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Rape as Genocide: Bangladesh, the Former Yugoslavia, and Rwanda¹

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Abstract *According to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, causing serious bodily or mental harm to members of an ethnic, national, or religious group and/or "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part" constitute genocide. Rape certainly may cause serious physical and/or mental injury to the survivor, and also may destroy the morale of her family and ethnic community. However, this Convention does not explicitly state that sexual violence is a crime of genocide. The Convention should be expanded to include mass rape, regardless of whether the victims are raped on the basis of racial/ethnic, national, or religious identity.*

Many use the term "genocide" to mean the extinction, or attempted extinction, of an ethnic or religious group. Rape, even if it does not kill the victim, may fall under the category of crimes of genocide.² According to the 1948 *Convention on the Prevention and Punishment of the Crime of Genocide* (hereinafter "the Genocide Convention"), "causing serious bodily or mental harm to members of the group" and/or "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part" constitute genocide.³ Rape certainly may cause serious physical and/or mental injury to the survivor, and also may destroy the morale of her family and ethnic community. However, the

¹ Portions of this article appear in modified form in a paper presented at the 1999 meeting of the Association of Genocide Scholars and in *Sexual Violence as a Political Weapon: The State and Rape* (Lynne Rienner, forthcoming). The Institute on Global Conflict and Cooperation and the University of California, Davis Pro Femina Research Consortium funded this research, and Drs. Donald Rothchild, Miroslav Nincic, Nayda Terkildsen, Jeannette Money, and Scott Gartner directed it. I am grateful to Lesley Mandros Bell, Matthew Hoddie, and Howard Sharlach for their feedback.

² I use "rape" to mean sexual penetration of a female by a male that takes place against her will. There is not a commonly accepted definition of rape in international law. The International Criminal Tribunal for Rwanda provides the following definition: "The Tribunal defines rape as a physical invasion of a sexual nature, committed on a person under circumstances which are coercive. The Tribunal considers sexual violence, which includes rape, as any act of a sexual nature which is committed on a person under circumstances which are coercive. Sexual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact" (*The Prosecutor versus Jean-Paul Akayesu*, Case No. ICTR-96-4-T, September 2, 1998, Count 12). Object rape, same-sex rape, or rape perpetrated by a female against a male are less common forms of rape that are beyond the scope of this essay.

³ Article II, sections b and c, of the *Convention on the Prevention and Punishment of the Crime of Genocide*, December 9, 1948.

Genocide Convention does not explicitly state that sexual violence is a crime of genocide. The Genocide Convention should be expanded to include mass rape, regardless of whether the victims are raped on the basis of racial/ethnic, national, or religious identity. Intent to destroy people on the basis of sex should, in my analysis, merit the same status under international law as the intent to destroy people on the basis of ethnicity, nation, and religion.

East Pakistan's secession, the wars in Bosnia–Herzegovina, Croatia and Kosovo against Serbia, and the 1994 civil war in Rwanda indicate that rape may be an instrument of genocide. In all three regions, soldiers or militia used rape as a tactic to cause either death or psychological and physical harm to women and girls. Rape may even be a shrewder military tactic than murder because rape is difficult to prove, there is no corpse left as evidence, and war crimes tribunals and domestic courts seldom prosecute soldiers for rape. Moreover, it is unlikely that women who have been raped will admit it, much less file charges, because of the stigma that tends to be associated with rape. The shame and the silence surrounding sexual violence make investigation of the political uses of rape difficult. Armies and governments never admit that they have encouraged rape, and the unwillingness of the victims to report the crime makes it impossible to ascertain with certainty the extent of a campaign of rape.

Bangladesh, the former Yugoslavia, and Rwanda are not representative of all instances in which men have used rape as genocide. Nevertheless, one may conclude on the basis of these three cases that rape as genocide appears to occur to ethnic groups that strongly stigmatize rape survivors rather than rapists. In such communities, women in their roles as mothers of the nation and as transmitters of culture symbolize the honor of the ethnic group. When a woman's honor is tarnished through rape, the ethnic group is also dishonored. To restore its honor, the ethnic group may ostracize or expel the raped girl or woman. The rape survivor's victimization continues long after the initial sexual assault. Post-rape trauma is compounded by "the second rape" of becoming a pariah in one's own society and even one's own family.

There are several reasons why recognizing that rape is a form of genocide is important. First, only within the last decade have many begun to treat rape as a human rights violation, and courts have the power to help to shape public opinion on this matter. Before women's emancipation in Western societies, judges perceived rape not as a crime against the woman or girl herself, but rather against the man, whether father or husband, to whom she belonged. Women are no longer chattel in most Western polities, but perceptions linger that rape is a husband's property damage, rather than a woman's human rights violation.⁴ Second, an awareness of the extent to which sexual violence is used as genocide may alert those who work with female survivors to listen for clues that a woman or girl has been sexually violated and provide treatment accordingly. Third, an analysis of genocide that ignores the sexual forms that affect women and girls also ignores the full extent of the humiliation of the ethnic group through the rape of its women, the symbols of honor and vessels of culture.

⁴ Claudia Card, "Rape as a Terrorist Institution," in R. G. Frey and Christopher W. Morris (eds), *Violence, Terrorism, and Justice* (Cambridge: Cambridge University Press, 1991), p. 303.

