, which had been under siege, without lights or heat only a few months earlier. They were articulate, they were determined, they had suffered . . . and they were indeed organized.

The participants at the conference had one goal: to keep their country from slipping back into war. They knew they had to build bridges across the psychological trenches left after 250,000 deaths, three years of schooling lost for their children, thousands of systematic rapes, two million people displaced, 60% of housing stock destroyed, and a completely collapsed economy.

The women formed political, economic, and social alliances our State Department would never have thought possible. They created a platform of action covering themes of human rights, democracy, elections, legislation, work and social politics, media, family, education, and health. But the underlying message of this conference was that, even in their hardship, these women were not alone. They had learned that by uniting, they could strengthen themselves, their families, and their country. In fact, given the uncertainties of the local political situation, Bosnian women had an extraordinary opportunity to stabilize their society, fuel their economy, and lead their nation.

In the September 1998 elections in Bosnia, women made dramatic gains at the polls, despite the stunning defeat of western-favored Biljana Plavsic to a Serb hard-liner in the Republika Srpska. Their advance was not a reflection of a change in Bosnian society, but an extraordinary story of successful social maneuvering:

First, in August 1997, seven women from across Bosnia's political parties, geographical cantons, and three ethnic groups met at the US-commanded Eagle Base near Tuzla. In 36 hours, they designed a Bosnian League of Women Voters that became active immediately, holding community-based voter education meetings. One year later, preparatory to the next elections, the League distributed 10,000 copies of a thick book profiling women candidates across all the parties. Each page gave not only biographical information and political positions, but showed a full-face portrait of the candidate.

While the League was educating women about political candidates, six women representing three nationalist groups, the Women's Party, and two multiethnic coalitions came to Washington, DC in February 1998. Several of the political parties that each belonged to had caused incalculable dislocation, loss, and pain to the other women in the room. Still, over the course of six days of visits to the Holocaust Museum, US Institute of Peace, State Department, etc., the women put aside their reasons to hate and managed to find common ground. They spent their last day planning a conference to carry on their work.

Back in Bosnia, these six women invited every political party to send representatives to a conference in Sarajevo entitled "Women: A New Political Future," co-sponsored by Hunt Alternatives Fund and the Organization for Security and Cooperation in Europe. Two hundred women came from 25 parties. A remarkable 40 percent came from Republika Srpska to the Federation capital, many for the first time in six years.

One participant described the war as one "in which every mother bled," adding that of course they could, and would, unite to secure the peace. Tearful scenes of reconciliation in the corridors, combined with spirited but well-intentioned debate in the conference room, demonstrated that bringing women into political leadership is a major move not only toward democratization, but also healing in a war-weary land.

The conference was successful far beyond expectations. Not only did the delegates agree on unanimous declarations, including a push for implementation of the Dayton Accords; the pressure created by the conference influenced the Bosnian Provisional Election Commission, which declared that in the upcoming elections, three political candidates of the top ten from every political party would have to be female. The new rule helped women gain 11 of the 42 seats in the Bosnia-Herzegovina House of Representatives. Only one woman sat in that Parliament in 1997; by 1998, women held 26 percent of the seats. Women also won 21 of the 140 seats on the Federal House of Representatives, compared to seven in 1997. And they won 19 of the 83 seats on the Republika Srpska National Assembly, compared to two seats the previous year.

The women of Bosnia took the lessons learned in governance and applied them to other aspects of their lives. In February 2001, the Women and Public Policy Program convened a group of 10 women religious leaders to exchange strategies for working across religious lines in order to develop partnerships that would support the healing of their war-torn communities. The following month, nearly 80 women from six regions in Bosnia (as well as several others from other parts of the former Yugoslavia) came together and planned initiatives that would take place throughout their communities. The energy generated from these discussions culminated in the decision to create "Strength in Diversity," an NGO to oversee implementation of these initiatives.

public sector, they undermine the country's long-term ability to develop an efficient state.⁴⁰ This problem could be particularly acute in the case of counseling and medical services provided presently by NGOs for women in Bosnia.

Meanwhile, so-called democracy NGOs assume the functioning of a democratic government and seek to advance political agendas and influence policy formation and implementation.⁴¹ By representing diverse interests and traditionally marginalized groups, they serve to undermine divisive nationalism and create a culture of tolerance necessary for participatory democracy to take root.⁴² Given their close and immediate tie to democracy promotion, these NGOs are generally thought to be more important for state building than development or service provision NGOs.⁴³ These democracy NGOs act as a counterweight to state power—"protecting human rights, opening up channels of communication and participation, providing training grounds for activists, and promoting pluralism."⁴⁴ Although less funding has been devoted to women's democracy NGOs, experiences with respect to their efforts have been largely positive. For example, the Women Can Do It campaign created training programs for women to become more involved in the political process and reach political decision-making positions.

Over the past ten years, of all the women's initiatives undertaken in the country, the vast majority has been focused on meeting conflict-related needs. However, as

Swanee Hunt, US Ambassador to Austria during the early 1990s, has pointed out: "The conflict in the region has energized many women to move beyond their traditional roles and work for change in their societies, and to develop a more active role for themselves in determining the direction of these changes."⁴⁵ Within the context of providing humanitarian aid, for example, many women's groups sought also to promote women's participation within the political, economic, legal, and social structures of the country.⁴⁶ Other women's organizations found themselves moving into the public arena through sheer adversity of circumstance. For example, the Association of Women of Srebrenica, a group that formed in 1992 to provide support to those adversely affected by the fighting, was compelled to undertake advocacy roles in 1995 after the men in their town were killed by Serb forces and the women and children forcibly expelled.

Women's organizations in Bosnia stand ready to cooperate with the Tribunal and, indeed, when given the chance, many have done so.

In the past two years, as international support for Bosnian civil society has diminished due to both donor fatigue and to the demands of competing crises, the focus of the work of many NGOs has changed. The general trend in women's organizing in Bosnia has been a movement away from "practical gender interests" or the provision of social services, to "strategic gender interests," or long-term institutional change and political and social transformation.⁴⁷ Women's organizations in Bosnia stand ready to cooperate with the Tribunal and, indeed, when given the chance, many have done so. Their contributions to the successes of the Tribunal are described below.

PART TWO: TRIBUNAL JUSTICE AND THE ROLE OF WOMEN

Women's involvement in the ICTY has led to a significant shift in the way international organizations and, specifically but not exclusively, international courts, think about: (a) the inclusion of women and gender expertise among tribunal staff; (b) the inclusion and valuing of women witnesses; (c) the treatment of wartime rape and sexual violence under international law; and (d) the participation of indigenous NGOs (and, specifically, local women's groups). Each of these is discussed in turn below.

The Inclusion of Women and Gender Expertise at the Tribunal

The inclusion of women is discussed below, considering, first, where women and gender expertise was included in the ICTY; second, the strategy employed for gender integration; and, third, the impact of inclusion.

Include at All Levels

Although men still dominate the top posts in each level of the Tribunal's operations, the degree to which women and gender expertise has been integrated is at an historic high. Particularly noteworthy is the inclusion of women judges. The Chambers consist of 16 permanent judges and a maximum at any one time of nine *ad litem* judges (temporary appointments). The 16 permanent judges are elected by the General Assembly of the United Nations for a term of four years and can be re-elected. Although the representation of women judges at the ICTY is still poor, the significance of any inclusion of women judges should not be underrated. The election of female judges to serve on the ICTY in 1993 was the first time women judges entered the international judicial arena, despite the 48-year existence of the International Court of Justice.⁴⁸ At no point in time have there been more than two female permanent judges (out of 16), and in fact usually only one of the permanent judges was female. Significantly, however, all of the major precedent-setting rape and sexual violence cases were heard before a panel that included a woman. Moreover, the rules of evidence and procedure for the court were written by a group of judges led by a woman (Gabrielle Kirk-McDonald).

To date, four women have served as permanent judges to the Tribunal: Elizabeth Odio-Benito from Costa Rica, Florence Mumba from Zambia, Gabrielle-Kirk McDonald from the United States, and Patricia Wald

from the United States. Thus far, the ICTY has chosen eight women out of the twenty-seven *ad litem* judges serving the Tribunal: Sharon Williams from Canada, Carmen Argibay from Argentina, Maureen Harding Clark from Ireland, Ivana Janu from the Czech Republic, Chikako Taya from Japan, Christine van den Wyngaert from Belgium, Fatoumata Diarra from Mali, and Vonimbolana Rasoazanany of Madagascar. Other female *ad litem* judges have been elected but are waiting to be called into service.

