

PROSECUTING GENDERED VIOLENCE IN INTERNATIONAL LAW: THE PARADOX OF WARTIME VIOLENCE

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Prominent legal feminists, like Catherine MacKinnon, have promoted an understanding of rape, when it occurs during time of war and is targeted towards women, as constituting the crime of genocide. Thus an understanding of rape as genocide has been used by Mackinnon and others to call for intervention and recognition (MacKinnon, 1994) (Mackinnon C., 2006) Therefore, one of the most critical shifts in international law and human rights policy is the recognition that sexual violence is not merely incidental to war, but in fact an integral aspect of the conflict. For instance, the conceptualization of rape as genocide, and as a weapon of war, has taken on legal significance. At the International Criminal Justice tribunals in Rwanda and Yugoslavia rape has been prosecuted as a crime against humanity and genocide (Engle, 2007). Thus, the rise of international criminal law and its subsequent tribunals have been revered as effective mechanisms to prosecuting gendered acts of sexual violence that arise in the context of war, thus bringing attention to its victims (Engle, 2007). In this essay, through the judgments of the International Criminal Justice's (ICJ), I examine how its tribunals reflect an understanding of rape as an instrument of the genocide. I argue that the discourse of 'rape as a weapon of war', and the instrumentalization of sexual violence as being natural in an ethnic conflict, paradoxically makes the victims of violence largely invisible. In a sense, international law has reductionist logic in terms of what can be understood about the form of impact on the victims of gendered sexual violence, and its role in the

genocide. I demonstrate how ‘rape as a weapon of war’ renders both male and female victims of violence in war invisible.

When prosecuting gendered violence, the tribunal’s choice of recalling the “facts” of the account of sexual violence, of the victims, becomes about locating the violence as occurring in the realm of the larger inter-ethnic conflict. In this dominant narrative, of inter-ethnic conflict, men from one ethnic group are understood as subjecting women from another ethnic group to sexual abuse. The Rwandan genocide occurred over a period of three months, commencing on 6th April 1994, when the plane carrying Rwandan President Habyarimana was shot down, as it approached Kigali. The early events leading to the genocide began in 1990 when the Rwanda Patriotic Force (RPF), an army of expatriate Rwandans primarily of the Tutsi but also of the Hutu group, occupied Rwanda from Uganda. The consequential civil war continued throughout the early 1990s and became a significant “backdrop to the genocide” (Buss 147). The Rwandan genocide finished in July 1994 when government forces left the country and coerced more than a million Rwandan civilians to depart with them (Buss, 2009). In the hundred days of the genocide, an estimated 800,000 Rwandans, primarily Tutsi were massacred.

The United Nations Security Council in November 1994 created The International Criminal Tribunal of Rwanda, which was similar in function to the International Criminal Tribunal for Yugoslavia (ICTY). The tribunal was established Arusha, Tanzania to hold those individuals accountable who had organized and participated in the genocide, and thus were liable for engaging in a crime against humanity. The Rwandan Tribunal discovered that sexual violence was prevalent throughout Rwanda and “were committed with the specific intent to destroy, in whole or in part, a particular group” (Buss, 2009, p. 151), primarily the Tutsi ethnic group. Furthermore, the

tribunal stated the violence led to bodily and mental harm of women of Tutsi descent, their families and the Tutsi community as a whole. Hence rape was an essential tactic employed in this civil conflict and was targeted at Tutsi women, to ensure destruction of the Tutsi group (Buss, 2009)

Significantly then, the International Criminal Tribunal for Rwanda (ICTR) as a post-conflict mechanism can be seen as a site that utilizes a reductionist narrative for explaining women's experiences of armed conflict. In this narrative, sexual violence is understood as occurring because 'Hutu men who raped Tutsi women [did so] as a means to destroy the Tutsi community' (Buss 160).

Hence, as seen in the Rwanda Tribunal, at post-conflict trials the prosecution of rape becomes inherently connected to the larger context of violence: that is *rape as a crime against humanity or rape as genocide*. In other words, sexual assault in armed conflict, then, to be prosecuted under international law needs to be reflected as having occurred as "part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds" (Buss, 2009, p. 150). Rape as genocide requires that the act of rape was "committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group" (Buss, p. 150). Under both crimes, rape is "a crime against a collectivity" (Buss, p. 150). Hence, while rape as an offence in international law is recognized as constituting an "act of sexual violence against an individual", it largely becomes constructed as harm against humanity through the prevailing 'rape as genocide' discourse; here the physical harm is viewed as targeting a community (Buss, 2009, p. 150). In other words, the victim of sexual violence is re-categorized as a particular victim whose suffering denotes a communal narrative of pain (Buss, 2009).