Review of the Literature on Rape as Genocide

Rape leaves lasting, perhaps irreversible, psychological trauma upon a girl or woman. Mass rape during ethnic conflict results in mass trauma and as such is a form of destruction of an ethnic group. The symptoms and the extent of post-rape trauma vary among individuals and among cultures. Writing of Rwanda, for example, the UN Special Rapporteur on Violence against Women, Radhika Coomaraswamy, details the common psychological aftermath of rape: trauma; sexual apathy or promiscuity; substance abuse; depression; psychosomatic ailments; anger; loss of sense of womanhood; and confusion about one's identity.⁵ The physiological and psychological complications of rape, that rape survivors become social outcasts in Rwanda, and the destitution of those survivors widowed, orphaned, or abandoned, led many Rwandan rape survivors to tell investigators that death would have been a preferable fate.⁶ The devastation that follows rape makes it a particularly effective tool of genocide because it destroys the morale of a woman, her family, and perhaps her entire community.

Jurist Raphael Lemkin in 1944 coined the term "genocide" to refer to the destruction of a national or ethnic group. The writers of the UN Genocide Convention in the late 1940s debated whether the term "genocide" should apply to mass killings of people on the basis of political identity.⁷ The final definition, which follows, does not encompass crimes against political groups:

Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children of the group to another group.⁸

Pieter Drost, a Dutch professor of law, in 1959 argued that the omission of groups formed on the basis of political affiliation from the Convention might permit states to exploit this loophole. In the last 15 years, many academics and human rights advocates have demanded the inclusion of social and political groups in the Convention's definition of genocide so as to facilitate prosecution of violent crimes against members of such groups.⁹ The expansion of the

⁵ United Nations High Commission on Human Rights, February, 1998, "Fundamental Freedoms: Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, Ms. Radhika Coomaraswamy: Addendum Report of the Mission to Rwanda on the Issues of Violence against Women in Situations of Armed Conflict," UN ECOSOC E/CN.4/1998/54/Add.1, at: < <http://www.unhchr.ch/html/menu4/chrrep/98chr54a1.htm> > .

⁶ Nowrojee, *Shattered Lives*, pp. 49–59.

⁷ Ervin Staub, *The Roots of Evil: The Origins of Genocide and Other Group Violence* (Cambridge: Cambridge University Press, 1989), pp. 7–8.

⁸ *Convention on the Prevention and Punishment of the Crime of Genocide*, Article II.

⁹ Frank Chalk, "Redefining Genocide," in George Andreopoulos (ed.), *Genocide: Conceptual and Historical Dimensions* (Philadelphia: University of Pennsylvania Press, 1994), pp. 48–53.

Convention's mandate to encompass social groups might permit international criminal courts to deem mass rape to be genocide, intended to harm or destroy the female sex in whole or in part, regardless of whether the sexual violence had an ethnically or racially based motivation.

Helen Fein believes that one shortcoming of the Convention is the ambiguity of the meaning of intention to destroy. Fein notes that the distinctions between genocide, terror, mass killings, and war crimes are not always clear.¹⁰ Her own definition lists the following conditions as necessary to establish genocide:

1. there was a sustained attack on continuity of attacks by the perpetrator to physically destroy group members;
2. the perpetrator was a collective or organized actor (usually the state) or commander of organized actors;
3. the victims were selected because they were members of the collectivity;
4. the victims were defenseless or were killed regardless of whether they surrendered or resisted; and
5. the destruction of group members was undertaken with intent to kill and murder was sanctioned by the perpetrator.¹¹

All of the definitions of genocide presented here are gender-neutral. None treat crimes against men or crimes against women separately. Yet genocide has gender-specific effects. Girls and women are far more likely than are men to be the targets of sexual violence used as a component of genocide, but it is rare that analysts perceive rape to be a component of genocide.

The media coverage of the rapes that accompanied the Serbian "ethnic cleansing" in the early 1990s sparked analysis of the use of rape as genocide. Professor of law Catherine MacKinnon insists that the rapes in Bosnia-Herzegovina and Croatia were a simultaneous expression of misogyny and genocide.¹² She describes rape as a method of extermination:

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. It is rape as genocide.¹³

Siobhan Fisher, writing of the Serbs' rape-until-pregnant campaign against Muslim and ethnically Croatian females in Bosnia-Herzegovina, argues that forced impregnation, not rape *per se*, constitutes genocide. "Repeated rape alone is still 'just' rape, but rape with the intent to impregnate is something more."¹⁴ Forcing females of a targeted ethnic group to conceive is genocidal because those

¹⁰ Helen Fein, "Genocide, Terror, Life Integrity, and War Crimes: The Case for Discrimination," in George Andreopoulos (ed.), *Genocide: Conceptual and Historical Dimensions* (Philadelphia: University of Pennsylvania Press, 1994), pp. 96–98. Fein explores the use of rape as genocide in "Genocide and Gender: The Uses of Women and Group Destiny," *Journal of Genocide Research* 1:1 (1999), pp. 43–63.

¹¹ Fein, "Genocide, Terror, Life Integrity, and War Crimes," p. 97.

¹² Katherine A. MacKinnon, "Rape, Genocide, and Women's Human Rights," *Harvard Women's Law Journal* 17 (1994), pp. 8–9.

¹³ *Ibid.*, pp. 11–12.