Women have figured prominently in other high-level positions at the Tribunal. Two chief prosecutors have been women: Louise Arbour from Canada and Carla del Ponte from Switzerland. Also, one of the three Registrars at the ICTY has been a woman: Dorothy De Sampayo from the Netherlands. And one woman, Gabrielle Kirk McDonald from the United States, has served as president of the Tribunal. A number of women have served the Tribunal in other critical positions, including as investigators, trial lawyers, prosecutors, legal advisors, translators, and counselors.

While there is no clear policy about recruiting staff with gender expertise for the office of the Chambers and there is no regular training for judges or other staff on gender issues, many of the legal assistants to the judges have expertise on gender issues and these topics have, albeit sparsely, appeared in the training curriculum for judges. Furthermore, each of the aforementioned permanent judges, and several of the *ad litem* judges, have been sensitive to or are experts in gender-related crimes.

Toward an Integrated Approach

The attempt to promote women in positions of power at the ICTY raised the question of how best to accomplish the task. In general, there have been two separate responses: the mainstreaming of gender issues throughout all organizations and all programs versus the establishment of a gender focal point or gender unit within an organization. The latter concept is straightforward. Each organization would have at least one central point to ensure that gender issues are addressed. The gender unit could offer technical assistance and expertise on gender issues to other parts of the organization. The mainstreaming concept is more complex. Mainstreaming began as an effort to increase the impact and effectiveness of development programs

in incorporating women and women's issues into development policies and programs. Today, the concept is applied to international institutions generally to refer to achieving women's full participation with men in decision-making issues; making women's issues central to any agenda; and putting women on a par with men in the process of initiating activities.⁴⁹

Both the mainstreaming and the focal point approaches have drawbacks. On one hand, mainstreaming risks submerging gender within the organization so that those concerns are no longer identified and addressed. It

may also result in words on paper but few changes in action. On the other hand, the gender focal point approach risks marginalizing gender within the organization so that gender is treated as something special that is not to be addressed at all except within the specified unit. Where woman-specific programs exist, there is little to guarantee that gender will be found in any other projects. Recognizing the limitations of both approaches, some international institutions have adopted a hybrid focal point/mainstreaming approach.

The ICTY discloses in its practice the benefit of combining both approaches to achieve gender integration. Patricia Sellers' role as the gender advisor in the Office of the Prosecutor (OTP) is the most prominent example of a combined focal point/mainstreaming approach. Appointed by former Chief Prosecutor Richard Goldstone, Sellers "was charged with developing the law through formulating the approach of the OTP to the investigation and indictment of gender crimes. She also devised the approach of the OTP to gender issues within the office itself."⁵⁰ In her own words, Sellers served as a "one-stop information source for gender issues" while also undertaking specific activities to further the mainstreaming of gender expertise throughout the ICTY. "Patty's role on the Tribunal was absolutely essential for its operations," recalled the first chief prosecutor for the Tribunal, Richard Goldstone. Sellers and Goldstone were part of an "inner cabinet" at the Tribunal that met every morning at 9 AM in The Hague.⁵¹ While Sellers had an influence on gender issues, Goldstone emphasized, her impact was felt even more broadly in overall improvements in the administration of justice. Pierre-Richard Prosper, war crimes prosecutor at the International

Criminal Tribunal for Rwanda and later appointed by President George W. Bush as US Ambassador-at-Large for War Crimes, agreed that Sellers played an "absolutely essential role" in the Tribunal's operations.

Another example of a combined focal point/mainstreaming approach concerns the investigatory teams. For the purposes of coordinating gathering evidence in

the field, the ICTY has broken investigators into specific teams. (For example, one team might be assigned to examine all atrocities in the town of Foca and another might be directed to investigate all issues

related to a certain detention camp.) "We had tremendous difficulty staffing women investigators, because we were insisting that all field investigators have ten years of experience . . . and there was only one country in the world where women had this kind of experience—the United States," Goldstone explained.

In response to this staffing issue and in recognition of the need to hold perpetrators of gender-based crimes accountable, in 1995 the Tribunal established a "sexual investigation team" composed exclusively of women with extensive experience on gender crimes. Nancy Paterson, a leader of this team, explained that sexual crimes were still within the purview of other teams, but that a specialized team was needed to ensure that rape and other forms of sexual violence were not overlooked. "Many of the investigators were police who had never done [sexual violence investigations] before," she explained. After a couple of years of intense focus on sexual violence, at the urging of Paterson and other members of the team, it was dissolved. By that time, awareness of how to investigate and try sexual violence cases had grown appreciably among many of the investigators. Thus, over time, the ICTY staff learned that it could address gender issues more thoroughly and effectively by fostering gender expertise and integrating gender awareness throughout the organization through a policy that set its long-term sights on mainstreaming while also utilizing focal points as needed.

The experience of the ICTY indicates that the success of any approach—mainstreaming, focal point, or combined mainstreaming/focal point—depends on the involvement of both women *and men* sensitive to

The election of female judges to serve on the ICTY in 1993 was the first time women judges entered the international judicial arena.

women's human rights issues. In fact, some of the people interviewed for this report opined that "men were perhaps more important than women" in pushing for the inclusion of gender expertise, because—in the words of one interviewee—"it was the men, not the women, who could take the risk."

The women human rights advocates interviewed for this report recalled the supportive efforts of men such as Judge Almiro Rodrigues and Judge Fouad Riad, who were able to draw from prior experience in family law matters in considering rape and other sexual violence issues before the Tribunal. The first Chief Prosecutor for the Tribunal, Richard Goldstone, also drew praise for creating the position of gender focal point and for responding to outside pressure to investigate rape and other forms of sexual violence. "Richard Goldstone was open to criticism and to ideas [from women's groups]," said Rhonda Copelon, an international lawyer who has advocated for gender issues to receive attention before the Tribunal. Without Goldstone's leadership in the initial stages, says Copelon, the ICTY would have been a much different place. Yet, even given the importance of key men to the successful integration of gender expertise in an international institution, the presence of women matters greatly.

The Impact of Inclusion

The impact of inclusion of women in ICTY processes has been dramatic. Barbara Bedont and Katherine Hall Martinez observe a relationship between participation rates of women and the existence of serious investigations into sexual violence: "the gradual shift toward taking rape and other sexual crimes seriously and investigating them zealously," they write, "can be traced to the participation of women in the ICTY and ICTR as investigators, researchers, judges, legal advisors, and prosecutors."⁵² Every case involving rape or other forms of sexual violence has involved women.

Indeed, Chief Prosecutor Richard Goldstone remembers that if a woman had not been on the Tribunal in its early years, there may not have been *any* indictments for gender-based crimes. He points to the decision that the Office of the Prosecutor made to indict Dragan Nikolic, the

Commander of the Susica detention camp in Vlasenica, without charging him with gender crimes. "As witnesses began to testify before the ICTY, however, evidence began to emerge that many of the women detained in the camp were subjected to sexual assaults, including rape. This spurred Judge Odio-Benito, one of two women judges on the Tribunal at the time, to publicly exhort the [Office of the Prosecutor] to include gender crimes in the indictment." Throughout the proceedings Judge Odio-Benito and her staff used every opportunity to call for the Nikolic indictment to be amended to include gender-based crimes. Eventually, her male colleagues on the three-judge panel would share her concerns. In the proceedings for re-confirmation of the Nikolic indictment, the judges commented:

From multiple testimony and the witness statements submitted by the Prosecutor to this Trial Chamber, it appears that women (and girls) were subjected to rape and other forms of sexual assault during their detention at Susica camp. Dragan Nikolic and other persons connected with the camp are alleged to have been directly involved in some of these rapes or sexual assaults. These allegations do not seem to relate solely to isolated instances. . . . The Trial Chamber feels that the prosecutor may be well-advised to review these statements carefully with a view to ascertaining whether to charge Dragan Nikolic with rape and other forms of sexual assault, either as a crime against humanity or as grave breaches or war crimes.⁵³

This statement is both "remarkable in its activist concern for the prosecution of gender crimes" as well as "remarkable in its suggestion that the judges would

be open to considering the indictment of rape and sexual violence beyond the enumerated ground of a crime against humanity."⁵⁴

