

## RAPE AS A CRIME AGAINST HUMANITY: INTERNATIONAL CRIMINAL TRIBUNALS AND CREATING NEW NORMS

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When and why did rape start to be considered a serious crime against humanity both domestically and internationally? This paper presents evidence that the International Criminal Court's (ICC) early landmark decisions and testimonies of victims of rape delivered to an international audience were crucial in increasing public attention to the issue and its perception as a serious human rights abuse. I document and attempt to explain this shift by analyzing both the number and the specific language of U.S.-based NGO reports, notably Human Rights Watch reports, about rape as an international war crime as well as systematic rape in a U.S. context. By examining the number of articles each year as well as the severity of language within each report, I find the number of reports on rape almost doubled each year for the first few years after the 1997 and 1998 inaugural cases and the severity of the language within each report focused more on rape as a distinct human rights violation. This increase is prominent both in international and domestic cases, suggesting the important role the ICC plays in increasing the perception and awareness of rape as a human rights abuse. The trials brought forth by the U.N. through the International Criminal Tribunal for Rwanda (ICTR) and Yugoslavia (ICTY) ultimately had a strong socialization effect in the United States, increasing awareness and acceptance of rape as a serious human rights abuse.

### HISTORY

Today, there are powerful intergovernmental organizations (IGOs) and non-governmental organizations (NGOs) dedicated to ending sexual violence,<sup>1</sup> extensive media coverage of military rapes,<sup>2</sup> and almost 200 open federal Title IX investigations in universities<sup>3</sup>—all reflecting a high level of serious attention paid to these issues in the United States. However, awareness of sexual violence in the U.S. has not always been so prevalent; rape has not always been perceived as such a pressing issue. Before the late 1990s, instances of rape both at home and abroad were often simply treated as women's issues or just an extra point to add to a long list of abuses; these acts were rarely the topic of INGO human rights reports or publicly condemned as crimes against humanity by the international community.

Rape is the primary form of sexual violence discussed in this paper. The FBI defines rape as "penetration, no matter how slight . . . without the consent of the victim."<sup>4</sup> Throughout the paper, I will use the terms "survivor" and "victim"<sup>5</sup> to refer to both children and adults who have experienced a broad range of types of sexual violence.

While wars have been rife with acts of rape from pre-biblical times to modern military conflicts, until the late 1990s rape was treated more as a consequence than a tool of war. Despite overwhelming evidence that German and Japanese forces used systematic rape as a tool of subjugation during the Second World War, sex offenders were not prosecuted by either the Nuremberg<sup>6</sup> or the Tokyo<sup>7</sup> trials. Moreover, no survivors of rape testified during either the Nuremberg or Tokyo trials.<sup>8</sup>

Without trials, survivors had few options for justice or to make their stories known, and the international community could remain ignorant of the extent and nature of these crimes. Although Article 27 of the fourth Geneva Convention<sup>9</sup> (1949) prohibited rape and forced prostitution, no acts of rape were prosecuted as war crimes for over 45 years. In this way, the classification of rape as a war crime seemed to be a largely symbolic gesture.

In the late 1990s, the international community finally acknowledged and condemned rape as a war crime. For the first time ever, the ICC prosecuted accused war criminals for sex crimes during the inaugural cases of both the International Criminal Tribunal of both Rwanda (ICTR) and Yugoslavia (ICTY). The ICTR prosecution versus Jean-Paul Akayesu in 1998 and the ICTY prosecution versus Duško Tadi in 1997 were the first trials treating rape as a war crime equal in severity to other crimes against humanity. The testimonies of survivors reached international audiences during these trials brought forth by the ICC. The verdicts set the legal precedent of holding leaders responsible for sexual violence they committed against their own people. Each trial prompted a fundamental social and legal shift from perceiving rape as a consequence of war to classifying and codifying it as a “crime against humanity” and a violation of the Geneva Convention with real consequences.

**Figure 1: Frequently Used Terms**

<b>ICC</b>	International Criminal Court
<b>ICTY</b>	International Criminal Tribunal for the former Yugoslavia
<b>ICTR</b>	International Criminal Tribunal for Rwanda
<b>NGO</b>	Non-governmental Organization
<b>IGO</b>	Intergovernmental Organization
<b>INGO</b>	International Non-governmental Organization

Though often used interchangeably, the phrases “war crime” and “crime against humanity” have distinct legal meanings, defined in the Nuremberg Trial Proceedings Charter of the International Military Tribunal, Article 6. While each crime involves similar levels and types of violence, such as murder and enslavement, the former phrase refers to crimes committed during times of war that are “not justified by military necessity” and the latter describes inhumane acts committed against “any civilian population, before or during war.”<sup>10</sup> While the rape cases discussed in this paper happened in the context of civil war, they were largely committed against a civilian population, so many of these cases constitute crimes against humanity. In addition, evidence of political motivation is required to constitute rape as a crime against humanity; for example, an individual taking advantage of the chaos in war in order to

rape or kill others for personal motive could not be tried in the ICC, but may be tried in the local or national courts of the state in which the crimes occurred. Thus both war crimes and crimes against humanity can be prosecuted in the ICC, while rape cases without clear political motivation or connection to ethnic cleansing have never been prosecuted internationally. This paper examines the consequences of two of the first high-profile prosecutions of rape as a war crime and a crime against humanity.

In the early 1990s, Serbian forces used rape as one of the main forms of ethnic cleansing in the Yugoslav Wars. The belief that children inherited their biological father's ethnicity influenced Serbian troops' genocide tactics; killing Muslim men and forcing pregnancy upon Muslim women through mass rape and cases of imprisonment was meant to ensure a future "Chetnik"<sup>11</sup> population. The U.N. Special Representative on Sexual Violence in Conflict, Margot Wallström, estimates that between 50,000 and 60,000 women were raped during the conflict.<sup>12</sup> Due to these extreme levels of violence, UN Security Council Resolution 808 created the ICTY to prosecute these crimes against humanity in February of 1993. In February 1994, Duško Tadi was to be the first to be arrested and tried by an international court since the Nuremberg and Tokyo trials of 1947. The May 1997 decision was the first prosecution of sexual violence by an international court in history. Using the precedent set by Tadi's conviction, prosecutors argued subsequent ICTY cases and began making connections between rape and other human rights abuses, including torture and ethnic cleansing. Finally rape began to be perceived as a grave human rights abuse alongside other acts of genocide.