For instance, the International Criminal Tribunal of Rwanda (ICTR) found Mikaeli Muhimana who was a counsellor in Kibuye, western Rwanda, guilty of partaking in and abetting rape as a crime against humanity. The Tribunal declared in its decision that the sexual violence occurred subsequently as a “discriminatory, widespread attack” against “a group of Tutsi civilians in Gishyita Commune, between the months of April and June 1994” (Buss, p. 150). Muhimana was convicted for having engaged in “acts of rape against women he believed were Tutsi” (Buss, 2009, p. 150). However, it is irrelevant whether the women Muhimana raped were actually Tutsi, what matters is that he engaged in sexual violence against them knowing the violence constituted a “widespread and systematic attack” (Buss, 2009, p. 150) on an identifiable ethnic group i.e. the Tutsi community. Hence the Tribunal found Muhimana “criminally liable for committing and abetting the rapes charged, as part of a widespread and systematic attack against a civilian population”, that is, a crime against humanity (Buss, p. 150). Furthermore, in the much praised first decision in *Akayesu*, the Tribunal found that rapes were widespread, the accused knew of and aided and abetted in the rapes, and hence they “were committed with the specific intent to destroy, in whole or in part, a particular group”, namely the Tutsi. The Tribunal held that the rapes led to the “physical and psychological destruction of Tutsi women, their families and their communities” (Buss, 2009, p. 151). The destruction of the Tutsi community was seen as occurring specifically through the sexual victimization of the Tutsi women (Buss, 2009).

Therefore, the Tribunal held that rape was used to commit the crime of genocide. The Rwanda Tribunal’s recognition that rape in the Rwandan Genocide “was a crime against humanity and/or an integral part of the genocide” resonates with several feminist theorists who reflect upon rape and other forms of wartime sexual violence “as instrumental to the larger conflict” (Buss,

2009, p. 151). Locating rape at the centre of the conflict—as an integral element of the violence—is an important effort which allows us to recognize that violence is indeed gendered in nature. However, without minimizing the impact of communal suffering as a result of sexual violence, it is imperative to examine how this inter-ethnic narrative of sexual violence conveys “a limited conception of harm and the complex dimensions of violence” (Buss, 2009, p. 151) rendering invisible the various conditions that expose women to violence, and the distinct ways they take to negotiate, resist and cope with sexual abuse and death.

Feminist scholarship and activism have effectively reflected the manner in which rape narratives have served as propaganda for constructing shifting conceptions of national self-identity. More significantly, feminists and legal feminists have long been aware of the impact of calling particular situation genocide-or at least ethnic cleansing or a mass human rights violation. Invoking such language allowed feminists, for instance Catherine MacKinnon, Susan Brownmiller and Beverly Allen, to draw attention to rape as part of the overall violence, targeting a community, and as a result signaled that international legal recognition and military intervention needed to be implemented to prosecute violations of women’s rights matter (MacKinnon, 1994) (Brownmiller, 1975) (Allen, 1996). Although these feminists were not primarily responsible for these interventions, they did play a crucial influence in advocating intervention for wartime sexual violence against women and thus for rape as genocide discourse. For instance, discussions regarding violence in Darfur showed how rape began to be spoken alongside and rather indistinctly from genocide to advocate for international criminal law intervention. The more rape was viewed as genocidal, the more those calling for international criminal law intervention invoked rape as a justification. However, speaking and framing of rape in this way frequently shifts the focus away

from the specific harm to women as a gender and instead serves to reflect the collective harm experienced in the Inter-ethnic conflict. (Engle, 2007). Despite the many visibilities of wartime sexual violence, violence against women in war continues to be generally invisible “as a matter of political and legal urgency” (Buss, 2009, p. 154). Below, I demonstrate there is a relationship between rape that becomes hyper- visible, and “rendered paradigmatic’, and rape and sexual violence that consequently becomes invisible (Buss, 2009, p. 154).

According to sociologist Avery Gordon, hyper-visibility is the phenomena that becomes the “persistent alibi for the mechanisms that render one *un-visible*” (Gordon, 1997). Hence hyper-visibility then acts as a smokescreen to obscure the very existence of un-visibility. Clearly, discussing wartime sexual violence as being hyper-visible might instantly seem controversial and rather peculiar, especially when given the fact the Rwanda Tribunal’s record on sexual violence reflects the strikingly low conviction rate for rape or sexual violence (Buss, 2009). While international law’s invocation of rape as a weapon for genocide and as a signifier of atrocity is well intended, such an emphasis is problematic as it as a ‘homogenising’ tendency to construct sexual violence as inevitable in war. Hence this homogenisation obscures the individual accounts of rape victims. The result is that while violence against women and gender inequality is made visible and treated seriously within international law, it is a partial visibility. Ultimately, women appear and function in these decisions to reinforce “borders of group identity” (Buss, *The Curious Visibility of Wartime Rape: Gender and Ethnicity in International Criminal Law*, 2007, p. 13). For instance, the *Furundzija* (1995) case was significant for being the “first war crimes prosecution in which rape and sexual assault was the single charge” (Campbell, 2002, p. 150), and thus provided the first definition of the elements of the crime of rape in international humanitarian law, reflecting

