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Cover Page Footnote

Carrie Sperling is an Assistant Professor of Legal Research and Writing at the University of Oklahoma College of Law. I would like to thank three of the brightest people I know for their assistance in writing this article—Talitha Ebrite for her excellent research and thoughtful comments, Meg Penrose for her encouragement and superb suggestions, and Vivian Houg for her keen insight and deft editing.

MOTHER OF ATROCITIES: PAULINE NYIRAMASUHUKO'S ROLE IN THE RWANDAN GENOCIDE

Carrie Sperling *

In the courtroom she prefers “plain high-necked dresses that show off a gleaming gold crucifix she usually wears.”¹ “[H]er appearance in court suggest[s] a school teacher.”² “With her hair pulled neatly back, her heavy glasses beside her on the table, she looks more like someone’s dear great aunt than what she is alleged to be: a high-level organizer of Rwanda’s 1994 genocide who authorized the rape and murder of countless men and women.”³

As Pauline Nyiramasuhuko stands trial before the International Criminal Tribunal for Rwanda (ICTR)⁴ for crimes against humanity and genocide,⁵ crimes shocking in their depravity, the press seems more fixated on her gender than the significance of her crimes and her prosecution.⁶ The press asks: how could a woman, a mother, a female that looks so feminine commit such atrocities?⁷ To ask the question is to assume that women are not capable of committing acts of violence and depravity such as rape,

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1. Peter Landesman, *A Woman’s Work*, N.Y. TIMES MAG., Sept. 15, 2002, at 86.

2. *Id.*

3. *Id.* at 125.

4. The United Nations Security Council created the International Criminal Tribunal for Rwanda (“ICTR”) on November 8, 1994. The ICTR is vested with jurisdiction to prosecute persons responsible for genocide and other violations of international humanitarian law committed in Rwanda between January 1, 1994 and December 31, 1994. See Statute of the International Criminal Tribunal for Rwanda, Nov. 8, 1994, available at <http://www.icttr.org> [hereinafter ICTR Statute]. The Tribunal is located in Arusha, Tanzania. See Alexandra A. Miller, *From the International Criminal Tribunal for Rwanda to the International Criminal Court: Expanding the Definition of Genocide to Include Rape*, 108 PENN. ST. L. REV. 349, 357-59 (2003).

5. See *id.* at 366 for a listing of crimes for which Pauline has been prosecuted.

6. See *infra* notes 156-164 and accompanying text.

7. See *infra* notes 156-164 and accompanying text.

mass murder, and genocide. In reality, “[i]t is probably the case that women’s peacefulness is as mythical as men’s violence.”⁸ Women throughout history have equaled their male counterparts in their cruelty and in their willingness to plan, orchestrate, and participate in mass atrocities.⁹ Women, girls, and mothers also willingly and enthusiastically played important roles in the Rwandan genocide.¹⁰ As a female perpetrator of mass violence, Pauline is not an anomaly.

Those who view Pauline’s actions during the genocide as somehow inexplicable because of her gender engage in the stereotypical thinking that perpetuates the special victimization of women. History demonstrates that women suffer especially heinous sexual violence in almost every armed conflict.¹¹ Women become such targets for many reasons, all connected to their otherness, their difference from the patriarchy that perpetuates the conflict.¹² As one writer noted, “if . . . war is the continuation of politics by other means, it has been constructed out of hostility towards the female ‘other.’”¹³

The Tutsi women of Rwanda, like women in countless other conflicts, were sexually violated to denigrate Tutsi men or the Tutsi race, to attack their purity, and to serve as a warrior’s reward.¹⁴ To successfully carry out a campaign of sexual terror, the perpetrators had to embrace the myth that sees women as merely an extension of the Tutsi man, merely a tool for the troops’ pleasure, or merely a vessel of procreation.¹⁵ This myth also sees rape as a defilement of the woman and her family, her man, and often her entire ethnic group.¹⁶ And because of adherence to this myth, crimes specifically targeting women during armed conflict are rarely prosecuted.¹⁷

Pauline’s case challenges the other side of the myth: that women, by their nature, are incapable of being warriors—somehow their roles as women and mothers prohibit them from planning or participating in depraved violence.¹⁸ Pauline’s case says more about our continued resistance to view women as equals than it says about her uniqueness among her female peers. Because we continue to view women as less

8. JILL STEANS, GENDER AND INTERNATIONAL RELATIONS 92 (1998).

9. *See infra* Part V.

10. *See infra* Part VI.

11. *See infra* Part VII.

12. *Id.*

13. STEANS, *supra* note 8, at 99.

14. *See infra* notes 79-91 and accompanying text.

15. *See infra* Part VI.

16. *See infra* notes 223-227 and accompanying text.

17. *See infra* Part IX.

18. *See infra* Part IV.

capable than men, as less worthy than men, and as confined to the roles of sexual objects or mothers, women continue to bear the painful scars of sexual violence in times of conflict. Pauline's case will hopefully prove to the world, once again, that women are equally human, even in their capacity for violence. When women begin to be seen as equals, sexual violence against women may lose its purpose. And though we may not live to see that day, we may live to see the day when crimes against women are treated as crimes against humanity, because women are equal participants in humanity.

The ICTR, where Pauline currently sits on trial for her crimes, has made significant progress towards ending impunity for the crimes carried out almost exclusively against Rwandan women.¹⁹ The next step toward ending impunity for crimes of sexual violence during conflict is to demystify the nature of women. In this regard, Pauline's case may become that important step in the process.

I. THE RWANDAN GENOCIDE: HISTORICAL BACKGROUND

Between April and July 1994, Rwanda suffered the most efficient and brutal genocide in recorded history. Best estimates calculate the dead between five hundred thousand and one million people,²⁰ decimating the pre-genocide population of eight million.²¹ Tutsis made up less than fifteen percent of the population before 1994,²² and the genocide eradicated approximately seventy-seven percent of that population.²³ Nearly all the victims were killed in the first ninety days of the Rwandan genocide, making the rate of the genocide five times as swift as the Nazi's extermination of the Jews in the Holocaust.²⁴

Genocide of that magnitude takes planning.²⁵ Hutu extremists were able to carry out massacres on such a large and rapid scale because they had

19. *See infra* notes 256-263 and accompanying text.

20. HUMAN RIGHTS WATCH, LEAVE NONE TO TELL THE STORY: GENOCIDE IN RWANDA (March 1999), available at <http://www.hrw.org/reports/1999/rwanda> [hereinafter HUMAN RIGHTS WATCH, LEAVE NONE TO TELL THE STORY] (scroll down to "Numbers").

21. SAMANTHA POWER, "A PROBLEM FROM HELL": AMERICA AND THE AGE OF GENOCIDE 336 (2002).

22. HUMAN RIGHTS WATCH, LEAVE NONE TO TELL THE STORY, *supra* note 20; TEMPLE-RASTON, JUSTICE ON THE GRASS: THREE RWANDAN JOURNALISTS, THEIR TRIAL FOR WAR CRIMES, AND A NATION'S QUEST FOR REDEMPTION 9 (2005).

23. HUMAN RIGHTS WATCH, LEAVE NONE TO TELL THE STORY, *supra* note 20.

24. *See* Miller, *supra* note 4, at 351; GÉRARD PRUNIER, THE RWANDA CRISIS: HISTORY OF A GENOCIDE 261 (1995).

25. PHILLIP GOUREVITCH, WE WISH TO INFORM YOU THAT TOMORROW WE WILL BE KILLED WITH OUR FAMILIES: STORIES FROM RWANDA 17-18 (1998) [hereinafter GOUREVITCH, WE WISH TO INFORM YOU].

been preparing for years.²⁶ They arranged for massive shipments of arms, trained thousands of militia members, and engaged in a propaganda campaign demonizing the Tutsis.²⁷ The media campaign targeted Tutsis as not only sub-human but also as a threat to the Hutu existence.²⁸ The arms shipments made it possible for the militia to commandeer large portions of the Hutu civilian population in killing their Tutsi neighbors.²⁹

Many historians trace the roots of the genocide back to colonial times, when Belgian colonizers created distinct racial classes in Rwanda.³⁰ Belgians deemed the Tutsis, who were taller and had more narrow facial features, more European and thus a more advanced “race” than the Hutu.³¹ The Belgian colonizers required citizens to carry identity cards listing the racial group to which they belonged.³² Tutsis were given positions of power within the government, much of the country’s land, and exclusive access to education, while Hutus were excluded from political power, obligated to work for Tutsis, and denied access to education.³³ The fact that the European colonizers were able to create such a chasm between two groups of Rwandans is remarkable considering the fact that the Rwandan people were so homogenous. In fact, Rwandans shared commonalities rarely found in other nations: one language (Kinyarwanda), one faith (Catholicism), and one law.³⁴

This system created extreme hostilities between Hutus and Tutsis, and it existed until the Hutu majority began to make demands for self-

26. LINDA MELVERN, CONSPIRACY TO MURDER: THE RWANDAN GENOCIDE 50-59 (2004).

27. *Id.*

28. *See id.* at 92, 103-05 (referring to Tutsis as cockroaches and characterizing all Tutsis as accomplices to the RPF); POWER, *supra* note 21, at 338-40 (setting forth the “Ten Commandments of the Hutu” and summarizing Hutu propaganda alluding to Tutsis as devils and claiming Tutsis intended to exterminate the Hutus).