After the Rwandan genocide of 1994, the United Nations established the International Criminal Tribunal for Rwanda (ICTR) with the goal of bringing the organizers of violence, including sexual violence, to justice. The inaugural case, the prosecution of Jean-Paul Akayesu, which began in January of 1997,<sup>13</sup> empowered three survivors of sexual assault to testify to an international audience, drawing global awareness of rape as a crime of war. The judges' subsequent decision in September of 1998 set many precedents: the verdict held a high-profile leader responsible for committing rape, classified rape as an act of genocide, and treated rape as an more than just a women's issue on the international stage.

Camps of International Relations scholars disagree because Rational Choice Theory and Norm Socialization Theory both offer explanations for how individuals and societies make decisions. According to Dennis Wrong, "the fundamental flaw of all rational choice theories is that they ignore socialization and draw an artificial distinction between self-interests and both the interests of others and normative standards."<sup>14</sup> He argues that socialization precedes self-interest and therefore rational choice theories alone fail to paint a full picture of human nature in society. While not necessarily mutually exclusive, the debate at its core is "do you follow the law because you don't want to be punished or do you follow the law because you have internalized the norms that govern the actions you are about to take without conscious thought."

While “norms” are quite broadly the beliefs, customs and values held by any given society, “socialization” refers to conditions under which individuals and groups are exposed to, inherit, and disseminate these norms.<sup>15</sup> “Norm socialization” therefore is a process by which certain practices are accepted by a given group of people and are seen as “normal.”<sup>16</sup> While international criminal tribunals have the potential to play a fairly important role in deterring rational actors from engaging in criminal behavior because of fear of punishment, this paper provides evidence that international criminal courts also have the potential to socialize individual actors and societies in the issue of rape as a crime against humanity. With the validation from an international legal body about the seriousness of rape, the evidence suggests that people begin to take the issue more seriously overall—and many of them may embrace norms that previously did not guide their thinking or actions.

Evidence shows the ICTY and the ICTR increased both the coverage and perceived legitimacy of rape as a serious human rights abuse by international NGOs based in the U.S. In the sections below, I explore this shift in normative thinking by examining when U.S.-based media sources and NGOs began to classify rape as a war crime as opposed to merely a women’s issue or a consequence of war. I find that the first ICC cases “legitimized” and socialized the norm of rape as a human rights abuse for these U.S.-based organizations. By analyzing the changes in both the frequency and language of NGO reports concerning sexual violence before and after the verdict as proxies for the changing perception of rape, I find that the trial ultimately had a strong socialization effect that increased awareness of rape as a serious human rights abuse in the U.S. This shift in thinking about rape as a crime against humanity correlates with the serious attention paid to issues of rape in both international and domestic settings.

I first briefly describe the background of sexual violence and its relationship to human rights. I discuss my research methods for my qualitative and quantitative analysis. Next, I compare press releases pre- and post-trial by an international NGO based in the United States, Human Rights Watch (HRW), with analysis of media articles from the *Washington Post* to avoid single-source bias. I find correlations between the trial dates and the number of articles published about rape. This suggests that the perception of seriousness of rape as well as the amount of attention paid to it increased after the trials. I find that the ICTY and the ICTR both increased the frequency and emphasis on rape in published reports, especially shortly after the Akayesu verdict. In order to make this evidence more generalizable, I also record the number of international NGOs established against sexual violence each year. I then discuss the limits of my methodology and propose areas where more research can be done. Lastly I consider the limitations of the prosecution of rape as a war crime, specifically with regards to the victims of those crimes, and examine the policy implications of my research for improving the awareness of rape as a tool of war. The study’s broader policy implications suggest that International Courts potentially have a strong ability to socialize norms, at least concerning the issue of systematic rape.

## METHODOLOGY

My research methodology consists primarily of analyzing these NGO and media reports in order to avoid certain biases. For example, interviewing individuals about their changed perceptions of rape as a war crime was an alternative I considered for this project. I concluded that this research route would not give very reliable results because today, both individuals and society have already been affected by the trials—there is simply no way to have a treatment group and a control group. Furthermore, most people are not fully aware of their shift in thinking or unbiased in analyzing the causes of the changes in their thinking. I am better able to avoid biases in time-order by mapping the language and publication dates of the articles and examining the resulting co-variation.

Therefore I decided to map both the frequency (Quantitative) and severity (qualitative) of references to rape in NGO databases, specifically that of Human Rights Watch. The dependent variable in this quantitative analysis is the number of results from the HRW database search each year between 1990 and 2000 with the year as the independent variable. I included several other measures in order to overcome potential bias limitations in my data. To eliminate the possibility that higher numbers simply represent an increase in the overall number of articles published online, I also measured “racism” and “slavery” in the same time period. In order to have a better understanding of the effects of the trials for people who are not human rights advocates at an international NGO, I compare the pattern of media reports with the HRW reports. I chose the *Washington Post* because it is a widely read, longstanding daily newspaper with a searchable database for the 1990s. In addition, analysis of dates when various International NGOs (INGOs) were established provides further evidence that attention to the issue of rape grew outside of the U.S. at the same time that the cases were being broadcast around the world.

The three types of analysis are important for different reasons. The increase of NGO reports shows that human rights experts focused increasingly on the issue of rape, the increase in *Washington Post* articles suggests an increased awareness for average U.S. citizens who read newspapers, and the INGO growth reflects increased international attention, including both governmental and private action on these issues.

The assumption underlying these measurements is that rape itself is not happening more frequently in the world, but individual cases are gathering more attention than past cases in the media. While similar past cases were largely ignored, contemporary cases may now be taken more seriously by the international community and human rights advocates. Since rape remains one of the world’s most unreported crimes<sup>17</sup> and a study from the U.S. Department of Justice suggests that the frequency of rape actually decreased between 1993 and 2000 in the United States,<sup>18</sup> it is unlikely that the increase in news releases is due to an actual increase in the number of rapes. Therefore, the number of results likely increased each year because there has been more attention paid to the issue.

Because increased attention does not necessarily prove that rape is taken more seriously as a serious crime against humanity, I also conducted a qualitative analysis regarding language and word choice in HRW news releases. Still using the search query “rape” in the HRW database, I randomly selected four articles each year between 1996 and 1999 and analyzed shifts in the prominence and treatment of rape as a crime in each article. I looked specifically for words indicating the seriousness as well as the framing of the crime as “violence against women” or “human rights abuse.” Approximately half of the randomly selected articles were published before the September 2, 1998, coverage of the verdict of the ICTR’s inaugural case and the other half released after.

### QUANTITATIVE RESULTS

International dialogue concerning sexual violence began to increase in 1997 and continued to increase after the conclusion of the first ICTR trial in September of 1998. Using the HRW search database from the years 1990–2006, I have recorded below the number of results per year for “rape,” as well as “racism” and “slavery.” Figure 2 is a table showing the frequency of news reports concerning rape published by HRW, as a proxy for the level of international attention paid to the issue of rape before and after the Akayesu case. Figure 2 below represents this data between the years 1990–2000.