¹⁴ Siobhan K. Fisher, "Occupation of the Womb: Forced Impregnation as Genocide," *Duke Law Journal* 46 (1996), p. 125.

so impregnated cannot carry the babies of men of their own ethnic group while their wombs are so “occupied.”¹⁵ However, Fisher’s claim that it is coerced impregnation rather than coerced penetration that constitutes genocide is unnecessarily limited. Whether rape is genocide need not rest upon whether the survivors become pregnant.

Rape may indeed constitute genocide regardless of whether conception resulted, as the International Criminal Tribunal for Rwanda (ICTR) ruled in 1998. In a precedent-setting case, the ICTR found Jean-Paul Akayesu, the former mayor of Taba Commune, guilty of a number of crimes of genocide, including rape:

The Tribunal has established that a widespread and systematic attack against the civilian ethnic population of Tutsis took place in Taba, and more generally in Rwanda, between April 7 and the end of June, 1994. The Tribunal finds that the rape and other inhumane acts which took place on or near the bureau communal premises of Taba were committed as part of this attack.¹⁶

Note that the ICTR’s decision that I cite here sidesteps the issue of forced impregnation. Rape not meant to result in pregnancy and rape of females too young, too old, or unable to reproduce may both be encompassed under the legal definition of genocide because they represent the enemy’s intent to destroy. Forced impregnation through rape is but one manifestation of rape as genocide.¹⁷

Feminist lawyer Rhonda Copelon registers a different complaint against the establishment of a separate category of genocidal rape. Rape harms a woman whether or not it takes place in the midst of genocide. Copelon fears that when courts treat rape during genocide specially, they are in effect indicating that rape that does not take place during genocide is not a crime of equal magnitude. Violence against members of a religious or ethnic group is a crime against humanity. Why, she asks, should violence against women not be sufficient to constitute a crime against humanity?¹⁸

Perhaps one day feminist lawyers will agitate for the definition of genocide itself to be expanded to include the intent to destroy, in whole or in part, the female sex. It could be argued that mass rape constitutes genocide *regardless* of whether the rapists targeted women on the basis of religious, national, or ethnic affiliation. Widespread crimes against men and women on the basis of ethnic, religious, or national affiliation are known as genocide, and as such under international law are a more grave matter than widespread crimes against women on the basis of sex. International law, which has been shaped almost exclusively by men, grants more importance to the categories of ethnicity, nation, and religion than to sex. Genocide is the attempt to destroy a people, and

¹⁵ *Ibid.*, p. 93.

¹⁶ *The Prosecutor versus Jean-Paul Akayesu*, Case No. ICTR-96-4-T, September 2, 1998, Count 12.

¹⁷ For an examination of whether rape constitutes genocide against the children conceived by such rape, see Robyn Carpenter, “Surfacing Children: Limitations of Genocidal Rape Discourse,” paper presented to the Association of Genocide Scholars Conference, June 13–15, 1999.

¹⁸ Rhonda Copelon, “Women and War Crimes,” *St. John’s Law Review* 69:1–2 (1994), pp. 67–68.

at present women are not included under the rubric of people unless attempts are made to destroy men at the same time as women. Destruction of female people and crimes against women remain of lesser legal importance than genocide and crimes against "humanity."

However, at present, the recognition of rape as a strategy of ethnic conflict—rather than a regrettable but inevitable consequence of war—is still a novel idea and represents an advance for women's rights. In the sections that follow, I examine the use of rape as genocide in the following ethnic conflicts: the 1971 secessionist war in East Pakistan, the dissolution of Yugoslavia in the early 1990s, and the 1994 conflict in Rwanda.

East Pakistan, 1971

After partition from India in the 1940s, Pakistan was divided in two parts, West and East. East Pakistanis demanded won independence in 1971 because of their exploitation by West Pakistan. West Pakistan did not incorporate many East Pakistanis into the civil service and military; it refused to include Bengali, the language of most East Pakistanis, among the national languages. Before 1971, East Pakistan held 54% of Pakistan's population, but benefited from only a third of development projects.¹⁹

During the 1971 nine-month war between East Pakistan (now Bangladesh) and West Pakistan (now Pakistan), approximately 3 million people died.²⁰ Pakistani soldiers raped between 200,000 and 400,000 Bangladeshi women and girls.²¹ The lowest estimate of Bangladeshis raped is more than triple that of even the highest estimates of rapes of ex-Yugoslavs in the recent civil war.

The genocide against East Pakistani Bengalis (an ethnic group comprised of both Hindus and Muslims) during the war of 1971 was fueled by West Pakistani perceptions of Bengalis as racially inferior.²² Rummel notes that the West Pakistanis considered Bengali Hindus to be subhuman, akin to monkeys or chickens. Hindus were the group they earmarked for genocide, but Muslims comprised the majority of the casualties. In response to the genocide by Pakistanis, the Bengalis attacked the 5–6 million non-Bengalis in East Pakistan (especially the Biharis). Bengalis believed the non-Bengalis to be complicit with West Pakistan, and murdered approximately 150,000 of them.²³

During the war, West Pakistani soldiers raided houses, killing men and raping women. Men might be spared if they could prove they were circumcised (a practice mandatory for Muslims); girls might be spared if they could recite Muslim prayers.²⁴ The victims of rape, known as *biranganas*, were primarily

¹⁹ R. J. Rummel, *Death by Government* (New Brunswick, NJ and London: Transaction, 1994), p. 316.