29. MELVERN, *supra* note 26, at 45-47.

30. *Id.* at 3-4; TEMPLE-RASTON, *supra* note 22, at 17.

31. PETER RONAYNE, NEVER AGAIN?: THE UNITED STATES AND THE PREVENTION AND PUNISHMENT OF GENOCIDE SINCE THE HOLOCAUST 153-54 (2001). The Twa, a small group of pygmies indigenous to the region, accounted for a small percentage of the population. MELVERN, *supra* note 26, at 5.

32. The practice of requiring citizens to carry national identity cards that permanently classified each citizen as Hutu or Tutsi assisted in carrying out the genocide. TEMPLE-RASTON, *supra* note 22, at 19. In 1990, outsiders became concerned about the identity cards playing a role in a looming genocide. MELVERN, *supra* note 26, at 60-61. That same year, as part of the peace negotiations, the government ordered new identity cards that deleted the Hutu-Tutsi delineation, but those cards never arrived. *Id.*

33. MELVERN, *supra* note 26, at 5-6; TEMPLE-RASTON, *supra* note 22, at 19.

34. GOUREVITCH, WE WISH TO INFORM YOU, *supra* note 25, at 55 (quoting Monsignor Louis de Lacger); TEMPLE-RASTON, *supra* note 22, at 6.

determination and self-government.³⁵ Sensing a possible uprising, the colonizers reversed field, supporting the Hutu uprising in 1959.³⁶ During this uprising, the Hutus targeted Tutsis, killing and displacing large numbers of Tutsis.³⁷ Many of the displaced Tutsis crossed into neighboring countries, including Uganda and Burundi.³⁸

Following this Hutu uprising, the Hutu majority held most of the political power in Rwanda³⁹ and denied Tutsis equal access to education, government office, and military service.⁴⁰ The Hutus succeeded in completely turning the tables in this new political reality.⁴¹

In the few years preceding the 1994 genocide, many of the Tutsis who had fled to Uganda formed a rebel force, the Rwandan Patriotic Front (RPF),⁴² originated to regain some political control in Rwanda.⁴³ Meanwhile, Hutu politics became radicalized. Many Hutus supported the total annihilation of the Tutsi population to rid Rwanda of the threat of another period of Tutsi domination—a political movement known as Hutu Power.⁴⁴ The dominant Hutu political party began to train youth militia, known as Interahamwe,⁴⁵ who would eventually carry out the genocidal plans.⁴⁶

As tensions built, foreign aid to Rwanda's Hutu president, Juvenal Habyarimana, and his government, continued to pour in, and weapons shipments continued to arrive from France, Egypt and South Africa.⁴⁷ In 1990, the RPF launched an invasion of Rwanda from Uganda, occupying the northeast portion of Rwanda.⁴⁸ Hutu Power responded by carrying out

35. RONAYNE, *supra* note 31, at 154; TEMPLE-RASTON, *supra* note 22, at 19-21.

36. RONAYNE, *supra* note 31, at 154.

37. *Id.*

38. MELVERN, *supra* note 26, at 8-10.

39. *Id.* at 8-12; POWER, *supra* note 21, at 337.

40. MELVERN, *supra* note 26, at 12.

41. GOUREVITCH, *WE WISH TO INFORM YOU*, *supra* note 25, at 61; RONAYNE, *supra* note 31, at 154.

42. AFRICAN RIGHTS, RWANDA, NOT SO INNOCENT 19-20 (African Rights 1995) [hereinafter AFRICAN RIGHTS, NOT SO INNOCENT].

43. MELVERN, *supra* note 26, at 13.

44. MAHMOOD MAMDANI, *WHEN VICTIMS BECOME KILLERS: COLONIALISM, NATIVISM, AND THE GENOCIDE IN RWANDA* 195 (2001).

45. MELVERN, *supra* note 26, at 24-27.

46. During the genocide, Interahamwe became synonymous with all militias. See MAMDANI, *supra* note 44, at 204; MELVERN, *supra* note 26, at 25.

47. MELVERN, *supra* note 26, at 316-17; Phillip Gourevitch, *Genocide in Rwanda*, AM. EDUCATOR, Fall 2003, http://www.aft.org/pubs-reports/american_educator/fall2003/glimpses.html [hereinafter Gourevitch, *Genocide in Rwanda*].

48. MAMDANI, *supra* note 44, at 186; MELVERN, *supra* note 26, at 316-17.

“dress rehearsals” for the genocide that would later overtake the entire country.⁴⁹ For example, in response to the RPF invasion, the state-owned Rwanda Radio falsely announced a “Tutsi plan” to massacre the Hutus.⁵⁰ This state-sponsored misinformation was used to encourage members of the militia in the Bugesera region to attack and kill Tutsi citizens.⁵¹ Militia members and villagers reacted by killing over three hundred Tutsis in the region in three days.⁵²

Fearing the outbreak of a devastating civil war, the international community brokered a peace agreement between President Habyarimana’s government and the RPF.⁵³ The Arusha Accords, signed on August 4, 1993,⁵⁴ gave the RPF a share of political power in the government and the military.⁵⁵

The Arusha Accords may have soothed international concern and placated the RPF, but the concessions made by Habyarimana to the RPF only fueled the Hutu extremists, inciting them to action.⁵⁶ Plans for a complete annihilation of the Tutsis began as early as 1992: the Hutu Power had prepared for it, the Interahamwe had trained for it, the arms had been gathered for it.⁵⁷ All were simply waiting for a spark that would ignite the killing. That spark was ignited on April 6, 1994, when the plane carrying President Habyarimana was shot down while on approach to Kigali, Rwanda.⁵⁸ Almost immediately, state-controlled media blamed the RPF for downing the plane.⁵⁹ And almost immediately the Interahamwe set up road blocks around Kigali.⁶⁰ By midnight that same evening, the Interahamwe began killing Tutsis at the roadblocks and began to hunt down Tutsis and moderate Hutus throughout the neighborhoods of Kigali based

49. TEMPLE-RASTON, *supra* note 22, at 28, 35.

50. MELVERN, *supra* note 26, at 25-26, 317-18.

51. *Id.*; TEMPLE-RASTON, *supra* note 22, at 27-29.

52. MELVERN, *supra* note 26, at 25-26, 317-18; Gourevitch, *Genocide in Rwanda*, *supra* note 47.

53. MELVERN, *supra* note 26, at 36-38.

54. Prosecutor v. Nyiramasuhuko, Case No. ICTR 97-21-I, Am. Indictment, ¶ 1.9 (Jan. 3, 2001); MAMDANI, *supra* note 44, at 212.

55. MAMDANI, *supra* note 44, at 210-11; POWER, *supra* note 21, at 336.

56. *Id.* at 211.

57. *Id.* at 216-17; Gourevitch, *Genocide in Rwanda*, *supra* note 47.

58. MAMDANI, *supra* note 44, at 216.

59. HUMAN RIGHTS WATCH/AFRICA, SHATTERED LIVES: SEXUAL VIOLENCE DURING THE RWANDAN GENOCIDE AND ITS AFTERMATH (Human Rights Watch September 1996), available at <http://www.hrw.org/reports/1996/Rwanda.htm> [hereinafter HUMAN RIGHTS WATCH/AFRICA, SHATTERED LIVES]; TEMPLE-RASTON, *supra* note 22, at 4.

60. GOUREVITCH, WE WISH TO INFORM YOU, *supra* note 25, at 114; MAMDANI, *supra* note 44, at 216.

on lists that had been prepared in advance.⁶¹

A mere two weeks later, approximately two hundred and fifty thousand Tutsis and moderate Hutus had been murdered.⁶² The genocide's massive scale necessitated participation by the masses.⁶³ In this, one of the poorest countries in the world, the masses resorted to hacking their victims to death with machetes.⁶⁴ Where plentiful supplies of machetes were unavailable, the attackers used knives, spears and *masu*, bulky clubs with nails affixed to the ends.⁶⁵

Knowing they were not safe in their homes—after all, the lists of Tutsi addresses had been disseminated to the Interahamwe in advance—Tutsis fled to places where they thought they would be protected: churches, government buildings, hospitals and schools.⁶⁶ Tutsis were told that if they took refuge in these places they would be protected.⁶⁷ They were, however, merely lured into Hutu traps and slaughtered.⁶⁸ Hundreds of sites across Rwanda still contain evidence of these mass slaughterhouses—the remains of thousands of Tutsis decomposing under the shelter of church steeples and school classrooms.⁶⁹

Eventually, the RPF's advance to Kigali halted the genocide and drove the genocidaires out of the country in July 1994.⁷⁰ Those responsible for the planning and implementation of the genocide quickly fled the country.⁷¹ Among those fleeing to Zaire were Pauline Nyiramasuhuko and her son, Arsene Shalom Ntahobali.⁷²

61. Gendecide Watch, *Case Study: Genocide in Rwanda, 1994*, http://www.gendecide.org/case_rwanda.html (last visited Sept. 8, 2005) [hereinafter Gendecide Watch].