In addition to influencing the Office of the Prosecutor, the inclusion of women judges had an

impact on the behavior of other Tribunal staff and, in particular, on defense attorneys and defense witnesses. Defense attorneys from the region had a reputation for treating female witnesses with disrespect and for being

Chief Prosecutor Richard Goldstone remembers that if a woman had not been on the Tribunal in its early years, there may not have been any indictments for gender-based crimes.

dismissive of claims of sexual violence. Counseled by their attorneys, defense witnesses made offensive remarks such as: “I wouldn’t rape her! I would rather rape a bicycle.” A pattern of this behavior threatened to create an atmosphere derisive of women and of gender-based crimes. One check on such behavior, however, was the presence of a woman judge in the courtroom. An illustration of this phenomenon concerns the *Omarska* case, involving the prison camp Omarska, where many male prisoners were tortured and killed, and a small number of female prisoners were raped and sexually tortured. In that case, the defense attorney questioned why the court had jurisdiction over the treatment of the women because the ICTY was just for “serious crimes” and rape and sexual fondling was not “serious.”⁵⁵ The sole female judge on the panel, Judge Wald, immediately rejected this argument, reminding the courtroom that the court had been created to cover precisely such offenses. Judge Wald felt that, while she could not prevent all offensive behavior, her presence made a difference.⁵⁶

Ambassador Pierre-Richard Prosper observed that “having women [appointed as Tribunal investigators, prosecutors, and judges] makes a difference.”

In noting the need for women witnesses as well as judges, Ambassador Pierre-Richard Prosper observed that “war is not a man’s issue . . . women are harmed by war, too . . . [and, thus] you need a cross-representation of victims.” And as to the essential role played by women advocates and judges, Prosper urged that for fair and full investigations, “it is necessary for all of humanity to be speaking out.” Moreover, he suggested that women tend to be more capable than men at empathizing with the victims. “I’m not saying that all women can empathize with victims of sexual abuse, or that all men can’t do so,” said Prosper, “but women tend to be better at it because they are closer to the victim’s experiences. . . . So, yes, having women [appointed as Tribunal investigators, prosecutors, and judges] makes a difference.”

The inclusion of women at the Tribunal has not been free from difficulty. On the contrary, according to numerous people interviewed for this report, including Richard Goldstone, the culture of the Tribunal is still not very conducive to women. Women tend to be hired at lower levels than men, and then they face great difficulties in achieving promotions. Moreover, “women tend to come under the greatest scrutiny, especially [when they are] at high levels,” one ICTY

former staff member remarked. One of the most dramatic illustrations of this “gender spotlight” was the attempt to disqualify a female judge during the *Furundzija* case, essentially for knowing too much about women’s issues. That time, however, the Tribunal’s decision served to support the role of women and men with gender expertise before the Tribunal and underscored the centrality of gender issues to the Tribunal’s mission.

The defense team in the *Furundzija* case argued that his conviction should be vacated because Florence Mumba, one of the Trial Chamber judges, should have been disqualified.⁵⁷ Prior to joining the Tribunal, Judge Mumba had worked with the UN Commission on the Status of Women (CSW) and, the defense contended, because the CSW issued reports on rape during the conflict in the former Yugoslavia, the appearance of bias existed. In considering these allegations, the Chamber reviewed the standards for unacceptable appearance of bias, which occurs when

[a] Judge is a party to the case, or has a financial or proprietary interest in the outcome of a case, or if the Judge’s decision will lead to the promotion of a cause in which he or she is involved, together with one of the parties . . . [or] the circumstances would lead a reasonable observer, properly informed, to reasonably apprehend bias.⁵⁸

Based on these criteria, the Appeals Chambers rejected the allegations of bias. Judge Mumba was serving as a representative of her country and not in her personal capacity, and there was no evidence that her work with the CSW would impede her impartiality, the Appeals Chambers reasoned. The Appeals Chambers emphasized that the desire to prosecute perpetrators of crimes against women was one motivating factor for the establishment of the Tribunal, and thus the inclusion of a judge with expertise on gender issues only furthered the Tribunal’s central purpose.⁵⁹

The Inclusion of Women Witnesses

The experience of women witnesses before the ICTY provides several lessons for the ICC and other international courts beyond just protection issues. At the outset, these experiences are good examples of why the

presence of women matters. According to ICTY staff, the prosecutors have become increasingly aware that women's experiences of war are valuable and that they reach far beyond the issue of rape. However, with the relatively low number of women witnesses in The Hague trials, it was also clear that most of their experiences were not being heard. (Roughly 21 percent of witnesses are women.) Patricia Sellers admonishes that "women should be called as witnesses for many reasons, not just because they are the victims of rape and other sex crimes." Wendy Lobwein recalls from her six years as a Tribunal counselor some cases where "wives [who accompanied their male relatives who had been called to The Hague as witnesses] were converted into witnesses." Still, the Tribunal staff concedes, the number of women witnesses is far too low, and the Tribunal is "losing a lot from not hearing from the women." Future international criminal tribunals like the ICC should "think about women witnesses from the beginning, and remember that they have valuable information about a variety of crimes."

Enhancing the participation of women as witnesses entails a consideration of women's traditional roles in their communities. Judge Mumba stresses that the *Kunarac* case (described below) underscores that the Tribunal is very careful with the treatment of witnesses. "They are not here to be exhibited. We know they are humans who are capable of being hurt. We've learned to set our practices to respect these witnesses, so they can come in and give their evidence and go away as soon as possible." Despite these protections, very few women want to testify about their own abuse. Interviews conducted in conjunction with this study indicate that women's responsibilities back home were as likely to factor into potential witnesses' decision-making process as were security concerns. The ICTY staff credit the Tribunal's practice of paying a small daily allowance for childcare and other family care as a major factor in enabling women to participate. They maintain, however, that the ICTY should be doing more to recognize that significant family responsibilities prevent many women from leaving home. In the words of one staff member, the ICTY could "pay greater attention to what prevents women from testifying before the Tribunal."

With appropriate privacy safeguards and health services, the experience of witnessing can be empowering for women and crucial for advancing the goals of the Tribunal.

Furthermore, the design of the Tribunal's facilities is significant. The ICTY began receiving witnesses "without anything in place with regard to their physical and psychological comfort and security."⁶⁰ The ICTY was wholly focused on finding witnesses and delivering them to The Hague. This was no easy task, because most witnesses were without proper travel documents and without any means of obtaining them in a time of ongoing war and chaos. "We put the first sets of witnesses in bulletproof vests and got them in a helicopter to Split [in Croatia], where they could be photographed and issued identification, and then brought them back to Bosnia for transport to The Hague," one staff member recalls. Once the witnesses arrived in The Hague, "it was like, what do we do next?" There were no witness waiting rooms, for example, and once these rooms were constructed, they were without access to bathrooms, food and drinks, or adequately ventilated smoking areas. "All of these factors, which might seem like very

little things [to outsiders], are in fact huge factors when it comes to the dignity of witnesses."⁶¹

Addressing the relationship between support staff and protection staff is also crucial. Traditionally, their approaches toward witnesses differed and in many cases were in direct conflict. "In the thinking of support staff, witnesses need as much information as possible [about the trial and their role in it] for as long as possible. More information increases decision-making capacity and enhances empowerment."⁶² For staff members with a protection mandate (i.e., staff charged with enhancing security and rights of witnesses), however, "more information and more contact is bad" as more information and contact may present security risks. Where support staff would like to continue their relationship with the witnesses (their "clients") beyond the trial, protection staff views their role in more limited terms. These fundamentally different approaches to working with witnesses need to be reconciled with the greatest attention to the interests of witnesses. Particularly in the case of women who have been sexually abused, and thus "denied their humanity in the most basic way," the Tribunal should make concerted efforts to adopt an approach that reinforces respect for independent decision making—in other

words, to provide as much information as possible, in a manner and time frame that respects “what the women really need.”⁶³

Finally, the experiences and motivations of women witnesses vary and thus there can be no single best practice or approach to accommodating an “essential woman witness.” Wendy Lobwein, a counselor who has been working with women victims from the establishment of the Tribunal, pointed to four separate motivations which encourage women to testify. Interviews with Bosnian NGOs (the self-termed “victims’ groups” and supportive “women’s” and “psychosocial counseling” NGOs) support these categorizations.