²⁰ Rounaq Jahan, "Genocide in Bangladesh," in Samuel Totten, William S. Parsons and Israel W. Charney (eds), *Century of Genocide: Eyewitness Accounts and Critical Views* (New York and London: Garland, 1997), p. 291.

²¹ P. C. C. Raja, "Pakistan's Crimes Against Humanity in Bangladesh," FBIS-NES-97-351, "India: Commentary Raps Pakistan for Crimes Against Bangladeshis," December 19, 1997. Originally broadcast by Delhi All India Radio General Overseas Service in English, December 17, 1997.

²² Jahan, "Genocide in Bangladesh," p. 296. R. J. Rummel, *op. cit.*, writes that West Pakistan was guilty of genocide against Hindus and mass murder of Bengalis, p. 329.

²³ Jahan, "Genocide in Bangladesh," p. 299; Rummel, *Death by Government*, pp. 331–335.

²⁴ *The Observer*, April 18, 1971, in Fazlul Quader Quaderi, *Bangladesh Genocide and the World Press* (Dacca, Bangladesh: Begum Dilafroz Quaderi, 1972), p. 61.

Bengali females of all castes and religions.²⁵ After raping the women, soldiers often murdered them by forcing a bayonet between their legs.²⁶ The pre-pubescent girls who were cut and gang-raped often died thereafter from the injuries. There are many reports of women and girls who survived the assaults and later killed themselves.²⁷ War correspondents heard repeatedly from refugees that soldiers killed babies by throwing them in the air and catching them on their bayonets, and murdered women by raping them and then spearing them through the genitals. *Newsweek* concluded that the prevalence of these unusual forms of murder targeting children and women was an indication that the West Pakistani army was “carrying out a calculated policy of terror amounting to genocide against the whole Bengali population.”²⁸

A newspaper columnist in Calcutta, India, Amita Malik, describes the surrender of West Pakistani troops to the Indian army, which intervened in the conflict. Malik writes that a West Pakistani soldier said:

“*Hum ja rahe hain. Lekin beej chhor kar ja rahe hain.*” (“We are going. But we are leaving our Seed behind.”) He accompanied it with an appropriately coarse gesture. Behind that bald statement lies the story of one of the most savage, organized and indiscriminate orgies of rape in human history: rape by a professional army, backed by local armed collaborators. It spared no one, from elderly widows to schoolgirls not yet in their teens, from wives of high-ranking civil officers to daughters of the poorest villagers and slum dwellers. Senior officers allowed, and presumably encouraged, the forced confinement of innocent girls for months inside regimental barracks, bunks and even tanks.²⁹

Rape can be especially effective as a tactic of genocide when used against females of communities that cast shame upon the rape victim rather than the rapist. In such communities, the rape forever damages the social standing of the survivor. Bengali girls and women who endured the genocidal rape had to cope not only with their physical injuries and trauma, but with a society hostile to violated women. The blame for loss of honor falls not upon the rapist, but upon the raped. After independence, Sheikh Muhibur Rahman tried to lessen the stigma associated with rape. He valorized the rape survivors as *biranganas*, or war heroines, set up rehabilitation centers for them, and offered rewards to men who would marry the girls. Nevertheless, most Bengalis refused to issue marriage proposals to the girls or even to take the wives or daughters back into their families because of the dishonor associated with having a family member raped. Some of the *biranganas* killed themselves. Others fled to West Pakistan, where their shame would be a secret.³⁰ Family honor is in this region and many others linked with female chastity. Woman symbolizes ethnic purity. A Pak-

²⁵ Urvashi Butalia, “A Question of Silence: Partition, Women, and the State,” in Ronit Lentin (ed.), *Gender and Catastrophe* (London and New York: Zed Books, 1997), p. 264; Amita Malik, *The Year of the Vulture* (New Delhi: Orient Longman, 1972), p. 152.

²⁶ *Newsweek*, June 28, 1971, reprinted in Quaderi, *Bangladesh Genocide and the World Press*, p. 158.

²⁷ Malik, *The Year of the Vulture*, pp. 140–154.

²⁸ *Newsweek*, June 28, 1971, in Quaderi, *Bangladesh Genocide and the World Press*, p. 158.

²⁹ Malik, *The Year of the Vulture*, p. 154.

³⁰ Santi Rozario, “Disasters and Bangladeshi Women,” in Ronit Lentin (ed.), *Gender and Catastrophe* (London and New York: Zed Books, 1997), p. 264.

istani's sexual assault upon a Bengali girl or woman represented a sully not only of her virtue, but a disgrace of her family and her community.