62. HUMAN RIGHTS WATCH, *LEAVE NONE TO TELL THE STORY*, *supra* note 20.

63. MAMDANI, *supra* note 44, at 5-7.

64. *Id.*

65. POWER, *supra* note 21, at 334.

66. Prosecutor v. Nyiramasuhuko, Case No. ICTR 97-21-I, Amended Indictment, ¶ 5.17 (Jan. 3, 2001); GOUREVITCH, *WE WISH TO INFORM YOU*, *supra* note 25, at 26; RONAYNE, *supra* note 31, at 158.

67. Prosecutor v. Nyiramasuhuko, Case No. ICTR 97-21-I, Amended Indictment, ¶ 5.17 (Jan. 3, 2001); GOUREVITCH, *WE WISH TO INFORM YOU*, *supra* note 25, at 26-27; RONAYNE, *supra* note 31, at 158.

68. GOUREVITCH, *WE WISH TO INFORM YOU*, *supra* note 25, at 26-27; MAMDANI, *supra* note 46, at 3; RONAYNE, *supra* note 31, at 158.

69. For a powerful description of the remains of such a place, see GOUREVITCH, *WE WISH TO INFORM YOU*, *supra* note 25, at 15-20.

70. POWER, *supra* note 21, at 380.

71. *Id.*

72. Landesman, *supra* note 1, at 85. Zaire is now known as the Democratic Republic of Congo. *Id.*

II. THE SYSTEMATIC ATTACK ON RWANDA'S WOMEN AND GIRLS

The genocide was not simply a campaign to kill all Tutsis, it was a campaign initially designed to kill Tutsi men and rape Tutsi women.⁷³ The rape was as important as the killing,⁷⁴ and during the genocide, "rape was the rule and its absence the exception."⁷⁵ So horrific were the rapes and sexual torture that many women paid to be killed instead.⁷⁶

The women of Rwanda experienced a full range of sexual violence that was "once considered a by-product of war."⁷⁷ For example, military and militia terrorized women through rape and gang rape as a method of destroying and demoralizing the Tutsi people as a whole.⁷⁸ A familiar account from the genocide included young sons who were forced to rape their own mothers in front of their families.⁷⁹ The militia "seemed particularly obsessed with what they did to women's bodies."⁸⁰ Victims of rape were often sexually mutilated including the pouring of boiling water or acid into women's vaginas;⁸¹ mutilating their vaginas with machetes, spears, and sharp banana leaves;⁸² cutting off women's breasts;⁸³ and cutting open pregnant women's wombs and killing the fetus before killing the mother.⁸⁴ After raping and killing women, the militia would often leave a woman's corpse naked with her legs spread apart.⁸⁵ One woman suffered a violent rape only to have her rapist cut out the inside of her vagina, put it on the top of a stick, and plant it outside her door shouting,

73. Gendercide Watch, *supra* note 61 (citing Judy El-Bushra, *Transformed Conflict: Some Thoughts on a Gendered Understanding of Conflict Processes*, in STATES OF CONFLICT: GENDER, VIOLENCE AND RESISTANCE 73 (Susie Jacobs et al. eds., 2000)).

74. Although Tutsi women were the main targets of the sexual violence, some Hutu women were singled out as well: moderate Hutus, Hutus who hid Tutsis from their attackers, and Hutu women married to Tutsi men. HUMAN RIGHTS WATCH/AFRICA, SHATTERED LIVES, *supra* note 59.

75. *Id.* (citing 1996 Report of the UN Special Rapporteur on Rwanda [Rene Degni-Segui]).

76. *Id.*

77. Kelly D. Askin, *The Quest for Post-Conflict Gender Justice*, 41 COLUM. J. TRANSNAT'L L. 509, 509 (2003).

78. HUMAN RIGHTS WATCH/AFRICA, SHATTERED LIVES, *supra* note 60; HUMAN RIGHTS WATCH, STRUGGLING TO SURVIVE: BARRIERS TO JUSTICE FOR RAPE VICTIMS IN RWANDA 8 (2004) [hereinafter HUMAN RIGHTS WATCH, STRUGGLING TO SURVIVE].

79. HUMAN RIGHTS WATCH/AFRICA, SHATTERED LIVES, *supra* note 59.

80. Landesman, *supra* note 1, at 84.

81. HUMAN RIGHTS WATCH/AFRICA, SHATTERED LIVES, *supra* note 59.

82. *Id.*

83. Landesman, *supra* note 1, at 84.

84. *Id.*

85. HUMAN RIGHTS WATCH/AFRICA, SHATTERED LIVES, *supra* note 59.

“Everyone who comes past here will see how Tutsikazi [Tutsis] look.”⁸⁶

Tutsi women and girls⁸⁷ in Rwanda were often captured and forced into sexual slavery.⁸⁸ They were collected together in locations convenient for “servicing” military and militia members.⁸⁹ Women faced multiple daily rapes and suffered from serious untreated injuries and lack of food.⁹⁰ Other Tutsi women and girls were victims of “forced marriages,” singled out by Hutu men and held captive in the man’s home, in some instances for the duration of the genocide.⁹¹

Finally, Tutsi women and girls were the targets of a unique genocidal tactic—to infect them with HIV/AIDS, leaving them to die a slow and painful death.⁹² According to Rwanda’s former president, Paul Kagame, hundreds of AIDS patients were released from hospitals during the genocide and became an instrument of war, targeted at women, to cause slow, agonizing, painful deaths.⁹³ Estimates project that two-thirds of the genocide survivors are HIV-positive as a result of the calculated sexual attacks they were subjected to, leaving approximately seventy thousand women suffering from AIDS.⁹⁴

The survivors of the massive rape campaigns carry the imprint of those crimes with them—infection with HIV/AIDS and the responsibility for raising the children conceived through rape.⁹⁵ But the dead also contain the evidence of the brutality targeted specifically at Tutsi women and girls. Lieutenant-General Romeo Dallaire commanded the UN peacekeeping troops sent to Rwanda to enforce the cease-fire agreement negotiated in the Arusha Accords. He later reflected on the evidence of the crimes he witnessed there:

I don’t know when I began to clearly see the evidence of another crime besides murder among the bodies in the ditches and the mass graves. . . .

But if you looked, you could see the evidence, even in the whitened

86. *Id.*

87. Ages of rape victims ranged from two years old to over fifty, but most rape victims were between sixteen and twenty-six years old. *Id.*

88. *Id.*

89. *Id.*; Landesman, *supra* note 1, at 87.

90. HUMAN RIGHTS WATCH/AFRICA, SHATTERED LIVES, *supra* note 59.

91. *Id.* at 28-32.

92. Landesman, *supra* note 1, at 116.

93. *Id.*

94. Gendercide Watch, *supra* note 61.

95. Approximately 5,000 children were produced through the militia’s rape campaigns. TEMPLE-RASTON, *supra* note 22, at 154. The children of rape were referred to as *enfants non-desires* (unwanted children) or *enfants de mauvais souvenirs* (children of bad memories). *Id.*

skeletons. The legs bent and apart. A broken bottle, a rough branch, even a knife between them. Where the bodies were fresh, we saw what must have been semen pooled on and near the dead women and girls. There was always a lot of blood . . . [M]any of the young girls had their breasts chopped off and their genitals crudely cut apart. They died in a position of total vulnerability, flat on their backs, with their legs bent and knees wide apart.⁹⁶

III. PAULINE'S ROLE IN THE GENOCIDE

Pauline is accused of playing a leading role in the planning and implementation of the genocide.⁹⁷ In fact, a woman who knew Pauline through her work in the family planning department of the University Center for Public Health ranked Pauline alongside the President and Hutu Prime Minister Jean Kambanda as the person most responsible for the genocide in Rwanda.⁹⁸ And in a remarkable confession, admitting to the commission of genocide and crimes against humanity, Prime Minister Kambanda named Pauline as one of the five members of his inner circle, responsible for drawing the plans of the genocide.⁹⁹

Currently, Pauline sits on trial before the ICTR,¹⁰⁰ a tribunal created by the United Nations to prosecute the atrocities that occurred in Rwanda in 1994.¹⁰¹ Pauline and her son, Arsene Shalom Ntahobali, are accused of genocide,¹⁰² crimes against humanity,¹⁰³ and violations of the Geneva

96. ROMEO DALLAIRE & BRENT BEARDSLEY, *SHAKE HANDS WITH THE DEVIL: THE FAILURE OF HUMANITY IN RWANDA* 430 (2003).

97. *Prosecutor v. Nyiramasuhuko*, Case No. ICTR 97-21-I, Amended Indictment (Jan. 3, 2001).

98. *AFRICAN RIGHTS, NOT SO INNOCENT*, *supra* note 42, at 92.