how a victim's experience of sexual violence can only find space if it is recalled in a way to reinforce the community-conflict narrative recognized by law (Campbell, 2002). The judgment in *Furundzija* affirmed that rape in armed conflict is a public wrong. Of course, normatively speaking, the acknowledgment of rape as not a crime against an individual, but rather a crime against humanity and hence a public wrong occurred because it constituted a violation "of universally accepted norms of international law" (Campbell, 2002, p. 155). This was essential in the *Furundzija* case because without this recognition the prosecution could not take place and there could no visibility of sexual assault in law.

However, it is important to observe the significant distinction between the social space in which the individual experience of violence occurs "and the contemporary space in which it is (or is not) recalled" (Campbell, 2002, p. 155). Hence, victims of wartime sexual violence, in order to have their experiences represented and recognized at trial, are expected to speak of the violence in a way that 'weaves' fact into a community's identity. In other words, a victim's individual memory becomes transformed in international law as "collective memory" (Campbell, 2002, p. 155). Consequently, "collective memory survives and individual memory can find a place [, otherwise] it vanishes from collective memory and the possibility for individual memory is severely strained" (Campbell, 2002, p. 155).

The individual narratives of victims become invisible partially because of the way crimes are defined and categorized in international law. Hence, the categorisation of war crimes under humanitarian law does not merely reflect and recognise the acts as having criminal intent, it offers a 'grammar of pain' (Buss, 2009, p. 155), i.e. a distinct and uniform language by which the tribunal can identify, and witnesses are permitted to testify to, their stories of violence. Consequently, this

categorisation of rape as a crime against humanity and as genocide, and the grammar of pain certain determine which types of narratives are recognized in court and which are excluded, and thus also which subjects are permitted to speak of the harms they have incurred (Buss, 2009).

In international law the communal narratives triumph over the individual narrative and memory of the victim becomes possible through the grammar of pain. This grammar of pain is inherently gendered and consequently provides rules and structures to assign people to positions within a script of violence. Through this script of violence, rape and sexual violence comes to be constructed as a material aspect of women's lives and thus are seen as being inevitable. The victimized female subject and her violator are situated in this script of violence and they subsequently emerge with their identities reconstructed to conform to the communal narrative of inter-ethnic conflict. Hence, in the script of violence created by the grammar of pain of international law, gender inequality becomes neutralized and women are then subjects who are 'inherently rapeable' (Marcus, 1992, p. 388). Thus, sexual violence is constructed as an instrument that 'one side' picks up and uses against the 'other side'. In the scripted communal narrative, rape follows from the very existence of conflicts understood as occurring between two polarised 'sides'. The prominence of the 'grammar of pain' and the violence script in international criminal law is reflected in the Rwandan Tribunal recognition of rape as an instrument of genocide. In this context, identities-males and females, Hutu and Tutsi groups- are placed into particular positions within the violent script and thus reconstructed through fixed and stable categories of victim and aggressor (Buss, 2009).

The Rwandan Tribunal's narrative of the rape script where Hutu men raped Tutsi women as a way to destroy the Tutsi community, while not inaccurate, provides an incomplete account of

the genocide and sexual violence. In the following discussion I reflect how difficulty arises in accepting this narrative when we begin to examine who are seen as victims and who aren't, how violence against women is rooted in pre-conflict sexual and gender relations, and the resistance victims of wartime sexual violence demonstrate (Buss, 2009). The judgment in the *Gacumbitsi* case depicts some of the dynamics involved in seeing wartime sexual violence through the communal narrative that focuses on the ethnic dimensions of a conflict. The former mayor of Rusumo in Eastern Rwanda Sylvestre Gacumbitsi was convicted for his contribution in orchestrating and participating in murder, rape, and extermination in the Rusumo commune during April, May and June 1994. Hence he was tried by the Rwandan Tribunal for genocide and crimes against humanity (Buss, 2007). This case reflects the reductionist logic inherent in international law's construction of wartime sexual violence. The logic is firstly reductionist in nature due to its preoccupation of fixed or stable categories of victim and aggressor. More significantly, because there is a greater distortion at work in judgments like *Gacumbitsi* as they are partially explained by the overemphasis on ethnic affiliation as the dominant narrative within which the events in Rwanda are understood, which silences the individual narrative and memory of the victim.

