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The Influence of Human Rights Advocacy Networks on the Prosecution of Conflict-Related Sexual Violence in International Criminal Courts

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**The Influence of Human Rights Advocacy Networks on the Prosecution
of Conflict-Related Sexual Violence in International Criminal Courts**

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Master's Thesis

Submitted in Partial Fulfillment of the Requirements for the Degree of
Master's of Arts in International Relations at the City College of New York

Advisor: Professor Jean Krasno

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Abstract

This thesis explores how human rights advocacy organizations have influenced the increased prosecution of conflict-related sexual violence in international criminal courts. This thesis will use the cases of the International Criminal Tribunal for Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and the International Criminal Court (ICC) to demonstrate that well-established international human rights non-governmental organizations (NGOs) and legal coalitions have been the primary actors in transnational human rights advocacy networks to influence the investigation and prosecution of conflict-related sexual violence in international criminal courts. The objective of the thesis is to focus on the major players in human rights advocacy networks and examine the evolution of tactics, strategies, and professionalization in their work to prosecute sexual violence. Transnational human rights advocacy networks have professionalized and legitimized themselves by becoming legal and investigative experts, in addition to their roles as advocates. They have in turn refined their investigative and report writing skills regarding conflict-related sexual violence to a level acceptable to legal institutions. This professionalization and legitimization has led to professional contacts and has given them access to legal institutions of international criminal tribunals and courts. I will argue that the internal dynamics and professionalization of international human rights advocacy NGOs and legal coalitions provide the best explanation as to how human rights advocacy networks have influenced the prosecution of conflict-related sexual violence. Building upon the theory of transnational advocacy networks, I will identify additional strategies and tactics of transnational human rights advocacy organizations in influencing legal institutions and international organizations. By focusing on the internal make-up and dynamics of advocacy organizations centered on this issue, I will attempt to identify a better understanding of how these organizations have influenced sexual violence prosecution in international criminal courts and international legal norms.

Chapter One: Introduction

Topic

This thesis explores how human rights advocacy organizations have influenced the increased prosecution of conflict-related sexual violence in international criminal courts, focusing specifically on the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Court for Rwanda (ICTR), and the International Criminal Court (ICC). The thesis will highlight the issue of conflict-related sexual violence and the history of criminalization and prosecution of such violence under international law. The objective of the thesis is to focus on the major players in human rights advocacy networks and examine the evolution of their tactics and strategies as well as their professionalization. By focusing on the internal make-up and dynamics of advocacy organizations centered on this issue, I will attempt to identify a better understanding of how these organizations influence international legal norms.

Questions About the Topic

Questions to address in my thesis include the following:

- 1) In the case of influencing the prosecution of conflict-related sexual violence, who were the major players?
- 2) How did large human rights NGOs like Human Rights Watch and Amnesty International work collaboratively, if at all, with local NGOs?
- 3) Do organizations within the networks work together or compete?
- 4) What were these organizations doing internally to professionalize and legitimize their efforts?
- 5) How did human rights advocacy organizations embed themselves into the legal system of international criminal tribunals and courts?
- 6) Aside from advocating for this specific prosecution, how did human rights advocacy networks work with legal institutions? Did they provide investigative tips and legal expertise?
- 7) What was their evolution of tactics and strategies from ICTY and ICTR to the ICC? What type of fact-finding, investigative strategies, and legal expertise have been improved regarding sexual violence?

- 8) Given the legal framework that they are working in, has there been a professionalization of the networks that has contributed to their influence in prosecution conflict-related sexual violence? What was the internal make-up of staff working on this issue?

Transnational Advocacy Networks and International Law

In global affairs today, non-state actors are increasingly playing a role in relations among states and international organizations. Some of the most visible non-state actors today are activists who operate in transnational networks and who are bound by shared principles, ideas, and values with the goal to change the behavior of states and international organizations.¹ Activists in these networks multiply the channels of access to the international system by building new links and forming new types of power.² Although states do remain major players in international relations, these growing networks and evolving relations require new methods of comprehensive analysis.

International relations theory has largely focused on state-centric paradigms for analyzing the international system. Realist and liberalist approaches are the most firmly established theories in the field of International Relations, but they seldom acknowledge or provide insight into transnational politics, activist networks, and the various structures of influence and communication at international levels. Recognizing this, in their book *Activists Beyond Borders*, scholars Margaret Keck and Kathryn Sikkink have developed a theory based on the rationality and significance of transnational advocacy networks in international relations.³

Since the development of this theory, realist critics have cast doubt on the effectiveness of advocacy networks in world politics. Critics of transnational advocacy

¹ Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders*, (Ithaca: Cornell University Press), 1998), 1.

² Ibid.

³ Ibid, 1-10.

network theory have focused on the tactical and strategic challenges of transnational activism and claim that the core information-based strategies are reactive only.⁴ They point to the focus on impunity and international legal mechanisms in human rights campaigns, which have been a central part of transnational activism. Realist critics further question the efficacy of transnational advocacy networks in the international system by pointing to the unevenness of norm change, minimal progress in states' compliance with human rights standards, and contemporary conflicts involving grave human rights violations.

Although transnational advocacy networks do experience some limitations in the international system due to the dominance of states, the theory developed by Keck and Sikkink still serves as a solid foundation for analyzing and understanding the influence that activist networks have on states and international organizations. I argue that these criticisms of transnational advocacy theory and advocacy campaigns are entirely premature because the study of transnational advocacy networks requires more development into the internal processes of these networks. Such internal processes have been largely absent from studies on transnational activism.⁵

By focusing on legal mechanisms and judicial frameworks, transnational advocacy networks are not only ensuring prosecution and accountability, but they are also solidifying shared principles and concerns as international norms. In addition, judicial channels have required increased information-based strategies and legal expertise. This has served as a foundation to legitimize the efforts of advocacy networks

⁴ Hans Schmitz "Transnational Human Rights Networks: Significance and Challenges," *The International Studies Encyclopedia*, Volume XI, ed. Robert A. Denmark, (Wiley-Blackwell, 2010), 7189-7208.

⁵ Ibid, 7189-7208.

and human rights campaigns. An analysis of these internal dynamics will lend to an improved understanding of how these networks have been influential in international legal frameworks.

Transnational advocacy network theory can be applied to the normative and institutional changes that have evolved concerning the prosecution of conflict-related sexual violence under international law. To explore this issue, I will look into the internal dynamics of human rights advocacy organizations focused on the prosecution of conflict-related sexual violence and examine the development of such advocacy campaigns around the prosecution at the International Criminal Tribunal for Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and the International Criminal Court (ICC). This thesis will examine and evaluate the influence of transnational advocacy networks on this issue of sexual violence prosecution.

Although it is clear that transnational advocacy networks have made significant contributions to the prosecution of sexual violence in international courts and they have raised global awareness on the issue, the way in which transnational advocacy networks have influenced international courts is less understood. As Keck and Sikkink note in their theory, we must look at the characteristics of the “target,” the “sender,” and the “source.”⁶ Advancing the study of transnational advocacy networks requires an examination beyond the principles and interests of such organizations and demands an inquiry into the internal dynamics of the “senders,” or participant non-profit organizations.⁷ The leaders and staff of such organizations make up these internal

⁶ Keck and Sikkink, 202.

⁷ Ibid, 23.

dynamics, professionalize these organizations, and constantly contribute to their evolution.

Transnational Advocacy Network Theory

Transnational advocacy networks are comprised of activists, scholars, NGOs, and other non-state actors working to change issues, interests, and norms around particular shared values.⁸ Not only are transnational advocacy networks bound by shared values and a common discourse, but also by a dense exchange of information and services.⁹ Keck and Sikkink maintain that transnational advocacy networks are not always successful in their efforts, but they are increasingly important players in policy debates at the regional and international level.¹⁰

Keck and Sikkink have outlined patterns that are common in campaigns for transnational advocacy networks, a typology of tactics that networks use in their persuasion, and stages of network influence. This typology of tactics includes: 1) information politics, or the ability to quickly and credibly generate politically usable information and move it to where it will have the most impact, 2) symbolic politics, or the ability to call upon symbols, actions, or stories that make sense of a situation for an audience that is frequently far away, 3) leverage politics, or the ability to call upon powerful actors to affect a situation where weaker members of a network are unlikely to have influence, and 4) accountability politics or the effort to hold powerful actors to their previously stated policies or principles.¹¹

⁸ Ibid, 1-10.

⁹ Ibid, 1-27.

¹⁰ Ibid, 1-27.

¹¹ Ibid, 16.

In addition, they have theorized two issue characteristics, which transnational advocacy networks have organized most effectively. These include: 1) issues involving physical harm to vulnerable individuals, especially when there is a short and clear causal chain about who bears responsibility; and 2) issues involving legal equality of opportunity.¹²

International and domestic NGOs play a prominent role in human rights advocacy networks by introducing new ideas, providing information, and lobbying for policy changes.¹³ This thesis will also point out that NGOs have played a legitimate role by professionalizing themselves. Examining their role in advocacy networks helps both to distinguish NGOs from and to see their connections with social movements, state agencies, and international organizations.¹⁴ Arguments can clearly be made on both positions as to whether or not advocacy campaigns have been successful in prosecuting conflict-related sexual violence. What the field still needs to explore is how human rights advocacy campaigns have worked and continue to work to influence the prosecution of conflict-related sexual violence.

The Situation of Sexual Violence in Conflict

By 1993, the Zenica Centre for the Registration of War and Genocide Crime In Bosnia-Herzegovina had documented 40,000 cases of war-related rape.¹⁵ Of a random sample of Rwandan women surveyed in 1999, 39 percent reported being raped during the 1994 genocide.¹⁶ In 2003, 74 percent of a random sample of 388 Liberian refugee

¹² Ibid, 27.

¹³ Ibid, 9.

¹⁴ Ibid, 6.

¹⁵ Jeanne Ward and Mendy Marsh, "Sexual Violence Against Women and Girls in War and Its Aftermath, Realities, Responses, and Required Sources," (paper presented at the Symposium on Sexual Violence in Conflict and Beyond, Brussels, Belgium, June 22-23, 2011), 2.

¹⁶ Ibid.

women living in camps in Sierra Leone reported being sexually abused prior to being displaced from their homes.¹⁷ Reports of the Eastern Region of the Democratic Republic of Congo have shown that 30 percent of women have reported being raped and 22 percent of men have also reported being raped.¹⁸ These statistics demonstrate that sexual violence is quite common in conflict situations around the world. Sexual violence used systematically as a weapon of war and as a result of militarized aggression has been and continues to be prevalent in conflict situations.¹⁹

Despite these statistics on conflict-related rape and other forms of sexual violence, they do not portray the extent of the problem because women and girls, as well as men and boys, are unwilling or unable to report sexual violence for a number of reasons, including lack of protection under the law. Transnational human rights organizations have focused on this lack of legal protection as a structural cause of conflict-related sexual violence. In identifying this causal mechanism, women's rights and human rights organizations have concentrated their research and advocacy efforts on influencing the criminalization and prosecution of such violence in international courts.

International Law and Prosecution

Clear declarations of a woman's absolute right to sexual integrity in conflict and the development of sexual violence jurisprudence in international law have emerged rather recently with the increasing recognition of women's rights as human rights. The principal international humanitarian law treaties governing the treatment of civilians in

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Pam Spees, "Women's Advocacy in the Creation of the International Criminal Court: Changing the Landscapes of Justice and Power" *Signs*, Vol. 28. No. 4, (2003), 1235.

armed conflict are the 1949 Geneva Conventions.²⁰ The Geneva Conventions following World War II included provisions relating to sexual violence that did not explicitly declare rape and sexual violence as grave breaches, but as violations linked to men's honor and women as property.²¹

In the early 1990s, following the gross violations of human rights and international humanitarian law in the conflict in the former Yugoslavia, the United Nations Security Council called for the establishment of an ad hoc international war crimes tribunal.²² The International Criminal Tribunal for the former Yugoslavia (ICTY) was therefore established to prosecute those responsible for serious violations of international humanitarian law committed in the territory since 1991.²³ Following the formation of this ad hoc tribunal, in mid-1994, the U.N. Security Council established the International Criminal Tribunal for Rwanda (ICTR) following investigative reports evidencing that over 600,000 people had been killed in 1994 in Rwanda.²⁴ Similar to the ICTY, the ICTR was established to prosecute those responsible for genocide and other gross violations of international humanitarian law in Rwanda.²⁵

Investigations led by the United Nations, prosecution teams, and non-governmental organizations such as Human Rights Watch, substantiated allegations that hundreds of thousands of women, children, and men were victims of rape and other forms of sexual violence in the conflict in the former Yugoslavia and in Rwanda. The ICTY and the ICTR did not initially include wide reaching criminalization of rape and sexual

²⁰ Kelly Askin, *War Crimes Against Women: Prosecution in International War Crimes*, (Boston: Martinus Nijhoff Publishers, 1997), 2.

²¹ Spees, 1239.

²² Askin, 2.

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

violence in their statutes, but they are widely considered to be the foundation for prosecuting sexual violence in international law.²⁶ The ICTY secured its first conviction for rape in the ground-breaking 2001 Foca verdict, which confirmed the use of rape as a crime against humanity.²⁷ In the 1998 verdict against Jean-Paul Akayesu, the ICTR handed down the first genocide conviction by an international court and the first conviction for rape as an act of genocide.²⁸

This foundation can be directly traced to the efforts of activist networks in pressuring and persuading the ICTY and the ICTR to prosecute sexual violence as a crime against humanity and genocide. Advocacy organizations publicized the issue, provided information to the courts based on their own reports and investigations, supplied amicus briefs to the courts, and provided a link between the courts and to victims.²⁹ In fact, research of political scholars has demonstrated that impunity campaigns have been a principal part of transnational activism and have been a key influence in the rapid creation of transitional justice mechanisms during the 1990s, including the establishment of the ICC.³⁰

Directly following the first prosecutions and convictions of wartime sexual violence at the ICTY and the ICTR, activist networks continued to mobilize to influence the prosecution of sexual violence at the ICC. The 1998 Rome Statute of the ICC, which entered into force on July 1, 2002, promised to prosecute those most responsible for

²⁶ Ashley Dallman, "Prosecuting Conflict Related Sexual Violence at the International Criminal Court," *Sipri Insights on Peace and Security*, No. 1 (2009), 5.

²⁷ *Ibid.*, 5.

²⁸ Askin, 2.

²⁹ Patricia Viseur Sellers, "The Prosecution of Sexual Violence in Conflict: the Importance of Human Rights as a Means of Interpretation," (UN Office of the High Commissioner for Human Rights, October 7, 2011).

³⁰ Schmitz, 7216.

grave human rights violations, including rape and other forms of sexual violence.³¹ Current international criminal law, as implemented through the ICC, specifies that sexual violence, including rape, sexual slavery, enforced prostitution, forced pregnancy, and enforced sterilization, as a crime against humanity and as serious violations of the laws and customs applicable in international armed conflict.³² This specific criminalization and prosecution of sexual violence is evidence that there are increasing norms and institutional changes for addressing sexual violence in conflict.

The ICC has opened investigations into the Central African Republic, the Democratic Republic of Congo, the Darfur region of Sudan, the northern region of Uganda, and Kenya. While charges of sexual violence and rape constituting crimes against humanity and war crimes have been added to some prosecutions, due to poor investigations, the burden of proof, and lack of political will, some charges of sexual violence have been dropped in prosecutions.³³ Although the record of the ICC to investigate and prosecute sexual violence has been mixed, advancements have been made due to the continued pressure, organization, and density of activist networks around the issue. NGOs have continued to bring awareness to the issue globally and they have provided assistance and information to the ICC in the effort to maintain and increase sexual violence prosecutions. Since the watershed prosecutions at the ICTY and the ICTR, advocacy networks of human rights organizations have honed their skills in influencing judicial frameworks and working within legal mechanisms. While it is apparent that advocacy networks have been fundamental in the development of conflict-related sexual violence prosecutions in international courts through their advocacy

³¹ Dallman, 1.

³² Sellers, 12.

³³ Dallman, 9.

campaigns, it is less understood how these organizations have developed internally to influence prosecution in international courts.

Hypothesis

In addition to the limited studies on the internal dynamics of human rights advocacy networks, there is also a dearth of scholarship on the role of the legal community in enforcing human rights.³⁴ Legal communities maintain transnational contacts based on professional interests, which suggests that human rights advocacy networks relied on more than just the politics of information, symbols, leverage, and accountability. Human rights advocacy networks have professionalized and legitimized themselves by becoming legal and investigative experts, in addition to their roles as advocates. They have in turn refined their investigative and report writing skills regarding conflict-related sexual violence to a level acceptable to legal institutions. This professionalization and legitimization has led to professional contacts and has given them access to legal institutions of international criminal tribunals and courts.