First, some women seek to speak for the dead. Many, but not all, of these women are motivated by religious convictions: “God let me survive so that I could witness,” they might reason. These witnesses, like nearly all witnesses, suffer from posttraumatic stress disorder that does not disappear after witnessing. Nonetheless, they tend to leave the Tribunal satisfied—at least they have spoken for the dead. As Mirha Pojskic, a therapist at Medica Zenica, a woman’s NGO that has worked with witnesses, observed: “for some women, the Tribunal is indeed a healing processes. There are women who lost family members, who had them killed during the war. For these women, they feel like they do something positive by speaking for the dead. They overcome a feeling of helplessness.”

The second type of witness wants to tell what happened, that is, to make a public and authoritative statement of their experiences. As Pojskic recounted, “some witnesses go, not because they think they should for the family, but for truth. These are the witnesses who are disappointed. . . .” The courtroom experience rarely permits them to tell what happened, at least not according to their perspective as a victim and survivor. Rather, the criminal law experience focuses narrowly on the actions of the perpetrator and on whether they fit the elements of the crime. Witness disappointment would not be such a problem if they were adequately prepared for their participation. [Note that the counselors and attorneys in The Hague said that the witnesses are prepared as much as possible—but, for

witnesses who have survived rape and other forms of sexual assault, there are risks inherent in preparation, which may lead to re-traumatization.]

The third type of witness “looks for justice in the present.” This witness, who represents a minority of those appearing in The Hague, shares the international community’s belief that individualizing guilt will promote reconciliation and that the Tribunal is a fair and effective way of promoting this kind of individual justice. Despite misgivings about sentencing and restitution/compensation and other aspects of the case, this type of witness tends to leave the Tribunal satisfied that she has

played a role in promoting justice.

Finally, the fourth type of witness appears “so that the crimes will not happen again.” This witness, who also comprises a small minority of all witnesses, has “a long-term global view of the Tribunal” and sees him- or herself as playing an historic role in the global effort to promote international standards of humanity. This type of witness tends to be very unsatisfied by many aspects of the Tribunal, including what is perceived as lenient sentencing, small number of prosecutions, and failure to prosecute certain key protagonists.

The act of witnessing alone can cause trauma. As Judge Wald observes, participation in adversarial criminal proceedings does not always help survivors to “feel better.”

Many of the witnesses are physically and emotionally fragile in the aftermath of their fractured lives. They frequently break down on the stand. The accused are there in the courtroom only a few feet away. One witness openly pled with the court to stop the accused from threatening her with his eyes. . . . Some of the witnesses say they are relieved to testify before us. Some express a humbling confidence that we will bring justice to their suffering. Others seem to find the courtroom experience with its stress on legal niceties anti-climactic and frustrating.⁶⁴

Nonetheless, “the potential for witnessing to re-traumatize can be overstated,” says Wendy Lobwein, stressing that even in the most traumatic situations,

*Each case bears the imprint of women—
acting in very public positions as judges,
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women still exercise agency. Lobwein remembers one witness who kept screaming and fainting during her testimony:

The judge eventually said, “Look, we have to stop this.” When I told the witness we had to stop, she pled with me to convince the judge to let her continue. She fainted a couple more times, but somehow she got through her testimony. When she was done, she thanked me and said, “now I can live again.”

While wary of re-traumatizing witnesses, Mirha Pojskic, of the NGO Medica Zenica, agrees that women should be able to make their own decisions on whether to testify. The women who take the opportunity to speak in The Hague, she said, make the most of it, despite the limitations of law: “the witnesses are prepared and are told to answer just the questions they are as asked. And they are told they have to fit their stories into the language of law. But they still find a way to say what they want to say.”

Lobwein provides another illustration of this important point: “There is the example of the woman who saw her husband murdered and in court she was asked what the murderer looked like. She answered, ‘if this happened to you, who would you look at? The murderer or would you have one last look at the man you love?’” Ultimately, with appropriate privacy safeguards and health services, the experience of witnessing can be empowering for women and crucial for advancing the goals of the Tribunal.

The Impact of Women on the Jurisprudence of the Tribunal

Recognition of Rape and Sexual Violence as Serious Violations

Although their approaches varied, women’s human rights advocates made central to their campaign the explicit recognition of rape as a violation of international law and not a mere byproduct of conflict. In the 1907 Hague Conventions and 1949 Geneva Conventions, rape and sexual violence are treated as an affront to personal dignity and honor.⁶⁵ Catherine N. Nicarchos underscores many of the pitfalls in linking rape and honor.

First, reality and the woman’s true injury are sacrificed: rape begins to look like seduction with “just a little persuading” rather than a massive and brutal assault on the body and psyche. As reports from the former Yugoslavia indicate, violations of honor and

modesty are wholly inadequate concepts to express the suffering of women raped during war. Second, by presenting honor as the interest to be protected, the injury is defined from society’s viewpoint, and the notion that the raped woman is soiled or disgraced is resurrected. Third, on the scale of wartime violence, rape as a mere injury to honor or reputation appears less worthy of prosecution than injuries to the person.⁶⁶

More modern humanitarian law, as reflected in the 1977 Protocols to the Geneva Conventions, reflects a slightly more enlightened approach, using the term dignity instead of honor.⁶⁷ This formulation, however, is still troubling for women’s human rights advocates. “[A]lthough dignity is a more germane referent than honor, it does not adequately express the fact that sexual assault is a violent crime; indeed, the Protocols *distinguish* sexual assaults from crimes of violence.”⁶⁸ Through their advocacy involving the ICTY, advocates did not seek to deny that rape is a violation of dignity. Rather, they sought to underscore that rape is primarily a physical assault and hence a crime of violence. By the time of the drafting of the ICC Statute in Rome in 1998, women’s advocates successfully delinked rape with crimes against honor or dignity.

In general, women’s human rights advocates took a two-pronged approach to the inclusion of rape and sexual violence in the ICTY statute. On one hand, some advocates sought to have rape and sexual violence prosecuted as a form of crimes such as genocide, torture, enslavement, and mutilation. At the same time, other advocates pushed for a separate section specifying that rape and sexual violence should be prosecuted as serious forms of violence. While some advocates pursued both tracks simultaneously—as one interviewee put it: “to cover all bases and make sure that rape appeared somewhere”—in general advocates were divided between the two approaches.

The Tribunal’s subject-matter jurisdiction is set forth in four articles, giving it jurisdiction over grave breaches of the Geneva Conventions of 1949 (Article 2), violations of the laws or customs of war (Article 3), genocide (Article 4), and crimes against humanity (Article 5). Advocates were successful with respect to their demand that rape be explicitly listed as a crime against humanity. Thus, Article 5 defines crimes against humanity in armed conflict as “murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecutions on political, racial, and reli-

gious grounds, and other inhumane acts.”⁶⁹ The term “rape” was still omitted from both Articles 2 and 3, the provisions relating to grave breaches of the Geneva Conventions and other war crimes. This was problematic because rape could be prosecuted as a crime against humanity only when committed as part of a widespread or systematic attack directed against a civilian population.⁷⁰

Over time, however, the omission of the term “rape” from Articles 2 and 3 proved to present few difficulties for prosecutors. In practice, the Office of the Prosecutor adopted the approach that sexual violence could be prosecuted not only as a crime against humanity but also under the other provisions of the statute—genocide, grave breaches, or violations of the laws or customs of war. Increasingly, the practice of the prosecution is to charge violations of laws or customs of war under Article 3 of the Statute instead of grave breaches under Article 2. “The reason for this,” Kelly Dawn Askin observes, “is that Article 3 charges do not require the prosecution to undertake the lengthy process of proving that the armed conflict was international in character at the time and place of the crimes alleged in the indictment.”⁷¹ This strategy has allowed more successful prosecutions of sexual violence cases as war crimes.