Figure 2: Frequency by year according to each search query  
Human Rights Watch

Year	Rape <sup>19</sup>	Racism <sup>20</sup>	Slavery <sup>21</sup>
1990	1	0	0
1991	0	0	0
1992	4	2	1
1993	6	2	1
1994	4	2	2
1995	13	6	5
1996	4	2	3
1997	16	2	3
1998	26	11	3
1999	47	5	6
2000	80	18	7
2001	59	41	21
2002	69	26	10

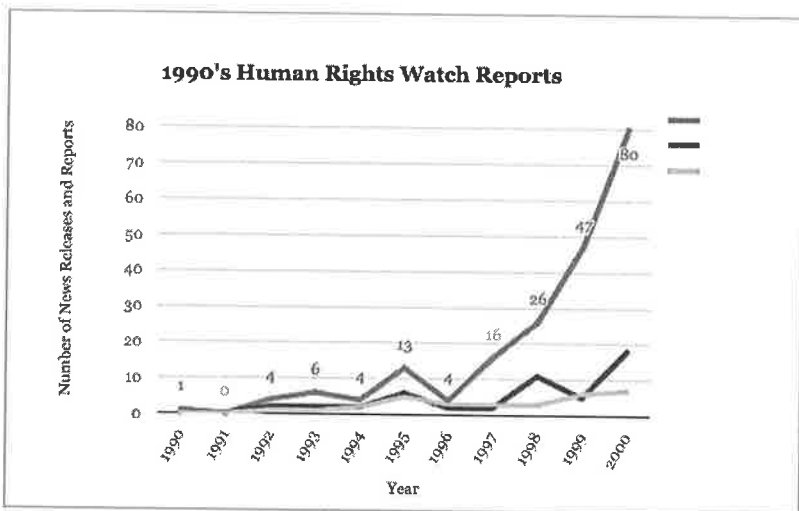
2003	123	28	28
2004	169	33	22
2005	191	40	24
2006	181	37	25

Source: Human Rights Watch database [www.hrw.org/search/apachesoer\\_search/](http://www.hrw.org/search/apachesoer_search/)

While it is clear that the number of results for “slavery” and “racism” increased gradually throughout the time period, probably as HRW grew as an organization, the number of results for “rape” increased nearly exponentially, almost doubling each year (See figure 2).

Even the second highest reporting category in the search, “racism,” does not come close to the increase in the frequency of results under the search query “rape.” The significant jump from 4 results in 1996 to 47 by the end of 1999 suggests that sexual violence gained significant importance as an issue in HRW in the late 1990s. The fact that the results nearly doubled both between 1998 to 1999 show a strong time correlation with the conclusion of ICTR’s inaugural trial in September of 1998 where rape was officially classified as a war crime in the sentencing.

Figure 3: Human Rights Watch: search query by year



Source: Human Rights Watch database [www.hrw.org/search/apachesoer\\_search/](http://www.hrw.org/search/apachesoer_search/)

I also analyzed the number of articles from the *Washington Post's* search database over the same time period (see figure 3). This was an important step for a number of reasons. First, these articles show consistency across media and lessen potential

concerns about bias within HRW—essentially they make the data slightly more generalizable. Next, the *Washington Post* is consistently ranked in the top ten most widely circulated newspaper publications in the U.S.<sup>22</sup>—it is definitely not a niche paper that primarily reports on international human rights issues. The increase in the number of articles published in the years after the trial suggests that the ICC did not merely influence the type of people attracted to and knowledgeable about human rights work, but reached the average U.S. household as well. Finally, by searching for both “rape” and “human rights,” I can narrow the search more effectively on the seriousness of attention paid to the issue; namely, I measured the increase in attention paid to rape as a rights abuse versus the average article about local crimes is more relevant for the purposes of this article.

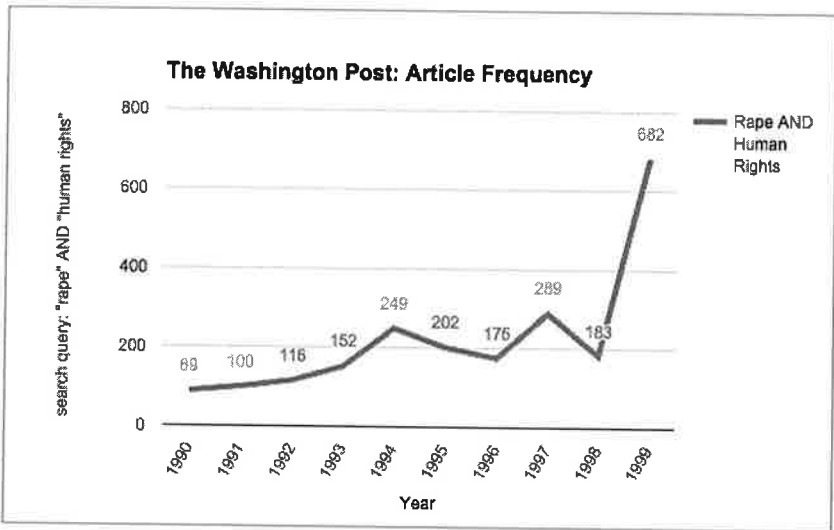
I found that the results from the *Washington Post* were very consistent with HRW results, with a small lag in the years. Between 1990 and 1999, the number of results around sexual assault and human rights increased almost 8-fold. There was a particularly strong increase from 1997 and 1998 to 1999, which aligns with the timeline of the Akayesu case. It makes sense that an international NGO would react more quickly to an international human rights ruling because their reporters pay close attention to issues affecting their work. On the other hand, a popular newspaper that reports on many issues may take longer to catch on. Still there is a dramatic increase in the year 1997 and again 1999 when the number of results increases by three-fold.

Figure 4: Frequency by year according to each search query  
*Washington Post*

Year	“Rape” AND “Human Rights”
1990	89
1991	100
1992	116
1993	152
1994	249
1995	202
1996	175
1997	289
1998	183
1999	682

Source: *Washington Post* database: <https://www.washingtonpost.com/newssearch/?query=rape>



Figure 5: *Washington Post*: search query frequency by year

Source: *Washington Post* database: <https://www.washingtonpost.com/newssearch/?query=rape>

At the same time that the serious attention paid to the issue of rape by INGOs and popular media sources increased, the number of organizations internationally dedicated to the eradication of sexual assault also increased. In their book *Activists Beyond Borders*, Margaret Keck and Kathryn Sikkink measure the number of NGOs in different issue areas as proxies for the growth of transnational advocacy networks. They state that NGO growth suggests “broader trends in the number, size, and density of advocacy networks generally” (Keck 10).