99. Landesman, *supra* note 1, at 88.

100. Pauline's trial began on June 12, 2001. The trial has been delayed numerous times and has now exceeded 300 days in length. *See* Status of Cases, www.ictor.org.

101. *See supra* note 4.

102. *Prosecutor v. Nyiramasuhuko*, Case No. ICTR 97-21-I, Amended Indictment (Jan. 3, 2001). "Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, 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." ICTR Statute, *supra* note 4.

103. *Prosecutor v. Nyiramasuhuko*, Case No. ICTR 97-21-I, Amended Indictment (Jan. 3, 2001). Crimes against humanity include: "the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial, or religious grounds: (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation; (e) Imprisonment; (f) Torture; (g) Rape; (h) Persecutions on political, racial and religious grounds; (i) Other inhumane acts." ICTR Statute, *supra* note 4.

Conventions.¹⁰⁴ They are part of a six defendant trial, accused of orchestrating or overseeing genocide in the Butare region.¹⁰⁵ Pauline, however, is the first woman to be tried by the ICTR.¹⁰⁶

Pauline, born and raised in Ndora, Butare, began life as the daughter of a subsistence farmer.¹⁰⁷ When Pauline was twenty-two, her influential friend, Agathe, wife of Juvenal Habyarimana, helped her climb the bureaucratic ladder to become national inspector of the ministry.¹⁰⁸ Eventually, President Habyrimana appointed her to the position of Minister of Family and Women's Development.¹⁰⁹ Along with her ministerial duties, Pauline also became part the president's inner circle of radical political allies,¹¹⁰ and a loyal member of Habyarimana's party, the MRND.¹¹¹

When President Habyarimana's plane went down on April 6, 1994, Pauline was tapped to serve in the interim government.¹¹² Pauline was dispatched to her home prefecture of Butare to oversee the genocide in this particularly resistant prefecture.¹¹³

The Tutsi population in Butare was much larger than in other prefectures.¹¹⁴ Butare boasted a large university and an educated population where Tutsis and Hutus successfully co-existed for years without the kind of violence and ethnic conflict that persisted in other

104. Prosecutor v. Nyiramasuhuko, Case No. ICTR 97-21-I, Amended Indictment (Jan. 3, 2001). "[V]iolations [of the Geneva Conventions] shall include, but shall not be limited to: (a) Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment; (b) Collective punishments; (c) Taking of hostages; (d) Acts of terrorism; (e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault; (f) Pillage; (g) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples; (h) Threats to commit any of the foregoing acts." ICTR Statute, *supra* note 4.

105. Internews Rwanda, *The Butare Six*, <http://www.internews.org.rw/articles11.htm>.

106. *Id.*

107. Prosecutor v. Nyiramasuhuko, Case No. ICTR 97-21-I, Amended Indictment, ¶ 4.1 (Jan. 3, 2001); Landesman, *supra* note 1, at 87.

108. Landesman, *supra* note 1, at 87.

109. Prosecutor v. Nyiramasuhuko, Case No. ICTR 97-21-I, Amended Indictment, ¶ 4.2 (Jan. 3, 2001); Landesman, *supra* note 1, at 87.

110. Landesman, *supra* note 1, at 87.

111. *Id.*

112. Prosecutor v. Nyiramasuhuko, Case No. ICTR 97-21-I, Amended Indictment, ¶ 6.7 (Jan. 3, 2001).

113. *Id.* at ¶6.14.

114. *Id.* at ¶6.19.

prefectures.¹¹⁵ Pauline allegedly became the main instigator of genocide in Butare, publicly inciting Hutus to exterminate the Tutsi population and its Hutu accomplices¹¹⁶ and providing weapons to the militia and certain civilians.¹¹⁷

On her first trip to Butare, Pauline ousted the Prefet of Butare, Jean Baptiste Habyalimana, who refused to participate in the genocide.¹¹⁸ Habyalimana was replaced with a Hutu loyalist, Sylvain Nsabimana, who carried out the genocidal directives of the interim government.¹¹⁹ After Nsabimana assumed his position as the executive authority in Butare, he made a public inflammatory speech denouncing those who did not feel concerned about the Tutsi problem and demanding that they “get out of the way” and “let us work.”¹²⁰ Present for Nsabimana’s speech were Pauline, the Prime Minister of the interim government, Jean Kambanda, and other prominent politicians.¹²¹ Shortly after the speech, planes carrying government soldiers landed in Butare and the massacre of Tutsis began in earnest.¹²²

Pauline almost immediately requested military assistance from Nsabimana to assist in massacres of Tutsis in her home commune of Ngoma.¹²³ Dressed in military fatigues, she and her son, Shalom, a prominent member of the Interhamwe, set up a roadblock near her residence in Butare. They allegedly used the roadblock to identify and kill Tutsis.¹²⁴

Because Butare had been a relatively safe area for Tutsis, many Tutsis fled to Butare when the genocide began.¹²⁵ They took refuge in churches and in prefecture offices. Pauline, one of the most recognizable figures in Rwanda,¹²⁶ routinely traveled throughout Butare in a Peugeot van, using her son as her driver.¹²⁷ From a loud speaker, she incited the killing of Tutsi

115. MELVERN, *supra* note 26, at 209-10.

116. Prosecutor v. Nyiramasuhuko, Case No. ICTR 97-21-I, Amended Indictment, ¶¶ 6.20, 6.22 (Jan. 3, 2001).

117. *Id.* at ¶¶ 5.8-6.10.

118. *Id.* at ¶6.20.

119. *Id.* at ¶6.21.

120. *Id.*

121. *Id.* at ¶ 6.21-6.22.

122. *Id.* at ¶ 6.22-6.23.

123. *Id.* at ¶ 6.25.

124. *Id.* at ¶ 6.27.

125. *Id.* at ¶ 6.19.

126. Lindsey Hilsum, *Rwanda—Refugees and Genocidaires*, in *CRIMES OF WAR: WHAT THE PUBLIC SHOULD KNOW* 317 (Roy Gutman et al. eds., 1999).

127. AFRICAN RIGHTS, NOT SO INNOCENT, *supra* note 42, at 93, 99.

men and the rape and murder of Tutsi women.¹²⁸ She showed up at prefecture offices, urging soldiers and militia to exterminate all Tutsis seeking shelter in the prefecture offices.¹²⁹ She made numerous trips to the prefecture offices to abduct refugees, take them elsewhere, and have them killed.¹³⁰ She gave the militia instructions “not to spare any[one], not even the [fetus] or the old.”¹³¹

Pauline’s militia members gave Tutsi refugees still seeking sanctuary false hope. Driving about town, they announced over loudspeakers that the Red Cross had arrived at a local stadium and would provide food and security to the Tutsis.¹³² On April 25, as thousands of Tutsis sought refuge in the stadium, members of the militia surrounded them.¹³³ Tutsi women were first removed from the crowd.¹³⁴ They were taken to a forested area just outside of town to be raped.¹³⁵ The militia then massacred the remaining Tutsis with machine guns, grenades, and machetes.¹³⁶ Pauline allegedly directed much of this killing from the sidelines.¹³⁷

Shortly after the stadium massacre, Pauline drove to a compound where the militia was keeping about seventy women.¹³⁸ Pauline allegedly ordered the militia to burn the women and directed the men to her car to get the gasoline necessary to complete the task.¹³⁹ She allegedly directed the men to rape the women before killing them.¹⁴⁰ Pauline repeatedly required women to lift their shirts to separate mothers from virgins.¹⁴¹ The virgins could then be taken by militia members and raped.¹⁴² Pauline advised the militia to take the young Tutsi women for sex and to kill the older women.¹⁴³ Pauline is also accused of keeping Tutsi women in her home and encouraging her son, Shalom, to rape them.¹⁴⁴

128. *Id.* at 93, 97; Landesman, *supra*, note 1, at 82.

129. AFRICAN RIGHTS, NOT SO INNOCENT, *supra* note 42, at 93-97, 101.

130. Prosecutor v. Nyiramasuhuko, Case No. ICTR 97-21-I, Amended Indictment, ¶¶ 6.30, 6.31 (Jan. 3, 2001).

131. AFRICAN RIGHTS, NOT SO INNOCENT, *supra* note 42, at 91.

132. *Id.*

133. Landesman, *supra* note 1, at 82.

134. *Id.* at 84.

135. *Id.*

136. *Id.*

137. *Id.* at 82.

138. *Id.* at 84.