Article 4, the genocide provision, also provided a possible avenue for the prosecution of wartime rape, but international advocates were split over the utilization of this approach. At the forefront of demands that the rapes of Muslim women in Bosnia be recognized as genocidal rape, Catherine MacKinnon declared:

This is ethnic rape as an official policy of war in a genocidal campaign for political control. . . . It is specifically rape under orders. This is not rape out of control. It is rape under control. It is also rape unto death, rape as massacre, rape to kill and to make the victims wish they were dead. It is rape as an instrument of forced exile, rape to make you leave your home and never want to go back. It is rape to be seen and heard and watched and told to others; rape as spectacle. It is rape to drive a wedge through a community, to shatter a society, to destroy a people.⁷²

Opponents of this approach did not deny that women were targeted for rape because of their real or perceived ethnicity. Nor did they deny that rape could be part of the act of genocide. However, to insist on a “genocidal

rape” formulation would, it was agreed, raise the burden of proof and undermine attempts to prosecute many cases of wartime rape. Rhonda Copelon, one of the leaders of the opposition camp, warned that an overemphasis on “genocidal rape” could obscure the gendered nature of the crime of rape—a violent crime committed against women as women—therefore rendering invisible any rape committed in an armed conflict outside of the context of a genocide.⁷³ The latter view prevailed in that the formulation “genocidal rape” does not appear in the text. Nonetheless, as in the case of war crimes and grave breaches, the Tribunal may consider claims of genocidal rape in specific cases, and indeed in practice the Tribunal has discussed rape as an instrument of genocide.⁷⁴

Advocates also played a role in the ICTY’s incorporation of an expanded notion of liability for rape and sexual violence. Under the Statute, individual liability may be imposed on any person who “planned, instigated, ordered, committed, or otherwise aided and abetted in the planning, preparation, or execution of a crime.”⁷⁵ Command responsibility applies if a superior “knew or had reason to know” that a subordinate was about to commit a crime or had committed a crime and failed to take reasonable measures to prevent the crime or punish the perpetrator.⁷⁶ The ICTY has interpreted its statute to mean that an accomplice is guilty if “his participation directly and substantially affected the commission of that offense through supporting the actual commission before, during, or after the incident,” and that guilt extends to “all that naturally results” from the act.⁷⁷ Under these principles of liability, guilt may be assigned to attackers who claim to be acting under orders, to persons who “aid and abet” a rape through taunts or other provocations, and to persons in authority who fail to take action to prevent rape or to punish those responsible. The Tribunal also prosecutes individuals under the “joint criminal enterprise” theory of responsibility, in which persons who knowingly participate in a joint criminal enterprise can be held criminally responsible for all acts committed either in furtherance of the criminal endeavor or which were foreseeable consequences, including rape crimes. Indeed, the *Krstic* and *Kvočka* judgments held the accused responsible for sexual violence committed as a foreseeable consequence of a joint criminal enterprise.

The ICTY delivered several landmark decisions expanding the understanding of sexual violence under

international law. Each case bears the imprint of women—acting in very public positions as judges, prosecutors, investigators, and witnesses, as well as behind the scenes as advocates.

The notion that a person can be convicted for having encouraged crimes of sexual violence, even if they did not participate directly, was confirmed early on in the *Tadic* case, the first trial to be conducted by the ICTY.⁷⁸ Dusko Tadic, a Serbian and former cafe owner, was brought to the Tribunal for his alleged participation in the repeated beating, rape, murder, and torture of detainees at the Omarska, Keraterm, and Trnopolje detention camps in BiH. In that case, the charges of aiding and abetting the rape of a female detainee were dropped after the victim refused to testify for fear of reprisal and the testimony of the corroborating witness was discredited. Nonetheless, the case remains a significant precedent for gender violence in wartime as Tadic was eventually convicted of aiding and abetting the sexual mutilation of a male prisoner. In reaching its decision, the Trial Chamber reasoned that sexual assault constituted the war crime of inhumane treatment and was a grave breach of the Geneva Conventions.⁷⁹ The Trial Chamber also affirmed that rape was a war crime even when committed by non-state actors and in non-international armed conflict. Significantly, the case also highlighted the prevalence of male-on-male sexual violence in wartime. According to Gabrielle Kirk-McDonald, however, the importance of the case “from a broader perspective . . . is that the *Tadic* trial gave the Tribunal the first opportunity to apply the rules it crafted, especially the rules of evidence—in a way that protected the accused’s right to a fair trial, thereby demonstrating that international criminal justice was possible.”⁸⁰

The issue of wartime rape was addressed again in the *Celebici* case, where four men were charged with participating in atrocities at the Celebici prison camp, where officials “killed, tortured, sexually assaulted, beat, and otherwise subjected [detainees] to cruel and inhuman treatment.”⁸¹ Among other findings, the Trial Chamber convicted one of the accused of war crimes and grave breaches of the Geneva Conventions for forcing male inmates to perform fellatio and other sexually humiliating acts on each other, finding that such conduct constituted “at least, a fundamental attack on . . . [the victims’] human dignity.”⁸² The Trial Chamber emphasized that if the indictment had charged the forced fellatio as rape instead of inhuman

treatment, it would have convicted the accused of rape instead of the more obscure crime. The *Celebici* case is also noteworthy for recognizing wartime rape as a form of torture when women were sexually violated in order to punish them, to gain information, and to discriminate against them as women.⁸³ To prove torture, one must show that the act in question (i.e., rape or other inhumane treatment) was inflicted for some designated purpose other than the act itself. The judges in the *Celebici* case reasoned this requirement that the act be inflicted for a designated purpose is satisfied in a rape case because violence directed against women is discrimination. It should be emphasized that the accused were convicted of failing their responsibility as superiors to prevent or punish sex crimes committed by subordinates.

In the *Furundzija* case, Anto Furundzija was found guilty of torture and outrages upon personal dignity as violations of the laws or customs of war for his role in the rape of a woman during interrogation. Furundzija verbally interrogated a woman while another raped her in multiple ways (orally, vaginally, and anally).⁸⁴ The *Furundzija* case set forth elements of rape that unequivocally encompassed forcible oral or anal sex as well as rape with foreign objects.⁸⁵ It proved that the rape of one woman is a serious violation of international law and punishable as such, and that an individual can be held criminally responsible for a rape crime even if he does not physically touch the victim, if he plays some role in facilitating the rape.

Building on the momentum of the earlier cases, *Kunarac* was the first international criminal case against a series of perpetrators charged exclusively with sexual crimes, and the first international judgment in which the offense of enslavement has been applied to the practice of female sexual slavery. The details and significance of the *Kunarac* case are outlined below.

In the *Kvočka* case, five accused were charged with a number of crimes committed in Omarska prison camp, which held several thousand men and some 36 women. The accused were convicted of participating in a joint criminal enterprise to persecute non-Serbs held in the camp. The Trial Chamber found that rape and other forms of sexual violence committed against some of the women in the camp were foreseeable consequences of the criminal enterprise, and it convicted the accused for persecution as a crime against humanity for crimes including sexual violence.

Case Profile: Judgment in the *Kunarac, Kovac, and Vukovic* Case¹

On February 22, 2001, in a landmark decision that shaped international humanitarian law pertaining to sexual violence and enslavement, Trial Chamber II of the ICTY sentenced three ethnic Serbs to prison for their abuse of women at a “rape camp” near Foca, a small Bosnian town southeast of Sarajevo. Dragoljub Kunarac was sentenced to 28 years, Radomir Kovac to 20 years, and Zoran Vukovic to 12 years.

Serb forces overran the Bosnian town of Foca in April 1992. The women and children from the region were taken to collection points, such as Buk Bijela. From there, they were transferred by bus to Foca High School, where they were detained. Some of them were later taken to other places in and around Foca, such as private houses and apartments and the Partizan Sports Hall. The conditions in these detention centers were deplorable. There were no sanitary facilities and the provision of food was inadequate and sporadic. The women and girls were threatened with guns and knives, and raped. The evidence revealed that this had occurred with the knowledge of the local authorities. The local police officers “helped guard the women, and even joined in their mistreatment when approached [by the victims] for help against their oppressors.”

The testimony indicated that Serb forces raped dozens of Muslim women and girls, some as young as 12 years old. The defendants—Kunarac, Kovac, and Vukovic—were identified by victims as being among those who came to the detention centers at night to rape the women, or to take them away to work in “quasi-brothels” used by soldiers. Some women were “rented.” Others were sold. One 12 year-old girl who was sold by one of the defendants has not been heard from since.