Civil War in Yugoslavia

The International Criminal Tribunal for the former Yugoslavia charged several men with crimes of genocide perpetrated during the war in the early 1990s.³¹ During the Serbian and Bosnian–Serb campaign of ethnic cleansing in the early 1990s, however, not all observers believed that genocide was taking place. Catherine MacKinnon argues that the Serbian aggression was genocidal, but that the international community preferred to describe it as “civil war” so as to remove any responsibility for intervening on behalf of the genocide victims.³² Steven Burg agrees that Serb aggression against Muslim civilians in Bosnia–Herzegovina constitutes genocide. The attacks were sustained; Serbs killed Muslims simply because they were Muslim; defenseless civilians were killed intentionally, and at least some of the bloodshed was authorized by high-level government and military officers. Burg notes that Croats and Muslims are themselves guilty of war crimes during this conflict. However, there is no evidence that during the 1990s either Croats or Muslims perpetrated genocide.³³

Estimates of the number of women sexually assaulted during the conflict in the early 1990s vary from 10,000 to 60,000.³⁴ Ethnically Serbian soldiers perpetrated the majority of the rapes against Muslim and Croatian women in Bosnia–Herzegovina.³⁵ Soldiers assaulted some women in the streets, others in their homes. Still others they took to concentration camps, a few of which were known as “rape camps.” In one such camp in Doboj, soldiers detained between 2000 and 2500 women and girls between May and June of 1992.³⁶ The rape survivors, in addition to coping with the rape-related injuries and trauma, face a culture in which a raped woman is forever dishonored. As in Bangladesh, family honor and ethnic group identity are enmeshed with female chastity. Muslim religious leaders in Bosnia–Herzegovina urged bachelors to marry the single women and girls who had suffered rape, but few did.³⁷

In Bosnia–Herzegovina, rape as genocide took a different form than in East Pakistan or Rwanda. The purpose of the Serb and Bosnian–Serb's mass rapes

³¹ *International Criminal Tribunal for the Former Yugoslavia*, Public Information Unit, Fact Sheet, April 12, 1999, at: < <http://www.un.org/icty/glance/fact.htm> > .

³² MacKinnon, “Rape, Genocide, and Women's Human Rights,” p. 10.

³³ Steven L. Burg, “Genocide in Bosnia–Herzegovina?” in Samuel Totten, William S. Parsons and Israel W. Charney (eds), *Century of Genocide: Eyewitness Accounts and Critical Views* (New York and London: Garland, 1997), pp. 428–430.

³⁴ Charlotte Bunch and Niamh Reilly, *Demanding Accountability: The Global Campaign and Vienna Tribunal for Women's Human Rights* (New York: Center for Women's Global Leadership and the United Nations Development Fund for Women, 1994), p. 36.

³⁵ Serb captors also inflicted sexual torture upon Croatian or Muslim males (JLM Commission 1994, pp. 5, 8). Amnesty International, *Bosnia–Herzegovina: Rape and Sexual Abuse by Armed Forces* (New York: Amnesty International, 1993), p. 5.

³⁶ Alexandra Stiglmayer, “The Rapes in Bosnia–Herzegovina,” in Alexandra Stiglmayer (ed.), *Mass Rape: The War Against Women in Bosnia–Herzegovina* (Lincoln, NE: University of Nebraska Press, 1993), p. 118.

³⁷ Slavenka Drakulic, “The Rape of Women in Bosnia,” in Miranda Davies (ed.), *Women and Violence: Realities and Responses Worldwide* (London: Zed Books, 1994), p. 181.

was not merely to drive away and to harm non-Serb women, but to rape them repeatedly to ensure that they became pregnant. Serb captors often told the Muslim or Croat women that the intention of the rape was to impregnate them. In many cases the soldiers intentionally detained women until abortion was no longer possible.³⁸

Most observers agree that at least some of the Bosnian–Serb rapists acted on official orders to rape women as part of the ethnic cleansing.³⁹ Indicators of a systematic, planned basis of the rape include: (1) that rapes in non-contiguous parts of Bosnia–Herzegovina had similar characteristics, including raping educated or upper-class women first and forcing family members confined in the same camp to perform incest; (2) that the rapes happened in different sections of Bosnia–Herzegovina simultaneously and accompanied the fighting; and (3) that many rapes took place within official detention centers.⁴⁰ Finally, a male survivor of a concentration camp in Croatia, Dr. Mladen Loncar, offers as another indication of the centrally planned nature of the mass rapes the fact that most of the camps had an identical layout. A rectangle of guards and minefields surrounded another rectangle where soldiers raped and inflicted other forms of torture.⁴¹

Serbian leaders deny that there was any directive to rape.⁴² In 1992, President Radovan Karadzic said, “The lies about the organized rapes of Muslim women are shameful, lacking all basis in fact and going beyond all bounds of human decency.”⁴³ Some Serbian authorities continue to deny that any of the alleged rapes even happened. In 1997, Bosnian–Serb television reporters announced that they had investigated claims of Muslim women raped by Serbs and found all to be false, even though at that time nine of the UN’s 19 indictments of Bosnian–Serb war criminals included charges of sexual assault.⁴⁴

In reports of rape from the recent conflict in Kosovo echo those from Croatia and Bosnia–Herzegovina of the early 1990s. Doctors and investigators in refugee camps have little doubt that mass rape of ethnic Albanians was again a political strategy by Serbs, although it is still too early for estimates of the extent of this rape to emerge.⁴⁵ Efforts to document the rapes are complicated by the extremely strong stigma associated with raped women in Kosovo.⁴⁶ Kosovars tend to see

³⁸ JLM Commission of Experts’ Final Report (S/1994/674), Parts I and II, United Nations Security Council, May 27, 1994, at: < <http://www.his.com:80/~cij/com-mxyu3.htm#II.I> > . Also Stiglmyer, “The Rapes in Bosnia–Herzegovina,” pp. 134–135.