Below, Figure 6 is a table that records all NGOs established to combat sexual violence using the same database that Keck and Sikkink use: the Union of International Organizations Network’s Yearbook. This table is also important for a number of reasons that are different from Keck’s.

First, it is relatively consistent with the HRW and *Washington Post* results: between 1997–2000 the number of INGOs established was higher than the zero reported establishments between 1990 and 1991. Next, the table increases the generalizability of the results overall: namely, the rise of NGOs internationally suggests that the U.S. is not the only nation affected by the ICC trials—many of these organizations were established in a variety of countries and continents. Additionally, data points in this chart were extendable to the early 2000s whereas the *Washington Post*’s articles were not, so data may suggest that there were lasting effects after the trials. Finally the results expand upon Keck and Sikkink’s posit that the number of NGOs reflects both the size of transnational networks and the level of advocacy influence NGOs have in their government and culture; NGOs themselves may be influenced by

international events such as the ICC trials. Because More anti-sexual violence NGOs were established after the genocides, it may indicate that more people thought of rape as a serious crime even in their own community. It suggests that the issue of rape was important enough to warrant direct community action and advocacy.

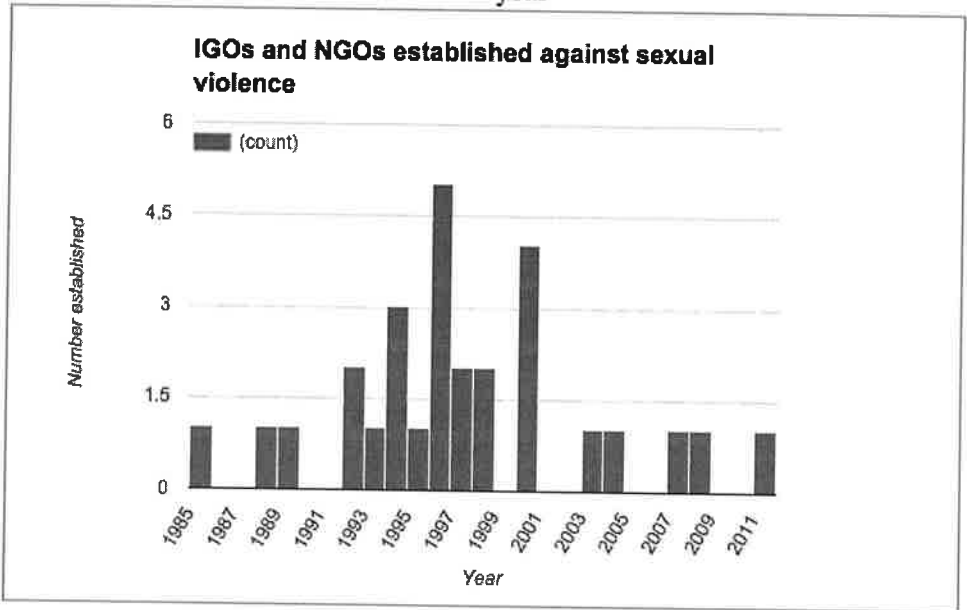
**Figure 6: List of INGOs and IGOs against sexual violence established between 1985–2012**

<b>Name</b>	<b>Year</b>
European Association against Violence against Women at Work	1985
Organization for Defending Victims of Violence	1988
Latin American Centre for the Study of Violence and Health "Jorge Careli"	1989
Latin American and Caribbean Feminist Network Against Domestic and Sexual Violence	1992
Pacific Women's Network Against Violence Against Women	1992
United Nations Declaration on the Elimination of Violence Against Women	1993
Women Against Violence Europe	1994
Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women	1994
Inter-African Francophone Network of Women for the Defense of Human Rights and Against Violence Against Women	1994
International Research Network on Violence Against Women	1995
European Network on Gender and Violence	1996
European Observatory on Violence Against Women	1996
UN Trust Fund to End Violence against Women	1996
WAVE Trust - Worldwide Alternatives to Violence	1996
Women's Court - Permanent Arab Court to Resist Violence Against Women	1996
European Policy Action Centre on Violence Against Women	1997
International Violence Against Women in War Network	1997
International Network on Family Violence	1998
International Observatory of Violence in the School Environment	1998
Sexual Violence Research Initiative	2000
Arab Regional Resource Center on Violence Against Women	2000
Lutte contre la violence exercée contre les enfants, les adolescents et les femmes (DAPHNE III)	2000
Global Action Committee for the Elimination of Violence in the Family	2000
End Violence Against Women International	2003
Violence Prevention Alliance	2004
African Women's Active Nonviolence Initiatives for Social Change	2007

Pan African Organisation for Research and Protection of Violence on Women and Children	2008
Council of Europe Convention on Preventing and Combating Violence against Women	2011

Source: UNION OF INTERNATIONAL ORGANIZATIONS  
Yearbook 1985–2012

**Figure 7: Number of Sexual Violence INGOs and IGOs established each year**



Source: UNION OF INTERNATIONAL ORGANIZATIONS Yearbook

Overall the increase in results in the late 1990s, for all measured NGO reports, media reports, and INGOs establishments dedicated to preventing sexual assault, suggests a strong increase in the level of attention paid to the issue of rape. The strong correlation between these measures and the ICC cases in Yugoslavia and Rwanda as well as the consistency across these sources indicate the power of international criminal cases to shape social norms. The doubling of number of results between 1998 and 1999 and again between 1999 and 2000 across different measures suggests that the trial itself had a strong socializing effect on the U.S. However, increased attention does not necessarily prove that rape is taken more seriously as a crime; some may argue that rape was simply more prominent in the international spotlight due to these cases. Qualitative analysis of the reports before and after the trials is a useful way to infer if instances of rape were taken more seriously after they

had been classified as a crime against humanity on an international stage or in a domestic context.

### QUALITATIVE ANALYSIS

In order to counter the claim that Human Rights Watch and the *Washington Post* simply wrote more articles about rape but did not necessarily take it more seriously, I conducted a qualitative analysis regarding language usage and word choice in HRW news releases. Still using the search query “rape” in the HRW database, I randomly selected four articles each year between 1996 and 1999 and analyzed shifts in the prominence and treatment of rape as a crime in each article. I decided to choose four articles because in 1996, only four articles were even written on the topic. Some of my techniques included recording the length of the report, evidence that rape was the main focus of the paper instead of a point in a long list of abuses, and whether articles were “tagged” as “women’s rights” or “crime against humanity.” Approximately half of the randomly selected articles were published before the September 2, 1998 coverage of the verdict of the ICTR’s inaugural case and the other half released after. Figure 8 below documents a noticeable shift in the language surrounding rape as a crime against humanity in my sample and strongly suggests the existence of norm socialization after the Akayesu trial.