Kunarac commanded a reconnaissance unit of the Bosnian Serb army, and Kovac and Vukovic were paramilitary leaders. The defendants acknowledged that they had taken part in the Serb military campaign in Foca, but denied the charges of torture, rape, and enslavement. The eight-month trial included testimony from sixty-three witnesses, including sixteen victims who had been held in sexual slavery for months and subjected to multiple gang rapes by the defendants and others. During the trial, measures were taken to protect the identity of the victims. Although they directly faced their accusers, the victims were identified by numbers, spoke through voice scramblers, and were hidden from public view to protect their privacy.

This judgment in this case represents a significant advance in international law pertaining to the treatment of sexual violence in wartime. First, the decision demonstrates that rape will not be accepted as an intrinsic part of war. Rather, it is a crime against humanity and may constitute torture. The detailed discussion of the elements of rape in the decision, including a broad survey of domestic legal systems, will serve as an important guide in future cases.²

Second, although this Tribunal, as well as the International Criminal Tribunal for Rwanda (ICTR), had dealt with rape in the past, this was the first case that focused entirely and solely on wartime crimes of sexual violence.

Third, while other international tribunals have considered the crime of torture, the ICTY’s authoritative discussion of the law of torture and its application to sexual violence cases is groundbreaking. The Trial Chamber concluded that the definition of torture under international humanitarian law does not comprise the same elements as the definition of torture generally applied under human rights law. In particular, the Trial Chamber was “of the

view that the presence of a state official or of any other authority-wielding person in the torture process is not necessary for the offense to be regarded as torture under international humanitarian law.”³

Fourth, the decision expanded our understanding of how rape is used in wartime. Judge Mumba rejected the label, “systematic rape employed as a weapon of war,” because “this could be understood to mean a kind of concerted approach or an order given to the Bosnian Serb armed forces to rape Muslim women as part of their combat activities in the wider meaning.” Instead, in this case rape was “used by members of the Bosnian Serb armed forces as an instrument of terror, an instrument they were given free rein to apply whenever and against whomever they wished.” This understanding of rape as an instrument of terror can be applied in other cases where there is not evidence of a direct order to rape.

Finally, this decision was the first by an international tribunal to result in convictions for enslavement as a crime against humanity. The war crime tribunals after World War II had considered slavery an economic crime, not a crime against humanity; further, those tribunals did not regard sexual violence as a form of enslavement. Although two of the women who testified were sold as chattel by Radomir Kovac for 500 Deutsch Marks each, the Tribunal found that enslavement of the women did not necessarily require the buying or selling of a human being. This broader definition of slavery can be applied in sexual slavery cases in the future.

¹ The decision read in open court can be found at <www.un.org/icty/pressreal/p566-e.html>. The full text of the decision can be found at <<http://www.un.org/icty/kunarac/trialc2/judgement/index.htm>>. Unless a paragraph number to the official decision is provided, all quotes herein are to the decision read in open court.

² “Prosecutor v. Kunarac et al. (IT-96-23).” *Judgment of Trial Chamber II*. The Hague: The International Criminal Tribunal for the Former Yugoslavia, 2001. 25 May 2004

<<http://www.un.org/icty/kunarac/trialc2/judgement/index.htm>>. Paras. 436–464.

³ “Prosecutor v. Kunarac et al. (IT-96-23).” Para. 496.

Protection

Article 15 of the ICTY Statute made it the duty of the ICTY judges to “adopt rules of procedure and evidence for the conduct of the pre-trial phase of the proceedings, trials and appeals, the admission of evidence, the protection of victims and witnesses, and other appropriate matters.”⁸⁶ Judge Gabrielle Kirk McDonald played a central role in the formulation of rules that would protect women’s interests. Largely as the result of her efforts, which were supported by women’s human rights advocates, the ICTY adopted important rules of procedure and evidence to protect and counsel victims of sexual crimes and to ensure proper handling of sexual crimes during trials. As noted by Gender Legal Advisor Patricia Viseur Sellers, “the Rules [of Procedure and Evidence of the ICTY] offer the

strongest evidence of the [ICTY’s] specific intent to investigate, prosecute, and adjudicate sexual assaults.”⁸⁷

The rule related to evidence in sexual assault cases, Rule 96, is revolutionary in its approach to evidence of rape and other sexual crimes. Rule 96 provides that in cases of sexual assault

- (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) reasonably 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.⁸⁸

The most progressive measures of Rule 96 include not requiring corroboration of the testimony of rape victims, the creation of a limited consent defense, and the inclusion of a "rape shield" provision barring evidence in any form of the victim's prior sexual conduct.

Three other procedural rules apply generically to all crimes, but have particular pertinence to rape and sexual violence cases. These rules permit

- The prosecutor to seek an order preventing disclosure of the identity of a victim or witness during the investigative stage;⁸⁹
- Deposition evidence in exceptional circumstances, which will spare some victims and witnesses the burden of traveling to The Hague;⁹⁰
- The Tribunal to order additional measures before or during trial for the privacy and protection of victims and witnesses, such as expunging names from the public record, nondisclosure to the public of identifying information, closed sessions, and testimony through closed-circuit television and image- and voice-altering devices.⁹¹

Rule 34 of the Rules of Procedure and Evidence provides for the creation of a Victims and Witnesses Unit within the Registry, the Tribunal's administrative organ. The explicit purpose of this Unit is to "provide counseling and support for [victims and witnesses], in particular[,] in cases of rape and sexual assault."⁹² In the creation of such a Unit, "due consideration shall be given, in the appointment of staff, to the employment of qualified women."⁹³ The Unit may provide care for children and dependent persons, support for accompanying persons, relocation of witnesses, and attendance allowances—flat fees paid to witnesses for costs incurred from being absent from home.

The vast majority of ICTY staff and Bosnian women interviewed for this report were impressed with the safeguards afforded witnesses at the Tribunal. Where problems with protection continue to exist, they are largely due to inadequacies in Bosnian criminal law and practice, not with international law. As one Bosnian woman who has worked in a support position for two witnesses described, "as long as [the witness] is in The Hague everything is okay, but as soon as they enter that plane to ride home, everything [related to protection] begins to fall apart." The fact that the Tribunal staff has few resources to follow-up with witnesses has drawn considerable criticism, both within and outside the region.

Participation of Indigenous NGOs and Local Women's Groups

The relationship between Tribunal investigators and Bosnian women's groups also provides several lessons for future international courts. In the Bosnian context, women's groups served to "forg[e] direct contact with victims, and thus [they] work[ed] as a channel between the investigators and witnesses."⁹⁴ The investigators interviewed for this report made clear that were it not for the work of local NGOs, there would have been few, if any, witnesses on sexual violence cases and many other cases. At the same time, the interviews

with the Bosnian NGOs indicate that their potential to provide a supportive role was largely untapped and that in fact they were able and willing to do much more.

Bosnian women's groups exhibited the ability to

play a key role in supporting witnesses. Although the availability of psychosocial services to survivors of sexual assault and other forms of wartime violence was scarce, it was a handful of women's groups that had principal or exclusive contact with central witnesses in sexual violence cases. Representatives of these groups—who asked not to be identified specifically in fear of retaliation—described ICTY investigators in generally favorable terms, describing them as sensitive and "appropriate" in approaching potential witnesses. "We saw maybe 300 women who were raped in war," said one Bosnian therapist, "and maybe 30 would talk to the Tribunal and 2 or 3 would end up testifying . . . Very few [women] wanted to do it." But once women

Local participation in transitional justice mechanisms like the Tribunal enhances the legitimacy of such processes.

decided to speak with the investigators, “they had it in their minds to do it” and “this was something they needed to do and no one could stop them.”

The Bosnian therapists interviewed for this report were generally of the opinion that the women who eventually testified in The Hague about their experiences did so willingly and with informed consent. “Yes, some of the women were broken by [going to The Hague to testify], but you can’t say anyone forced them,” said one therapist with a women’s group. Many witnesses were frustrated by the legal process, which made it hard to talk about their experiences in their own terms. Nonetheless, this therapist contended, “for some [witnesses], it was liberating, like a burden rising from their shoulders.” Similarly, another women working with a Bosnian women’s organization asserted that the notion that women witnesses are “used” by the Tribunal can be condescending: “It’s like [the witnesses] can’t make decisions for themselves, but they can and they do.”