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.*

144. AFRICAN RIGHTS, NOT SO INNOCENT, *supra* note 42, at 92.

IV. RESPONSES TO THE ALLEGATIONS ABOUT PAULINE'S ROLE

Pauline pled not guilty to the charges of genocide and crimes against humanity leveled against her in the ICTR.¹⁴⁵ However, her own response to the allegations exhibits precisely the kind of gender bias that portrays women as weak, subservient, or pure, incapable of committing the kinds of atrocities for which she stands accused. Pauline also claimed to be a victim of sexism, targeted for persecution precisely because she is an educated woman.¹⁴⁶ Pauline either believes that by framing the issue around gender, she creates reasonable doubt about her capacity to commit the crimes for which she stands accused, or she shares the gender bias of her patriarchal culture, which incorrectly views women as incapable of heinous, violent acts.¹⁴⁷

Pauline has denied all allegations that she participated in planning or implementing genocide.¹⁴⁸ In fact, she denied that genocide took place in Rwanda. When asked by a BBC reporter what she did during the war, Pauline replied, "We moved around the region to pacify We wrote a pacification document saying people shouldn't kill each other Saying it's genocide, that's not true It was the Tutsi who massacred the Hutus."¹⁴⁹ Pauline's response to allegations that she committed rape and murder emphasize her gender as a defense. "I cannot even kill a chicken. If there is a person who says that a woman, a mother, killed, then I'll confront that person The RPF have put on their list all intellectual Hutus. I'm amongst those Hutu who have been to university. I studied law. All women who went to university are seen as killers."¹⁵⁰ When asked if women were involved in the killing, Pauline responded, "I have no example [of that]. It's not possible because [women] did not know [how] to massacre like that."¹⁵¹

Pauline's husband, Maurice Ntahobari, echoed Pauline's gender-biased claims that women and mothers are incapable of committing murder. When probed by a *New York Times* reporter about the allegations against

145. Danna Harman, *A Woman on Trial for Rwanda's Massacre*, CHRISTIAN SCIENCE MONITOR, Mar. 7, 2003, available at <http://www.csmonitor.com/2003/0307/p09s01-woaf.html>.

146. See *infra* notes 150-51 and accompanying text.

147. As one commentator suggests, perhaps Pauline, like many other women, has "drunk deeply of patriarchy's poisons and thoroughly digested them." Michele Landsberg, *Men Behind Most Atrocities, but Women are Singled Out*, TORONTO STAR, Sept. 21, 2002, at K.01.

148. AFRICAN RIGHTS, NOT SO INNOCENT, *supra* note 42, at 106.

149. *Id.*

150. *Id.*

151. *Id.*

Pauline, Ntahobari referred to Pauline's former role as a social worker.¹⁵² He responded, "[s]he was committed to promoting equality between men and women. It is not culturally possible for a Rwandan woman to make her son rape other women. It just couldn't have taken place."¹⁵³ Pauline's mother gave a similar response when asked about the allegations against her daughter. "It is unimaginable that she did these things. She wouldn't order people to rape and kill. After all, Pauline is a mother."¹⁵⁴

The press seems more focused on Pauline's womanly attributes than any other aspect of the case against her. Many reports comment on her appearance and the clothes she wears. Although the local Butare papers described Pauline as a "frenzied madwoman" during the genocide,¹⁵⁵ a reporter observed Pauline adjusting the shoulder pad of "her pretty dress" during her trial,¹⁵⁶ and noted that her wardrobe included a "green flowery dress one day, a pressed cream-colored skirt and blouse set the next."¹⁵⁷

While some commented subtly on Pauline's femininity, others overtly expressed shock that Pauline is a woman and noted the significance of her gender.¹⁵⁸ But the gendered view of Pauline's case is not limited to the press or to Pauline's family. A Tutsi survivor of the genocide argued the importance of focusing on Pauline, not only for her active participation in the genocide, but "above all because she is a mother, with all the social criteria and expectations that entails."¹⁵⁹ The survivor noted that although Pauline was a government minister and politician, "first of all she was the mother of a family."¹⁶⁰ One writer used Pauline's case to comment on the evils of feminism. He argued that feminism, which places women in roles

152. Landesman, *supra* note 1, at 87.

153. *Id.*

154. *Id.* at 123.

155. *Id.* at 87.

156. Harman, *supra* note 145.

157. *Id.*

158. One writer observed the difficulties the ICTR may have finding Pauline guilty of rape precisely because she is a woman. Miller, *supra* note 4, at 372. Miller argues that [t]he idea of finding a woman . . . guilty of such atrocities performed on her own gender may prove to be too controversial for the Tribunal. Although the standard of finding guilt is beyond a reasonable doubt, that standard may be subconsciously raised in the proceedings involving Pauline. On the other hand, the outrage over discovering that a woman could commit such atrocities may provide Pauline with little defense. She could be found guilty because of her classification as a woman, rather than as a war criminal. Men may have found an ideal way to assuage their guilt over the rape of women: blame a woman instead.

Id. at 372-73.

159. Landsberg, *supra* note 147, at 05.

160. *Id.*

formerly held exclusively by men, causes women to devalue life.¹⁶¹ Making a comparison between abortion and genocide, he argued that “[t]he story of Pauline Nyiramasuhuko is the biography of feminism and its profound contempt for life in the pursuit of power.”¹⁶²

In one of the most noteworthy stories written about Pauline, Peter Landesman wrote in the *New York Times Magazine*:

The case against Pauline further cements the precedent established in the Akayesu trial: namely, that inciting mass rape is a crime against humanity. But Pauline’s case transcends jurisprudence. She presents to the world a new kind of criminal. “There is a shared concept across cultures that women don’t do this kind of thing. . . . Society doesn’t yet have a way to talk about it, because it violates all our concepts of what women are.”¹⁶³

However titillating the aspect of Pauline’s gender is to the international community, she is not a “new kind of criminal.” She has female counterparts throughout history who ordered massive and brutal killings.¹⁶⁴ Neither does she stand alone among her female contemporaries.¹⁶⁵ Powerful women in Rwanda also assisted in the planning and incitement of the genocide, just as women were involved in carrying out the genocide in the former Yugoslavia.¹⁶⁶ Further, Pauline was not the only Rwandan abusing her position as an advocate and protector of women and families.¹⁶⁷ Many who were responsible for the spiritual and physical well being of others carried out atrocities against the Tutsis.¹⁶⁸ And thousands of Rwandan women directly participated in the murder, torture and rape of their Tutsi neighbors.¹⁶⁹

V. WOMEN AS PERPETRATORS OF ATROCITIES

In Western culture, prominent tales warn us that women, just like their male counterparts, have the capacity to kill. Since the seventeenth century, Lady Macbeth has served as a reminder that women can become as

161. Gerald L. Rowles, *Feminist Atrocity*, Oct. 24, 2002, http://www.fathers.ca/female_empowerment.htm.

162. *Id.*

163. Landesman, *supra* note 1, at 123 (quoting Carolyn Nordstrom, an anthropologist from the University of Notre Dame).

164. *See infra* Part V.

165. *See infra* notes 190-218 and accompanying text.

166. *See infra* notes 190-214 and accompanying text.

167. *See infra* notes 207-08, 215-18 and accompanying text.

168. *See infra* notes 207-08, 215-18 and accompanying text.

169. *See infra* notes 209-14 and accompanying text.

engulfed in power, perhaps even more so than the men surrounding them.¹⁷⁰ And when entranced by that power, women have the capacity to brutally torture, terrorize, and take innocent life.

Throughout history women have wielded their powers for evil as well as for good. In Western culture we can look to Mary I, Queen of England, who in her zeal to restore Catholicism to England burned at least three hundred high-profile Protestants at the stake.¹⁷¹ For her attempts to cleanse England of heresy, she became known as “Bloody Mary.”¹⁷² Other notorious female killers include Catherine de Medici and Isabella I of Spain. History credits Catherine de Medici, widow of Henry II, with orchestrating the massacre of between two thousand and one hundred thousand Protestants on St. Bartholomew’s Day in 1572.¹⁷³ She reportedly participated in the plot with the dual goals of securing her son’s ascension to the French throne and advancing the Catholic cause against the Huguenot “swine [who] must be drowned into their own excrement.”¹⁷⁴ With similar religious zeal, Isabella I of Spain was dedicated to the cause of exposing false converts to the Catholic faith, or *conversos*, among Spain’s Jewish and Protestant populations.¹⁷⁵ To that end, and in hopes of inspiring authentic conversions, Isabella was the driving force behind the Inquisition—the means by which thousands of Jews and Protestants were tortured, killed, expelled, and financially ruined.¹⁷⁶ In Eastern culture, Wu Zetian, the only female Chinese Emperor, is described as a “malicious and cunning woman,” who “killed, exiled, or forced suicide on anyone who opposed or insulted her,” including her own daughter.¹⁷⁷

170. WILLIAM SHAKESPEARE, *THE RIVERSIDE SHAKESPEARE 1307-1340* (Houghton Mifflin Co. 1974).

171. JOHN WAGNER, *BOSWORTH FIELD TO BLOODY MARY: AN ENCYCLOPEDIA OF THE EARLY TUDORS 289-92* (2003). Mary I was the daughter of King Henry VIII and Catherine of Aragon and the older half-sister of Elizabeth I. *Id.* She ascended to the throne in 1553. *Id.*

172. *Id.*

173. *St. Bartholomew’s Day*, *THE CATHOLIC ENCYCLOPEDIA*, VOLUME XIII (Robert Appleton Co. 1912), available at <http://www.newadvent.org/cathen/13333b.htm>.

174. *Id.*

175. Jason L. Slade, *The Spanish Inquisition*, Aug. 6, 1996, <http://www.geocities.com/capitolhill/3231/Jewish-Community-Of-Malta/The-Spanish-Inquisition.htm>.