My thesis will use the cases of the ICTY, the ICTR, and the ICC to demonstrate that international human rights NGOs and legal communities have been the primary actors in human rights advocacy networks to influence the investigation and prosecution of conflict-related sexual violence under international human rights and humanitarian law. I will argue that the internal dynamics and professionalization of human rights advocacy NGOs provide the best explanation as to how human rights advocacy networks have influenced the prosecution of conflict-related sexual violence. Building upon the theory of transnational advocacy networks set forth by Keck and Sikkink, I will identify

³⁴ Schmitz, 7212.

additional strategies and tactics of human rights advocacy organizations in influencing legal institutions and international organizations.

Methodology

The comparative case studies of the ICTY, ICTR, and ICC are made up of various components. First, descriptions of the establishment of the courts are outlined including transnational advocacy participation in the formation of the courts. Next, an examination is made into how advocacy networks interacted and influenced sexual violence prosecution in each court. Finally, the question of how advocacy strategies changed or evolved in each court is explored.

I will draw on qualitative analysis of secondary sources to analyze how transnational human rights organizations have influenced the prosecution of sexual related violence. This includes NGO reports and briefing papers, scholarly journal articles, press releases, and case documents from the ICTY, ICTR, and ICC. I will then analyze and draw conclusions from prosecutions from the ICTY, ICTR, and the ICC in an effort to better understand how advocacy organizations have influenced prosecution. I will also collect data on the prosecutions and charges related to sexual violence at all three courts.

Given the limited information regarding the internal processes of these organizations in their advocacy efforts for prosecuting such violence, I gathered information from seven personal interviews with members and staff of these organizations, who have specific professional experience with international justice advocacy and conflict-related sexual violence prosecutions. (Brief biographies of those individuals who were interviewed as well as interview transcriptions are included in the

appendices of this thesis.) The semi-structured interviews will allow me to ask new questions that arose while also drawing on the aforementioned thesis questions.

Limitations

It should be noted that obtaining interviews from professionals with this specific experience proved to be difficult given the busy schedules of these professionals. The quantity of such personal interviews has therefore been quite limited. Even with the limitations in gathering evidence from personal interviews, thoughtful interpretation and analysis can be made when cross-checked with scholarly articles and documentation of the role of transnational advocacy networks in the prosecution of sexual violence at the ICTY, ICTR, and the ICC.

Chapter Two: Literature Review

Theoretical Background

This chapter offers a synopsis and assessment of the scholarly work on transnational advocacy networks, which will serve as a foundation for developing the ideas and arguments set forth in this thesis. The chapter begins with a brief overview and description of the origins of the general groundwork of this theoretical approach. Then, I explore the major contributions of two leading scholars (Keck and Sikkink) to this theoretical framework. Next, I consider subsequent contributions of other theorists and scholars that have emerged within this framework. In addition, I note persistent gaps in transnational advocacy network theory, which demonstrate that additions should be made to the paradigm.

As previously noted in the introductory chapter, the most established theoretical approaches in the field of international relations, namely neo-realism and liberalism, have discredited the importance of transnational activism by focusing primarily on state-centric paradigms for analyzing the international system. Despite this state-centric dominance, in the past two decades, the field of international relations has provided an increasing wealth of literature and research on the study of transnational politics and activism. The emergence of this trend can be traced back to political science scholars Margaret Keck and Kathryn Sikkink, who are credited for developing a theory based specifically on the significance of transnational advocacy networks in the international system.³⁵

³⁵ Schmitz, 5.

Prior to the theoretical insights of Keck and Sikkink, which were generated through qualitative research, few theories attempted to explain transnational activism and advocacy networks.³⁶ The exploration of transnationalism and transnational interactions was a precursor to the study of advocacy-oriented transnational interactions. Noteworthy scholars who established transnationalism as a challenge to state-centered theories in international relations are Joseph Nye and Robert Keohane.

Nye and Keohane contended that states are by no means the only actors in world politics and they noted that little theoretical attention has been paid to the interactions that involve nongovernmental actors, individuals, and organizations.³⁷ They argued that nongovernmental actors play a significant role in world politics and they defined “transnational interactions” as the movement of tangible or intangible items across state boundaries when at least one actor is not an agent of a government or an intergovernmental organization.³⁸ By stressing the importance of these transnational interactions, Nye and Keohane challenged realism and asserted that transnational relations alter relationships between governments and change state attitudes.

Although Nye and Keohane set a precedent and addressed transnational interactions within their theory of complex interdependence, they did not succeed in motivating a self-sustaining research agenda on the significance of transnational actors.³⁹ Constructivism in international relations theory and social movement theory in comparative politics provided a gateway for scholars to instigate new theoretical frameworks to explore transnational activism and transnational social movement

³⁶ Keck and Sikkink, 5.

³⁷ Joseph S. Nye, Jr. and Robert O. Keohane, “Transnational Relations and World Politics: An Introduction,” *International Organization*, Vol. 25, No. 3, (1971), 330.

³⁸ *Ibid*, 332.

³⁹ Schmitz, 5.

organizations.

Social movement theory draws from various interdisciplinary fields with social sciences, but has minimal recognition in the field of international relations. The theoretical framework of social movements surveys why social mobilization occurs and the social, cultural, and political outcomes of such mobilization. By offering historically specific formulations, social movement theory provides a wealth of information about the roots of contemporary social activism, the features of such activism, and the dynamics of movement emergence.⁴⁰ Although social movement theory is useful for understanding the social structures that shape contemporary activism, it does not explore how social movement activism operates, which has limited its overall contribution to the study of transnational advocacy networks.⁴¹

Like social movement theory, constructivism has a sociological approach, but it is a more widely accepted theory in the field of international relations. Constructivism provides a broad underpinning from which scholars in international relations have been able to draw from to examine both how and why transnational activism and advocacy networks function. One of the leading social constructivists in the field of international relations, Alexander Wendt, notes that the core of constructivism involves two basic claims: “that the fundamental structures of international politics are social rather than strictly material, and that these structures shape actors’ identities and interests, rather than just their behavior.”⁴² Constructivists hypothesize that social structures are made up of social relationships, which are defined by shared understandings, expectations, and

⁴⁰ Steven M. Buechler, “New Social Movement Theories,” *The Sociological Quarterly*, Vol. 36, No. 3 (1995), 441-464.

⁴¹ *Ibid*, 460.

⁴² Alexander Wendt, “Constructing International Politics,” *International Security*, Vol. 20, No. 1 (1995), 71-81.

knowledge. These social structures constitute the actors in a situation and the nature of their relationships.⁴³ Constructivism is concerned with how the social and political worlds work and with the idea that the collectivity of norms makes behavioral claims on actors.⁴⁴ Constructivism, therefore, easily supports the notion that norms coming from transnational advocacy networks and organizations could influence the behavior of states without having traditional sources of power.

One of the most visible forms of transnational activism is the transnational human rights movement, which surfaced following World War II and gained momentum towards the end of the Cold War. The increased attention to social movement theory and a constructivist paradigm, combined with the sustained growth of the transnational advocacy organizations (specifically human rights advocacy organizations) fueled scholarly interest in a shaping a theoretical framework to understand how transnational activism operates.⁴⁵

Transnational Advocacy Network Theory

In their book, *Activists Beyond Borders*, Keck and Sikkink, built upon the existing theoretical frameworks mentioned above and introduced the role and influence of transnational advocacy networks, including human rights activism, in world politics.⁴⁶ Several studies have taken up the ideas expressed in *Activists beyond Borders* and refined the theoretical understanding of why and how transnational advocacy groups can change the domestic practices of governments.⁴⁷ The criticism of their work that has

⁴³ Ibid, 73.

⁴⁴ Jeffrey T. Checkel, "The Constructivist Turn in International Relations Theory," *World Politics*, 50 (1998), 325

⁴⁵ Schmidt, 5.

⁴⁶ Keck and Sikkink, 1-10.

⁴⁷ Schmidt, 5.

emerged, as well as the spring of scholarly work that builds upon and refines their theoretical assumptions, indicates that not only is Keck and Sikkink's work valuable to the field of international relations, but that transnational advocacy networks do, in fact, play a noteworthy role in world politics. Although aspects of Keck and Sikkink's theory were briefly discussed in the introductory chapter, it is worth revisiting and describing at more length some of their theoretical claims, as they have been significantly useful in informing background knowledge for this thesis.

Keck and Sikkink provide a solid foundation to their work by clearly defining the terms that they use. As this thesis seeks to build upon Keck and Sikkink's theory of transnational advocacy networks, the terms that they coined will be used throughout this thesis. The "networks" that Keck and Sikkink refer to are forms of organization characterized by voluntary, reciprocal, and horizontal patterns of communication and exchange.⁴⁸ Advocates defend causes and stand up for the causes of others. "Advocacy networks" are therefore organized to promote causes, principled ideas, policy changes, and norms.⁴⁹ Keck and Sikkink use the term "transnational advocacy network" to describe networks that are comprised of activists, scholars, NGOs, and other non-state actors working to change issues, interests, and norms around particular shared values.⁵⁰

By creating links through these networks, activists significantly increase access to the international system. Although activists do not have power in the traditional sense, by coming together as a dense network around a particular campaign, activists may be able to wield influence in global affairs. Campaigns are described as sets of strategically linked activities in which members of networks develop explicit, visible ties, and

⁴⁸ Keck and Sikkink, 8.

⁴⁹ Ibid, 8.

⁵⁰ Ibid, 1-10.

mutually recognized roles in pursuit of a common goal.⁵¹ Transnational advocacy networks are bound by a typology of tactics used for persuasion, which enables them to exert a form of power. This typology of tactics includes 1) the politics of generating and disseminating information, 2) using symbols to frame stories and issues, 3) using leverage of powerful actors to influence a situation, and 4) holding powerful actors accountable for previously stated policies.⁵²

Keck and Sikkink examine the efficacy of transnational advocacy networks by analyzing various campaigns that networks have waged, including the campaign to combat violence against women. Through these case studies, Keck and Sikkink were able to identify how and why advocacy networks are likely to emerge. They also assessed the influence of transnational advocacy networks campaigns by the various levels of influence that they exerted at domestic and international levels.

Given the insight from their case studies, Keck and Sikkink theorized two specific issues, which transnational advocacy networks have organized around most effectively. These include: 1) issues involving bodily harm to vulnerable individuals, especially when there is a short and clear causal chain about who bears responsibility; and 2) issues involving legal equality of opportunity.⁵³ It is therefore little surprise that human rights is the issue area around which the largest number of international NGOs has organized around.⁵⁴ Keck and Sikkink's findings consequently best explain the emergence and influence of transnational human rights advocacy networks.

⁵¹ Ibid, 6.

⁵² Ibid, 16.

⁵³ Ibid, 27.

⁵⁴ Ibid, 12.

As previously noted, Keck and Sikkink's primary focus is whether or not transnational advocacy networks are effective, and their research leans towards a more positive view on these types of networks in the international system. Although *Activists Beyond Borders* does not focus on the internal dynamics of these networks, Keck and Sikkink's book does provide some insight into these dynamics and proposes that further research should be conducted. Their research suggests that international and domestic NGOs play a central role in all advocacy networks by initiating actions and ideas, providing information, and pressuring more powerful actors.⁵⁵ Furthermore, transnational networks typically involve a small number of activists from the organizations involved in a given campaign.⁵⁶ If a relatively small number of activists from NGOs play a major role in advocacy networks, then clearly more research should be made to focus on the evolution of strategies that activists use and the internal dynamics of organizations.

Building on Transnational Advocacy Network Theory

An important article that builds upon ideas from Keck and Sikkink while also providing invaluable information on current theoretical contentions and gaps on transnational advocacy networks, is "Transnational Human Rights Networks: Significances and Challenges" by scholar Hans Schmidt. In this article, Schmidt provides a historical overview of the study of advocacy networks in social science and surveys criticism of transnational advocacy campaigns.⁵⁷ Aspects of his historical review are reflected in the theoretical background section of this chapter. While being aware of the criticisms is vital to any researcher, it is beyond the scope of this literature review and thesis to focus on the criticisms of transnational advocacy networks outlined by Schmidt.

⁵⁵ Ibid, 8.

⁵⁶ Ibid, 18.

⁵⁷ Schmidt, 1-5.

More importantly, in the third and four sections of his article, Schmidt reviews the ways in which the transnational advocacy sector itself has evolved and examines the internal dynamics of transnational networks and individual organizations.⁵⁸ In fact, he focuses almost exclusively on human rights advocacy and stresses that there is relatively little information and research on the internal dynamics of these networks and organizations. Although subsequent scholars and authors noted in this literature review do provide notable contributions to the field of study on transnational advocacy networks, Schmidt's work is particularly useful in identifying the areas in this field that have little attention and require further research.

An important point that Schmidt makes, but does not fully explore, is that the study of transnational advocacy and NGO activism focuses almost exclusively on how activism is driven by shared principles and informal exchanges.⁵⁹ An area that has been absent from these studies is that the legal community increasingly plays a role in these advocacy networks, forging professional standards and expertise, and lending additional legitimacy to campaigns.⁶⁰ This suggests that organizations have legitimized and professionalized themselves through contacts with legal experts, thus sustaining contacts for professional interests, not just by shared principles. The professional networking and contacts with the legal communities also indicates some of the ways in which human rights advocacy networks have strategically evolved.

Schmidt identified several key developments in transnational human rights activism that have evolved since the publication of *Activists Beyond Borders*.⁶¹ First,

⁵⁸ Ibid, 1.

⁵⁹ Ibid, 11.

⁶⁰ Ibid, 12.

⁶¹ Ibid, 17.

advocacy networks play a significant role in the creation and evolution of international institutions, which can be seen in the establishment of the ICC and the inclusion of sexual violence in the definition of war crimes.⁶² Although advocacy networks' efforts do not always end in success, their success in recognizing human rights in international courts is of particular interest for the this thesis. A second key development that Schmidt noted is that transnational human rights advocacy networks began in the 1990s to gradually address human rights violations committed by non-state actors and not just state governments.⁶³

Schmidt's deduces that the advancement of the study of transnational human rights advocacy networks requires an investigation into the internal dynamics of participant NGOs.⁶⁴ While researchers have increased knowledge of the principles and interests of such organizations, knowledge of what these organizations look like on the inside and how they operate is scant.⁶⁵ Inquiries into these internal dynamics entails a look at the organizational leadership, professional contacts, membership, staff, and advisors, who mold the interests, principles, and actions of the organizations.⁶⁶

Schmidt furthers his studies by examining some of the evolutionary changes of the sector in his article with Emily B. Rodio, "Beyond Norms and Interest: Understanding the Evolution of Transnational Human Rights Activism."⁶⁷ In this article, they outline how human rights advocacy organizations have shifted from reactive "shaming"

⁶² Ibid, 17.

⁶³ Ibid, 17.

⁶⁴ Ibid, 23.

⁶⁵ Ibid, 3.

⁶⁶ Ibid, 23.

⁶⁷ Hans Schmidt and Emily B. Rodio, "Beyond Norms and Interests: Understanding the Evolution of Transnational Human Rights Activism," *The International Journal of Human Rights*, Vol. 14 No. 3, (2010), 442-459.

strategies to more proactive efforts in order to address some of the root causes of gross human rights violations. Schmidt and Rodio argue that the evolution of transnational human rights activism now represents a “more effective response to human rights violations and atrocities committed around the world” and these NGOs are shaping the diffusion of human rights norms.⁶⁸ While they focus primarily on Amnesty International, their findings seem to be representative of most major human rights NGOs as Amnesty International serves a central role in international human rights activism.

Schmidt and Rodio used qualitative methods to examine the changes in the reporting practices of Amnesty International. Their findings that show how this type of advocacy has evolved internally is useful for this thesis, as well as their background information on the history of transnational human rights activism. They note that the professionalization and media-driven character of transnational human rights advocacy campaigns has led to the visibility of human rights today.⁶⁹ While this professionalization has led some scholars to focus on arguments that these organizations are strictly self-interested and concerned for organizations survival, Schmidt and Rodio encourage scholars to move beyond the dichotomy of “norms versus interests” and focus on the “evolution of transnational activism.”⁷⁰

Scholar Charli Carpenter explores specific aspects of internal processes of advocacy networks in her article, “Setting the Advocacy Agenda: Theorizing Issue Emergence and Non-emergence in Transnational Advocacy Networks.” Carpenter emphasizes that current literature on transnational advocacy networks does not explore

⁶⁸ Ibid, 443.