Individual Responsibility in International Law

It is the commonly held belief that international criminal law, with its emphasis on individual criminal responsibility, is the suitable solution and mechanism to provide justice for instances of mass violence. Hence, when international criminal trials take on instances of mass violence, they are first and foremost a mechanism for establishing *individual criminal responsibility* for that violence (more precisely, they determine responsibility for specific acts or omissions defined as constituting war crimes). In this context, one or more individuals are

apprehended for violating principles of international criminal law. The post-conflict criminal trial represents an “effort to fix individual responsibility for history’s violent march” (Krever, 2013). Hence, the focus on individual criminal responsibility is widely understood not as a limitation of international criminal law, but as a key strength. However, as I reflect below, when contextualized, the doctrine of individual criminal responsibility contributes to rendering violence invisible (Krever, 2013, p. 712).

Previously, perpetrators of mass violence could use the notion of state sovereignty as a justification for their actions. Sovereignty as a legal concept allowed state leaders, under the principle of self-determination to govern their state in a manner they thought best, without any international or political interference. However, such sovereignty of states has become *qualified* with the emergence of the “the new universalized rule of law” (Krever, 2013, p. 712) which is meant to regulate the actions of those state leaders who use their power to violate established international norms, regardless of whether or not they have chosen to adhere to such norms by formally becoming a member to an international law treaty. Thus this “universalized rule of law” represents “a moral conquest over the sovereign indifference of cold leviathans” (Krever, 2013, p. 712)

In the *Gacumbitsi* case, the Tribunal considered charges relating both to the defendant's role as an authority figure organizing murder, rape, and genocide, and his own role in individual acts of rape and murder. A critical aspect of the evidence was a speech the defendant gave on 17 April 1994, in which he encouraged “the men of Rusumo to have sex with Tutsi ‘girls’ and, should the women refuse, to kill them ‘in an atrocious manner’” (Buss, *The Curious Visibility of Wartime Rape: Gender and Ethnicity in International Criminal Law*, p. 13). There were two distinct

difficulties that arose for the Tribunal in *Gacumbitsi* that need to be reflected upon. The first difficulty concerned his role for the rapes that occurred around the time of his speech; however, the Tribunal in Rwanda was unable to find complete evidence to convict him on the basis of such charges. These charges involved the rapes of witnesses ‘TAO’, ‘TAS’, ‘TAP’ and ‘TAP's mother’ (Buss, *The Curious Visibility of Wartime Rape: Gender and Ethnicity in International Criminal Law*, 2007, p. 13). The defendant Gacumbitsi was eventually acquitted for the said charges. He was found not responsible for the rape of these witnesses, because there was a lack of evidence linking his speech to the sexual violence; the prosecution could not establish a co-relation between the defendant's specific acts of encouragement on 17th April 1994 and the rapes of these women, all of which occurred near mid-April” (Buss, 2007). However, the tribunal did find that rapes of other women and girls did occur due to his speech as they occurred immediately after his “utterances” (Buss, *The Curious Visibility of Wartime Rape: Gender and Ethnicity in International Criminal Law*, 2007, p. 14).

The second difficulty, which is also difficult to reconcile, in this decision concerns one of above mentioned witness; ‘TAS’ who was actually a Hutu woman but was married to a Tutsi man. In her testimony she reported she was raped by two Hutu men while attempting to find a place to hide. One of her attackers stated that the defendant had given them orders to engage in sexual violence only against Tutsi women and girls, and that nothing had been decided regarding Hutu women married to Tutsi men. Yet these two men raped ‘TAS’ anyway. The ethnicity of ‘TAS’ becomes important here. Given she was of Hutu descent and not officially part of the Tutsi population; this challenged and disrupted the static and stable categories of rape that ‘one side’

picks up to attack another (Buss, *The Curious Visibility of Wartime Rape: Gender and Ethnicity in International Criminal Law*, 2007).

In order to prove a crime against humanity, the prosecutor in *Gacumbitisi* was required not only provide of evidence of the rape, but also that the rape of ‘TAS’ occurred as a result of an attack against the Tutsi community, even despite the fact it was known to the tribunal she was of the Hutu ethnic group (Buss, *The Curious Visibility of Wartime Rape: Gender and Ethnicity in International Criminal Law*, 2007). To counter this challenge to the inter-ethnic conflict narrative, fixated on collective memory, the tribunal ruled that “through the woman, it was her husband, a Tutsi civilian, who was the target” (Buss, *The Curious Visibility of Wartime Rape: Gender and Ethnicity in International Criminal Law*, 2007, p. 14). Thus, in a sense, to prevent her unique narrative from disrupting the dominant narrative present in the rape as genocide discourse, her rape was not recognized in the manner feminist sociologists have traditionally understood and made clear its nature i.e. a crime of power by men to dominate women and thus a crime embodying patriarchy. In such a conceptualization of rape the victim would be *allowed* to remain the subject of the abuse, however in *Gacumbitisi* ‘TAS’s’ was reconstructed “as a crime not against her person, but against her husband’s” (Buss, *The Curious Visibility of Wartime Rape: Gender and Ethnicity in International Criminal Law*, 2007, p. 14).