I additionally included one article published after the Tadi trial, specifically because his was the first case where sexual violence against men was prosecuted and this article was the first that I found explicitly focusing on sexual violence against men.

**Figure 8: Qualitative Discourse Analysis of Human Rights Watch Articles**

Date	Title	Treatment of Rape as a Crime
1996 February 1	Human Rights Abuses during a Cease-Fire	Rape or sexual abuse is not the topic; simply mentioned in a long list of abuses and does not stand alone as a crime.
1996 September 25	Rwanda’s Genocide	Same as above. Rape is mentioned in a long list of abuses and does not stand alone as a crime.
1996 December 1	All too Familiar	Makes the case that sexual conduct between male guards and female prisoners should be criminalized.
1996 December 7	Sexual Abuse of Women in U.S. State Prisons	Reporter advocates criminalizing and punishing sexual contact between guards and prisoners criminal; tagged “women’s rights.”
1997 January 1	The Unindicted	No mention of rape as a crime; in long list of abuses but there is <b>nothing specific about rape.</b>

1997 June 1	Rape for Profit	Rape is written about as a consequence of human trafficking.
1997 August 1	South Africa: Violence Against Women	Rape is the topic of the piece; it is referred to as “gender-based crime” but not a “crime against humanity.”
1997 October 1	What Kabila is Hiding	Rape is listed in a paragraph of abuses and does not stand alone as a crime. Cited more as an example to “larger” acts of corruption.
<b>1998 October 2: Akayesu is sentenced to life in prison</b>		
1998 September 1	Indonesia: The Damaging Debate on Rapes of Chinese Women	The title and topic both focus on rape, author calls for international action specifically about rape.
1998 September 2	Human Rights Watch Applauds Rwanda Rape Verdict	Title and topic suggest rape is the main focus. Subtitle explicitly refers to rape as a war crime.
1998 September 21	Women Raped in Prisons	Title and topic note the importance of this crime. A HRW director calls prison rape “a terrible abuse of human rights.”
1998 December 1	Summary of the Key Provisions of the ICC Statute	Report details rape enumerated as war crime for first time.
1999 May 10	Kosovo: Sexual Violence as International Crime	Title refers to rape as a war crime. The article is tagged “crimes against humanity.”
1999 June 24	Getting Away with Murder, Mutilation, and Rape	Title focuses on rape along with two other crimes against humanity, tagged with “war crimes.” Rape is more than just another example of an abuse listed for shock factor—it warrants a distinct section and distinct investigation.
1999 July 7	Annan Must Reject Amnesty for Sierra Leone Crimes	Majority of “atrocities” described are instances of rape and gang rape. Rape and murder are both described as “crimes against humanity” and neither is given more focus or declared the worse of the abuses.

1999 October 19	Crime or Custom?	Rape and crimes against women by private citizens are the main topics of the press release. This begins to bridge the divide between rape perceptions as war crimes versus crimes committed by non-state actors. Author argues that freedom from rape in all cases is a “fundamental human right.”
<b>2000 January 26: Tadi is sentenced to a maximum of 20 years</b>		
2001 April 1	No Escape: Male Rape in U.S. Prisons	One of the first articles that focuses primarily on sexual violence against men. 378 page report detailing abuse across multiple states

Source: Human Rights Watch database [www.hrw.org/search/apachesoer\\_search/rape](http://www.hrw.org/search/apachesoer_search/rape)

According to the database, before the conclusions of the trials rape rarely made headlines. In fact, in six out of the eight sampled articles the NGO released before 1998, “rape” or “sexual violence” was not featured in the title and was merely cited as another example in a long list of abuses or as a subcategory of women’s rights—epidemic rape was rarely treated as a human rights crisis alone or as the sole subject of a news release. However, in 1998 and after, rape was finally the topic of numerous articles, featured in titles, referred to more often as a “crime,” and treated as a serious human rights abuse by itself. Articles about rapes were tagged as “crime against humanity” instead of “women’s rights” in the database. While no article in my study published prior to the 1998 verdict refers to rape as a war crime, over half of articles after the landmark decision are tagged “war crime” or use the phrase in the body of the article to refer to rape.

Analysis of NGO reports suggest that the ICTR case increased the perceived legitimacy of the issue of rape not just in the Rwandan genocide, but also worldwide. Cases from many countries all over the world, including Kosovo, Sierra Leone, and Pakistan, were reported on just in the year 1999. Furthermore, some of these cases of rape happened outside acts of war, suggesting that the NGO linked war and peacetime violence as still constituting human rights abuses, especially in cases of systematic rape and rape related to ethnic violence.

During and after the trials, NGO and media spotlight increased on rape cases within the U.S. in the context of human rights abuses. Prior to 1998, international cases received more attention from HRW while afterwards the organization was more willing to label domestic rape cases and rape cases occurring outside the context of war as “crimes.” For example, the articles “Sexual Abuse of Women in U.S. State Pris-

ons” (1996) and “Women Raped in Prisons” (1998) cover the same topic almost exactly two years apart. While “Sexual Abuse,” describes a situation of “invisibility” of these crimes, it recommends that the U.S. acknowledge and punish “sexual contact” between guards and female prisoners.<sup>23</sup> The report is long, but the language is not as damning as the shorter 1998 report. In “Women Raped,” the situation described by the author about sexual assault of female prisoners by guards takes a more accusatory tone. In the article, a HRW director, Reagan Ralph, stated “if this were happening in another country, no one would hesitate to call it what it is: a terrible abuse of human rights.”<sup>24</sup>

The press release for the report came on September 21, 1998, only 20 days after Human Rights Watch reported on the verdict of the Akayesu trial. No article before that point had referred to U.S. prison rapes as a crime against humanity—the 1996 article was tagged as “women’s rights” and the authors described a situation where guards were not punished for rape “largely because of an ingrained belief, except in the most egregious cases, that the prisoner was complicit in the sexual abuse committed against her.”<sup>25</sup> Beyond the classification of rape as a tool of war and an act of genocide in Rwanda, reporters consciously or subconsciously found rape in Michigan to be a human rights abuse. This parallel shift in thinking between war crimes and peacetime crimes suggests that norm socialization played a role; after all, a precedent in an international criminal court does not have any direct legal ramifications on domestic criminal processes. While the Akayesu case set an important legal precedent labeling rape as a war crime, evidence suggests that this case affected the United States’ perception of rape in first world countries as a serious abuse of human rights.