176. *Id.*; Committee Against Making Isabella of Castile a Saint, Petition to the Catholic Church, The Holy See, The Pope, <http://www.petitiononline.com/121904/petition.html> (last visited Feb. 15, 2006).

177. Rit Nosotro, *Empress Wu Zetian (624-705): Only woman to be Emperor of China*, <http://www.hyperhistory.net/apwh/bios/b3wuempress.htm> (last visited Feb. 15, 2006); *Empress Wu Zetian*, http://www.travelchinaguide.com/intro/history/tang/emperor_wuzetian.htm (last visited Feb. 15, 2006).

In more recent history, the Third Reich produced examples of brutal female perpetrators of atrocity. Maria Mandel, for example, was the chief guard of the Birkenau women's camp who not only tortured prisoners, but also selected those who would be subjected to medical experiments and the gas chamber.¹⁷⁸ Mandel's sadistic tendencies were evident in her penchant for forcing prisoners to play orchestra music while their fellow prisoners were dying in the gas chambers.¹⁷⁹ Likewise, Herta Oberhauser was a physician at Auschwitz who conducted "some of the most gruesome and painful medical experiments of World War II," including killing children by painful means and then removing their limbs and organs.¹⁸⁰ Other female concentration camp guards are reported to have taken sadistic pleasure in torturing and murdering prisoners.¹⁸¹

Women in the modern era are no different from their predecessors. Despite the fact that Pauline is the first woman to be tried by an international criminal tribunal, she is neither the only woman to face punishment in one of the UN tribunals nor the only woman to face charges that include responsibility for rape. Biljana Plavsic, a former acting President of the Serbian Republic of Bosnia and Herzegovina was indicted by the International Tribunal for the former Yugoslavia ("ICTY")¹⁸² on charges of genocide, crimes against humanity, and war crimes.¹⁸³ The charges stemmed from her responsibility for acts committed by the Serbian military and other governmental agents under her control.¹⁸⁴ She eventually pled guilty to one count of persecution as a crime against humanity and the prosecutor dropped all other charges against her.¹⁸⁵ The persecution count, however, included crimes of sexual violence.¹⁸⁶ The Trial Chamber sentenced Plavsic to eleven years' imprisonment, and she is

15, 2006).

178. *Maria Mandel (1912-1947)*, JEWISH VIRTUAL LIBRARY, <http://www.jewishvirtuallibrary.org/jsource/biography/mmandel.html> (last visited Feb. 15, 2006).

179. *Id.*

180. *Herta Oberheuser, The Holocaust Website*, <http://www.auschwitz.dk/Women/Oberheuser.htm> (last visited Feb. 15, 2006).

181. *Juana Borman, The Holocaust Website*, <http://www.auschwitz.dk/Women/Bormann.htm> (last visited Feb. 15, 2006); *Irma Grese, The Holocaust Website*, <http://www.auschwitz.dk/Women/Grese.htm> (last visited Feb. 15, 2006).

182. Askin, *supra* note 77, at n.29.

183. *Id.*

184. *Prosecutor v. Plavsic*, Case No. IT-00-39 & 40/1, Sentencing Judgment, ¶¶ 8-19 (Feb. 27, 2003).

185. *Prosecutor v. Plavsic*, Case No. IT-00-39 & 40/1, Plea Agreement (Sept. 30, 2002).

186. *Id.*

now serving out her sentence in Sweden.¹⁸⁷

These women's stories serve as examples of the extreme depravity that people—both men and women—are capable of. But the proportionally fewer examples of women who carry out atrocities against other humans, as opposed to the high number of their male counterparts, is more the result of a lack of opportunity than a lack of natural ability.¹⁸⁸ Pauline Nyiramasuhuko, unlike most women in Rwanda, was given the opportunity to participate in the planning and implementation of the genocide that swept the country in 1994.¹⁸⁹ Although thousands of women in Rwanda played a part in furthering the genocide, Pauline was one of only a few women in a position to develop and implement the genocidal plan. Like some of her historical female predecessors, Pauline seized the opportunity and ordered thousands of Tutsis raped and killed.

VI. WOMEN PERPETRATORS IN RWANDA

Although never indicted by the ICTR, many women have been tried or face trial for their roles in the Rwandan genocide. Two women receiving international attention for their roles in the genocide are Sister Gertrude Mukangango and Sister Maria Kisito.¹⁹⁰ The two Benedictine nuns stood trial in Belgium for their role in the murders of thousands of Tutsis who took refuge at their convent in Sovu, Rwanda.¹⁹¹ Over seven thousand Tutsis who sought refuge in and around the convent were killed.¹⁹² Although they never wielded any weapons, the nuns collaborated with the militia, sending the Tutsis seeking refuge to their deaths.¹⁹³ After assisting in cornering between five hundred to seven hundred Tutsis in a garage near the convent's health center, the nuns provided the militia with gasoline to burn the Tutsis alive.¹⁹⁴ Sister Gertrude ordered the Tutsi nuns who were

187. Prosecutor v. Plavsic, Case No. IT-00-39 & 40/1, Case Information Sheet, available at <http://www.un.org/icty/cases-e/index-e.htm> (last visited Feb. 15, 2006).

188. STEANS, *supra* note 8, at 63.

189. See *supra* notes 108-117, and accompanying text.

190. See *supra* notes 108-17 and accompanying text; Marlise Simons, *Belgian Jury Convicts 4 of 1994 War Crimes in Rwanda*, N.Y. TIMES, June 9, 2001, *Obstruction of Justice: The Nuns of Sovu in Belgium*, African Rights New Publications, Feb. 29, 2000, <http://www.africanrights.unimondo.org/html/witness11.html> [hereinafter *Obstruction of Justice*].

191. *Obstruction of Justice*, *supra* note 190.

192. AFRICAN RIGHTS, NOT SO INNOCENT, *supra* note 42, at 164; Simons, *supra* note 190.

193. AFRICAN RIGHTS, NOT SO INNOCENT, *supra* note 42, at 180-85; *Obstruction of Justice*, *supra* note 190.

194. *Obstruction of Justice*, *supra* note 190.

hiding family members in the convent to expel them.¹⁹⁵ When they did not comply, Sister Gertrude summoned the local mayor and then drove the families of about twenty-two nuns out of the convent and immediately to their deaths at the hands of the mayor's troops.¹⁹⁶ Exercising universal jurisdiction,¹⁹⁷ the Belgian government tried the two nuns before a twelve-person jury in Brussels.¹⁹⁸ The jury found the nuns guilty and sentenced Sister Gertrude to a fifteen year sentence and Sister Kisito to a twelve year sentence.¹⁹⁹

Thousands more women are imprisoned in Rwanda, either serving sentences related to the genocide or awaiting trial for genocide-related offenses.²⁰⁰ At least fifty women are accused of Category I offenses, a category reserved for the primary planners, instigators, and most notorious killers of the genocide.²⁰¹ And several women have received the death penalty for their roles in the genocide.²⁰² Scores of other women, both those charged with crimes and those currently free from prosecution, participated in the genocide in some way.²⁰³

The woman with perhaps the most direct and influential role in the planning of the genocide remains at large, seemingly immune from prosecution. Agathe Habyarimana, Pauline's close childhood friend and the former president's wife, is widely accepted as one of the people with direct responsibility for the planning of the genocide.²⁰⁴ With her power, influence, and money, Agathe helped establish the media in Rwanda that became an essential propaganda tool, urging the masses to kill the Tutsis.²⁰⁵ Claiming that Agathe was a key mastermind in the genocide, the Rwandan government has been seeking her arrest to bring her to trial

195. *Id.*

196. *Id.*

197. See generally Henry J. Steiner, *Three Cheers for Universal Jurisdiction—Or Is It Only Two?*, 5 THEORETICAL INQUIRIES L. 199 (2004) (explaining the usefulness of universal jurisdiction and the diplomatic problems that arise when states exercise this jurisdictional mechanism to prosecute citizens from other states).

198. Simons, *supra* note 190.

199. *Id.*

200. Nicole Hogg, *Women Accused of Genocide in Rwanda*, COALITION FOR WOMEN'S HUMAN RIGHTS IN CONFLICT SITUATIONS, http://www.womensrightscoalition.org/publications/vol4No1/womenaccusedofgenociderwanda_en.php (last visited Feb. 15, 2006).

201. *Id.*

202. *Id.*

203. For a detailed account of the role Rwandan women played in the genocide, see generally AFRICAN RIGHTS, NOT SO INNOCENT, *supra* note 42.