³⁹ Stiglmyer, “The Rapes in Bosnia–Herzegovina,” pp. 148, 154; Human Rights Watch Women’s Rights Project, *Human Rights Watch Global Report on Women’s Human Rights* (New York: Human Rights Watch, 1995), p. 11; Amnesty International, *Bosnia–Herzegovina*, p. 4; JLM Commission of Experts’ Final Report, I.G.1.

⁴⁰ JLM Commission’s Final Report, Part IV, E.3, 8.

⁴¹ Fred Pelka. “Voices from the War Zone,” reprinted from *The Humanist*, March/April (1995), at: < <http://www.supernet.net/~dubravko/articles/pelka.html> > .

⁴² CNN, The Balkan Tragedy, “Serbs Deny Committing Atrocities,” July 18, 1995, at <http://www.cnn.com/WORLD/Bosnia/updates/july95/7-18/index2.html>; Elizabeth Bumiller, “Deny Rape or Be Hated: Kosovo Victims’ Choice,” *New York Times*, June 22, 1999, p. A1.

⁴³ In Stiglmyer, “The Rapes in Bosnia–Herzegovina,” p. 163.

⁴⁴ Paris AFP, 1997, “Bosnia–Herzegovina: UN Demands Airtime on Bosnian–Serb TV to Refute ‘Lies,’” August 13, 1997, FBIS Transcribed Text Document Number FBIS-EEU-97-225.

⁴⁵ Eileen O’Connor, CNN Interactive, “Mental Trauma of Kosovo Rape Victims Difficult to Treat,” April 17, 1999, at: < <http://www.cnn.com/HEALTH/9904/17/kosovo.rapes/> > .

⁴⁶ Bumiller, “Deny Rape or Be Hated,” p. A1.

rape as a humiliation of the entire family, and they do not perceive the raped women and girls to be innocent victims. The death of the family member defiled by rape may seem the only way to restore the family's honor.⁴⁷

In early June of 1999, the United Nations Population Fund reported that the Serbs had been raping women leaving Kosovo widely and that such crimes were increasing. The UN representatives report that there is not yet evidence that such rapes are systematic, but that the survivors feel that commanding officers were responsible. Serb soldiers released the raped and brutalized Albanian women after several hours or several days.⁴⁸ That the women are released shortly thereafter seems to suggest the Serbs are not repeating their strategy of raping in detention until pregnant; nevertheless, there are recent reports of Serbs' rape of Albanian women in camps.⁴⁹ Serbian graffiti in Mitrovica is strikingly reminiscent of Serbs' psychological and sexual torture of women in the genocide in Bosnia-Herzegovina: "We're going to rape your women, and they will give birth to Serbian children."⁵⁰ Once more, Yugoslav soldiers used rape, and possibly deliberate impregnation, as a particularly effective tactic of genocide against a community that stigmatizes its women and girls who have been raped.

Rwanda, 1994

In less than three months, Rwandan soldiers, militia, and civilians slaughtered approximately a million Tutsi. The genocide left over 250,000 women widowed and between 300,000 and 400,000 children orphaned.⁵¹ Men, primarily Hutu, used rape of women, primarily Tutsi, as a political weapon during the Rwandan genocide.⁵² Rape of Tutsi girls and women took place in every part of Rwanda between April 6 and July 12, 1994.⁵³ Especially after mid-May, the Hutu leaders ordered the militia known as the *Interahamwe* ("those who stand together") not to spare Tutsi women and children in the genocide. Some of the rape victims were Hutu, attacked either because of their association with Tutsi or because they had the misfortune to be in the wrong place at the wrong time.⁵⁴

The UN's Special Rapporteur on Rwanda estimates that in this tiny country there were between 250,000 and 500,000 rapes.⁵⁵ In some areas, almost all women who survived had been raped. Most women between the ages of 13 and 50 who survived in Kigali are reputed to be rape victims. There are reports of

⁴⁷ Carol J. Williams, "Kosovo Rape Victims Face Society's Harsh Judgment," *The Sacramento Bee*, May 30, 1999, p. A18.

⁴⁸ Amy Bickers, "Kosovo/Sex Crimes," Transcript of Voice of America Broadcast No. 2-250174, June 3, 1999.

⁴⁹ Bumiller, "Deny Rape or Be Hated," p. A13.

⁵⁰ *Ibid.*

⁵¹ Felicite Umutanguha Layika, "War Crimes Against Women in Rwanda," in Niamh Reilly (ed.), *Without Reservation: The Beijing Tribunal on Accountability for Women's Human Rights* (New Brunswick: The Center for Women's Global Leadership, 1995), p. 38.

⁵² Elizabeth Royte, "The Outcasts," *The New York Times Magazine*, January 19, 1997, p. 38.

⁵³ Catherine Bonnet, "Le viol des femmes survivantes du génocide au Rwanda," in R. Verdier, E. Decaux and J.-P. Chrétien (eds), *Rwanda, un génocide du XXe siècle* (Paris: Editions L'Harmattan, 1995), p. 19.

⁵⁴ Nowrojee, *Shattered Lives*, p. 41.