Essentially, the Tribunal held that the rapes of witness TAS and the three other victims did occur, but were part of a widespread attack meant to destroy the Tutsi community. It ruled that *Gacumbitisi* was not “specifically responsible for causing these rapes” (Buss, *The Curious Visibility of Wartime Rape: Gender and Ethnicity in International Criminal Law*, 2007, p. 14). The decision in this case reflects the complexities that arise when wartime sexual violence is only

examined through the inter-ethnic conflict narrative. Thus, while sexual violence was discussed by the Tribunal, systemic inequality of women remains invisible. This is because the doctrine of individual criminal responsibility prevents International Criminal law from recognizing the victimization of women due to its preoccupation with fixed categories of specific crimes and individual criminal responsibility (Krever, 2013). Clearly such a reductive understanding of violence is predictable within the world of the law, as it is primarily concerned with categories (Buss, 2007).

Besides calling upon Hutu men to rape Tutsi girls, *Gacumbitsi* went further to specify that young Hutu men should be encouraged to rape “girls [who] had refused to marry [them]” (Buss, *The Curious Visibility of Wartime Rape: Gender and Ethnicity in International Criminal Law*, 2007, p. 16). While the tribunal in its decision in *Gacumbitsi* does recount the evidence of several raped women and girls whose attackers specifically stated that the rapes were motivated by revenge for the women's refusal to marry the men, the tribunal's decision fails to address and acknowledge marriage and rape as a type of revenge against Tutsi women. Such a discussion of what marriage meant for both the victims and aggressors serves as a crucial insight into the sexual economy in Rwanda which contributed to the conditions for the genocide that took place. But the tribunal's focus on framing the violence through the lens of ethnic conflict allows the existence of this sexual economy to go largely unnoticed, and hence rendered invisible (Buss, 2007).

In the sexual economy that paralleled the ethnic stratification in Rwanda, Tutsi women, at least symbolically, were idolized and highly sexualized. Tutsi women constituted social capital for Hutu men (Buss, 2007). Therefore, Tutsi women's sexuality was central in the political propaganda used to build up and commence the Rwandan genocide. Constructed images of

dishonest and cunning Tutsi women were used to belittle the Tutsi group and subsequently to convince the Hutu group that the Tutsi were on the verge of conquering and killing them (Buss, 2007). Furthermore, the Rwandan tribunal's decisions are full of descriptions about the extreme gendered violence and torture that took place primarily against Tutsi women during the genocide. However, it is important to discuss that Hutu women were also raped and not merely because of their allegiance or sympathy with the Tutsi population or because they had married Tutsi men (Buss, 2007). Legal Studies scholar Doris E. Buss states that sexual violence against women in Rwanda needs to be understood, to an extent, in the context of men gaining ownership of property and assets (Buss, *The Curious Visibility of Wartime Rape: Gender and Ethnicity in International Criminal Law*, 2007). Buss reflects that in Rwanda rapes were constructed as "marriages"; one of the key purposes of this was to gain access to assets that women possessed, including land and farming. This violence against women, under the veneer of "marriages" and other coercions to gain access to women's assets, continued to occur after the Rwandan genocide had ended. However, there is little or no space at all in the inter-ethnic narrative, where one side picks up 'rape as a weapon' to attack the other side, to include a recognition of the role of the sexual and gendered economy that facilitated and marked the genocide (Buss, 2009). While the Rwanda Tribunals' decisions recognize, to an extent, that the political propaganda leading up to the genocide exposed Tutsi women to particular violence, there is a lack of examination of the various ways in which gender complicated and intersected with ethnicity to create the circumstances under which particular forms of violence were enacted (Buss, 2009).

Besides a lack of understanding of the sexual economy that was crucial in the build-up to the genocide, it is also important to examine how the resistance of victims in wartime violence

becomes downplayed in the inter-ethnic conflict narrative and the discourse of rape as a weapon of war. The identities of victims of violence, and the distinct ways in which they negotiate with and resist violence during war, is reflected in the story of Beatrice, a genocide survivor, who narrated her experience to journalist Lindsey Hilsum (Pottier, 2002). Beatrice and her daughter and son, aged 10 and 6, were Tutsi, living in the Muslim area of Kigali, since they had recently converted to Islam. Beatrice's parents were from Zaire, the current Democratic Republic of the Congo (DRC) and hence she had a Zairean identity card. Along with a neighbour, a Tutsi woman named Laetitia (a pseudonym) and her baby, Beatrice and her children fled Kigali in the early days of the genocide. As they made their way to Rwanda's south-western border, they were repeatedly harassed at check points and made to show their identity cards. To protect her, Beatrice altered Laetitia's card to identify her as Hutu, but Laetitia was still raped at check stops. Because Beatrice had a Zairean identity card she was often let go and not subjected to violence, but nonetheless had to pay substantial sums of bribery money from the finances she had been allocated by her family. However, the neighbour Laetitia and her child were not that fortunate. And while Beatrice attempted to protect Laetitia from violence through the funds she possessed, Laetitia was repeatedly raped. Furthermore, Beatrice's daughter was extremely vulnerable at check points because she apparently had features that made her look like she was of Tutsi descent. As a result, Beatrice asked her friend Mamma Naima to take the son and daughter as her own. Thus, Beatrice parted company with her children and joined them later again in Cyangugu (Pottier, 2002).