⁶⁹ Ibid, 444

⁷⁰ Ibid, 448.

the process by which advocacy networks select issues around which to mobilize.⁷¹

Carpenter developed an analytical framework on issue emergence by comparing two prominent issues in transnational advocacy networks to issues largely absent from these networks.⁷²

Carpenter described “issue emergence” as the conceptual link between the bad things in the world and the specific persuasive mechanisms of advocacy.⁷³ “Issue adoption” occurs when the issue is backed by at least one major player in a broad transnational advocacy network.⁷⁴ When an issue has been defined and adopted by a major NGO or a well-respected intellectual, then the issue has truly emerged within a transnational advocacy network. In short, international advocacy is only possible after an issue in world affairs is defined as a problem by activists and then adopted as an issue by major players in advocacy networks.⁷⁵ Although Carpenter’s case studies of children born of wartime rape are not specifically related to the case studies later presented in this thesis, her research encourages scholars to explore why major NGOs have such a strong role in issue emergence and generally, how and why advocacy networks define and adopt particular issues.

While Carpenter notes that there are many questions yet to be answered regarding advocacy networks, she notes that one clear fact about these networks is that major organizations function as gatekeepers for access to international institutions and influence

⁷¹ Charli Carpenter, “Setting the Advocacy Agenda: Theorizing Issue Emergence and Nonemergence in Transnational Advocacy Networks,” *International Studies Quarterly* Vol. 51 Issue 1 (2007), 99.

⁷² *Ibid*, 100.

⁷³ *Ibid*, 102.

⁷⁴ *Ibid*, 103.

⁷⁵ *Ibid*, 112.

in world politics.⁷⁶ In the field of human rights, Amnesty International and Human Rights Watch are examples of such major organizations. As evidenced in their websites and published reports, these major organizations do not simply address every human rights violation in the world. Instead, they are selective in the number and type of issues that they actually promote and advocate for. These organizations are clearly strategic about the issues that they advocate for and their position in a broader transnational human rights advocacy network. In order to improve the analytical framework of issue emergence and the theoretical framework of transnational advocacy network scholarship in general, Carpenter suggests that scholars not only examine the internal politics of advocacy networks, but also the internal dynamics of “gatekeeping” organizations.⁷⁷

Another aspect of scholarship on advocacy networks that has been rather unexplored but is gaining increasing attention, is the influence of such networks on international law. In his article, “Nongovernmental Organizations and International Law,” Steve Charnovitz argues that NGOs contribute to the development, interpretation, judicial application, and enforcement of international law.⁷⁸ Charnovitz explores five specific issues related to this topic, which suggest that NGOs that have legal and investigative expertise, as well as the goal to influence international relations, can be influential because they are included in the professional proceedings in international courts concerning human rights issues. The five chapters of this article examine the following topics; NGO identity and inclusion into state decision making, legal status of NGOs in international law, the historical influence of NGOs in international law,

⁷⁶ Ibid, 114.

⁷⁷ Ibid, 114.

⁷⁸ Steve Charnovitz, “Nongovernmental Organizations and International Law,” *The American Journal of International Law*, Vol. 100, No. 2 (2006), 348-372.

democratic legitimacy of NGO participation, and whether intergovernmental decision makers have a duty to consult NGOs.⁷⁹

A central aspect to NGO identity is their ability to be creative and independent because they are not limited by states like international organizations. By continuously developing and functioning with independence and a moral authority, NGOs are able to wield influence through the persuasiveness of their ideas.⁸⁰ Charnovitz concludes that international law is susceptible to being influenced by NGOs because NGOs are independent experts and they seek to sell norms to authoritative decision makers.⁸¹

In addition to the influential nature and identity of NGOs, consultative recognition within international organizations and courts has paved the way for NGOs to influence global politics and international law. In 1950, the United Nations Economic and Social Council (ECOSOC) implemented Article 71, which granted a consultative role for NGOs.⁸² Charnovitz traces the foundation of NGO efforts to strengthen international law to Article 71.⁸³ Article 71 established a norm of NGO consultancy throughout the UN system, which eventually spread to international criminal courts.

This norm of NGO consultancy status and influence in international tribunals and courts is present today. Although NGOs tend to be particularly productive around the emergence of new fields in law and they initiate action by seeking to contribute to international adjudication through friend-of-the-court submissions, international tribunals and courts are also active in seeking the expertise, information, and ideas of NGOs.⁸⁴ In

⁷⁹ Ibid, 350.

⁸⁰ Ibid, 351.

⁸¹ Ibid, 362.

⁸² Ibid, 358.

⁸³ Ibid, 358.

⁸⁴ Ibid, 353.

fact, international tribunals and courts (with an exception of the International Court of Justice), developed procedures to enable NGOs to submit information, investigative reports, and statements related to pending cases.⁸⁵ In some cases, the ICTY and the ICTR have specifically requested amicus brief submissions from NGOs. In order to assist the development of international law, the UN Security Council has even called upon NGOs to gather and submit information regarding violations of international humanitarian law.⁸⁶ This suggests that in their dealings with international organizations and courts, NGOs have established a legitimacy that is now being acknowledged. Not only are NGOs themselves seeking to influence international law, but the very institutions that they lobby are tacitly expecting them to influence international law through their legitimate wealth of information, ideas, and expertise.

Critical views of the goals of transnational human rights advocacy networks and their influence on transnational criminal justice is an important area of scholarship that can build upon the largely positive outlooks of Keck and Sikkink. J. Snyder and L. Vinjamuri take such a critical view in their article, “Trials and Errors: Principle and Pragmatism in Strategies of International Justice.”⁸⁷ Snyder and Vinjamuri first discuss strains of constructivism and the role of human rights advocacy networks in promoting norm change in international relations. Constructivism has not examined judicial accountability for human rights violations, which is noteworthy because “NGOs and legalists advocating war crimes tribunals implicitly hold to the constructivist theory.”⁸⁸ Snyder and Vinjamuri contend that advocacy groups strictly follow “logic of

⁸⁵ Ibid, 352.

⁸⁶ Ibid, 355.

⁸⁷ J. Snyder, J., and Vinjamuri, L., “Trials and Errors: Principle and Pragmatism in Strategies of International Justice,” *International Security*, Vol.28 No. 3 (2003), 5–44.

⁸⁸ Ibid, 10.

appropriateness” rather than “logic of consequences,” which may undermine the institutionalization of justice rather than advance it.⁸⁹

Even though this thesis steers away from assessing the positive and negative aspects of transnational advocacy networks and focuses instead on internal dynamics of these groups as they influence international criminal prosecutions, Snyder and Vinjamuri’s analysis provides important insight and questions into advocacy networks’ push for judicial accountability. A considerable portion of the work of transnational human rights advocacy networks focuses on the rule of law in world politics, strengthening legal norms, and establishing international judicial institutions. There are many norms that these advocacy networks assume including that of criminal accountability for war crimes and a universal system of international criminal justice. These norms are considered among transnational advocacy networks as “appropriate standards of behavior.”⁹⁰ The following assumption is that as the norm becomes embodied in legal institutions such as the ICTR, the ICTY, and the ICC, it should begin to have a deterrent effect. However, Snyder and Vinjamuri warn that legalist tactics for strengthening human rights norms can backfire or be simply irrelevant when institutional and social preconditions for the rule of law are lacking.⁹¹

They further argue that decisions to prosecute should not be recognized as the only legitimate tool for serving the broader interest of human rights.⁹² In sum, this article does not completely denounce the legal norms emphasized by these advocacy networks, but warns that they may not necessarily deter subsequent war crimes and they have the

⁸⁹ Ibid, 5-10.

⁹⁰ Ibid, 10.

⁹¹ Ibid, 10-44.

⁹² Ibid, 14.

possibility of hindering efforts to defuse ethnic tensions.⁹³

Another work that has provided a summation of background information and informed this thesis on criticisms and relatively unexplored issues in the study of transnational advocacy networks is Richard Price's article, "Transnational Civil Society and Advocacy in World Politics." This article is a comprehensive review of the following scholarly books on transnational activism:

- 1) *Moral Victories: How Activists Provoke Multilateral Action* by Susan Burgerman
- 2) *Diplomacy of Conscience: Amnesty International and Changing Human Rights Norms* by Ann Marie Clark
- 3) *Unarmed Forces: The Transnational Movement to End the Cold War* by Matthew Evangelista
- 4) *The Third Force: The Rise of Transnational Civil Society* by Ann Florini
- 5) *Non-State Actors and Authority in the Global System* by Richard Higgott, Geoffrey Underhill, and Andreas Bieler
- 6) *Activists beyond Borders: Advocacy Networks in International Politics* by Margaret Keck and Kathryn Sikkink
- 7) *Restructuring World Politics: Transnational Social Movements, Networks, and Norms* by Sanjeev Khagram, James V. Riker, and Kathryn Sikkink

Price identified these books as being part of the current and progressive research agenda on the role of transnational advocacy in world politics.⁹⁴ Price argues that this research on transnational activism demonstrates the increasing influence and leverage of civil society. The research further demonstrates that transnational civil society matters and that advocacy network research "constitutes a powerful theoretical counter" to domestic preference and state centric theories.⁹⁵ Price finds that that each book offers different findings, which point to the difficulty of "conceptually mapping everything such

⁹³ Ibid, 25.

⁹⁴ Richard Price, "Transnational Civil Society and Advocacy in World Politics," *World Politics*, Vol. 55, No. 4 (2003), 579-606.

⁹⁵ Ibid, 579.

actors do and seek.”⁹⁶ The consistent activities of advocacy networks that Price was able to glean from the books he reviewed consist of agenda setting, developing solutions, creating norms, recommending policy change, building networks and coalitions of allies, and employing tactics of persuasion and pressure to change practices and/or norms.

Price also acknowledges that further systematic research on this topic must go into why some campaigns succeed, but others fail. The success of some campaigns seems to be derived from a combination of expertise, moral influence, and claims to political legitimacy.⁹⁷ Human rights activists and organizations rely on their status and reputation as legitimate experts of objective knowledge and information.

One of the shortcomings of the research on the success or failure of transnational activism may lie in the fact that the research has overwhelmingly focused on domestic structures. A focus on how influence is exerted on international institutions may bolster the current research. Looking at institutions may provide significant insight as “activists not only try to make use of the political opportunity structures they are presented with, but they also try to make those structures themselves.”⁹⁸

Price also raises two additional forms of constructive criticism for the future discourse on transnational advocacy and civil society. First, other international relations theories, such as realism, constructivism and rational choice, are not mentioned or discussed in the volume on transnational civil society that Price reviewed. He argues that this research therefore is not fully equipped to defend itself against the first objections that will emerge from alternative theoretical perspectives.⁹⁹ It is therefore important for

⁹⁶ Ibid, 584.

⁹⁷ Ibid, 587.

⁹⁸ Ibid, 595.

⁹⁹ Ibid, 600.

further systematic research to address or at least acknowledge different theoretical approaches. Secondly, more attention in this field should be paid to how activists themselves learn and strategize, both substantively about the issues they become involved in and strategically about how to get what they want.¹⁰⁰ In order to fully comprehend the role of transnational advocacy networks in world politics, it is imperative to understand how they strategize internally.

In their article, “Transnational Information Politics: NGO Human Rights Reporting 1986-2000,” James Ron, Howard Ramos, and Kathleen Rodgers extend their analysis of transnational advocacy networks by exploring the internal dynamics of large NGOs regarding their strategies of information politics.¹⁰¹ To do this, they study the country reporting of Amnesty International and draw on interviews from staff. There are various factors, including human rights conditions that determine the volume of country reporting. Reporting on specific countries is part of a specific strategy for these large NGOs to maximize advocacy opportunities and shape international norms.¹⁰²

This article further analyzes these strategies by accessing their strengths and weaknesses. Although this article does explore information politics, it only provides insight into a specific aspect of information politics because it narrows its scope to the volume of country reporting. Regardless, the study of the volume of country reporting and the information on some of the internal dynamics of major NGOs are informative for this thesis.

Amnesty International is not only one of the largest international human rights

¹⁰⁰ Ibid, 605.

¹⁰¹ James Ron, Howard Ramos and Kathleen Rodgers, “Transnational Information Politics: NGO Human Rights Reporting, 1986-2000,” *International Studies Quarterly*, Vol. 49, No. 3 (2005), 557-587.

¹⁰² Ibid, 557.

NGOs, but it is one of the major players in transnational human rights advocacy networks. The group has the longest history and broadest name recognition in the field and is believed by many to set standards for the human rights advocacy movement as a whole.¹⁰³ For example, their methods of information gathering and professional advocacy are also used with other NGOs who are major players in advocacy networks. The professional contacts of former Amnesty International employees are spread throughout the broader transnational advocacy network, which diffuses the group's principles, tactics, and worldviews. In addition to their professional advocacy, Amnesty International is also a major player due to its legitimacy. Among academics, Amnesty International is viewed as a reliable source of information, and public trust in Amnesty's reputation is similarly high.¹⁰⁴

An interesting finding is that their research did not find strong statistical support for the notion that strong, mobilized local advocates attract major international NGOs to engage with a region, issue or country.¹⁰⁵ This finding does not necessarily suggest that international NGOs don't work and collaborate with local NGOs, rather, it suggests that they are attracted to different happenings in global affairs that enable them to exert the most influence. Such happenings include news releases and the media. Although these NGOs work to influence the media's agenda and promote human rights awareness through media coverage, they are also keenly aware of the media's current interests, and often respond accordingly.¹⁰⁶

Although there are some findings of strategies and internal dynamics of major

¹⁰³ Ibid, 559.

¹⁰⁴ Ibid, 559.

¹⁰⁵ Ibid, 564- 572.

¹⁰⁶ Ibid, 572-573.

international NGOs, ultimately the research and analysis for this article are mostly focused on the written work of Amnesty International and less on internal mechanisms and dynamics. However, this article furthers the research for the field of transnational human rights advocacy networks and reveals some of the complexities of leading transnational NGOs. The “pragmatic” and “politically savvy” strategies of these leading NGOs have allowed them to exert considerable influence in specific areas and gain achievements for human rights.¹⁰⁷

As previously mentioned, there is currently not a wealth of scholarly research on how human rights NGOs have transformed and professionalized themselves. In the article, “Professionalized Representation of Human Rights NGOs to the United Nations,” Kerstin Martens focuses on the professionalization of human rights NGOs and argues that NGOs have increasingly invested in their international presence and gradually professionalized.¹⁰⁸ Martens studies the professionalization of NGO representation to the UN with four cases studies of international human rights organizations: Amnesty International, Human Rights Watch, the International Federation of Human Rights and the International League for Human Rights. Although Martens does not identify these organizations as “gatekeepers” or major players within transnational advocacy networks, her focus on these NGOs’ internal organizational developments provides some explanation as to how they are influential in international affairs.

Martens argues that internal organizational developments of international NGOs explain the how they deliver valuable information and research on human rights violations to UN commissions and committees, how they provide knowledge and

¹⁰⁷ Ibid, 575.

¹⁰⁸ K. Martens, “Professionalized Representation of Human Rights NGOs to the United Nations. *International Journal of Human Rights*,” Vol. 10, No. 1 (2006), 19–30.

expertise during negotiation processes of international human rights law and declarations, and how they monitor and supervise the implementation of human rights standards and principles.¹⁰⁹ Martens' data collection has influenced and informed this thesis as she acquired most of her data through semi-standardized expert interviews with NGO and UN staff and representatives.¹¹⁰ While Martens draws theoretically from social movement theory to explain the professionalization of international human rights NGOs, her insights build upon the transnational advocacy network theory that Keck and Sikkink established.

Martens' discussion of the definition of professionalization has also informed this thesis. She states that, "Professionalization describes the process whereby problems are increasingly dealt with by persons with relevant subject-specific knowledge, experiences and training, rather than by staff members solely recruited for their previous political activism or engagement in the organization."¹¹¹ The educational and professional background of the staff of these NGOs as well as their highly specific knowledge and expertise are highly valued as they provide the organizations with a professional edge for dealing with states and international institutions. Professionalization therefore establishes quality standards within the work of an NGO to make it legitimate and ultimately more "effective and efficient in contributing and shaping political processes."¹¹²

The organizational dedication to quality standards consequently shapes and sharpens the strategies and tactics of the organization. One of the professional strategies that Martens identified of major NGOs is appointing personnel to establish NGO offices

¹⁰⁹ Ibid, 19.

¹¹⁰ Ibid, 20.

¹¹¹ Ibid, 21.

¹¹² Ibid, 21.

in state or intergovernmental organizations or the setting up of a special section within the international headquarters of an NGO dedicated to its relations with the UN.¹¹³

International unitary NGOs, with a guiding international headquarters and dependent national members sections that conform to the mandate of the organization, are those NGOs, which have professionalized. These international unitary NGOs are generally able to professionalize more than local NGOs due to their financial resources and additional resources, which enable them to devote their energy towards professional standards.

In fact, NGOs are increasingly invited to participate in UN commissions and committees, due to their legal expertise and technical skills.¹¹⁴ Prior to the 1990s, human rights NGOs were viewed by states and international organizations as amateurish, but now they are viewed as legitimate players in global affairs due to their highly specialized expertise. Martens notes that many staff and representatives of these major international human rights NGOs have gone through higher educational programs, hold post-graduate degrees, and/or have an LLM degree in international law with a specialization in international human rights.¹¹⁵ This professional expertise has allowed these NGOs to gain internal access to UN mechanisms and work closely with UN staff to provide legal, investigative, and research expertise. Consequently, the insider access and “legitimate” reputation has enabled them to advocate more efficiently and exert more influence in international affairs related to human rights issues.