⁵⁵ *Ibid.*, p. 24.

rape of old women and very young girls.⁵⁶ As one widowed rape survivor explains:

Now, AVEGA [Association of Widows of the April Genocide] is conducting a study. To see—there is a very bad joke around that any woman who has survived, has been raped. Although it is a bad joke, it seems that a big proportion of those who survived, most of the time, it was because of an act—it is because we were raped. And the person who raped, took you and said that you are the wife after he raped you. But most of the time they killed the whole family.⁵⁷

Rwandan women are often unwilling to admit they have been raped because of the terrible social stigma that accompanies rape. President of a Rwandan widows' association, Felicité Umutanguha Layika, explains that their family and neighbors may perceive rape survivors to have been willing participants and even complicit with the *Interahamwe* in the genocide. "From society's point of view there is little sympathy, for at the moment that men and children died without defense, these women used the sex card, 'selling their bodies' to save their lives."⁵⁸

Rape in the Rwandan genocide usually preceded murder, or was intended to cause fatal injuries.⁵⁹ The *Interahamwe* preferred to inflict a protracted death upon the Tutsi rather than to kill them swiftly. A rape survivor recalls, "One of them told us that they were going to chop the Tutsi women into pieces over days—one leg today, another arm tomorrow—until we died slowly."⁶⁰ The *Interahamwe* inflicted what they believed to be mortal wounds on a Tutsi with clubs and machetes and then moved on to the next one. One survivor narrates, "I went to every hill to try and find the bodies of my family. I saw people who had been hit by machetes, talking to each other. One person was saying to another: 'Are you dead yet?'"⁶¹ Rape survivors alive today may have been left for dead or were able to escape by pretending to be dead.⁶²

Just as the policy of forced impregnation was a distinctive characteristic of rape as genocide in the former Yugoslavia, the deliberate transmission of HIV was a unique component of rape as genocide in Rwanda. Survivors report that Hutu men diagnosed with HIV raped Tutsi women during the civil war, then told the women that they would die slowly and gruesomely from AIDS.⁶³ Attempts at transmission through rape are likely to be successful because the use of force by a rapist may create tears and micro-cuts in a woman's skin and membranes through which the virus can enter her bloodstream. A staff member of Rwandan Women's Net in Kigali, which operates the Polyclinic of Good Hope for women survivors of war, told me that the majority of rape survivors test positive for HIV.⁶⁴ It is usually not certain that the transmission was deliberate,

⁵⁶ Layika, "War Crimes Against Women in Rwanda," p. 39.

⁵⁷ Interview of anonymous survivor, AVEGA, Association des veuves du genocide d'avril (Association of Widows of the April Genocide), Kigali, Rwanda, November 10, 1998.

⁵⁸ Layika, "War Crimes Against Women in Rwanda," p. 40.

⁵⁹ Nowrojee, *Shattered Lives*, p. 35.

⁶⁰ *Ibid.*, p. 65.

⁶¹ African Rights, "Resisting Genocide: Bisesero, April–June 1994," 1998. Online summary at: < http://www.unimondo.org/AfricanRights/html/rw_resist.html > .

⁶² Nowrojee, *Shattered Lives*, p. 35.

⁶³ Interview of Chantal Kayitesi, AVEGA, Kigali, Rwanda, November 10, 1998; UNHCHR, "Fundamental Freedoms," p. 18.

⁶⁴ Interview of staff member, Rwandan Women's Net, Kigali, Rwanda, November 11, 1998.

and, as HIV infection rates among Rwandan women of reproductive age are high, it is of course possible that a survivor may have contracted HIV before or after being raped.⁶⁵ In Rwanda, protease inhibitors (to control HIV) are not available, and HIV left untreated is almost certain to result in AIDS and death in approximately 7–15 years. Therefore, for a Hutu man known to be HIV-positive to rape a Tutsi woman is in essence protracted genocide.⁶⁶

Alice Karekezi, professor of law and monitor for women's rights at the International Criminal Tribunal for Rwanda, explains how the use of rape as genocide differed in the civil wars in Rwanda and the former Yugoslavia:

But in Yugoslavia, for example it was used as—sexual violence was used as ethnic cleansing, too. The Serbian was trying to have children from Muslim women. Here, it wasn't used like that. Pregnancy was a consequence, but not aimed to have children through them. But the goal of the men ... was to weaken, to destroy, in this case the Tutsi, in Rwanda. That's the main difference.⁶⁷

Leaders planned the genocide carefully, but it is not certain whether they planned the mass rapes. Dr. Bonnet of Doctors Without Borders believes that rape in Rwanda was systematic, premeditated, and used intentionally as a weapon of ethnic conflict to destroy the Tutsi community and to render any survivors silent.⁶⁸ A genocide and rape survivor that I interviewed, nevertheless, believed that the rapes were spontaneous.⁶⁹

There is consensus, however, in both international and Rwandan courts, that the rapes meet the criteria for genocide. The war crimes tribunal for Rwanda set a precedent in international law when it ruled in the case of Jean-Paul Akayesu that rape was a component of genocide.⁷⁰ Rwanda's Parliament took several years to agree upon the genocide law, which divides genocide crimes into four levels.⁷¹ The first level carries a mandatory death penalty. This category is reserved for the planners of the genocide, those implicated who held public or military office, and those who were especially ruthless and prolific killers. The second level of the genocide law is for those who were not leaders, but who participated in the killings. The third level is for assault (not murder), and the fourth is for crimes against property.⁷²

There was controversy as to the level at which rape should be prosecuted. A representative of the Rwandan women's group, Pro-Femmes, believes that most Rwandan men do not consider rape to be a crime, much less a crime of genocide. However, Pro-Femmes lobbied for rape to be considered among the most serious genocide crimes. They called women witnesses to testify before special

⁶⁵ At least 20% of Rwandan women between 25 and 29 carry the HIV virus. Scott Stearns, "Rwanda/AIDS," May 11, 1998, Transcript of Voice of America Broadcast 2-232008.