An additional report I included beyond the random samples was a 378-page investigation published in 2001 about the rape of men in U.S. prisons by other men. I think this report is interesting for a number of reasons. It is one of the first reports that focus directly on the experience of male victims of sexual assault. This is especially interesting considering that approximately a year before this, Tadić’s sentencing appeal was denied and he was officially the first man ever prosecuted and found responsible in an international criminal court for acts of sexual violence against men. Second, most of the crimes described in this article are those of private citizens against other private citizens. Crimes like these do not have the clear “government motivation” required by the ICC and thus do not constitute crimes against humanity. Yet it is clear that HRW is still taking these rape cases very seriously as human rights abuses. I believe the socialization effect from the ICC not only allowed average citizens to understand rape as a crime in the context of war, but also placed rape in contexts outside of war, such as systematic institutionalized rape, as human rights abuses too.

#### LIMITATIONS FOR VICTIMS

A large body of research has discussed the negative consequences for the health, safety and recovery of the victims who testify in International Courts. At first

glance, this may seem peripheral to the subject of this paper, but in reality it is relevant and important for the purposes of policymaking. Although evidence shows that the ICC affected international norms, including increasing public acceptance of rape as a human rights abuse, these trials come at a cost for victims. While international human rights scholars and reporters may advocate for more international criminal courts to address sexual assault, it is important to also advocate for policies during and after the trials that mitigate acts of re-victimization and meet the survivors' needs for psychological and economic support. Prioritizing healing after violence is important in addition to preventing violence.

It is a common perception that "telling one's story" can be a healing experience for survivors of rape. While disclosure can be a powerful experience, it is usually when disclosure happens on the victim's own terms. Some survivors use art, storytelling, poetry, and other media to relay their experiences to an audience of their choosing. However, this is not the case for survivors of war crimes testifying in an international court. The victims are cross-examined by hostile defense lawyers who are eager to poke holes in their stories. Occasionally, the prosecutor cuts off victims if they attempt to elaborate on a feeling that the prosecutor believes is not immediately relevant to the facts of the case. In many cases, there is little debriefing after a case and women feel unappreciated for testifying in difficult circumstances. While some victims in one study described their experience testifying as positive, the majority, 24 to 7, found it "painful" and "disempowering" (Brounéus 2008). Brounéus (2008), Crider (2012), and Henry (2009) provide persuasive challenges to the "myth" that testifying is a healing experience.

In a paper examining victim insecurity and re-traumatization after testifying, Brounéus (2008) presents material from interviews with 16 women survivors who told their stories in Rwanda *gacaca* village tribunals.<sup>26</sup> First, those testifying had to worry about their physical security; women who chose to testify in her study were quite literally "re-victimized" in that they were threatened before, during, and after the trials. Next, the trials exacerbated many of the physical and psychological ailments the victims suffered; Hutu extremists often used rape not only to humiliate and injure Tutsi women and girls, but also to spread HIV and to force pregnancy on Tutsi women. Brounéus cites another study, which found testimony often "disrupted lives and relationships . . . [causing] nausea and vomiting, as well as psychological distress" (Herman 2003). The women who testified in local villages in Rwanda were often not provided with any safety measures or adequate, if any, medical care for physical or mental afflictions after disclosing that they were survivors.

Crider (2012) describes the negative feelings survivors in Rwanda and Bosnia had when they felt their testimonies were not taken seriously. Though they were encouraged to testify, they noticed that charges of rape could be dropped in exchange for the rapist pleading guilty on other counts; moreover, other rapists received the minimum sentencing even when the women did testify. Crider describes the Kunarac case of 2001, where Bosnian women exclaimed "Justice has not been done" as three



men were found guilty yet sentenced to the minimum possible punishment for their crimes (34). Crider argues that cases like these are a failure on the part of the international community to take these crimes seriously and that “simply acknowledging rape in war is not going to solve the problems” (35).

Henry (2009) further describes the negative treatment of victims in rape hearings by the Court itself and the outcome this treatment had on their perceptions of procedural fairness. A large part of the psychological trauma caused by rape is a loss of control over one’s own body and life. In the ICC cases this feeling repeated as the prosecutor—not the victim—decided if there was enough evidence to move forward, decided if the defendant could get off by pleading guilty to other charges, and decided the questions to be asked of both the victim and the defendant. The victims did not have the right to confront the accused and the (mostly male) judges ultimately decided if what the women experienced was “enough” to constitute a crime. Accounts of judges falling asleep during trial proceedings and allowing the defendant’s lawyers to ask unnecessarily hostile and accusatory questions likely left victims feeling ignored by the justice system meant to protect them (121).

Henry notes that survivors cited four main motivations to testify: to speak for the dead, to tell the world the truth, to seek justice, and to prevent further crimes from occurring. While many women felt a duty to speak for these very reasons, they were frustrated by the experience of speaking out and often felt their testimony was meaningless. Though victims described their motivation to “tell the truth,” they were not allowed to tell it in the way that they wished. Henry cites an excerpt from the Celebici trial that makes it clear that the prosecutor’s goals and the victim’s goals were sometimes at odds. In this case, the survivor began to tell her story and make sense of what had happened to her, but the prosecutor interrupted the victim at the beginning of her testimony to elicit “facts” to secure a guilty verdict. Though the prosecutor has the right motivations, he effectively shut the victim off from her own words and story and prohibited her from expressing herself in the way that she made sense of her own experience (126). The lack of freedom victims had over their own stories and lack of control they had over most of the legal processes left many feeling powerless, frustrated, and disillusioned.

Due to these clear limitations, it is important to weigh benefits and detriments when seeking policy recommendations for the eradication of sexual violence. Michael Reisman describes “judicial romanticism” as a key pitfall to avoid: the “glorification of legal entities” as panaceas (Henry 134). Survivors should not be misled to believe that testifying would be good for them—unless important changes are made in the way that prosecutions for rape proceed; this will involve a real effort to educate prosecutors and judges on the distinctive problems of testimony by rape victims. Governments and the ICC should ensure that the resources available to each individual testifying satisfy basic needs of victims, including healthcare and security. The ICC should continually improve “best practices” to give survivors power and control over their own stories and experiences. While international criminal trials have the poten-

tial to increase awareness and influence cultural change, in their current state they do not have the power to heal the community in which they occur.