In their article, “NGO Research Program: A Collective Action Perspective,” Erica Johnson and Aseem Prakash use a collective action approach to examine why NGOs

¹¹³ Ibid, 21.

¹¹⁴ Ibid, 23.

¹¹⁵ Ibid, 26.

emerge, how they function, how they are structured, and what strategies they employ to ensure accountability.¹¹⁶ Their explanations of NGO structure and strategies provide the most significant analytical tools for this thesis. Johnson and Prakash note that NGOs exhibit core characteristics of collection action perspective: “(1) a view of institutions as bundles of contracts between (2) principals and agents whose interactions are governed by (3) hierarchical control rather than decentralized exchanges between anonymous agents.”¹¹⁷

While they note that scholars such as Keck and Sikkink emphasize the character of NGOs to pursue normative goals, collective action is the study of conditions under which individuals might cooperate to pursue common goals.¹¹⁸ This perspective is instructive for understanding internal dynamics and strategies of NGOs because individuals must pursue more than just a normative agenda. In fact, individuals pursue collective action because they believe that pooling resources and coordinating strategies with like-minded actors can achieve more influence in international affairs, which is one of the goals of human rights advocacy NGOs.¹¹⁹ Additionally, the goal to influence norms means that internally, “NGOs must choose between the tactics of protesting the political status quo or working within conventional channels to implement new policies.”¹²⁰ Regardless of which tactic is chosen, in order to be prominent actors, Johnson and Prakash point out that the organizational structure and personnel have become increasingly

¹¹⁶ Erica Johnson and Aseem Prakash, “NGO Research Program: A Collective Action Perspective,” *Policy Sciences*, Vol. 40, No. 3 (2007), 221-240.

¹¹⁷ Ibid, 223.

¹¹⁸ Ibid, 223-224.

¹¹⁹ Ibid, 226.

¹²⁰ Ibid, 228.

professionalized.¹²¹ Therefore, the collective action approach explains that NGOs use professionalization to pursue common goals in world politics.

¹²¹ Ibid, 230.

Chapter Three: Background Information and Historical Analysis

This chapter provides a brief review of the evolution of rape and sexual violence under international humanitarian and international criminal law prior to its prosecution at the ICTY. In addition to outlining the laws of war, this chapter analyzes some of the provisions of those laws in an effort to offer a partial explanation as to why rape and sexual violence were not prosecuted under international law prior to the tribunals for the former Yugoslavia and Rwanda. Next, I note aspects of international human rights law and international norms regarding sexual violence. The subsequent chapters demonstrate the work of transnational human rights activism and the resulting prosecution of sexual violence in international courts. To lead into these chapters, the final section of this chapter will therefore briefly summarize the history of transnational human rights activism.

Laws of War and International Humanitarian Law

In order to understand the evolution of the prohibition of wartime rape and sexual violence, it is vital to understand some of the historical laws governing war. An examination of International Humanitarian Law (IHL) reveals that the punishment of rape in wartime is not a new decree in the laws of war. IHL refers to the rules, regulations and laws that govern members of the armed forces and certain civilians during periods of armed conflict.¹²²

Often in times of conflict and war, throughout history and throughout all regions of the world, rape has been given license, as a necessity for soldiers, as booty or as an

¹²² Sellers, 5.

instrument of policy.¹²³ Prior to modern humanitarian law, a small number of laws of war existed that forbid rape by soldiers, albeit such prohibitions were largely unenforced. According to scholar Theodor Meron, national military codes of Richard II (1395) and Henry V (1419) prohibited rape by soldiers and noted that violators could have been subjected to capital punishment.¹²⁴ However, it is doubtful that such provisions in military codes considered the rights of women.

Gender expert and legal scholar, Patricia Viseur Sellers, has researched and analyzed military codes of the 18th century in Europe, which had nominal provisions prohibiting wartime sexual violence and rape against the “presumed innocent, persons such as scholars, farmers, women, merchants, priests or children.”¹²⁵ Although these provisions existed in military codes, given the inferior status of women at the time, it can be inferred that such provisions did not have an underlying condescension of rape. The dignity and worth of women and children were not particularly taken into consideration. Sellers notes that these prohibitions “ensured that non-military segments of society remained functional.”¹²⁶ Thus the prohibitions were established to attempt to ensure that society still functioned in the midst of war and that soldiers did not disrupt the productive, civilian aspects of society.

Despite the minimal disparagement of rape and sexual violence in the previously mentioned military codes some military codes of conduct and laws of war slowly progressed. In 1863 in the United States, a military code known as the “Lieber Code,”

¹²³ Theodor Meron, “Rape as a Crime under International Humanitarian Law,” *American Journal of International Law* 87 (1993), 245.

¹²⁴ Ibid.

¹²⁵ Sellers, 6.

¹²⁶ Sellers, 6.

forbade “all rape” and declared that, “crimes ... such as ...rape ... are punishable.”¹²⁷

This may have been reflective of customary laws of war at the time, but it is uncertain whether such a regulation was actually enforced. Nevertheless, the Lieber Code is part of the initial stages of modern IHL.

Although the Hague Conventions of 1899 and 1907 did not explicitly ban rape as a war crime, it can be argued that aspects of the Conventions implied that the prohibition of rape was a customary law of war.¹²⁸ Article I of the Annex to the II Hague Convention of 1899 and Article I of the IV Hague Convention of 1907, cautioned soldiers to “conduct their operations in accordance with the laws and customs of war.”¹²⁹ As was customary at the time, rape was viewed as a violation of a family’s honor as opposed to a violation of a woman’s body and spirit. The Hague Convention vaguely addresses this by noting that during wartime and/or military occupation, “family honour...must be respected.”¹³⁰ Therefore, the language of this legal instrument did not overtly condemn sexual violence.

Despite the aforementioned laws of war, IHL and more progressive regulations of rape truly emerged with the Geneva Conventions. In fact, “humanitarian law” was coined in the 1950s by the International Committee of the Red Cross to distinguish the provisions of the Geneva Conventions from the general laws of war.¹³¹ The 1929 Geneva Convention stipulated that “Prisoners of war have the right to have their person and their

¹²⁷ General Order 100, Instructions for the Government of the Armies of the United States by the Field by Order of the Secretary of War, 24 April 1863 (“the Lieber Code”), Articles 44 and 47.

¹²⁸ Sellers, 7.

¹²⁹ Convention Respecting the Laws and Customs of War on Land, and Annex to the Convention, Regulations Respecting the Laws and Customs of War on Land (Hague IV), The Hague, 18 October 1907, 3 Martens (3rd) 461, 36 Stat. 2277, T.S. No. 59 (Hague Convention IV), reprinted in AM. Journal International 90 51908, Supp. (The IV Hague Convention of 1907).

¹³⁰ Ibid, The IV Hague Convention of 1907, Section III, Article 46.

¹³¹ Liz Philipose, “The Laws of War and Women’s Human Rights,” *Hypatia*, Vol. 11, No. 4, (1996), 52.

honour respected...women shall be treated with all the regard due to their sex.”¹³² The Geneva Convention of 1949 and its Additional Protocols, state that women, children, and the elderly are to be "especially protected" from inhumane treatment.¹³³ Although rape is not clearly noted, it is clear that rape would be considered a violation of dignity and bodily integrity, and it could be classified as cruel, inhuman, or degrading treatment.

Tokyo and Nuremburg Tribunals

There is adequate documentation that during World War II, Nazi and Japanese soldiers committed acts of forced prostitution, rape, and other forms of sexual violence on a massive scale.¹³⁴ Despite customary laws of war, both the International Military Tribunals for Tokyo and Nuremburg did not prosecute rape. Evidence of rape was admitted to the tribunals, but in fact, rape was not named in either charter or charged as a separate offence.¹³⁵

Although rape was not formally recognized or prosecuted in Nuremburg, it was listed as a crime against humanity in the Allied Local Council Law No. 10, under which intermediate-ranking Nazi war criminals were prosecuted.¹³⁶ Despite the fact that rape was not charged as a separate offense in the Tokyo Tribunal, sexual violence was acknowledged and convictions of such violence were included under the category of war crimes of “murder, rape, and other cruelties.”¹³⁷ It is important to note that rape was acknowledged in Tokyo even though it was not given a separate and distinct charge.

¹³² Convention relative to the Treatment of Prisoners of War, Geneva July 27, 1929, Article 3.

¹³³ Convention relative to the Protection of Civilian Persons in Time of War, Geneva, August 12, 1949. 1949 Geneva Convention and Additional Protocol.

¹³⁴ Meron, 245.

¹³⁵ Copelon, 217.

¹³⁶ Ibid.

¹³⁷ Sellers, 7.

Additional Protocols

In 1977, the First and Second Additional Protocols to the Geneva Convention provided more comprehensive prohibitions on rape and violations of personal dignity. They provided an explicit prohibition of rape in international armed conflicts as well as in armed conflicts not of an international character.¹³⁸ The First Additional Protocol specified that civilians and military agents are prohibited from inflicting, “outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault.”¹³⁹ The Protocol further stipulated that women are to be protected from “rape, forced prostitution, and any other form of assault,” and that children are to be protected from “indecent assault.”¹⁴⁰

The Second Additional Protocol focuses on non-international armed conflict and reiterates fundamental guarantees listed in the First Protocol. For example, it prohibits “outrages against personal dignity, rape, enforced prostitution and any form of indecent assault” against persons who “do not take a direct part or have ceased to take part in hostilities.”¹⁴¹ The expanded language in these Additional Protocols demonstrates how customary law progressed relative to sexual violence and rape.

Direct and Indirect Criminal Responsibility

Despite the more explicit prohibitions regarding rape in the Additional Protocols of the Geneva Convention of 1949, rape and other forms of sexual violence were not pursued in international investigations and prosecutions. Sellers notes that this lack of judicial redress was excused on grounds of the inability to identify physical perpetrators

¹³⁸ Ibid, 9.

¹³⁹ Additional Protocol of 1949 Geneva Convention, Article 75(2)b.

¹⁴⁰ Ibid, Article, 76 and 77.

¹⁴¹ Second Protocol to the 1949 Geneva Convention, Article 4.

and the problem of charging a non-physical perpetrator responsible if he were a political leader or military commander.¹⁴² However, with the evolution of customary law, it has been found that the definitions of direct criminal responsibility and indirect criminal responsibility can address the issue regarding who is responsible for perpetrating sexual violence and who can be prosecuted for such atrocities. Direct responsibility implicates any accused persons who have planned, instigated, committed, ordered, aided or abetted the execution of crimes.¹⁴³

Indirect criminal responsibility implicates liability to a person in a position of superior authority, whether military, political, business, or any hierarchical status, for acts directly committed by his or her subordinates.¹⁴⁴ Indirect criminal responsibility is particularly useful for prosecutions relative to armed conflict situations where there is a chain of command or persons in higher positions of authority who may demand or be complicit with acts of rape and sexual violence.

Human Rights Law and Women's Rights

In addition to humanitarian law and laws of war, international human rights standards also provide a legal framework from which to condemn and prosecute sexual violence in conflict. Historically, human rights were seen primarily as domestic matters, prohibiting the state from abusing its citizens, while humanitarian law sought to regulate war and to prevent abuse, which exceeded the needs of war.¹⁴⁵ Although the scope, substance, and jurisdiction of humanitarian law differ from human rights law, it is increasingly recognized as interconnected law.

¹⁴² Sellers, 14.

¹⁴³ Ibid.

¹⁴⁴ Ibid, 17.

¹⁴⁵ Philipose, 52.

Rape and other forms of sexual violence deprive victims (women, men, and children) of their human rights, in wartime and in peace. That being said, it is also a human rights violation to deny equal access to justice. There are several human rights laws and standards that address the human rights violations of sexual violence.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and its General Recommendations has provisions, which specifically address sexual violence. The first Article in CEDAW defines discrimination against women as

“any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”¹⁴⁶

In 1992, CEDAW General Recommendation No. 19 recognized that gender-based violence, which infringes the enjoyment of women’s human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of the first article of CEDAW.¹⁴⁷ General Recommendation 19 thus outlines that women and girls have the right to equal protection under humanitarian norms and access to judicial redress for such violations.

Additional declarations and resolutions have increasingly contributed to expanding international human rights norms and standards that condemn sexual violence in conflict. The 1995 Beijing Platform for Action acknowledged that rape in armed conflict is an

¹⁴⁶ Convention on the Elimination of All Forms of Discrimination Against Women (New York, 18 Dec. 1979) 1249 Un.N.T.S. 13, 19 I.L.M 33 (1980) entered into force 3 Sept. 1981, Article 1.

¹⁴⁷ Sellers, 28.

“abhorrent practice.”¹⁴⁸ The Platform further noted that such practices are violations of human rights and IHL. In 2000, Security Council Resolution 1325 on Women, Peace, and Security specified the “need to implement fully, international humanitarian and human rights law that protects the rights of women and girls during and after conflicts” and called “upon all parties to armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse.”¹⁴⁹ In 2008 the Security Council passed resolution 1820, which noted that, sexual violence is used sometimes as a tactic of war and that women and girls are particularly targeted.¹⁵⁰ The resolution further noted the need to address sexual violence in conflict.

Brief History of Transnational Human Rights Activism

Humanitarian and human rights laws and human rights activism have evolved and merged in the past two decades. Just as taking note of the historical and legal background of IHL and human rights law is important for understanding the nuances of sexual violence prosecution at the ICTY, ICTR, and ICC, it is also important to briefly outline the history of transnational human rights activism and women’s rights activism.

According to Schmidt and Rodio, adoption of the Universal Declaration of Human Rights (UDHR) in 1948 marked the beginning of the modern era of transnational human rights activism.¹⁵¹ The UDHR has been a foundation for legally binding and “soft” human rights law. In addition, it has been a cornerstone document for the principles of human rights activists, NGOs, and intergovernmental organizations. The activism around

¹⁴⁸ United Nations, *Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women*, 27 October 1995.

¹⁴⁹ *UN Security Council, Security Council resolution 1325 (2000) [on women and peace and security]*, 31 October 2000, S/RES/1325 (2000).

¹⁵⁰ UN Security Council, *Resolution 182 (1963) of 4 December 1963*, 4 December 1963, S/RES/182 (1963).

¹⁵¹ Schmidt and Rodio, 444.

the time of the adoption of the UDHR overwhelmingly depended on the individual capacities of norm entrepreneurs and their close ties to policymakers.¹⁵² A prime example of such individual activism of an influential figure is Eleanor Roosevelt, who was heavily involved in drafting the UDHR.

In the 1960s and 1970s, transnational human rights activism began to involve more people, regardless of individual capacities or personal influence on policymakers. The activism at this time sought to be independent and non-partisan in an attempt to reveal states' poor implementation of human rights norms. The ensuing Cold War gave states different priorities, which reasserted their sovereignty.¹⁵³ The focus of the UN at the height of the Cold War was on ensuring peace and security and there was less emphasis on promoting human rights norms. During this period, human rights NGOs began to grow in prominence and they began to utilize various methods for trying to exert pressure on states. During the 1970s, with de-colonization and some easing of Cold War tensions, human rights organizations focused more attention on the UN.¹⁵⁴ Human rights organizations were starting to issue their reports on human rights issues to the UN human rights bodies as a form of activism.

With little movement in the UN, NGOs developed a new strategy that focused on individual countries, the development of sustained transnational ties between local activists and international NGOs, and the systematic gathering, investigating, and publication of human rights information.¹⁵⁵ Organizations such as Amnesty International and Human Rights Watch gained legitimacy through their human rights research and

¹⁵² Ibid.

¹⁵³ Ibid.

¹⁵⁴ Ibid, 445.

¹⁵⁵ Ibid, 445.

investigations. Their reports and publications became trusted sources of information, which has been central to their identity and style of activism. With these honed strategies of large human rights NGOs, Amnesty International and Human Rights Watch became leaders in the field. As their strategies continue to evolve, there are a plethora of other human rights advocacy organizations at the international and domestic levels that collaborate and model similar strategies of information gathering, policy lobbying, and report writing.

By the 1990s, transnational human rights activism began focusing on specific thematic issues and campaigns in addition to specific country and regional reporting.¹⁵⁶ International human rights organizations, like Human Rights Watch, established thematic divisions for women's rights, and specific women's rights organizations formed at the international and local levels.

An example of thematic campaigning is of the campaign to eliminate violence against women. Such campaigning included the same principles and older strategies of previous transnational human rights activism, while also generating more attention towards international justice and ending impunity for gross human rights violations. A specific thematic issue under the umbrella of the campaign to eliminate violence against women and ending impunity was the push to prosecute conflict-related sexual violence in international criminal tribunals and courts. The work of transnational human rights activists to influence the prosecution of sexual violence in international courts will be discussed in the subsequent chapters.