⁶⁶ Layika, "War Crimes Against Women in Rwanda," p. 40; interview of staff member, Rwandan Women's Net, Kigali, Rwanda, November 11, 1998.

⁶⁷ Interview of Alice Karekezi, Special Monitor for Women's Human Rights at the ICTR, Arusha, Butare, Rwanda, November 12, 1998.

⁶⁸ Bonnet, "Le viol des femmes survivantes du génocide au Rwanda," p. 2.

⁶⁹ Interview of anonymous survivor, AVEGA, Association des veuves du génocide d'avril (Association of Widows of the April Genocide), Kigali, Rwanda, November 10, 1998.

⁷⁰ Bill Berkeley, "Judgment Day," *Washington Post Magazine*, October 11, 1998, pp. 10–15.

⁷¹ This law includes a mandatory death penalty, limited rights of appeal, and retroactive provisions. See UNHCHR, *Fundamental Freedoms*, p. 33.

⁷² Nowrojee, *Shattered Lives*, pp. 35–37.

caucuses of women and a few men from Parliament. Parliament decided to include rape in level one among the most serious crimes of genocide.⁷³ Thus, for the average Hutu man who participated in the genocide but was neither a leader nor an especially prolific killer, a conviction for rape would carry a heavier penalty than would a conviction for murder. However, not one man has yet been found guilty within the Rwandan courts of perpetrating rape during the genocide.⁷⁴

Conclusion

In East Pakistan, the former Yugoslavia, and Rwanda, rape was one component of a campaign of genocide or forced expulsion of a population. Soldiers may rape women before murdering them; they may attempt to dilute an ethnic community's bloodline by raping and impregnating its women; or they may intend for the mass rapes to demoralize the surviving members of a community. In the case of Rwanda, Hutu men used the HIV virus as a weapon of genocide against Tutsi women.

A striking similarity that appears in each of the case studies is that there was a preexisting stigma against raped women in the ethnic group targeted for genocide.⁷⁵ The severe stigma that a woman or girl in these ethnic groups must endure if she reveals that she has been raped may serve to prevent the victims of genocidal rape from ever reporting the crime. It appears that the women and girls who are most likely to suffer rape during genocide are those for whom it will have the worst long-term consequences—stigma, shame, and even expulsion from their homes and communities. Despite their pariah status, the rape survivors of the civil wars in East Pakistan, the former Yugoslavia, and Rwanda are in a sense veterans. They are the invisible living casualties of the genocide that must live with the physical, psychological, and emotional aftermath of the sexual violence—in addition to the “second rape” of them by a society hostile to rape survivors.

Reporters, writers, and scholars are beginning to address rape as genocide, and the international tribunals are beginning to hand down verdicts deeming rape to be genocide. The goal of the international war crimes tribunals is to prosecute the few who bear the most responsibility for the perpetration of gross human rights violations. With respect to Rwanda, for example, it is not possible to jail or to execute three-quarters of the adult population of Rwanda and many of its minors as well. Nevertheless, neither the International Tribunal nor the Rwandan judiciary has sentenced one man for *committing* rape. (The Tribunal has prosecuted a man, Jean-Paul Akayesu, who was the mayor of the Taba commune, and a woman, Pauline Nyiramasuhuko, who, surprisingly, was the minister of family and women's affairs, for encouraging their subordinates to

⁷³ Interview of Representative of Pro-Femmes-Twese-Hamwe, Kigali, Rwanda, November 13, 1998; Victor Karega, Director of Planning, Ministry of Gender, Family, and Social Affairs, Government of Rwanda, Kigali, Rwanda, November 13, 1998.

⁷⁴ UNHCHR, *Fundamental Freedoms*, pp. 32–33.

⁷⁵ Royte, “The Outcasts,” pp. 37–39; *State Commission for Gathering Facts on War Crimes in the Republic of Bosnia and Herzegovina*, “War Crimes Against Women,” March, 1993, at: < gopher://gopher.igc.apc.org:70/00/peace/yugo/crimes/so/38 > and “Rape as War Crime,” April, 1993, at: < gopher://gopher.igc.apc.org:70/00/peace/yugo/crimes/so/38 > .

rape.) The lack of prosecution of rapists sends a signal to the men of Rwanda and to the men of the world.

The seeming disinterest around the globe in prosecution of rape as genocide may mean that in future ethnic conflicts men believe that they have license to rape. The only constraint upon a man's behavior toward women in war is his own conscience, and, as a Rwandan rape survivor and widow observes, this constraint is often insufficient:

Until now, I try to understand why they did as they did—as a human being, once you are sure there is no one watching, that you can do whatever you want, it was like there was nobody watching you. Once you are sure that you can do whatever you want, that there is nobody, like nobody is watching you. So what do you do when nobody is watching you? So I'm very frightened. I'm very afraid. What a human being can do when there is no watch, when there is no safeguard, when you let them.⁷⁶

⁷⁶ Interview of anonymous survivor, AVEGA, Association des veuves du genocide d'avril (Association of Widows of the April Genocide), Kigali, Rwanda, November 10, 1998.