204. GOUREVITCH, WE WISH TO INFORM YOU, *supra* note 25, at 77, 95.

205. *Id.* at 85-88.

before the ICTR or a court in Rwanda.²⁰⁶

Rwandan Minister of Justice, Agnes Ntamabyariro, told a crowd of Hutus in Kibuye, “When you begin extermination, no one, nothing, must be forgiven. But here, you have merely contented yourselves with killing a few old women.”²⁰⁷ Although nearly a quarter of a million Tutsis had been murdered in Kibuye when Ntamabyariro addressed the crowd, she chastised the Hutus present for failing to carry out the genocide to its fullest extent.²⁰⁸

In addition to participating in the genocide at the highest levels of government, women widely participated in the genocide in varied capacities. Some women actually led the killings in their communities.²⁰⁹ Often women killed other women and the younger children by hacking them to death with machetes or masus.²¹⁰ More prevalent are examples of women turning on their neighbors, outing them to Hutu killers.²¹¹ Women also followed mobs of killers, singing in praise of the genocide, and providing strength to the ones doing the work of the killing.²¹² Women were usually the ones who followed behind the killers and looted the dead of their clothes and valuables.²¹³ Women also sang out encouragement to their men to rape the Tutsi “cockroaches.”²¹⁴

Furthermore, Pauline is not unusual in betraying her role as the person responsible for working toward the betterment of women and families. Many of those whose position in society was to care for the health and spiritual well-being of Rwanda’s people betrayed their positions in a reign of terror against a large number of those same women and families. Doctors and nurses murdered their patients.²¹⁵ Ministers and priests were responsible for the massacre of many who sought sanctuary in their churches.²¹⁶ Teachers and school administrators led many of their students to their deaths.²¹⁷ And government officials, both on the local and national

206. Irin News, *Rwanda: Census Finds 937,000 Died in Genocide*, IRIN NEWS, Apr. 2, 2004, <http://www.irinnews.org> (search “Archives”).

207. AFRICAN RIGHTS, NOT SO INNOCENT, *supra* note 42, at 90.

208. *Id.*

209. AFRICAN RIGHTS, NOT SO INNOCENT, *supra* note 42, at 25-40.

210. *Id.* at 27.

211. *Id.* at 57-66.

212. *Id.* at 72.

213. *Id.* at 81.

214. *Id.* at 82.

215. AFRICAN RIGHTS, NOT SO INNOCENT, *supra* note 42, at 208-48; GOUREVITCH, WE WISH TO INFORM YOU, *supra* note 25, at 26-29, 115.

216. AFRICAN RIGHTS, NOT SO INNOCENT, *supra* note 42, at 155-95; GOUREVITCH, WE WISH TO INFORM YOU, *supra* note 25, at 26-29, 35-36, 125-26, 139-40.

217. AFRICAN RIGHTS, NOT SO INNOCENT, *supra* note 42, at 196-207; GOUREVITCH, WE

levels, turned their backs on their citizens and assisted in orchestrating their deaths.²¹⁸

In light of all the evidence that women, directly and indirectly, participated in the Rwandan genocide, the focus on Pauline's gender is misplaced. Instead, the gender-based fascination with Pauline's role in the genocide underscores a myth—a sexist myth that women, by their very nature, are incapable of such atrocities. Despite historical evidence of woman as aggressor, killer, rapist, and torturer, society remains skeptical that women have the capacity to commit atrocities. But this arbitrary role of women as “the other,” “the pure,” and “the innocent” permits, if not perpetuates, the brutal and degrading treatment specifically forced on women in times of conflict.²¹⁹ Women are specifically targeted because of their purportedly inferior status,²²⁰ and the perpetrators of sexual violence often commit their crimes against women with impunity precisely because their victims hold a particular disempowered and devalued status in society, one that is inseparable from their gender.²²¹ Systematic Hutu propaganda targeting Tutsi women generated the fear, violence, and aggression that made their decimation possible. Societal and cultural preconceptions that dehumanize women make it possible in times of armed conflict to target women as victims of brutal rape campaigns.

VII. RAPE AND SEXUAL VIOLENCE AS A CONSTANT IN CONFLICT

Rape and military conflict have been inseparable throughout history.²²² Women are targeted as victims of sexual violence for varied reasons, one of which attempts to “insult or denigrate other men” because women are seen as merely the property or extension of the enemy's men.²²³ Often, rape serves as a physically violent conquest of an enemy's women through sexual violence. Warring parties have long sought to sexually defile their enemy's female population to signal the ultimate defeat of the enemy—the inability of the enemy to protect its own women.²²⁴ When the rapist seeks to demonstrate the superiority of his team, he rapes the property of the

WISH TO INFORM YOU, *supra* note 25, at 115.

218. AFRICAN RIGHTS, NOT SO INNOCENT, *supra* note 42, at 109-46.

219. STEANS, *supra* note 8, at 100-01.

220. Askin, *supra* note 77, at 512.

221. *Id.* at 512-13; *see also* Catherine A. MacKinnon, *Crimes of War, Crimes of Peace*, 4 *UCLA WOMEN'S L. J.* 59, 72-73 (1993).

222. *Id.* at 509-10.

223. Katherine K. Baker, *Once a Rapist? Motivational Evidence and Relevancy in Rape Law*, 110 *HARV. L. REV.* 563, 607-08 (1997).

224. Simon Chesterman, *Never Again . . . And Again: Law, Order and the Gender of War Crimes in Bosnia and Beyond*, 22 *YALE J. INT'L L.* 299, 325-28 (1997).

enemy.²²⁵ And rape often serves as an expression of the totality of the victory, a “sexual coup de grace.”²²⁶

Rape is also used as an attack on the woman’s or the enemy’s honor or purity.²²⁷ “The humiliation . . . inflicted by the rapist is meant to degrade not just the individual woman but also to strip the humanity from the larger group of which she is part.”²²⁸ Because most cultures place utmost emphasis on a woman’s virtue, rape shames the woman and humiliates her family.²²⁹ Often women of wartime rape are ostracized from their families and communities, considered soiled, unable to find a husband.²³⁰

Frequently women are used as objects to service the desires of the warriors or sometimes as a way for troops to bond.²³¹ And finally, rape is used as an attack on the role of women in procreation.²³² The women are raped to force impregnation with the enemy’s seed.²³³ In a patriarchal society, where ethnic lines pass through the father, forced impregnation dilutes the enemy’s population, forcing the defeated women to become complicit in the enemy’s domination of the ethnic minority.²³⁴

VIII. THE UNDERPINNINGS OF THE SEXUAL VIOLENCE IN RWANDA

In Rwanda, the sexual violence against women followed this historical

225. Baker, *supra* note 223, at 607-08 (citing the example of the U.S. soldiers who left their military patches on the Vietnamese women they raped in the My Lai rapes).

226. Chesterman, *supra* note 224, at 325.

227. Askin, *supra* note 77, at 511-12.

228. HUMAN RIGHTS WATCH/AFRICA, SHATTERED LIVES, *supra* note 59.

229. Although the Fourth Geneva Convention of 1949 recognized rape as a war crime, it framed wartime rape as an attack on a woman’s honor. Therefore, any attempt to prosecute the crime would rely upon proof of the victim’s virginity or chastity. Stephanie K. Wood, *A Woman Scorned for the “Least Condemned” War Crime: Precedent and Problems With Prosecuting Rape as a Serious War Crime in the International Criminal Tribunal for Rwanda*, 13 COLUM. J. GENDER & L. 274, 282-83 (2004).

230. HUMAN RIGHTS WATCH/AFRICA, SHATTERED LIVES, *supra* note 59; DALLAIRE, *supra* note 96, at 512.

231. Perhaps the most infamous example of this is the story of the women held as sexual slaves by the Japanese during WWII. They were held captive in brothels, forced to service up to thirty soldiers a day. This was perhaps the most explicit example of the enemy’s view of women as property. The Japanese listed the “comfort women”, along with tanks, munitions and other supplies, in itemized supply lists. KELLY DAWN ASKIN, WAR CRIMES AGAINST WOMEN: PROSECUTION IN INTERNATIONAL WAR CRIMES TRIBUNALS 73-84 (1997) [hereinafter ASKIN, WAR CRIMES AGAINST WOMEN].

232. *Id.* at 273-76.

233. Perhaps the most remarkable examples of propaganda used as a tool in the sexual war against women were used by Serbian forces against the Muslim and Croatian women in the former Yugoslavia. See Catharine A. MacKinnon, *Rape, Genocide, and Women’s Human Rights*, 17 HARV. WOMEN’S L. J. 5, 5 (1994).