¹⁵⁶ Ibid, 446.

Chapter Four: The International Criminal Tribunal for the former Yugoslavia

This chapter offers a synopsis and assessment of the influence and interaction that transnational human rights advocacy networks had with the ICTY. The chapter begins with a brief overview and description of the conflict in the former Yugoslavia and acts of sexual violence in the conflict. I will also describe the formation and jurisdiction of the Tribunal, as well as advocacy network involvement regarding prosecution of sexual violence. I then analyze how advocacy networks have contributed to the prosecution of conflict-related sexual violence at the Tribunal by looking at the strategies utilized and dynamics of the networks.

Historical Context

Bosnia-Herzegovina arose as a sovereign state out of the collapse of totalitarian control in the former Yugoslavia. The political vacuum left room for intense conflict over territory among competing ethnic groups. Through political elections in the early 1990s, Bosnia became divided along ethnic nationalist lines. These factors, as well as the decline in economic conditions began to play a role in festering nationalist and ethnic extremism. Bosnian president, Alija Izetbegovic, led the Party for Democratic Action (SDA), which was a predominately Muslim party. Further enraged by the Muslim majority leadership, Bosnian-Serb leader, Rodovan Karadzic, began rallying Bosnian-Serbs. Under direct collaboration, assistance, and influence from Belgrade, Bosnian-Serb paramilitary forces began military operations in Bosnia in April of 1992, soon after the

day Bosnia-Herzegovina's independence was recognized by the international community.¹⁵⁷

Bosnian-Croat paramilitary forces, under the influence and assistance of Croatia, also began its campaign of overtaking Bosnian territory through ethnic cleansing. Serbian and Croatian forces aimed to not only expel the ethnically "unclean" population from the desired territory, but also to destroy all possibilities for their return by instilling fear and demolishing buildings, bridges, and monuments.¹⁵⁸ The war in Bosnia consisted of highly discriminate massacres in which military male age civilians were separated from women, children and elderly, and tortured, forced into labor, or killed. Political and cultural elite were publicly tortured and executed, women and children were forced to flee, and younger women were raped.¹⁵⁹

Through a campaign of systematic ethnic cleansing, Bosnian-Serbs and Bosnian-Croats wanted to break up Bosnia and link areas, which contained their ethnic majorities to the larger entities of Serbia and Croatia. Bosnian Muslims, fought to retain a unified Bosnian state, a state that would include the Bosnian Serbs and Bosnian Croats, but which would give the Muslims enhanced control of the government due to their relative population strength.¹⁶⁰ Although the Bosnian-Serbs initiated the conflict and ethnic

¹⁵⁷ Rabia Ali and Lawrence Lifschultz, "Why Bosnia?" *Third World Quarterly*, 1994, Vol. 15, No. 3, pp. 371.

¹⁵⁸ *Ibid*, pp. 368.

¹⁵⁹ Charli Carpenter, "Women and Children First: Gender, Norms, and Humanitarian Evacuation in the Balkans 1991-1995," *International Organization*, Vol. 57, No. 4 (2003) pp. 664.

¹⁶⁰ Jutta Paczulla, "The Long, Difficult Road to Dayton: Peace Efforts in Bosnia-Herzegovina," *International Journal*, Vol. 60, No. 1, (2004/2005), 256.

cleansing, Croatian Army and Bosnian government army offensives also perpetrated grave human rights violations in the conflict.¹⁶¹

From 1992 to 1995, approximately 250,000 people died or went missing in the conflict in the former Yugoslavia and millions were displaced, raped, tortured, and detained in concentration camps.¹⁶² These deaths and displacements were not merely incidental. In fact, during the war, civilians were deliberately targeted for massive forced removal, murder, rape, and other atrocities.¹⁶³

Sexual Violence in the Conflict

As previously mentioned, rape and other forms of sexual violence were used as tools of war and as elements of a systematic campaign to form ethnically homogenous territories. There have been estimates that approximately 20,000 women and girls were raped during the conflict, and oftentimes in particularly sadistic and humiliating ways that included mutilation, gang rape, and public rape.¹⁶⁴ Rape, sexual enslavement, and forced impregnation and maternity occurred where women and girls were forcibly enslaved in abandoned schools, sports centers, and cafes to be continually raped.¹⁶⁵ Many women and young girls also died as a result of sexual injuries or mutilation. Boys

¹⁶¹ Ibid, 261.

¹⁶² Ibid, pp. 256.

¹⁶³ Julie Mertus, "Women's Participation in the ICTY: Transitional Justice for Bosnia," Women Waging Peace Policy Commission, July 2004.

¹⁶⁴ Heidi Nicholas Haddad, "Mobilizing the Will to Prosecute: Crimes of Rape at the Yugoslav and Rwandan Tribunals," *Human Rights Review*, Vol.12, (April 8, 2010), 109-132.

¹⁶⁵ Ibid.

and men were also victims of sexual violence that was meant to cause extreme humiliation and mutilation.

Women's Rights Advocacy and the Formation of the ICTY

In addition to the increase of human rights advocacy network campaigns operating in world politics since the 1970s, specific campaigns for gender justice and women's rights had been mobilizing and activists had been gathering a wealth of experience in international politics leading up to the formation of the ICTY. These campaigns for women's rights merged with the larger framework of transnational human rights advocacy and drew upon their tactics and strategies. Violence against women became a specific topic for transnational human rights networks in the early 1980s and by the 1990s, the issue developed rapidly and became one of the most important women's rights issues, as well as a major concern for international human rights.¹⁶⁶ The increased awareness of the topic of violence against women in the international community, the issues of sexual violence in the conflict in the former Yugoslavia, and the UN's interest in establishing a tribunal were therefore timely for advocacy networks to campaign for the prosecution of sexual violence at the ICTY.

As evidence began to mount and media reports unveiled the heinous human rights violations during the conflict, the international community decided to establish a tribunal to prosecute those persons most responsible for grave breaches of the Geneva Conventions of 1949, violations of laws or customs of war, genocide, and crimes against humanity. Transnational human rights advocacy networks were involved at the

¹⁶⁶ Keck and Sikkink, 166.

beginning stages of forming such a tribunal, which I argue played a role in the leverage that they had in encouraging the prosecution of sexual violence. The UN Office for Legal Affairs sought comments and recommendations from member states and human rights NGOs prior to drafting the Statute of the ICTY in 1993.¹⁶⁷ The Security Council approved the Statute on May 25, 1993, as Resolution 827.¹⁶⁸

In addition to making recommendations for the Statute to include specific criminalization for sexual violence, women's and human rights organizations also urged the Tribunal to adopt rules and procedures that would enable successful sexual violence prosecution.¹⁶⁹ In fact, legal scholars and students of the International Women's Human Rights Law Clinic of CUNY Law School and the Harvard Law School Human Rights Program submitted a brief recommending rules and procedures to the ICTY regarding sexual violence crimes.¹⁷⁰ Some of the rules that they recommended were adopted, including those regarding protection of victims and witnesses, the creation of a victim and witnesses unit, and guidelines for rules of evidence in cases of sexual assault. The rules regarding evidentiary rules for crimes of sexual violence were directly derived from the proposed rules of the two law school programs.¹⁷¹ This supports my hypothesis that large and well-established organizations and coalitions within advocacy networks have played a key role.

In submitting recommendations and comments during the drafting process for the Statute, many larger human rights and women's rights NGOs, who had access and

¹⁶⁷ Mertus, "Women's Participation in the ICTY: Transitional Justice for Bosnia," 5.

¹⁶⁸ UN Security Council, *Resolution 827 (1993) Adopted by the Security Council at its 3217th meeting, on 25 May 1993*, 25 May 1993, S/RES/827 (1993).

¹⁶⁹ Haddad, 122.

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

experience with the UN system and knowledge of international humanitarian law, demanded that rape be explicitly listed as a crime against humanity.¹⁷² As a result, article five of the Statute lists rape as a crime against humanity in armed conflict.¹⁷³ Advocates also played a role in the ICTY incorporation of an expanded notion of liability and criminal responsibility for rape and sexual violence.¹⁷⁴ The Statute specified that individual liability may be imposed on any person who “planned, instigated, ordered, committed, or otherwise aided and abetted in the planning, preparation, or execution of a crime.”¹⁷⁵

Once the ICTY was officially formed, advocacy networks played various roles in ensuring that the recognition of sexual violence in the Statute would be implemented in court proceedings. There had already been a solid foundation of active women’s rights NGOs in the former Yugoslavia. These domestic NGOs played a role in identifying and supporting witnesses of the ICTY, as well as counseling survivors.¹⁷⁶ Domestic NGOs had also been active during the war, documenting abuses and gathering evidence related to crimes of sexual violence. They were therefore able to inform the ICTY of the pervasiveness of sexual violence during the conflict as well as assist in investigatory procedures.

In addition to this role of local NGOs, the success of prosecuting sexual violence depended heavily on the strategies and tactics of international NGOs. International women’s rights and human rights organizations, such as the Feminist Majority, Women’s

¹⁷² Mertus, 6.

¹⁷³ International Criminal Tribunal for the former Yugoslavia Statute, Article 5.

¹⁷⁴ Mertus, 18.

¹⁷⁵ ICTY Statute.

¹⁷⁶ Mertus, vii.

Action Coalition, the Center for Women’s Global Leadership, and the Center for Reproductive Policy and Law, formed the Ad Hoc Women’s Coalition Against War Crimes in the former Yugoslavia to pressure to bring awareness of sexual violence to the ICTY and to pressure the Tribunal to prosecute such crimes.¹⁷⁷ These NGOs exerted pressure on judges and prosecutors to raise awareness regarding crimes of sexual violence and to ensure that these crimes were prioritized.¹⁷⁸ They worked to ensure that gender expertise was present throughout the organization of the ICTY.

This pressure made through information politics, symbolic politics, media articles, briefings, direct legal intervention with amicus briefs, letter writing, and in-person meetings made the initial chief prosecutor, Richard Goldstone, specifically aware of the need to have gender expertise at the ICTY to ensure the prosecution of sexual violence. Goldstone appointed Patricia Sellers as “Legal Advisor for Gender-Related Crimes” to the Office of the Prosecution to formulate a prosecution approach to rape and other sex crimes at the ICTY (and the ICTR).¹⁷⁹ Although it is unclear whether this appointment was a direct result of the efforts of advocacy network pressure, it can be inferred that advocacy campaigns for prosecuting sexual violence did help generate the political will to implement gender-sensitive procedures and tools for the Tribunal. In fact, Goldstone himself noted in written statements that he faced an immediate pressure from advocacy groups to address crimes of sexual violence.¹⁸⁰

Prosecution and Conviction for Sexual Violence at the ICTY

Although this thesis cannot describe every single conviction at the ICTY, it is

¹⁷⁷ Nicholas, 120.

¹⁷⁸ Ibid.

¹⁷⁹ Ibid.

¹⁸⁰ Ibid.

important to highlight a significant conviction at the Tribunal and note how legal scholars and professionals within advocacy networks were able to exert influence. A form of direct and formal intervention in tribunal cases is made through the submission of amicus curiae or “friend of the court” briefs. The trial of Duško Tadić reveals how professionals working within advocacy networks were able to exert such direct and formal pressure on the Tribunal. Tadić was a Bosnian Serb who participated in the killing and mistreatment of Bosnian Muslims and Bosnian Croats in the Omarska, Trnopolje and Keraterm detention camps.¹⁸¹ The female and male prisoners in these camps were beaten, tortured, raped, sexually assaulted, and sexually mutilated.

Initially, the prosecutors for the Tadić trial filed an affidavit that treated the rape of women in Omarska prison as background matter, while emphasizing the beatings of male prisoners.¹⁸² The CUNY Law School Clinic of International Human Rights, the Blaustein Institute, and the Harvard Human Rights Program filed an amicus brief, which emphasized the failure to treat rape as an indictable offense, therefore bringing attention to the issue.¹⁸³ In situations like these, legal scholars were able to use their professional experience and legal knowledge for the campaign to prosecute sexual violence. This type of activity informed judges, prosecutors, and other staff working for the Tribunal that the advocacy campaign was professional and highly targeted.

In response to the amicus brief that was submitted, a motion that addressed the rape of female prisoners was granted.¹⁸⁴ Tadić was charged and indicted on counts of crimes

¹⁸¹ Kelly D. Askin, “Sexual Violence in Decisions and Indictments of the Yugoslav and Rwandan Tribunals: Current Status,” *The American Journal of International Law*, Vol. 93, No. 1 (1999), 100.

¹⁸² Rhonda Copelon, “Gender Crimes as War Crimes: Integrating Crimes against Women into International Criminal Law.” *McGill Law Journal*, Vol. 46, (2000), 217.

¹⁸³ Ibid.

¹⁸⁴ Ibid.

against humanity (persecution on political, racial, and or religious grounds), for taking part in a campaign of terror, which included killings, torture, sexual assaults, and other physical and psychological abuse and for his participation in the “torture of more than 12 female detainees, including several gang rapes.”¹⁸⁵ He was charged and indicted on counts that he had subjected a woman to forcible sexual intercourse under crimes against humanity (rape). Tadić was charged with a grave breach (inhumane treatment) violation of the laws or customs of war (cruel treatment) for his participation in acts of sexual violence and sexual mutilation. Although there had been insufficient evidence that Tadić himself had committed sexual violence, evidence did establish that sexual violence was pervasive and rampant, therefore Tadić was convicted of aiding and abetting crimes of physical, mental and sexual violence through continued and knowing participation in, or tacit encouragement of, these crimes.¹⁸⁶

These convictions demonstrate that the submission of amicus briefs was a specific tactic that was helpful for sustaining pressure on the court. Two amicus briefs were also filed by women’s and human rights groups in the Tadic case to support witness protection measures and two more were filed in the Anto Furundzija case to counter the defense lawyer’s claim that the rape victim’s condition of post-traumatic stress disorder limited the credibility of her testimony.¹⁸⁷ In 1998, the ICTY convicted Anto Furundzija, a Special Forces commander, for rape and torture as war crimes. In this case, a witness described how she was arrested and held at the Special Forces barracks where, during an interrogation led by the Furundzija and another perpetrator, she was subjected to public

¹⁸⁵ ICTY Judgement Prosecutor v. Tadic, Case No. IT-94-1-T, (May 7, 1997)

¹⁸⁶ Askin, 105.

¹⁸⁷ Nicholas, 122.

rape and threats of sexual mutilations.¹⁸⁸ The trial chamber held that the elements of rape were: “(i) the sexual penetration, however slight: of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or of the mouth of the victim by the penis of the perpetrator; (ii) by coercion or force or threat of force against a victim or third person.¹⁸⁹ The conviction further underlined the non-consent of the victim by stating that “any form of captivity vitiated consent.”¹⁹⁰

ICTY Indictments and Convictions of Rape/Sexual Assault

Information listed below is current as of July 2011. Since the Tribunal started, 78 individuals, 48% of the 161 accused, had charges of sexual violence included in their indictments.

Convictions	28
Withdrawn Indictments or Accused Deceased Before Trial	13
Individuals Acquitted of Sexual Violence Charges	11
Individuals in Ongoing Proceedings	20
Individuals Referred to a National Jurisdiction	6

Source: International Criminal Tribunal for the Former Yugoslavia
(<http://www.icty.org/sid/10586>)

¹⁸⁸ Sellers.

¹⁸⁹ ICTY, “Furundzija Case: The Judgement of the Trial Chamber,” Press Release, The Hague, December 10, 1998, accessed on April 1, 2011, <http://www.icty.org/sid/7609>.

¹⁹⁰ Ibid.

Implications and Limitations of Sexual Violence Prosecution

Although there is wide recognition among human rights and women's rights advocacy organizations that the prosecutions of sexual violence at the ICTY was a step forward, there are also several aspects of the prosecutions that scholars and activists have reflected as being regressive. First, the recognition of rape as a crime against humanity has not been interpreted as an absolute prohibition against the act of rape in war. The Tribunal did not condemn rape and sexual violence as acts, which exceed a reasonably necessary and proportional level of violence in all circumstances of armed conflict.¹⁹¹ Even though the listing of rape and sexual violence as a crime against humanity addresses the fact that such acts are a violation of basic human rights, the crimes against humanity provision limits the condemnation of sexual violence in war. The implications are that the ICTY is not a confirmation of absolute prohibitions against sexual violence in war, therefore not providing full recognition and resources to investigating and prosecuting such atrocities.¹⁹²

Second, while rape in the conflict in the former Yugoslavia garnered attention in the international community, the attention was due to the perception that rape was an attack on ethnicity or genocidal.¹⁹³ The use of symbolic politics and the media in the transnational advocacy campaign to end impunity for conflict-related sexual violence in the former Yugoslavia emphasized rape as a tool of ethnic cleansing. Although rape was used as a tool to ethnically cleanse territories in the former Yugoslavia, the perspective of sexual violence was oversimplified and failed to acknowledge the numerous acts of

¹⁹¹ Philipose, 53.