Experience suggests that the increased participation of local NGOs in the ICTY would both enhance the ability of local NGOs to prepare witnesses and enhance the potential of the Tribunal to influence local processes in long-lasting and positive ways. The experiences of a group of psychotherapists and psychologists from Bosnia sent to The Hague in December 2003 are instructive. Private donors funded the trip, wholly separate from the Tribunal’s standard budget, which did not contemplate the necessity of such an exchange. In an experience that all involved rated as “highly meaningful,” the therapists were given a tour of The Hague and received in-person instruction on the operations of the Tribunal. Many of the participants lamented that the exchange had not occurred earlier. “This was the first time in six years that we were able to see what they are doing there.” The visit had two benefits. First, as one therapist in attendance explained, “it gave [the local professionals working with victims] a picture of what a victim witness could expect there.” This enhanced the ability of the people working with victims to prepare them for what was to come in The Hague. “It was more than a little better than we expected,” said Mirha Pojskic of Medica Zenica.

Second, the trip provided them with an “awareness of possibilities,” of “ideas for protection of witnesses [in Bosnia].” They returned home with a drive to improve local laws and practices for witnesses and the knowl-

edge to make it a reality. International support of local NGOs, therefore, is one tangible way to further the broader goals of promoting justice. Alisa Muratcaus, the coordinator of the Association of Women Former Prisoners of Concentration Camps,⁹⁵ expressed the opinion of many indigenous NGOs interviewed for this study when she stated that her overall opinion about The Hague Tribunal is that “it is good that it exists” and that problems rested with Bosnian law, not international law:

The problem with witnesses going to The Hague is that the Tribunal does not take care of them after they testify. Very often women from The Hague are put on the very same plane as the war criminals against whom they are testifying. When they return to Bosnia they are told to return to the same town from which they came, or they can go to a third country. [She recognizes that local law must change. Her association is working to change local laws and practices to enable women who want to return to Bosnia, to a city other than their hometown, to receive the kind of residency status they need for health care and other social benefits.]

Local participation in transitional justice mechanisms like the Tribunal enhances the legitimacy of such processes. The citizens who were more involved in the Tribunal were more likely to recognize its role in promoting reconciliation. For example, Nuna Zvizdic, a leader of Zene Zenema, a Sarajevo-based women’s group active in advocacy on issues of transitional justice and the Tribunal, noted:

The Tribunal is trying to show everyone that justice is defined differently from different standpoints. We have to learn these differences. What is important now is from our vantage point in both entities. We have been listening to this [the Tribunal proceedings]. We have been talking more openly about our fears [in relation to the past]. We need to hear the facts so that we may go forward into the future.

Zvizdic viewed the Tribunal as a first step. “You need time for reconciliation,” she said, “Everything really is happening very quickly; but for the internationals, it is too slow.”

Although an Outreach Program was established in September 1999, with a coordinator based in The Hague and offices in Croatia and Bosnia, flow of information has been inadequate. Poor communication between the ICTY and Bosnia has hindered the

Select Bosnian Women's Organizations and Initiatives

A directory of women's organizations in the region can be found online at <http://www.zinfo.hr/engleski/pages/education/REWIND/asp/PretrazivanjeRaznoW.asp>. Listed below are four examples.

Medica Zenica (www.medicamondiale.org) was established in 1993 in the Bosnian town of Zenica by a German gynecologist who had heard about the Bosnian rape camps and wanted to help the women survivors. In its first five years, Medica provided 18,000 women and children with medical care, and 2,000 women and children with individual counseling and/or group therapy. Medica has a fully equipped gynecological clinic that offers services to women from Zenica and to refugee women. Medica also operates "Martha," a mobile outpatient clinic that travels to refugee centers and remote or isolated villages. Treatment at Medica is free, and the gynecologists and therapists take time to listen to the women in their care. A team of psychologists and psychiatrists work side by side with the medical team, as physical illness and trauma are closely related. Medica staff recognizes that women find it very difficult to organize childcare and transport, so that no one who arrives is turned away or asked to return another day, no matter how busy the clinic is.

BiH Women's Initiative (BWI—www.unhcr.ba/programme/bwi-index.htm) was first established in 1996 as a program of the UN High Commissioner for Refugees (UNHCR); its focus was the empowerment of women through their reintegration into the social and economic aspects of life. The primary areas of activity were income generation, education and skills training, social and health issues, community service, women's rights, tolerance building, and reconciliation. In 1999, UNHCR announced its withdrawal from BWI and a potential exit strategy was discussed with the umbrella agencies and local women's NGOs. Today, the Initiative is a foundation that supports the activities of women's NGOs and women's groups for the empowerment of women through social, economic, and educational programs so that they can actively participate in the transformation of society in BiH.

Zene Zenama (Women to Women—<http://www.zenezenama.com.ba/>) was established in March 1997. Its goals include abolishing all forms of discrimination against women, promoting human rights, providing emotional and psychological support to women, and delivering training in non-violent communication and conflict resolution, women's studies, and the development of civil society. Zene Zenama is based in Sarajevo but works with and brings together women activists from around the country. Once a week they hold open lectures on issues related to gender equality and democracy; in order to reach the rest of the country, seminars are held in several smaller cities. By promoting democracy, the values of non-violence, and the development of a civil society in a safe space where women can come together to discuss these issues, Zene Zenama strives to improve women's lives in postwar BiH.

The **Movement of Mothers from the Enclaves of Srebrenica and Zepa**, established in 1998, is an independent organization headquartered in Sarajevo. The more than 10,000 women members are survivors of the collapse of Srebrenica, the former UN Protection Zone in East Bosnia, on July 11, 1995. Most of these women lost their male relatives: 10,701 Bosnians disappeared or were killed in mass executions after Srebrenica's capture by Serbian General Ratko Mladic's forces. So far, the remains of about 5,300 men have been exhumed from mass graves. The primary goal of the

mothers' movement, led by chairwoman Munira Subasic and her representative Kada Hotic, is the clarification of the fate of their relatives. They have collected information about the missing, advocated for aid to survivors, and helped with the rehabilitation of families. The mothers are human rights activists, calling for the continued exhumation of graves and identification of the missing, the punishment of war criminals, and the return of survivors to Srebrenica.

potential for the Tribunal to serve local needs for reconciliation. In addition, the poor communications have created unrealistic local expectations for the ICTY, observes Judith Armatta, pointing out that support for the Tribunal is greater among people with greater

knowledge of its purpose. Indeed, the respondents in the present research were most likely to be supportive of the Tribunal as a mechanism for reconciliation if they had more information about its operations.

CONCLUSION

Reports of mass rape and other gender-based crimes galvanized the international community into creating the ICTY. As the first international tribunal in 50 years, it has made significant contributions to international justice. Gabrielle K. McDonald notes that the most far-reaching contribution of the ICTY is that its establishment

... signaled the beginning of the end of the cycle of impunity. Those responsible for committing or ordering the commission of horrific acts of violence against innocent civilians, simply because of the happenstance of their birth, their ethnicity, their religious beliefs, or their gender, are now for the first time being called to account for their criminal deeds. . . . The [ICTY has] also demonstrated that the rule of law has been an integral part of the peace process; expanded the jurisprudence of international humanitarian law; raised the international community's level of consciousness regarding the need of states to enforce international norms; and accelerated the development of the permanent International Criminal Court.⁹⁶

In lobbying for the establishment of the court, and through their presence at its creation and in its operation, women have helped set important precedents. "Women's expectations have been raised [by the ICTY]," observes women's human rights leader Charlotte Bunch. "What was once unimaginable is now not only imaginable, but expected." With the ICTY success as their guide, women will now demand that they be included in international justice mechanisms at all levels of decision-making and operations, that gender expertise be better integrated throughout international institutions, and that international bodies take allegations of rape and sexual violence in war seriously as grave violations of international law and not mere byproducts of war.

Beyond the significant gains made in the area of rape and sexual violence, the women who served on the tribunal staff as investigators, prosecutors, defense attorneys, counselors, and judges have had a tremendous impact on international justice. The critical contributions of women, however, belie their relatively small numbers at all levels of the court system. Few investigators and attorneys have been women, and at any one time, only 3 of the 18 judges have been female. Furthermore, although court employees recognize the value of women witnesses, only 21 percent of witnesses to date have been female.

Though Bosnian women have served as witnesses, investigators, and advocates, their participation in the activities of the ICTY has been rare and is declining as the Tribunal continues to lose the confidence of the population it was established to serve. Focus group research supports the conclusion that the Tribunal still lacks legitimacy among the local population and that there is little knowledge among people in BiH of how the Tribunal operates.