### AREAS FOR FURTHER RESEARCH

Scholars should conduct further research on causal relationships and generalizability in order to strengthen the validity of these findings. First, the direction of the causal relationship must be investigated. Evidence suggests that increased media attention could have prompted the ICC to take action in the first place. For example, a researcher in Bosnia at the time of the war, Alexandria Stiglmayer, “credits the media with putting pressure on the Red Cross and larger international community to deal with the issue [of rape in war].”<sup>27</sup> While the media likely influenced the ICC, however, it is clear that the ICC influenced the media. The number of news releases regarding sexual violence increased slowly before the trial but increased at a much faster rate after the Akayesu verdict in 1998. The serious attention paid to sexual violence against men also increased after the Tadi verdict in 2000. The timeline suggests that the inaugural ICTR and ICTY cases affected NGO and media treatment of sexual violence as a war crime.

In order to make more generalizable statements about the impact of the ICC, further research including countries besides the United States should attempt to measure the causal interactions while controlling for possible confounding domestic factors. For example, other international and domestic contemporary events besides the ICTR and the ICTY may have increased attention to the issue of rape, such as the mid-1990s US prison rape scandals or the 1990s feminist campaign urging the U.S. government to recognize marital rape as a crime. Using data from other sources outside of the U.S. would improve generalizability. Large-scale analysis of language shifts in a number of different media including television, journals, NGO reports, and newspapers would demonstrate if the shift is consistent across news sources and NGOs in numerous countries and cultures. Extending the time period of the study to the 2000s and 2010s may provide evidence that other international trials played a role in increasing awareness of rape or other human rights abuses.

Furthermore, examining how other domestic or international laws and treaties changed after the 1998 verdict would provide more evidence the transformation in the treatment of rape as a crime. For example, the Kunarac, Kovac, and Vukovic ICTY case, which began in March of 2000, used legal precedents from ICTR cases to expand the definition of enslavement to include forced sexual servitude.<sup>28</sup> This suggests that the ICTR’s legal legacy improved the ability of international courts to hold leaders responsible for human rights conditions. Moreover, the level of serious attention governments pay to the issue of rape could be assessed by examining changes in national criminal laws concerning rape, the percentage of guilty verdicts, and the number of prosecutions. Since international trial verdicts do not serve as legal precedents in domestic cases, legal changes in the treatment of rape would likely be due to a socialization effect.

Finally, this study could be repeated with analyses of other human rights abuses. Trials that set precedents for cases involving torture, forced disappearances, or the death penalty, and the subsequent reactions, would give a wider picture of the possible policy implications for international criminal tribunals beyond the prosecution of rape. If increases in media and NGO reports also occur after important verdicts in these types of cases, one could make a strong argument about the ICC's influence in socializing norms and increasing the attention paid to human rights issues in general.

## CONCLUSION

The evidence of socialization effects laid out in this paper suggests best practices for increasing the serious attention paid by the international community to human rights abuses; specifically, international criminal tribunal cases can increase NGO and media coverage and the perceived legitimacy of labeling rape as a human rights abuse. While it is important to prioritize empowering survivors of the crimes, the ICC has the potential to socialize our norms around the issue and change attitudes about the severity of these crimes.

Prior to the late 1990s, rape had never been prosecuted in an international court. Instances of rape domestically and internationally were often described as simply a "woman's issue" or treated as an extra point to add to an already long list of abuses. In fact, these acts were rarely the topic of human rights articles or publicly condemned as crimes against humanity by the international community. I find evidence that the perception of rape as a serious crime changed in the late 1990s after the trials of Duško Tadi and Jean-Paul Akayesu, the first men tried and found guilty in an international court for sexual violence as a war crime. I measure the level of serious attention paid to rape using NGO reports, newspapers, and INGO establishment dates. The data shows a strong positive shift after the ICTR and ICTY inaugural trials in 1998 and 2000, respectively.

The three types of analysis are important for different reasons. First, the number and language of NGO reports measure the amount of attention and resources human rights experts devote to the issue of rape. Second, the number of *Washington Post* articles suggests the general level of awareness of rape for average U.S. citizens who read newspapers. Finally, the INGO growth reflects international attention paid to sexual violence, including both governmental and private action on this issue.

All analyses showed an important shift after the trials. First, the number of NGO and media reports increased sharply after 1998 along with a general increase in the number of INGOs established during the course of the trial. Next, the language surrounding these reports increased in intensity, and the NGO began to label acts of sexual violence as "crimes against humanity" more often. Finally, the NGO not only paid more attention to rape in times of war, but also started to focus on domestic cases of systematic rape as human rights abuses even if private citizens committed those crimes. After the ICTY case set a precedent in finding a state leader responsible

for sexual violence against men for the first time in an international court, Human Rights Watch even began to write about the ways in which sexual violence affected specifically men.

The classification of rape as an act of genocide mattered because NGOs were able to devote limited time, money and human capital to an issue that would be taken seriously by the international community. Due to increased ICC attention to these issues, HRW may have increased reporting on these types of abuses because they believed that the international community would pay attention. The *Washington Post* began publishing significantly more articles about rape in the context of human rights in the years 1998 and 1999. This suggests that the ICC had strong influence in “setting the agenda” of human rights NGOs and even capturing the attention of the media. The fact that more NGOs were established around the issue of sexual violence around the time of the trials suggests that the internationally community was not merely paying attention—it was also taking action to prevent sexual assault.

These findings suggest international criminal tribunals play an important role in broadcasting stories of violence and in holding perpetrators responsible on an international stage. The ICC may have more influence than a simple deterrent effect through the punishment of high-level leaders—they can also change our norms regarding violence in individual countries and in the international community. They can “set the agenda” for human rights organizations and even increase the number of people reading about human rights issues in the daily papers.

The trials brought forth by the U.N. through the International Criminal Tribunal for Rwanda (ICTR) and Yugoslavia (ICTY) ultimately had a strong socialization effect on the United States, increasing awareness and acceptance of rape as a serious human rights abuse. At the same time that international criminal trials have had positive effects on the treatment of rape as a serious crime, they also have the potential to have negative effects on the health, safety, and empowerment of victims of these crimes. While ICC trials have the potential to increase awareness and create some cultural change, in their current condition, they do not have the power to heal the community in which they occur.