¹⁹² Ibid.

¹⁹³ Copelon, 217.

sexual violence that were attacks on women, men, and children's worth and human dignity. Even though this characterization of rape helped contribute to its overall condemnation and prosecution, the characterization deflected from the issue of sexual violence in war and the fact that women and girls are predominantly victims of sexual violence in war. Rhonda Copelan, who was a co-founder and professor for the CUNY Law School's International Women's Human Rights Clinic, has reflected that the characterization of rape being a "weapon of war" for genocide, had a potentially regressive aspect in suggesting that this use of rape was qualitatively different from the traditional use of women as booty.¹⁹⁴

Analysis of Advocacy Networks

Understanding the dynamics and strategies of the transnational advocacy network and prosecutorial outcomes is important for understanding the effect and influence that advocacy networks have had on the ICTY. Obviously, geopolitical factors, media attention, and symbolic framing all set the stage for transnational advocacy to influence the ICTY to address conflict-related sexual violence.¹⁹⁵ However, the professional presence of NGOs and coalitions and their information politics, expertise, and direct forms of legal pressure all had unequivocal influence in the prosecution and ultimate convictions related to sexual violence. While it is more ambiguous what the prosecutorial outcomes would have been without this specific transnational advocacy network campaign to prosecute sexual violence, the campaign undoubtedly influenced legal norms and bolstered the political will to investigate and prosecute sexual violence.

¹⁹⁴ Ibid.

¹⁹⁵ Haddad, 109-132.

The work of local NGOs to provide their own investigative findings, provide victim/witnesses, support victim/witnesses, and counsel victim/witnesses demonstrated to the Tribunal that even small, domestic NGOs had a certain level of professionalization and expertise on the subject of sexual violence. It is clear that the information that domestic NGOs had about rape and sexual violence during the conflict was shared with international NGOs and coalitions in an effort to work towards a common goal of prosecution. This collaboration strengthened the campaign internally and also assisted the campaign to be perceived from the Tribunal as highly organized and professional.

The receptiveness of the Tribunal's judges, prosecutors, and staff of NGO participation and recommendations allowed NGOs to gain significant leverage and embed their principles into the prosecution unit. The multifaceted strategies that NGOs and coalitions employed, including recommendations for the Statute, rules and procedures, being an intermediary for victims/witnesses, and filing direct amicus briefs, further demonstrated the legitimacy of the campaign and the high degree to which organizations were part of the prosecution of sexual violence at the ICTY. The participation of the CUNY law school and Harvard law school legal scholars was pivotal for further legitimizing and professionalizing the campaign. The work of Ad Hoc Women's Coalition Against War Crimes in the former Yugoslavia in encouraging and providing gender expertise through all aspects of the ICTY organization was also significant. In addition, the expertise that human rights legal scholars were able to insert into the Tribunal's rules and procedures unmistakably set a precedent for NGO and human rights coalitions to be recognized not only as experts, but an informal authority on prosecutorial procedures.

Chapter Five: The International Criminal Tribunal for Rwanda

Like the previous chapter, this chapter offers a synopsis and assessment of the influence and interaction that transnational human rights advocacy networks had with the ICTR. The chapter opens with a concise historical background and summary of the genocide in Rwanda that took place in 1994. Included in this summary will be an overview of the extensive and systematic acts of sexual violence. Following this background information, I will review the establishment of the ICTR and the role that advocacy networks played in the inclusion of sexual violence in the jurisdiction of the tribunal. Next I describe and analyze how advocacy networks contributed to the investigation and prosecution sexual violence at the ICTR, by combing through specific events in the landmark Akayesu case. I will highlight the professional advocacy methods and tools that activists, lawyers, and researchers used, as well as specific internal dynamics of NGOs as they advocated for sexual violence prosecution at the tribunal.

Historical Context of the Conflict

A swift and massive genocidal campaign took place in Rwanda in 1994, which was organized by political leaders and extremists and carried out by military, militiamen, police, and civilians. Although the exact figures of those who were killed during the 1994 Rwandan genocide are difficult to determine, it is estimated that approximately 500,000 to one million Rwandan men, women, and children were murdered from April to July 1994.¹⁹⁶ Those who were murdered were primarily Tutsi minorities and moderate Hutus.

The Tutsi ethnic group in Rwanda was favored during colonialism and therefore

¹⁹⁶ Human Rights Watch, "Shattered lives: sexual violence during the Rwandan Genocide and its aftermath," (New York, September 1996).

held control in Rwandan politics. When Rwanda gained independence in 1962, Hutus seized power, which incited approximately half the Tutsi population to flee to neighboring countries.¹⁹⁷ Although conflict continued between Tutsi refugees and Hutus following independence, the decade leading up to 1990 was relatively stable. However, in 1990 expatriate rebel forces of Tutsi refugees (the Rwandan Patriotic Army) invaded northern Rwanda.¹⁹⁸ President Juvenal Habyarimana was the president of Rwanda and had governed since 1973.¹⁹⁹ Although Habyarimana bowed to pressure sign the peaceful Arusha Accords in 1993 he had already established a massive campaign against all Tutsi and Hutus who allied with them and he was able to block full implementation of the Accord. This campaign included propaganda through written press and radio, organization of militia, and distribution of arms.²⁰⁰

On April 6, 1994, Habyarimana's plane was shot down, which spurred Habyarimana supporters and Hutu extremists to blame the RPF and civilian Tutsi for his death.²⁰¹ Immediately following Habyarimana's death, plans for genocide were effectively and easily executed as they built upon Habyarimana's propaganda campaign. National and local authorities, political and military leaders, and militias led and fully implemented efforts to attack Tutsis and moderate Hutus.

As Hutus began to attack and murder Tutsi, the majority of Tutsi sought refuge and congregated in central gathering places such as churches, schools, hospitals, athletic

¹⁹⁷ Alan J. Kuperman, "Rwanda in Retrospect," *Foreign Affairs*, Vol. 79, No. 1 (2000), 94-118.

¹⁹⁸ *Ibid.*, 95

¹⁹⁹ Human Rights Watch, "Shattered lives."

²⁰⁰ *Ibid.*

²⁰¹ *Ibid.*

fields, and stadiums.²⁰² Military, police, and militia surrounded such sites and killed those inside. Within two weeks, approximately 250,000 Tutsis were murdered.²⁰³ With limited media reports, scant international pressure, and a weak and ineffective peacekeeping force, most of the killing of Tutsis occurred within three weeks and a slower rate of killing dragged on for two and a half months.²⁰⁴

Sexual Violence in the Conflict

As briefly noted above, there was limited accurate or reliable news sources on the genocide and ultimately, it was large international NGOs such as Human Rights Watch, African Rights, and the Red Cross who had actually documented information and reported on the genocide.²⁰⁵ During the genocide, sexual violence was widespread and systematic. Human Rights Watch led investigations into the pervasiveness of sexual violence during the genocide and published a report, which revealed that militia groups, soldiers, and civilians perpetrated sexual violence. The report noted that, “rape and other forms of violence were directed primarily against Tutsi women because of both their gender and their ethnicity.”²⁰⁶

Although precise figures of the number of women and girls who were raped is unclear, it is estimated that tens of thousands of women were subjected to extremely violent forms of sexual violence. Women and girls were individually raped, gang-raped, raped with objects such as sharpened sticks or gun barrels, held in sexual slavery, and/or

²⁰² Kuperman, 96.

²⁰³ Ibid, 98.

²⁰⁴ Ibid, 100.

²⁰⁵ Copelon, 217.

²⁰⁶ Human Rights Watch, “Shattered lives.”

sexually mutilated with machetes, knives, sticks, boiling water, and or acid.²⁰⁷ While many women and girls were killed immediately after being raped and or sexually mutilated, some women were held in sexual slavery and some women were able to flee only to face sexual violence repeatedly from different militiamen. For some women who were not killed following rape and sexual mutilation, the sexual violence caused severe bleeding and additional medical complications, which resulted in their deaths.

Formation of the ICTR

The advocacy of women's rights organizations and coalitions during the formation of the ICTY and the writing of the ICTY statute had a far reaching impact as the statute for the ICTR specified rape as a crime against humanity in article three.²⁰⁸ The statute of the ICTR was adopted by Security Council resolution 955 in November of 1994 and was established to investigate and prosecute war crimes, genocide, and crimes against humanity that took place in Rwanda between January 1, 1994, and December 31, 1994.²⁰⁹ In addition to listing rape as a crime against humanity, the statute gave the Tribunal the authority to prosecute persons committing or ordering to be committed serious violations of article three common to the Geneva Conventions of August 12, 1949 for the Protection of War Victims, and of Additional Protocol II of 1977.²¹⁰ These violations include, "outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault."²¹¹

²⁰⁷ Human Rights Watch, "Shattered lives."

²⁰⁸ Statute of the International Criminal Tribunal For Rwanda, Security Council Resolution 955 of November 8, 1994, UN Security Council, Off. Doc. S/RES/955 (November 8, 1994).

²⁰⁹ Ibid.

²¹⁰ Ibid.

²¹¹ Ibid.

Despite specific and clear language regarding sexual violence in the statute, the formation of the ICTR and initial investigations did not place emphasis or priority on the issue. The Commission of Experts in Rwanda had a four-month mandate and started its work in July 1994. Unlike the Commission of Experts for Yugoslavia, the Commission for Rwanda did not devote much of its investigations into rape and sexual violence.²¹² In fact, the report failed to mention any instances of rape and sexual violence as part of the genocide in Rwanda.²¹³ In addition to this failing, advocacy networks did not really start to mobilize advocacy campaigns and pressure the Tribunal regarding sexual violence prosecutions until 1996. While there are various arguments as to why advocacy networks did not mobilize as quickly and efficiently as they did at the beginning of ICTY's existence, it is clear that all of the progress made regarding sexual violence prosecutions at the ICTY did not automatically transfer to the ICTR. The strategies that advocacy networks used at the ICTR were therefore not always evolved techniques and tools that were used at the ICTY. With that being noted however, I argue that major international human rights organizations and coalitions of professionals were essential to the progress made at the ICTR regarding sexual violence prosecutions.

Prosecutorial Strategy at the ICTR

In addition to the inadequate investigations of the Commission of Experts for Rwanda, the overall investigative and prosecutorial strategy for the Prosecution Office at the ICTR did not place a strong emphasis on sexual violence. Furthermore, the political will of the prosecution unit to aggressively investigate and prosecute sexual violence and establish gender-sensitive policies was inconsistent. Advocacy groups therefore had to

²¹² Galina Nelaeva, "The Impact of Transnational Advocacy Networks on the Prosecution of Wartime Rape and Sexual Violence: the Case of the ICTR," *International Social Science Review*, Vol. 85, (2010).

²¹³ *Ibid.*

respond to the inconsistent political will and weak prosecutorial strategies of the ICTR with detailed research reports and expertise as advocacy tools.

Although the first prosecutor for the ICTR, Richard Goldstone, appointed a Legal Advisor for gender-related crimes for both the ICTY and the ICTR, the position was located in the Hague and the Advisor's influence on the ICTR was therefore quite limited.²¹⁴ Investigators did not receive extensive trainings on sexual violence and the investigative team had the general attitude that "women don't talk about these things."²¹⁵ Goldstone did not establish a sexual assault unit of the investigative team of the Office of the Prosecutor until the end of his tenure in 1996.²¹⁶ A witness protection program was not created until 1997, which also significantly contributed to the poor prosecutorial strategy of the ICTR regarding sexual violence.²¹⁷ In fact, in the three years that Goldstone was the chief prosecutor of the ICTR, no rape indictments occurred and rape was simply not included in the general prosecutorial strategy of the tribunal.²¹⁸

The second prosecutor of the ICTR, Louise Arbour, placed more emphasis on collecting sexual violence evidence and 100 percent of the cases that came into the court during her tenure included sexual violence charges.²¹⁹ Although Arbour established a stronger stance on investigating and prosecuting sexual violence, the third chief prosecutor, Carla del Ponte, who was appointed in 2000, had little commitment to the issue of sexual violence. She dismantled the sexual assault unit and did not reinstate the unit until she was seeking a second term and faced pressure from women's rights

²¹⁴ Haddad, 114.

²¹⁵ Binaifer Nowrojee. Interview by Jessica Welker. Tape recording over the phone. May 8, 2012. Transcript available in Appendix II.

²¹⁶ Haddad, 116.

²¹⁷ Ibid.

²¹⁸ Ibid.

²¹⁹ Binaifer Nowrojee interview.

groups.²²⁰ Even if charges of rape had been put forward in some of the indictments during Carla del Ponte's tenure, they were often dismissed due to insufficient evidence.²²¹ Once the investigation team dealing with sexual crimes was disbanded, the proportion of new indictments including sexual violence charges dropped from 100 per cent in 1999 and 2000 to 35 percent in 2001 and 2002.²²² By Del Ponte's final year as Chief Prosecutor, none of the new indictments contained rape charges.

Funding and Administration

In addition to the general prosecutorial differences for the ICTY and the ICTR, there were also gross funding and administrative differences, which may have impacted the inconsistent and weak stance that the ICTR had regarding sexual violence prosecution. Although the professionals interviewed for this thesis pointed to lack of political will, none of them mentioned funding and administrative deficiencies for the ICTR as a possible explanation. Within the first few years of operation, the ICTY received \$75 million, compared to the ICTR, which received \$42 million.²²³ An audit report of the United Nations Office of Internal Oversight Services in 1997 detailed large shortcomings in all areas of the ICTR. These deficiencies included incomplete and unreliable financial records, payroll problems, under-qualified staff and staff vacancies, inadequate security and witness protection, and lack of leadership.²²⁴

Transnational Advocacy Network Mobilization

As previously mentioned in this chapter, transnational advocacy networks did not

²²⁰ Haddad, 116.

²²¹ Nelaeva.

²²² Binaifer Nowrojee interview.

²²³ Haddad, 119.

²²⁴ UN Office of Internal Oversight Services, "Audit and Investigation of the International Criminal Tribunal for Rwanda," 1997, Accessed on July 1, 2012.

http://www.un.org/Depts/oios/pages/other_oios_reports.html#1997.

really start to mobilize around sexual violence prosecution at the ICTR until 1996. This may be because initially, human rights advocacy organizations assumed that the gains made at the ICTY regarding sexual violence would travel to the ICTR, especially given that both tribunals shared the same Chief Prosecutor.²²⁵ An additional and crucial factor that contributed to the delay in advocacy mobilization for the ICTR laid in the fact that there was uneven media attention given to the genocide in Rwanda compared to the conflict in the former Yugoslavia.²²⁶ In reality, the conflict in Rwanda was not in the sphere of interest of the mainstream media.²²⁷ Furthermore, local women's organizations in Rwanda did not have deep connections with large international organizations and they did not have issue alignment over the prioritization of sexual violence justice.²²⁸ As a result of all the aforementioned factors, transnational advocacy network campaigning was severely delayed and it did not gather the strength and momentum to gain widespread awareness on the issue of sexual violence to profoundly influence the ICTR.

In 1996, Human Rights Watch researchers Binaifer Nowrojee and Janet Fleishman traveled to Rwanda conduct research and investigations into sexual violence that occurred during the genocide.²²⁹ Human Rights Watch then published Nowrojee and Fleishman's work in a report titled "Shattered Lives: Sexual Violence during the Rwandan Genocide and its Aftermath," which revealed that sexual violence was systematic and widespread during the genocide. "Shattered Lives" was the first report available to the public that documented the widespread nature of sexual violence in Rwanda and it therefore became an advocacy tool that helped to mobilize transnational

²²⁵ Binaifer Nowrojee interview.

²²⁶ Haddad, 127.

²²⁷ Ibid.

²²⁸ Ibid, 128.

²²⁹ Binaifer Nowrojee interview.

human rights advocacy networks.²³⁰

According to Nowrojee, the report was “the starting point for a whole campaign to bring this issue to the attention of policy maker’s and women’s rights groups.”²³¹ As part of the advocacy campaign, Nowrojee collaborated with local organizations, large international organizations like International Federation for Human Rights (FIDH), and broad-based coalitions of feminist lawyers and scholars such as the Coalition for Women’s Human Rights in Conflict Situations.