Beatrice and her children survived the Rwandan genocide and the interviews she gave were done from Bujumbura, Burundi. Beatrice's story demonstrates the limitation in talking about wartime sexual gendered violence through the lens of the grammar of pain in which sexual

violence (as a legally recognized harm) occurs from the very existence of conflicts taking place between two polarized sides. In this sense, we can understand how Beatrice's narrative of how she negotiated the risk of violence and being violated disrupts the construction of the violence script utilized in international law to frame ethnic identities as always being fixed and stable. Beatrice's story emphasizes the significance of various other aspects of social position that influence, together with ethnic identity, an individual's vulnerability to violence (Pottier, 2002).

Beatrice's narrative clearly demonstrates that individuals targeted for attack are likely to have been victimized for multiple reasons, rather than merely their ethnic affiliation. Hence, Beatrice's experience of the genocide was determined by several factors, including who she was and what resources she had available. Because she was recognized as being Zairean, she was not limited to the Tutsi category and this gave her a degree of protection from violence. Furthermore, when she fled and was stopped at checkpoints, she belonged to a Muslim community in a predominantly Christian country. She was resourceful in terms of her finances and friends, and she was helped by Hutu friends and strangers. While at the time she managed to resist the violence, as evident from her narrative, however she also suffered greatly and died in 1998 (Pottier, 2002). However, what I have meant to emphasise in my discussion above is that Beatrice's narrative is an example of a victim of wartime violence who cannot simply be categorized into the stable and unchanging category of the "Tutsi" victimized subject of the Rwandan tribunal. Her Zairean nationality was more significant in her interaction with some of her potential attackers. Furthermore, another aspect of her identity was being Muslim which allowed her to form and maintain vital links with friends and neighbours that were crucial to her survival and the steps she took to minimize the risk to herself and her children (Pottier, 2002).

The purpose of this preceding discussion has been to demonstrate that international law's overt focus on the instrumentalization of rape, or as weapon during wartime that one side utilizes to eliminate and conquer the other, renders the narratives of women invisible. While the persistent recognition of rape as an instrument of the genocide may rightfully so act as signifier of atrocity, it simultaneously works to obscure the individual accounts of sexual violence as well as who is considered to fit the victim category. In this part of my essay, I discuss gendered assumptions regarding wartime violence in international law.

Sexual violence in wartime has been typically understood as an issue affecting women. Even those authors who admit that men are also raped often discuss it in a manner that minimizes its importance: "Yes, men do get raped, but it is usually by other men and it happens less frequently than is the case for women," claims Sara Sharatt (1999, p. 80), speaking on the Foca Indictment at the International Criminal Tribunal for the former Yugoslavia. Similarly, a report from the Liu Institute claims -without reference to systematic data- that, while men may be more likely to be killed than women, women are *far* more vulnerable to sexual violence (Liu-Institute, 2005) R. Charli Carpenter, in interviews he carried out with humanitarians from 2001 to 2003, was often told that women comprised the vast majority of rape victims, but these same practitioners told him they were unaware of any data collected that assessed the extent of men's vulnerability to sexual assault (Carpenter, 2006). Despite the tendency to treat sexual violence as a war crime whose victims are only female subjects, "men and boys have historically been and continue to be targeted for sexual violence in particular and gender-specific ways that deserve the attention of the human rights community" (Carpenter, 2006). In my discussion here, I aim to draw

attention to how men are rendered invisible as victims of gendered and sexual violence by international criminal law.

According to Carpenter, the predominant types of sexual violence against men and older boys include a combination of rape and sexual mutilation. The ritual castration of male prisoners and enslavement of adolescent boys along with women for sexual purposes has historically been a prevalent feature of warfare (Carpenter, 2006). The ideological basis of these acts of violence is reflected in how these acts are physically and symbolically meant to deprive these males of their self-concept as men and to ‘feminize’ them; this is achieved through rape which is seen as the ultimate way to eliminate a male’s dignity as a man and through castration as way to deprive him of his manhood (Carpenter, 2006).