The most pressing shortcoming of the Tribunal is its failure to develop more fully its relationship with indigenous women's organizations. Although Bosnian women's groups helped to locate and prepare many ICTY witnesses, the Tribunal has failed to develop fully its relationship with these organizations. "One wonders what could have happened if we had better mechanisms for providing information to [indigenous groups] . . . and if we truly tapped their potential," says one investigator. "We were so focused on getting the Tribunal started, and—you have to remember, it was the middle of the war—it took a great deal of effort to do anything," states another investigator, admitting that communication with Bosnian women's groups was "never a top priority" and that "there were missed opportunities." To improve the Tribunal going forward, the communication process could be viewed as a two-way process in which ICTY staff not only supports and teaches local activists more about the court, but also learns *from* them about the community and issues facing potential witnesses. And future international courts would enhance their credibility and effectiveness by improving communication with the "local" population they purport to serve.

The experience of the ICTY, now over ten years into its mandate, reveals many lessons for future criminal tribunals and, especially, the ICC. To improve future courts, women and staff with gender expertise must be equally represented—as judges, prosecutors, defense attorneys, and investigators—and women witnesses and local women's organizations must be drawn upon and fully supported. Ambassador Prosper concludes that the ICTY's treatment of gender issues should be viewed as a "learning process" in which significant advances had been made even though more change is needed. As future international justice mechanisms continue along this learning curve, they must include women and feature gender expertise even more centrally than in the ICTY.

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- ¹⁷*Statute of the International Criminal Tribunal for the Former Yugoslavia*, Art. 11.
- ¹⁸*Statute of the International Criminal Tribunal for the Former Yugoslavia*, Art. 18.
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Convention. 18 October 1907. 25 May 2004 <<http://www.lib.byu.edu/~rdh/wwi/hague/hague5.html>>. Art. 46.] The Fourth Geneva Convention of 1949 incorporates these concepts in a provision giving women special protection against rape. Article 27 states: "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. Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault." [*Geneva Convention Relative to the Protection of Civilian Persons in Time of War*. 21 October 1950. 25 May 2004 <<http://www.unhchr.ch/html/menu3/b/92.htm>>. Art. 27.]

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⁷⁹"Prosecutor v. Tadic (IT-94-1-T)." *Opinion and Judgment*. The Hague: The International Criminal Tribunal for the Former Yugoslavia, 1997. 25 May 2004 <<http://www.un.org/icty/Tadic/trialc2/judgment-e/tad-tj970507e.htm>>.

⁸⁰McDonald, Gabrielle K. "The International Criminal Tribunals: Crime And Punishment in the International Arena." *International Law Students' Association Journal of International and Comparative Law* 7 (2001): 668.

⁸¹“Prosecutor v. Delalic (IT-96-21-T).” *Judgment*. The Hague: The International Criminal Tribunal for the Former Yugoslavia, 1998. 25 May 2004 <<http://www.un.org/icty/celebici/trialc2/judgement/index.htm>> Supra note 5, Para. 1019 (quoting indictment, supra note 59), Para. 1060 (quoting indictment, id.).

⁸²“Prosecutor v. Delalic (IT-96-21-T).” *Judgment*. Para. 1066.

⁸³“Prosecutor v. Delalic (IT-96-21-T).” *Judgment*.

⁸⁴“Prosecutor v. Furundzija (IT-95-17/1-A).” *Appeals Judgment*. The Hague: The International Criminal Tribunal for the Former Yugoslavia, 2000. 25 May 2004 <<http://www.un.org/icty/furundzija/trialc2/judgment/fur-tj981210e.htm>>. Para. 39–41, 44–46.

⁸⁵The Trial Chamber defined rape as: (i) [T]he sexual penetration, however slight: (a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or (b) of the mouth of the victim by the penis of the perpetrator; (ii) by coercion or force or threat of force against the victim or a third person. [“Prosecutor v. Furundzija (IT-95-17/1-A).” *Judgment of Trial Chamber II*. The Hague: The International Criminal Tribunal for the Former Yugoslavia, 1998. 25 May 2004 <<http://www.un.org/icty/furundzija/trialc2/judgement/index.htm>> Para. 185.]

⁸⁶*Statute of the International Criminal Tribunal for the Former Yugoslavia*, Art. 15.

⁸⁷Sellers, Patricia Viseur and Kaoru Okuizumi. “Intentional Prosecution of Sexual Assaults.” *Transnational Law and Contemporary Problems* (1997): 50.

⁸⁸*Rules of Procedure and Evidence*. The Hague: The International Criminal Tribunal for the Former Yugoslavia, 1994. 25 May 2004 <<http://www.un.org/icty/legaldoc/index.htm>> Rule 96.

⁸⁹*Rules of Procedure and Evidence*. Rule 69.

⁹⁰*Rules of Procedure and Evidence*. Rule 71.

⁹¹Rule 75 provides, in part: “(B) A Chamber may hold an *in camera* proceeding to determine whether to order: (i) measures to prevent disclosure to the public or the media of the identity or whereabouts of a victim or a witness, or of persons related to or associated with him by such means as: (a) expunging names and identifying information from the Chamber’s public records; (b) non-disclosure to the public of any records identifying the victim; (c) giving of testimony through image- or voice-altering devices or closed circuit television; and (d) assignment of a pseudonym; (ii) closed sessions in accordance with Rule 79 [to ensure “safety, security, or nondisclosure of the identity of a victim or witness”]; (iii) appropriate measures to facilitate the testimony of vulnerable victims and witnesses, such as one-way closed circuit television. (C) A Chamber shall, whenever necessary, control the manner of questioning to avoid harassment or intimidation.” [Rules of Procedure and Evidence. Rule 75.]

⁹²*Rules of Procedure and Evidence*. Revision 8, supra note 13, Rule 34(A)(ii).

⁹³*Rules of Procedure and Evidence*. Id. Rule 34(B).

⁹⁴Kvinna Till Kvinna. “Getting it Right? A Gender Approach to UNMIK Administration in Kosovo.” Stockholm, Sweden: The Kvinna till Kvinna Foundation, 2001. 25 May 2004 <<http://www.iktk.se/publikationer/rapporter/pdf/Kosovorapport.pdf>>. 11.

⁹⁵Alisa Muratcaus—“Q: How did you start working with women former political prisoners? A: I did not intend to work with women. I was in a camp and got out and wanted to do something. In 1997, I started working with the Association of Concentration Camp Victims. There were 6000 men and 1000 women. I noticed that about 80 % of these women had been raped [the victims would fill out an information form to “register” with the Association] so I knew that there were a lot of women and that they had their own experiences and so I tried to set up some kind of support system for them. It is a very difficult life for these women. Most of them are completely marginalized in their communities. They have not official residency in Sarajevo.”

⁹⁶McDonald, Gabrielle K. “The International Criminal Tribunals: Crime And Punishment in the International Arena.” 663.

APPENDIX 1: MAP OF BOSNIA AND HERZEGOVINA



Source: University of Texas. 25 May 2004 <http://www.lib.utexas.edu/maps/europe/bosnia_pol_2002.jpg>.

APPENDIX 2: LIST OF ACRONYMS

| | |
|-------|---|
| AFZ | Antifascist Women's Front |
| BiH | Bosnia and Herzegovina |
| BWI | Bosnian Women's Initiative |
| CSW | United Nations Commission on the Status of Women |
| ICC | International Criminal Court |
| ICTR | International Criminal Tribunal for Rwanda |
| ICTY | International Criminal Tribunal for the former Yugoslavia |
| NGO | Non-governmental organization |
| OSCE | Organization for Security and Cooperation in Europe |
| OTP | Office of the Prosecutor |
| SPGTF | Stability Pact Gender Task Force |
| UN | United Nations |
| UNDP | UN Development Programme |
| UNHCR | UN High Commissioner for Refugees |

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The Policy Commission is conducting a series of case studies to document women’s contributions to peace processes across conflict areas worldwide. The studies focus on women’s activities in conflict prevention, pre-negotiation and negotiations, and post-conflict reconstruction—including governance; disarmament, demobilization, and reintegration; and, transitional justice and reconciliation. This body of work is pragmatic and operational, offering suggestions, guidelines, and models to encourage policymakers to include women and gender perspectives in their program designs.

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