## NOTES

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1 RAINN and Stop Rape Now are two prominent examples. RAINN is the Rape, Abuse and Incest National Network founded in 1994. Stop Rape Now refers to The United Nations Sexual Violence in Conflict, established by the Security Council in 2009

2 Thompson, Mark. “The Military’s Latest Rape-Case Mess.” *Time*, 16 Sept. 2013. <http://content.time.com/time/magazine/article/0,9171,2151156,00.html>

3 [http://www.huffingtonpost.com/entry/federal-funding-campus-rape-investigations\\_us\\_568af080e4b014cfe0db5f76](http://www.huffingtonpost.com/entry/federal-funding-campus-rape-investigations_us_568af080e4b014cfe0db5f76)

- 4 FBI definition of rape: <https://www.fbi.gov/about-us/cjis/ucr/recent-program-updates/new-rape-definition-frequently-asked-questions>
- 5 <https://www.opendemocracy.net/5050/rahila-gupta/victim-vs-survivor-feminism-and-language>
- 6 Sommer, Robert. "Camp Brothels: Forced Sex Labour in Nazi Concentration Camps," in *The Brutality of Desire: War and Sexuality in Europe's 20 Century*, ed. Dagmar Herzog, (New York: Palgrave MacMillan, 2009): 168–196.
- 7 History of Nanking Massacre, [http://www.nanking-massacre.com/History\\_of\\_Nanking\\_Massacre\\_1937.html](http://www.nanking-massacre.com/History_of_Nanking_Massacre_1937.html).
- 8 Henry, Nicola. "Witness" (2009)
- 9 Text of the Fourth Geneva Convention in 1949 <https://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=AE2D398352C5B028C12563CD002D6B5C&action=openDocument>
- 10 Nuremberg trial proceedings, article 6 <http://avalon.law.yale.edu/imt/imtconst.asp>
- 11 Chetnik refers to the main Serbian Nationalist Group involved in the violence. *I Came to Testify: Women, War, and Peace*. PBS, 2011.
- 12 <http://www.womenundersiegeproject.org/conflicts/profile/bosnia>
- 13 Transcript of case no. ICTR-96-4-T The Prosecutor versus Jean-Paul Akayesu <http://www.unict.org/sites/unict.org/files/case-documents/ict-96-4/trial-judgements/en/980902.pdf>
- 14 Alexander 2004. "Self, Social Structure, and Beliefs: Explorations in Sociology." (92)
- 15 Marsh and Payne (2007). "The Globalization of Human Rights and the Socialization of Human Rights Norms."
- 16 Mendeloff (2012). "Deterrence, Norm Socialization, and the Empirical Reach of Kathryn Sikkink's The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics"
- 17 "Reporting Rates." RAINN | Rape, Abuse and Incest National Network. N.p., <https://www.rainn.org/get-information/statistics/reporting-rates>
- 18 "How Often Does Sexual Assault Occur?" RAINN | Rape, Abuse and Incest National Network. N.p., <https://www.rainn.org/get-information/statistics/frequency-of-sexual-assault>
- 22 [https://en.wikipedia.org/wiki/List\\_of\\_newspapers\\_in\\_the\\_United\\_States\\_by\\_circulation](https://en.wikipedia.org/wiki/List_of_newspapers_in_the_United_States_by_circulation)
- 23 Ibid.
- 24 <http://www.hrw.org/news/1998/09/20/women-raped-prisons-face-retaliation>
- 25 <https://www.hrw.org/reports/1996/Us1.htm>
- 26 Brounéus (2008). Local grassroots courts that worked with the ICTR to bring justice to more perpetrators of violence than the ICTR had the capacity to prosecute.
- 27 Crider (26)

28 “[the ICTY conviction] closely followed the historical precedent set by the ICTR’s judgment in the Akayesu case in 1998.” *The Prosecutor versus Jean-Paul Akayesu*. Case No. ICTR-96-4-T. International Criminal Tribunal for Rwanda. 2 Sept. 1998. <http://www.icty.org/sid/10314>

## BIBLIOGRAPHY

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Alexander, Jeffrey and Gary Marx and Christine Williams. “Self, Social Structure, and Beliefs: Explorations in Sociology.” University of California Press. 2004.

Askin, Kelly. “Prosecuting Wartime Rape and Other Gender-Related Crimes under International Law: Extraordinary Advances, Enduring Obstacles.” *Berkeley Journal of International Law*. 2003. <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1240&context=bjil>

Brounéus, Karen. “Truth-Telling as Talking Cure? Insecurity and Retraumatization in the Rwandan Gacaca Courts.” International Peace Research Institute. 2008.

Cider, Lindsey. “Rape as a War Crime and Crime against Humanity: The Effect of Rape in Bosnia-Herzegovina and Rwanda on International Law.” Alabama Political Science Association Conference. 2012. <http://www.cla.auburn.edu/alapsa/assets/File/4CCrider.pdf>

Henry, Nicola. “The Fixation on Wartime Rape: Feminist Critique and International Criminal Law.” *Social & Legal Studies*. 2014. <http://sls.sagepub.com/content/23/1/93.full.pdf>

Henry, Nicola. “Witness to Rape: The Limits and Potential of International War Crimes Trials for Victims of Wartime Sexual Violence.” *The International Journal of Transitional Justice*. 2009. <http://ijtj.oxfordjournals.org/content/3/1/114.full.pdf+html>

Human Rights Watch. Annan Must Reject Amnesty for Sierra Leone Crimes: Eyewitnesses Confirm Fresh Rebel Atrocities Against Civilians Despite Ceasefire. Press Archives. *Human Rights Watch*, 7 July 1999.

Human Rights Watch. Crime or Custom? Violence Against Women in Pakistan. Press Archives. *Human Rights Watch*, 19 Oct. 1999.

Human Rights Watch. Kosovo Backgrounder: Sexual Violence as International Crime. Press Archives. *Human Rights Watch*, 10 May 1999.

Human Rights Watch. Women Raped in Prisons Face Retaliation. Press Archives. *Human Rights Watch*, 28 September 1998.

Keck, Margaret and Kathryn Sikkink. “Activists Beyond Borders: Advocacy Networks in International Politics.” Cornell University Press. 1998.

Marsh, Christopher and Daniel Payne. "The Globalization of Human Rights and the Socialization of Human Rights Norms." *Brigham Young University Law Review*. 2007.

Meernik, James. "A Psychological Jurisprudence Model of Public Opinion and International Prosecution." *International Area Studies Review*. 2014. <http://ias.sagepub.com/content/17/1/3.full.pdf>

Skjelsbaek, Inger. "Sex, Violence and War: Mapping out a complex relationship." *European Journal of International Relations*. 2001. <http://ejt.sagepub.com/content/7/2/211.full.pdf+html>

## DATA GATHERING

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Online Archive of Human Rights Watch News Releases [Internet]. Human Rights Watch. 1990–2000. [cited 2016] Available from: [http://www.hrw.org/search/apachesolr\\_search/](http://www.hrw.org/search/apachesolr_search/)

Online Archive of the *Washington Post* [Internet]. *Washington Post*. 1990–1999. [cited 2016] Available from Dartmouth College database

UNION OF INTERNATIONAL ORGANIZATIONS Yearbook. 1985–2012.