234. ASKIN, WAR CRIMES AGAINST WOMEN, *supra* note 231, at 273-76.

pattern. Because Rwandans see women as “the symbol of purity” at the center of the family, rape became the most shameful part of the genocide.²³⁵ In their attempts to humiliate the entire Tutsi population, Hutu militia often forced sons to rape their mothers and forced families to watch their mother’s rape, before the family’s murder.²³⁶ Hutus held women hostage as sex slaves to serve at the pleasure of those responsible for murdering their families.²³⁷ Finally, Hutus used rape as a form of delayed genocide—killing the few survivors through the intentional infection and spread of HIV/AIDS to the only remaining members of the enemy’s ethnic group.²³⁸

Like other conflicts throughout history, the media fueled the violence against Tutsi women through carefully-placed propaganda.²³⁹ The media portrayed Tutsi women stereotypically as very sexual and, at the same time, arrogant—“looking down on Hutu men whom they considered ugly and inferior.”²⁴⁰ Rwandan newspapers printed graphic cartoons depicting Tutsi women using their sexuality to lure the hated UN peacekeepers and portrayed the moderate Prime Minister Agathe Uwilingiyimana in a variety of overtly sexual poses with other politicians.²⁴¹ Perhaps the propaganda that sexualized the Prime Minister also contributed to her rape at the hands of the Presidential Guard, sent to assassinate her shortly after President Habyarimana’s plane was downed.²⁴²

The victims of sexual violence in Rwanda faced sexual torture because of their perceived roles as symbols of purity, their perceived sexual status as unattainable to Hutu men, and their societal status as little more than property. These perceptions continue to persist, causing the revictimization of survivors of sexual violence.²⁴³ Their prospects of marriage are almost non-existent because they are seen as soiled or as certain carriers of HIV/AIDS.²⁴⁴ They are often left to raise the children of their rapists

235. Landesman, *supra* note 1, at 82.

236. *Id.* at 116.

237. *Id.* at 89.

238. *Id.* at 89, 116.

239. HUMAN RIGHTS WATCH/AFRICA, SHATTERED LIVES, *supra* note 59.

240. *Id.*

241. *Id.*

242. Prosecutor v. Nyiramasuhuko, Case No. ICTR 97-21-I, Amended Indictment, ¶ 6.4 (Jan. 3, 2001).

243. Landesman, *supra* note 1, at 125.

244. *Id.* at 89, 116; DALLAIRE, *supra* note 96, at 512 (“[I]n this male-dominated culture [the rape victims] were considered to have been permanently sullied by the uses to which the soldiers put them.”).

alone.²⁴⁵ The stigma associated with rape has dissuaded many survivors from seeking medical treatment for their rape induced injuries.²⁴⁶ And in a country that continues to discriminate against women in the law of inheritance, the widows of genocide are often forced from their land because women are not entitled to inherit from their husbands or fathers.²⁴⁷

Finally, like victims of sexual violence in conflict throughout history, the survivors in Rwanda live with the fact that most of the perpetrators of sexual violence have not been held legally accountable for their crimes.²⁴⁸ From the lack of reporting due to the persistent stigma caused by sexual violence, to the lack of efforts at investigating and prosecuting crimes of sexual violence, to the lack of resources to try the alleged rapists, the story of accountability for perpetrators of sexual violence in Rwanda sadly follows a familiar historical picture in which rape, the most damaging by-product of war, remains “tolerated, if not explicitly condoned.”²⁴⁹ The same sexist devaluation of women that leads to violence against them often provides impunity to the men who rape them.²⁵⁰

IX. LACK OF ACCOUNTABILITY FOR CRIMES OF SEXUAL VIOLENCE

The omnipresence of sexual violence during armed conflict belies the fact that there have been clear and unequivocal proscriptions against the perpetration of these crimes for centuries. While biblical references suggest that women are the valid booty of the victors,²⁵¹ legal codes have long prohibited sexual violence during warfare.²⁵² Despite this, with no political will to enforce these prohibitions, very few individuals have been criminally prosecuted for their acts of sexual violence during armed conflict.²⁵³ And the lack of political will has stemmed from the fact that those responsible for investigating, prosecuting, and judging those accused

245. HUMAN RIGHTS WATCH/AFRICA, SHATTERED LIVES, *supra* note 59.

246. *Id.*

247. *Id.*

248. See Askin, *supra* note 77, at 512-13.

249. Wood, *supra* note 229, at 277 n.17.

250. MacKinnon, *supra* note 221, at 75 (“Women’s problem has been that society and law do not agree that nature made them human, so nothing that is done to them is a crime against humanity, because they have none.”).

251. PETER KARSTEN, LAW, SOLDIERS AND COMBAT 4-6 (1978).

252. Instructions for the Government of Armies of the United States Field by Order of the Secretary of War, General Order No. 100 (April 24, 1863), in THE LAWS OF ARMED CONFLICT: A COLLECTION OF CONVENTIONS, RESOLUTIONS AND OTHER DOCUMENTS 3 (Dietrich Schindler & Jeri Toman eds., 1981). The Lieber Code, as it became known, was authored by Professor Francis Lieber as a direct response to his observations of atrocities committed on and around the battlefield during the Civil War. *Id.*

253. Askin, *supra* note 77, at 512-13.

of sexual violence against the enemy's women adhere to the same patriarchal myths about women – that women are simply extensions of the enemy's men, that they are simply victims of renegade soldiers' urges, mere collateral damage, and that the crimes bring such shame on the victims that they truly are “unspeakable crimes.”²⁵⁴

Only recently, with the UN's establishment of the ICTY and ICTR, has the international community begun to hold the perpetrators of sexual violence accountable for their crimes.²⁵⁵ In fact, the ICTR, in the landmark decision of *Prosecutor v. Akayesu*,²⁵⁶ made history by finding *Akayesu* guilty of rape as a form of genocide and rape as a crime against humanity.²⁵⁷ However, the *Akayesu* decision came only after the female judge halted the proceedings, requesting that the prosecutors investigate and re-indict *Akayesu* for crimes of sexual violence evidenced in the testimony but not reflected in the prosecutor's original indictment.²⁵⁸ Further, the investigation of crimes of sexual violence in the ICTR has been hampered by the lack of female investigators and interpreters.²⁵⁹ Because of the enormous shame imposed on the victims of rape in Rwanda, many victims do not feel comfortable telling their stories in the presence of an all male investigatory team.²⁶⁰ Amid pressure from international groups, the ICTR placed more women in important roles throughout the tribunal.²⁶¹ The chief prosecutor is currently female, and there are more female investigators and interpreters, making it more likely that women will tell their stories of rape.²⁶²

Internally, Rwanda is attempting to bring those responsible for crimes in the 1994 genocide to justice as well.²⁶³ Naturally, with the number of people involved in the mass killings and rapes, the Rwandan justice system

254. As to the unspeakable nature of the crimes, see DALLAIRE, *supra* note 96, at 430; TEMPLE-RASTON, *supra* note 22, at 95.

255. Askin, *supra* note 77, at 520.

256. *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgement (Sept. 2, 1998), available at <http://196.45.185.38/default.htm>.

257. HUMAN RIGHTS WATCH, STRUGGLING TO SURVIVE, *supra* note 78, at 9.

258. Gaëlle Breton-Le Goff, *Analysis of Trends in Sexual Violence Prosecutions in Indictments by the International Criminal Tribunal for Rwanda (ICTR) from November 1995 to November 2002*, MCGILL DOCTORAL AFFILIATES WORKING GROUP ON INTERNATIONAL JUSTICE, RWANDA SECTION, Nov. 28, 2002, http://www.womensrightscoalition.org/advocacyDossiers/rwanda/rapeVictimssDeniedJustice/analysisoftrends_en.php.

259. *Id.*

260. *Id.*

261. *Id.*

262. *Id.*

263. See generally HUMAN RIGHTS WATCH, STRUGGLING TO SURVIVE, *supra* note 78.

is overwhelmed.²⁶⁴ Often local authorities fail to act on women's reports of sexual violence.²⁶⁵ Even when they do act, the cases often fail because of a lack of testimonial and forensic evidence supporting the rape victim's claims.²⁶⁶ Further, there are no safeguards to ensure a victim's safety once she testifies against perpetrators who, if released, will become her neighbors again.²⁶⁷ Although these tribunals have made enormous advances toward ending impunity for these "unspeakable crimes," the myths that portray women as mere property of other men, or as pure and virginal, or as vestibules of procreation, also lead to their want of justice for the crimes uniquely inflicted upon them.

X. "IN THE END, HER CASE SAYS NOTHING ABOUT WOMEN'S NATURE, BUT OFFERS A SADLY FAMILIAR GLIMPSE INTO THE WORST OF HUMAN NATURE."²⁶⁸

"She was a broad-hipped, middle-aged woman in a Virgin Mary blue dress"²⁶⁹ in the days following the genocide. However, she now stands trial in the ICTR for crimes committed not as a woman, but as a military-fatigue-clad²⁷⁰ perpetrator of genocide and crimes against humanity. Perhaps the greatest contribution Pauline will make to history is to shine the light on gender dichotomy and expose the way it plays out in times of conflict. Being the first woman to receive immense international attention for crimes of genocide and sexual violence, Pauline ruptures the myth that women are incapable of committing such atrocities. Hopefully, this myth will die along with the patriarchal preconceptions about women that leave them vulnerable to sexual violence. And hopefully with the death of that myth, perpetrators of widespread sexual torture will face an international community willing and able to hold them accountable for their crimes.

264. *Id.* at 13.

265. *Id.* at 34.

266. *Id.* at 30.

267. *Id.* at 4-5.

268. *The Feminine Mystique*, DETRITUS EX MACHINA, April 20, 2003, <http://homepage.mac.com/ronsbell/Blogs/B335607521/C2128762332/E1034689334/>.

269. Hilsun, *supra* note 126, at 316.

270. AFRICAN RIGHTS, NOT SO INNOCENT, *supra* note 42, at 96.