In fact, the Coalition for Women’s Human Rights in Conflict Situations was formed following the publishing of “Shattered Lives.” Co-founder of the Coalition for Women’s Human Rights in Conflict Situations (the Coalition), Ariane Brunet, collaborated with Human Rights Watch and the International Centre for Human Rights and Democratic Development in Montreal, soon after “Shattered Lives” was published to form the Coalition. Within a year and a half, Brunet networked and got a variety of actors to be part of the Coalition. These actors include; students from the University of Toronto Law School, Berkley Human Rights Center, the Working group on Engendering the Rwanda Tribunal, CUNY Women’s International Human Rights Law Clinic, Africa Rights Watch, the Center for Constitutional Rights, FIDH, individual lawyers, legal scholars, individual activists, numerous NGOs based in Kenya and Rwanda, and additional international NGOs.²³²

Following this collaboration and networking, Nowrojee and other activists within the Coalition then held meetings with government officials, the Rwandan government,

²³⁰ Adriane Brunet. Interview by Jessica Welker. Taped recording over the phone. May 11, 2012. Transcript available in Appendix II.

²³¹ Binaifer Nowrojee interview.

²³² Adriane Brunet interview.

humanitarian groups, and prosecutors at the ICTR to gain widespread awareness of the issue and discuss recommendations which could be implemented for different actors, including the Prosecution Office at the ICTR. In addition to these meetings, activists began to closely follow, document, analyze, and critique the proceedings of Tribunal. As with the ICTY, advocacy networks established and introduced their advocacy with the ICTR by writing letters to the court and submitting amicus briefs voicing their concerns over the lack of attention paid to prosecuting sexual violence.

Another strategy and advocacy tool that Nowrojee used was sharing information from her investigations and providing her expertise on the issue of sexual violence during the Rwandan genocide with the prosecution team. Nowrojee not only shared information and took the stand as an expert witness regarding sexual violence during several trials, but she also provided trainings to investigators and prosecutors on investigating sexual violence. In an interview for this thesis Nowrojee stated, “So it wasn’t just a matter of criticizing and pointing out the short falls, but also trying to constructively assist the Prosecutor’s Office in terms of looking at the evidence, looking at their witness statements, and serving as an expert witness in some of the trials.”²³³ Other activists from the Coalition, such as Dr. Alison Des Forges of the Africa Regional Division of Human Rights Watch, also served as expert witnesses for trials.²³⁴

Despite the fact that Nowrojee and other expert activists were able to share information, provide trainings, and serve as expert witnesses in trials, these actions did not happen immediately. Initial advocacy strategies of letter writing and direct meetings following the publishing of “Shattered Lives” did not provoke a significant or immediate

²³³ Binaifer Nowrojee interview.

²³⁴ Ibid.

response from the prosecution to more aggressively investigate and prosecute sexual violence. The newly developed strategy of the Coalition was to work directly with legal students both in Toronto and at CUNY to closely zero in on a particular case, which was the Jean Paul Akayesu case.²³⁵ A deeper look into the Akayesu case provides significant insight into the dynamics of how transnational advocacy organizations interacted with and pressured the ICTR to include sexual violence indictments in both the Akayesu case and proceeding cases.

Jean Paul Akayesu Case

Although the overall prosecution of sexual violence at the ICTR was weak and inconsistent, the case of Jean Paul Akayesu was a milestone that recognized sexual violence as an integral part of the genocide, recognized rape as a form of torture, broadened the definition of rape and sexual violence, and prosecuted rape and other forms of sexual violence as genocide and crimes against humanity.²³⁶ An examination of the Akayesu case is crucial for this chapter as the successful prosecution of the case is rather reflective of the overall prosecution strategy of the ICTR and the direct pressure that advocacy groups placed on the court.

Jean Paul Akayesu was the mayor of the Taba commune during the genocide. Akayesu served an executive role in the commune as mayor and was in charge of communal police and gendarmes at the commune. During the genocide, many Tutsis sought refuge from the massacres in the Taba municipal offices only to be subject to various forms of violence, including sexual violence, and/or murder.²³⁷

²³⁵ Ariane Brunet interview.

²³⁶ Askin, 107.

²³⁷ Sellers.

Before describing specific details and events of the Akayesu trial, it is important to note that prior to the trial, Binaifer Nowrojee had informed the prosecution that there were masses of cases of sexual violence at the Taba commune by sharing information that she had gathered in her investigations.²³⁸ With that preface noted, the initial 12 indictments of the Akayesu case did not include rape or sexual violence and those indictments were not added until five months into the trial.²³⁹ According to Sara Darehshori, who served as a prosecutor at the ICTR during the Akayesu trial, the Prosecutor's Office did not have direct evidence linking Akayesu to the sexual violence that occurred in his commune. In addition, the evidence that Human Rights Watch provided to the prosecution only indicated that sexual violence took place and did not indicate that Akayesu was a perpetrator of sexual violence, nor did it prove that people under Akayesu's direct control were committing acts of sexual violence.²⁴⁰

Furthermore, Darehshori noted that when the prosecution prepared a witness for trial, she said that she was raped, she witnessed other rapes in the area of the commune municipal office, and that Akayesu was present during the rapes.²⁴¹ Moreover, the witness told prosecutors that she knew names of perpetrators, victims of the rapes, and eyewitnesses who could provide testimony.²⁴² The prosecution then started to pursue an

²³⁸ Sarah Daheshori. Interview by Jessica Welker. Taped recording over the phone. March 21, 2012. Transcript available in Appendix II.

²³⁹ ICTR *The Prosecutor v. Jean-Paul Akayesu* (Trial Judgement), ICTR-96-4-T, International Criminal Tribunal for Rwanda (ICTR), 2 September 1998.

²⁴⁰ Sara Daheshori interview.

²⁴¹ Ibid.

²⁴² Coalition for Women's Human Rights in Conflict Situations, *Amicus Brief Respecting Amendment of the Indictment and Supplementation of the Evidence to Ensure the Prosecution of Rape and Other Sexual Violence within the Competence of the Tribunal*, Accessed June 1, 2012.

http://www.womensrightscoalition.org/site/advocacyDossiers/rwanda/Akayesu/amicusbrief_en.php

investigation with these eyewitnesses while the witness who they prepped, revealed in direct testimony in court, what she witnessed.²⁴³

Directly following this courtroom testimony, in July 1997, the Working Group on Engendering the Rwanda Tribunal, the International Women's Human Rights Law Clinic of CUNY Law School, the Coalition for Women's Human Rights in Conflict Situations, and the Center for Constitutional Rights, filed an amicus curiae brief.²⁴⁴ The amicus brief was signed by over 160 NGOs and requested the inclusion of sexual violence charges by arguing that there was evidence that sexual violence was used systematically in the genocide and could be prosecuted under several articles in the ICTR statute.

While the courtroom testimony and the amicus brief were quickly ensued by an adjournment of the trial in order for the prosecution to amend the indictment to include sexual violence charges, there has been debate as to whether this was the influence of the amicus brief. The prosecutor stated that the amendment was not motivated by the amicus brief.²⁴⁵ In fact, Darehshori noted in her interview for this thesis that those who submitted the brief did not follow the technical court procedure to file a motion in which you request to file an amicus brief and it was therefore not considered by the court.²⁴⁶ From the perspective of the prosecutor's office, the amicus brief put the trial at risk because it was unclear whether the testimony in the brief was direct testimony based on eyewitnesses. The brief could have been further damaging because the defense did not

²⁴³ Sara Daheshori interview.

²⁴⁴ Nelaeva.

²⁴⁵ Copelon, 217.

²⁴⁶ Sara Darehshori interview.

have the ability to cross-examine testimonies therein.²⁴⁷ Ultimately, the brief was not accepted by the court due to technical errors and because it came too late in the trial.²⁴⁸

Regardless of these technical mistakes and the fact that the brief was not accepted by the court, NGOs created press releases and there turned out to be a significant amount of media attention drawn to the issue with the submission of the amicus brief.²⁴⁹ This attracted increased international attention to the systemic use of sexual violence in the genocide and the status of prosecuting such crimes at the ICTR. Given the media attention and public awareness that was generated through advocacy efforts, it is clear that advocacy networks played an influential role in pressuring the prosecution and encouraging them to thoroughly investigate leads regarding sexual violence and to include sexual violence indictments.

Following investigation, the trial progressed with additional testimonies and evidence used to verify that sexual violence was intrinsic to the genocide and that Akayesu was criminally responsible. The prosecution successfully substantiated allegations that Akayesu facilitated the commission of sexual violence by allowing the sexual violence to occur on or near the Taba commune and he encouraged these acts by failing to prevent them.²⁵⁰ Akayesu was charged with rape and inhumane acts as crimes against humanity; outrages upon personal dignity as a war crime, and, sexual violence in

²⁴⁷ Sara Darehshori interview.

²⁴⁸ Gaëlle Breon Le Goff. Interview by Jessica Welker. Taped recording over the phone. April 2, 2012. Transcript available in Appendix II.

ICTR, "Decision on the application to file an amicus curiae brief according to rule 74 of the Rules of Procedure and Evidence filed on behalf of the NGO Coalition for Women's Human Rights in Conflict Situations," Accessed on July 7, 2012. <http://www.ictor.org/>.

²⁴⁹ Gaëlle Breton-Le Goff, "Analysis of Trends of Sexual Violence Prosecution in Indictments by the International Criminal Tribunal for Rwanda, from November 1995 to November 2002," A Study of the McGill Doctoral Affiliates Working Group on International Justice, Rwanda Section, November 28, 2002.

²⁵⁰ Askin, 106.

respect to genocide under article 2(b), namely, causing serious bodily or mental harm to members of the group.²⁵¹

In addition to successfully prosecuting and convicting Akayesu of crimes of sexual violence, the indictment broadened the definitions of rape. Acts of sexual violence were defined as “forcible sexual penetration of the vagina, anus or oral cavity by a penis and or of the vagina or anus by some other object, and sexual abuse, such as forced nudity.”²⁵² The Akayesu judgement further stipulated that sexual violence during conflict does not require any prerequisites that the victim physically or verbally communicate their non-consent to the perpetrator regarding the physical invasion of the sexual nature.²⁵³ These broadened definitions set a precedent for defining and prosecuting sexual violence in international criminal courts.

ICTR Indictments and Convictions of Rape/Sexual Violence

Following the amendment in the Akayesu case, several cases were amended to include acts of sexual violence.²⁵⁴ Beginning in 1998, sexual violence was incorporated into the initial indictments for all prosecutions instituted after 1998, which demonstrated an increased sensitization on this issue, a more effective search for evidence and better familiarity with the related legal tools.²⁵⁵ However, between October of 1998 and 2002, no judgment involved a conviction for sexual violence. As of 2010, 25 percent of completed sexual violence cases resulted in successful convictions at the ICTR,

²⁵¹ Sellers, 19.

²⁵² ICTR, *The Prosecutor v. Jean-Paul Akayesu* (Trial Judgement) ICTR-96-4-T, International Criminal Tribunal for Rwanda, 2 September 1998.

²⁵³ Sellers, 20.

²⁵⁴ Gaëlle Breon Le Goff interview.

²⁵⁵ Ibid.

compared to the ICTY where 92 percent of completed rape cases resulted in successful convictions.²⁵⁶

Following the Akayesu case, advocacy networks continued to mobilize around the issue, which contributed to the overall sensitization of sexual violence at the ICTR, feminization of ICTR staff, cooperative relationships with local women's organizations, establishment of victim and witness support units, and investigative reporting on the systematic use of sexual violence. Activists continued to monitor cases, draft letters, meet directly with staff at the ICTR, and provide expertise, all of which helped in securing some sexual violence prosecutions.

As the success of advocacy campaigns can be contextually constrained, that was certainly the case for the mobilization at the ICTR. As previously mentioned, chief prosecutors, funding, and inadequate administration all impacted the prosecution and conviction of sexual violence. According to Gaëlle Breton-Le Goff in her study on trends in sexual violence prosecutions at the ICTR, numerous factors have affected sexual violence prosecutions and convictions, including but not limited to; difficulties in gathering evidence and taking witness statements regarding sexual violence, difficulty in finding witnesses willing to testify, overall capacity to prosecute, scandals involving investigators, inadequate witness protection, high turnover and constant re-staffing, and poor cooperation between the Rwanda government and the ICTR.²⁵⁷

²⁵⁶ Haddad, 119.

²⁵⁷ Gaëlle Breon Le Goff interview.

Analysis of Advocacy Networks

The relatively poor rate of sexual violence prosecutions and convictions at the ICTR is not reflective of advocacy networks' ability to wield influence. On the contrary, it demonstrates the complexities in international justice mechanisms. Notably, it is beyond the scope of this thesis to further explore the various additional factors that contributed to low levels of prosecutions and convictions. In this chapter however, I have outlined the ways in which advocacy networks were influential and how their tactics evolved in order to be more effective at the ICTR.

Despite the insistence of the prosecutor's office that NGOs had nothing to do with the prosecution of sexual violence charges in the Akayesu case, I argue that NGOs certainly had a degree of influence on the prosecution. Although the prosecution did pursue a deeper investigation into sexual violence at Taba following the revelation from a witness, it raises the question as to how committed the prosecution and investigation team was at the beginning of the case to thoroughly investigate sexual violence allegations. Especially given that they had knowledge of the systemic nature of sexual violence from Human Rights Watch's investigations and detailed reports. Of course, the prosecution could not simply ignore the testimony regarding sexual violence that was revealed in court. This therefore suggests that a careful investigation into sexual violence at Taba came as an afterthought. In addition, this also suggests that increased advocacy efforts following the witness' courtroom testimony placed by an extensive network of transnational advocates encouraged the prosecution to pursue a thorough investigation of sexual violence, to include sexual violence indictments in the Akayesu case, and to definitively define sexual violence for the ICTR. Moreover, following the amendment of

the Akeyesu case to include sexual violence indictments, additional cases were amended, which was proceeded by initial indictments including sexual violence.

The broad and precise mobilization of advocacy networks to generate political will was built upon extensive tactics and advocacy tools such as informational politics, symbolic politics and framing, direct legal intervention through amicus briefs, and working with receptive actors within the tribunals. Albeit activists may have initially been perceived by the prosecution as amateurish due to the amicus brief that was filed during the Akayesu trial, advocacy networks sustained their advocacy efforts and became increasingly professionalized in their pursuit of sexual violence prosecutions during their advocacy at the ICTR. The most notably evolved and highly professionalized tactics included sharing information from investigations, serving as expert witnesses, and providing constructive criticism and professional support to the prosecution.

The information presented in this chapter supports my hypothesis that international NGOs were the primary actors in advocacy networks to influence sexual violence prosecution. The efforts of researchers and divisions within Human Rights Watch were instrumental in initiating an advocacy campaign on the issue. Even though local NGOs and groups were most certainly involved in the process of collaboration, international NGOs played a pivotal role. International NGOs like Human Rights Watch helped to bridge local NGOs to the ICTR, helped to mobilize a broad base of international and local NGOs, and provided a professional role of expertise within the court.

Although it has proved difficult to obtain in-depth information on the internal dynamics of advocacy organizations and networks during this particular advocacy

campaign, it is clear that there was great collaboration of NGOs, students, and lawyers through the development of the Coalition for Women's Human Rights in Conflict Situations. Based on interviews with key activists in this campaign, it is clear that the publishing of Human Rights Watch report "Shattered Lives" spurred an advocacy campaign. After this report was published, researcher Binaifer Nowrojee continued using various advocacy tactics while building off of her investigation and report, which was the primary advocacy tool. This advocacy campaign was not a set job description for Nowrojee and other activists and they clearly formed strategies and tactics to specifically address issues and contexts intrinsic to the ICTR.

While the mixed success of sexual violence prosecutions at the ICTR can raise doubt regarding the extent to which advocacy networks were able to influence the prosecution of sexual violence, it demonstrates that advocacy campaigns can be contextually constrained and that there was not a clear and simple evolution of tactics from the ICTY. However, it is evident that some degree of development and refinement in tactics was taken from the ICTY to the ICTR. This is particularly true in the case of submitting amicus briefs on behalf of law school students, lawyers, NGOs, and coalitions. Given the light that activists brought to the issue through various developed advocacy tools, it is clear that without the advocacy efforts of advocacy networks, there would have invariably been fewer prosecutions of sexual violence at the ICTR and less recognition of the systematic nature of rape being used as a weapon of war in the Rwandan genocide.

Chapter Six: The International Criminal Court

This chapter illustrates the relations that transnational human rights advocacy networks have with the ICC and the degree of pressure that they exert on the court. First, the chapter traces the role that transnational human rights advocacy networks played in the overall creation of the ICC, as well as their involvement regarding specific articles in the statute on sexual violence. I then briefly describe cases that are being investigated and prosecuted by the ICC, as well as the first conviction of the court. Next, I will highlight how advocacy networks evolved and became highly specialized regarding advocacy efforts for monitoring and influencing sexual violence prosecution. I then analyze how advocacy networks have contributed to the prosecution of conflict-related sexual violence at the ICC by looking at the strategies utilized and dynamics of the networks.