During times of armed conflict, together with other forms of torture, crimes against the bodily integrity of men are widespread in detention settings. Carpenter discusses several cases of sexual assault against men during the war in Bosnia and Herzegovina, chiefly in detention camps, and these acts included castration, circumcision and other forms of sexual mutilation; in many cases, prisoners were coerced to engage in sexual acts with the guards or with other prisoners, and forced into torturing and mutilating other male prisoners. One scenario involved prisoners being lined up naked while Serb women from outside undressed in front of them; if any prisoner had an erection, they would be castrated; another ex-detainee told of suffering electric shocks as punishment for experiencing arousal (Carpenter, 2006). Besides being subjected to such humiliation and mutilation, men are likely to be “raped anally in detention or forced to sexually service male guards” (Carpenter, 2006, p. 95).

International law has failed to recognize sexual and gendered violence against men as constituting sexual violence during wartime and armed conflict. For instance, although sexual mutilation of men was reported in the context of the Bosnian concentration camps, it has not been prosecuted as rape or sexual violence at the Hague tribunal, instead merely seen as ‘torture’ or ‘degrading treatment’ with no acknowledgment of the inherent gendered nature of the violence meant to explicitly target the bodily integrity and self-concept of the men victimized (Carpenter, 2006). The invisibility of men as victims of sexual violence largely results from International Law’s script of violence. This script provides the content of the dominant wartime narrative which is spoken through a “*gendered* grammar of violence” (Marcus, 1992, p. 392). Ultimately, through the gendered grammar of violence that emerges in the prosecution of war crimes, gender and gendered violence become “synonymous only with women” (Carpenter, 2006). Hence, through the script of violence, men and women are constructed as stable a category which reifies an “essentialized notion of women as victims and men as perpetrators” (Carpenter, 2006, p. 99).

This essentializing notion in international law is largely rooted in assumptions about male wartime roles. These gendered assumptions impact both how the identities of men and women are constructed in the decisions of the tribunals. For example, while clearly there is no doubt what happened in Srebrenica in Bosnia is constituted as genocide; in the *Krstic* decision the Tribunal instills a problematic understanding of gender in order to determine its ruling. In this decision gender emerges as a “static, almost self-evident” category. In the Prosecutor’s analysis, women are constructed as merely being the biological reproducers and as signifiers of the patriarchal aspects of their community, as opposed to being individuals with agency. The fixed category of men as perpetrators in war, and thus outside the realm of the civilian population, which includes

women and children, emerged as a result of their mass recruitment in the army in the early modern period. As a result, since military institutions became male-dominated, the image of the ‘able-bodied adult male’ arose in the public perception and in the militarized state (Carpenter, 2006). Hence, gender hierarchy and relations came to be constructed through the allocation of power to weapon-bearing men as the guardians of frail and feeble women, who required their protection (Carpenter, 2006). This gender hierarchy continues to force men into military service through actual and threatened physical violence. And thus “masculinized military institutions” in turn reinforce gender hierarchies, as women are excluded from the bearing of arms, and as disproportionate number of male soldiers generate the image of a “masculinized nation-at-arms” voluntarily ready (rather than coerced) to fight (Carpenter, 2006). Consequently, this hierarchical order of gender relations infiltrates into international law, which then locates them in the category of the perpetrator of violence. Hence, due to international law’s preoccupation with categories, the identities of men and women are essentialized; the former are constituted as inherently being aggressive and prone to violence and the latter are constituted as being defenseless, perpetual victims and ‘inherently rapeable’ (Marcus, 1992, p. 388).

One of the most convincing examples of International law’s essentializing process of fixed gender identities in wartime, is the gendered way the concept of the ‘civilian’ has been constructed in international law. Because international’s law recognizes men solely as aggressors, in conflict situations it consequently makes them appear, in a sense, existing outside the civilian population. This in turn leads to the perception that men of an ethnic and/or age demographic are always potential threats. Consequently, then, this perception encourages sex-selective patterns of atrocity against even those men who manage to remain in the civilian sector, and resist fighting. This

transpires when codified laws requiring belligerents to distinguish between combatants and civilian on the basis of a person's actual participation in war are, in fact, interpreted according to the use of sex as a means to recognize the enemy (Carpenter, 2006). Evidently, then, gendered assumptions about wartime roles explain this tendency in conflict zones, and continue to be reinforced by international law in post-conflict trials where men are only recognized as perpetrators, thus rendering violence against men, which includes sexual violence and sex-selective massacre, invisible.

International Law's construction of violence as primarily "the product of an inter-ethnic conflict" fails to consider how it is influenced by other social, political and economic structures. For instance, in the Rwanda Tribunal's decision "all sexual violence is reduced to the equation of 'Hutu men who raped Tutsi women as a means to destroy the Tutsi community'" (Buss, 2009, p. 160). Hence the Tribunal's decision frames the violence against women occurring primarily as a way to eliminate an ethnic group; the Tutsi community. However, as observed by anthropologist Jennie Burnet, it is more so men, and thus not women, who are seen to embody ethnicity (Burnet, 2009). Hence, destroying an ethnic group often is seen achievable through the elimination of its male members, while women can be appropriated into the ethnic identity of the attacking group. While I recognize that this observation only is relevant to cases where target groups were defined according to ethnicity, it does hold relevance in such contexts as the Rwandan Genocide. In Rwanda, Hutu attackers took some Tutsi women as their wives, after their husbands and children had been killed (Carpenter, 2006). Furthermore, according to a 1995 African Rights Report, Hutu sympathisers convinced the Hutu attackers to spare women because they did not denote ethnicity; 'the bad ones were men' and female survivors reported being told they were safe because 'sex has

no ethnic group' (African-Rights, 1995a). While I do not dispute that women were severely victimized which reflected a shared pattern of sexual violence, the possibility that men would have also been targeted to eliminate a community disrupts International law's reduction of the Rwandan Genocide as primarily Hutu men who harmed Tutsi women.

Wartime sexual violence "is treated as relatively uniform in practice and experience" (Buss, 2009, p. 155) due to fixed and stable constructions of gender identity i.e. aggressor (men) and victim (women). This focus on shared patterns of violence, against women or women of a distinct ethnic group by men, provides the content of the communal narrative and subsequently renders the inconsistencies and exceptions to this very narrative, which are present in the memory of victims, largely invisible (Buss, 2009). Furthermore, this pre-occupation with fixed gender identities also determines who gets to be recognized as a victim of wartime violence. Particularly female victims must find space within the role of the 'inherent rapeable' subject who is vulnerable to violence during wartime and male victims are unlikely to have their narrative of sexual violence recognized as *gendered* violence, in International law.

This clearly has been the case with Beatrice's *own* narrative of violence as a female victim, mentioned previously in this essay; the resources and connections she had influenced her survival, also it is possible that she was able to resist violence, possibly because the Hutu attackers might have seen as her not representing ethnicity (Pottier, 2002). The fact that some Tutsi women were taken as 'wives', while still an indication they were sexually violated and treated as claimed property by Hutu men, provides us with insights about the pre-existing sexual economy in Rwanda where Tutsi women as mistresses were recognized as social capital (Buss, *The Curious Visibility of Wartime Rape: Gender and Ethnicity in International Criminal Law*, 2007). Gaining access to

women's bodies through "marriage" also allowed men access to the assets they owned including land and farming. Yet, in the inter-ethnic narrative in which victims are located, and where sexual violence is spoken of through an almost dictated rape script; where one side picks up 'rape as a weapon' to attack the other side (Buss, 2009), there is no room to include the context of the sexual-gendered economy that was crucial to the momentum the genocide took in Rwanda. Paradoxically, the hyper-visibility of wartime sexual violence through the inter-ethnic conflict narrative renders invisible - or at least invisible a significant factor of - women's systemic inequality.

The rigid focus on the generalised pattern of rape can lead to an essentializing narrative in which wartime sexual violence is treated as seemingly inevitable. An alternative approach to treating gendered violence as relatively similar with fixed gender identities, as dictated by the rape script in International law, can be found by examining the unique narratives of victims. Beatrice's story allows us to explore the various circumstances that exposed her to violence and the brave steps she took to resist rape and death (Buss, 2009). It is at this level of detail, with all the inconsistencies and complexities revealed, that it becomes possible to imagine a situation where women are not seen as 'inherently rapeable' (Marcus, 1992, p. 388) beings but as individuals who have resilience and thus negotiate, interact, and resist the systemic inequality they live with and the sexual economy they are part of (Buss, 2007). Furthermore, in post-conflict trials when women are seen as "always raped", all men are only recognized as perpetrators, and instances involving men as victims of rape, sexual mutilation, and mass killings are not recognized under gendered violence, despite the sex-selective nature of these acts (Carpenter, 2006).

International law embodies reductionist logic in terms of what can be spoken and understood about the impact on the victims of gendered sexual violence, and its role in the

genocide. Rape as a ‘weapon of war’ renders both male and female victims of violence in war invisible, as it depicts violence “exclusively as the product of an inter-ethnic conflict rather than considering how other social political and economic structures shaped the violence and genocide” (Buss, 2009, p. 160). Pinpointing rape at the centre of the conflict—as an integral element of the violence—is an important effort which allows us to recognize that violence is indeed gendered in nature. However, without minimizing the impact of communal suffering as a result of sexual violence, it is essential to observe how this inter-ethnic narrative of sexual violence conveys a partial account of the violence. Hence, in international law the communal narrative’s triumph over the individual narrative and memory of the victim becomes possible through ‘the grammar of pain’. This grammar of pain is inherently gendered and consequently provides rules and structures to assign people to positions within a script of violence. Furthermore, when wartime sexual violence “is treated as relatively uniform in practice and experience” (Buss, 2009, p. 155), the focus on shared patterns of violence provides the content of the collective memory of suffering, which renders exceptions and variances found in the narratives of individual men and women invisible (Buss, 2009).

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