ICC Negotiations and Advocacy Networks

Advocacy in the field of international justice grew exponentially during the negotiations for an international criminal court. Transnational human rights advocacy networks built upon the foundation of advocacy for international justice that transpired at the ICTY and the ICTR, including advocacy efforts specifically geared towards sexual violence prosecution.

In 1995 the UN General Assembly created a Preparatory Committee for the establishment of the ICC. From 1996 to 1998 there were six Preparatory Committee sessions to prepare a consolidated draft text and NGOs were able to participate in the drafting under the umbrella of the NGO Coalition for an ICC.²⁵⁸ Then from June 15 to July 17, 1998, negotiations took place to finalize and adopt a convention for the ICC at a

²⁵⁸ Coalition for the ICC, "History of the ICC," Accessed on June 1, 2012. <http://www.iccnw.org/?mod=icchistory>.

conference in Rome. NGOs participated at the Rome conference along with 160 countries, which ultimately resulted in the adoption of the Rome Statute that governs the function and jurisdiction of the ICC.²⁵⁹ A Preparatory Commission, known as PrepCom, was assigned with negotiating complementary documents, including the Rules of Procedure and Evidence, the Elements of Crimes, the Relationship Agreement between the Court and the United Nations, the Financial Regulations, and the Agreement on the Privileges and Immunities of the Court.²⁶⁰ Following the required 60 ratifications, the Rome Statute entered into force on July 1, 2002, making the ICC the first permanent international criminal court established to prosecute perpetrators of the genocide, crimes against humanity, and war crimes.²⁶¹

The process for drafting the statute for the ICC was inclusive to civil society organizations, as well as state delegation and international organizations. There was a specific delegation that consisted of a large NGO coalition (the Coalition for the ICC) of over 800 organizations, 236 of which sent one or more representatives to the Rome Conference.²⁶² Most of those 236 organizations were major international human rights organizations or professional organizations of lawyers. Well established international human rights organizations such as Amnesty International, Human Rights Watch, No Peace without Justice, International Crisis Group, the International Bar Association, the International Commission of Jurists, Lawyers's Committee for Human Rights, and Federation International des Ligues de Droits de l'Homme were all very active in the

²⁵⁹ Ibid.

²⁶⁰ Ibid.

²⁶¹ International Criminal Court, "About the Court," Accessed June 1, 2012. <http://www.icc-cpi.int/Menus/ICC/About+the+Court/>.

²⁶² Marlies Glasius, "Expertise in the Cause of Justice: Global Civil Society Influence on the Statute for an International Criminal Court," in *Global Civil Society*, Marlies Glasius, M. Kaldor, and H. Anheier (eds.) (Oxford: Oxford University Press, 2002), 147.

process because they were able to send one or more representatives to Rome and because they had professional experience with the previous Ad Hoc Tribunals for Yugoslavia and Rwanda. Notably, major international human rights organizations that had the capacity to do so, such as Human Rights Watch, were beginning to form specific divisions within their organizations to focus on the ICC and international justice.²⁶³

Due to the massive network of NGOs under the Coalition for the ICC, the advocacy work was split into different groups. These groups consisted of regional caucuses, who lobbied state representatives from their own regions, thematic caucuses on gender justice, victims, children, peace, and faith, and 12 working groups on different parts of the draft statute.²⁶⁴ Organizations and individuals within these three groups then used the following strategies and advocacy tools; 1) lobbied state and intergovernmental representatives, 2) prepared expert documents, reports, and scholarly journal articles, 3) organized seminars and conferences, 4) disseminated information about the ICC to the media and organization members, and 5) provided financial and expert assistance to small and poor NGOs and government delegations.²⁶⁵

As previously mentioned, during the negotiations for the statute for the ICC, a thematic caucus on gender formed, which was called the Women's Caucus for Gender Justice. This caucus not only advocated issues such as sexual violence, but they also worked to include gender sensitivity throughout all functions of the court.

Activists within this caucus had been lobbying government delegations at the Preparatory Committee meeting in February of 1997. These activists not only advocated

²⁶³ Géraldine Mattioli-Zeltner. Interview by Jessica Welker. Taped recording over the phone. March 22, 2012. Transcript available in Appendix II.

²⁶⁴ Glasius, 147.

²⁶⁵ Ibid.

for a gender perspective and articles addressing sexual violence throughout the statute for the ICC, but they also worked to broaden a specific network of women's human rights organizations. At the time of the Rome Conference, the Women's Caucus represented a network of approximately two hundred women's organizations all over the world.²⁶⁶ The regionally diverse collection of organizations and individuals were united in their support of main principles and goals of the Women's Caucus.²⁶⁷ These goals were:

- 1) To ensure a worldwide participation of women's human rights advocates in the negotiations of the ICC treaty to lobby for an effective and independent court
- 2) To take advantage of this opportunity to educate governments delegations and mainstream Human Rights NGOs on their commitments to women and the need to integrate a gender perspective into the U.N.
- 3) To use this historical event as a means for popular education on women's human rights and raise public awareness of the horrific nature of crimes committed against women.²⁶⁸

Activists within the Women's Caucus lobbied state representatives, as well as actively participated in the negotiations for the Preparatory Committee and the Rome Conference regarding gender and sexual violence provisions. Despite strong opposition from anti-abortion groups, the Vatican, and some Islamic states regarding use of the terms such as "gender," the Women's Caucus was able to successfully advocate for the terms "gender" and "gender crimes" to be used in many of the provisions of the ICC Statute, also known as the Rome Statute, instead of terms such as "sex" and "sexual violence."²⁶⁹ The position of advocacy groups was that the term "sex" was restricted to biological differences between men and women, whereas gender includes differences

²⁶⁶ Barbara Bedont, and Katherine Hall-Martinez. "Ending Impunity for Gender Crimes under the International Criminal Court." *Brown Journal of World Affairs* Vol. 6(1) (1999), 66.

²⁶⁷ Pam Spees, "Women's Advocacy in the Creation of the International Criminal Court: Changing the Landscapes of Justice and Power." *Signs* 28(4), 2003, pp. 1237.

²⁶⁸ Women's Caucus for Gender Justice, "About the Women's Caucus," Accessed on June 1, 2012, <http://www.iccwomen.org/wigidraft1/Archives/oldWCGJ/aboutcaucus.htm>.

²⁶⁹ Bedont and Hall-Martinez, 168.

between men and women because of their socially constructed roles.²⁷⁰ They correspondingly advocated for “gender crimes” because it includes crimes, which are targeted at men or women because of their gender roles, which may or may not have a sexual element.²⁷¹ This language in the Rome Statute broadened concepts of sexual violence and gender-based violence compared to language used in ICTY and ICTR.

As will be discussed in more detail in the following section, articles in the Rome Statute defining war crimes and crimes against humanity delineate a wide range of gender-specific crimes and sexual violence crimes. This broad recognition of gender-based and sexual violence crimes can be directly linked to the advocacy and lobbying efforts of the Women’s Caucus. In fact, the initial draft of the ICC statute in 1996 did not specify crimes of sexual violence other than rape, nor did it recognize those crimes as grave breaches of the laws and customs of war.²⁷² The draft statute was later changed to address rape and other forms of sexual violence as war crimes because the Women’s Caucus heavily lobbied for the inclusion before and during the 1997 Preparatory Commission.²⁷³ The Women’s Caucus also urged to separately identify sexual violence crimes in order to recognize the distinct characteristics of the different crimes and to acknowledge the aggravating harm caused to the victim.²⁷⁴

Activists and organizations within the Women’s Caucus learned from shortcomings at the ICTY and ICTR trials, and during the negotiations for the Rules of Procedure and Evidence pushed for progressive regulations that are sensitive to sexual violence crimes. In due course, the Women’s Caucus’ negotiations were reflected in

²⁷⁰ Ibid, 167.

²⁷¹ Ibid.

²⁷² Ibid.

²⁷³ Ibid.

²⁷⁴ Ibid.

Rule 63, which stipulates that the Court may not require corroboration in a victim's testimony.²⁷⁵ In addition, in cases of sexual violence, the Court prohibits a defense of consent and the submission of sexual conduct evidence unless such evidence is conducted in closed proceedings and is highly relevant and credible.²⁷⁶

The continued lobbying efforts of the Women's Caucus to weigh in on rules and procedures of the ICC, as well as definitions and elements of crimes, after the adoption of the Rome Statute further demonstrates the heightened level of professionalization and organization of advocacy networks in influencing sexual violence prosecution in international criminal courts. In the negotiations to enumerate definitions and elements of crimes, the Women's Caucus was able to successfully negotiate the inclusion of sexual and gender-based violence definitions. Pam Spees, former Program Director for the Women's Caucus, noted the following in her article highlighting women's advocacy in the creation of the ICC; in the negotiations on the crime of rape, the efforts were to ensure, that the elements maintained a focus on the crimes of the perpetrator, that the force element was defined broadly enough to encompass the non- physical coercive circumstances that often play on victims, that the definition would avoid unwieldy and harassing specificity, and finally, that the definitions would be gender neutral.²⁷⁷

In addition to the aforementioned outcomes of the Women's Caucus' highly organized advocacy campaign, the campaign also had a hand in shaping mandates concerning the sensitive participation and protection of sexual or gender violence victims and witnesses, as well as mandates to ensure a fair and equal presence of women on the

²⁷⁵ Rome Statute of the International Criminal Court, United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, July 17, 1998, Rules of Procedure and Evidence, Rule 63 [hereinafter Rome Statute].

²⁷⁶ Rome Statute, Rules of Procedure and Evidence, Rule 70, 71, and 72.

²⁷⁷ Spees, 1240.

Court.²⁷⁸ Furthermore, the Statute for the ICC requires the Court to select staff with legal expertise on sexual and gender-based violence.²⁷⁹ The Prosecutor is also required to have advisors with expertise on sexual and gender-based violence, and the Victim and Witness Unit within the Registry must have staff with expertise on sexual violence related trauma.²⁸⁰

Sexual Violence in the ICC Statute

As previously mentioned in Chapter Three, rape and sexual violence were not acknowledged as grave breaches of the Geneva Convention, nor were they considered violations of the laws or customs of war. The seriousness of sexual violence crimes in wartime and conflict were not recognized until the Ad Hoc Tribunals for Yugoslavia and Rwanda specifically listed sexual violence crimes as crimes against humanity. While the ICTY and the ICTR had historic cases that changed the jurisprudence of sexual violence prosecutions for international criminal courts, the Rome Statute broadened definitions of sexual violence and specified more sexual violence crimes than the ICTY and ICTR Statutes. Although it has been previously mentioned in this chapter that the advocacy of the Women's Caucus led to increased recognition of sexual violence crimes in the Rome Statute, it is important to note the detailed provisions in the Statute. These specificities are noted below.

The Rome Statute not only progressively defines rape, but it further outlines a spectrum of non-consensual sexual penetration. Rape is defined as:

The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the

²⁷⁸ Rome Statute, Articles 68 (3), 68 (1), and 69.

²⁷⁹ Ibid.

²⁸⁰ Ibid.

victim with any object or any other part of the body. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression, or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.²⁸¹

The Rome Statute is the first international treaty to explicitly list crimes of forced pregnancy and sexual slavery. The Statute further recognizes the seriousness of sexual violence by including such crimes under war crimes and crimes against humanity. War crimes and crimes against humanity include subparagraphs that list a broad range of sexual violence crimes. The crimes include: rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and any other forms of sexual violence also constituting a grave breach/serious violation of the Geneva Conventions (regarding war crimes) or other forms of sexual violence of comparable gravity (regarding crimes against humanity).²⁸²

The Rome Statute was also the first treaty to specifically include gender to the crime of persecution.²⁸³ Article 7(1)(h) prohibits persecution against an identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court.²⁸⁴

The Rome Statute includes sexual violence as an act of torture and genocide. If sexual

²⁸¹ Rome Statute, Elements of Crimes 2002, Article 7[1][g]-1.

²⁸² Rome Statute, Article 7 1(g) and 8 2 (b).

²⁸³ Women's Initiatives for Gender Justice, "Sexual Violence and International Criminal Law: An Analysis of the Ad Hoc Tribunals' Jurisprudence and the International Criminal Court's Elements of Crimes," September 2005, Accessed on June 1, 2012.
http://www.iccwomen.org/publications/resources/docs/Overview_Sexual_Violence_and_International_Criminal_Law.pdf.

²⁸⁴ Rome Statute, Article 7 1(h).

violence is committed with the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, it consequently qualifies as genocide.²⁸⁵ Rape and other forms of sexual violence can constitute torture as a crime against humanity when the elements of torture are satisfied.

The specific rules and principles of evidence regarding sexual violence in the Rome Statute are also unprecedented and noteworthy.

- The rules of evidence specify that the Chamber shall not impose a legal requirement that corroboration is required to prove a crime, in particular, crimes of sexual violence.²⁸⁶
- The Chamber shall not admit evidence of the prior or subsequent sexual conduct of a victim or witness.²⁸⁷
- The Court shall note that in cases of sexual violence: 1) Consent cannot be inferred by reason of any words or conduct of a victim where force, threat of force, coercion or taking an advantage of a coercive environment undermined the victims ability to give voluntary and genuine consent, 2) Consent cannot be inferred by reason of any words or conduct of a victim where the victim is incapable of giving genuine consent, and 3) Consent cannot be inferred by reason of the silence of, or lack of resistance by, a victim to the alleged sexual violence.²⁸⁸

²⁸⁵ Rome Statute, Article 6.

²⁸⁶ Rome statute, Article 66 (3), Rules and Evidence, Rule 63.

²⁸⁷ Rome Statute, Article 69 (4), Rules and Evidence, Rule 71.

²⁸⁸ Rome Statute, Rules and Evidence 70.

Cases at the ICC

The first inauguration of judges for the ICC took place on March 11, 2003, followed by the selection of the Chief Prosecutor, Luis Moreno-Ocampo, which commenced the full functioning of the court in 2003.²⁸⁹ The Rome Statute stipulates that the Chief Prosecutor can commence an investigation into a situation based on the referral from a State Party to the Statute or from the United Nations Security Council. The Prosecutor can also initiate an investigation based on information that he or she receives.²⁹⁰ Currently the Prosecutor is conducting investigations into situations in Uganda, the Democratic Republic of the Congo, the Central African Republic, Darfur (Sudan), and Libya.²⁹¹ The Prosecution has also been granted the authority to open investigations into the situations of Kenya and Côte d'Ivoire.²⁹²

Although it is beyond the scope of this thesis to provide background information into all of the cases and situations before the ICC, it is worth mentioning briefly the status of the current cases. For Uganda, one case is being heard before a pre-trial Chamber and four of the suspects, who are members of the Lords Resistance Army, are still at large.²⁹³ There have been four cases for the Democratic Republic of Congo. The suspect in one case remains at large while the pre-trial Chamber decided to decline to confirm charges for the suspect in another case. The trial for the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* and the case of *The Prosecutor v. Thomas Lubanga Dyilo* both began in 2009.²⁹⁴ The only case before the ICC that has resulted in a

²⁸⁹ International Criminal Court, "Situations and Cases," Accessed on June 1, 2012. <http://www.icc-cpi.int/Menus/ICC/Situations+and+Cases/>.

²⁹⁰ Ibid.

²⁹¹ Ibid.

²⁹² Ibid.

²⁹³ Ibid.

²⁹⁴ Ibid.

conviction is the case of *The Prosecutor v. Thomas Lubanga Dyilo*, which will be discussed in more detail below.

There are five cases regarding the situation in Darfur, Sudan, before the ICC and four suspects remain at large. After appearing voluntarily before the Chamber, the pre-trial Chamber declined to confirm charges against Mr. Abu Garda, but confirmed charges against Mr. Saleh Mohammed Jerbo Jamus and Mr. Abdallah Banda Abakaer Nourain, and committed them to trial.²⁹⁵ For the Central African Republic, the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* is on trial. For the situation in Kenya, following voluntary appearances before pre-trial Chambers, charges were confirmed against William Samoei Ruto, Joshua Arap Sang, Francis Kirimi Mathaura, and Uhuru Muigai Kenyatta, and they have been committed to trial.²⁹⁶ Due to the death of Muammar Gaddafi, the case against him has been terminated. However, for the situation in Libya, two suspects for a case remain at large.²⁹⁷ Finally, for Côte d'Ivoire, the case *The Prosecutor v. Laurent Gbagbo* is set for a confirmation of charges hearing on August 13, 2012.²⁹⁸

Advocacy in the Lubanga Case

Although it is difficult to thoroughly analyze the influence of advocacy networks on sexual violence prosecution at the ICC because only one case has resulted in a conviction, a closer look into the Thomas Lubanga Dyilo case reveals the detailed advocacy strategies of transnational human rights advocacy networks. Lubanga was the President of the Union des Patriotes Congolais (UPC) and Commander-in-Chief of the

²⁹⁵ Ibid.

²⁹⁶ Ibid.

²⁹⁷ Ibid.

²⁹⁸ Ibid.

Forces Patriotiques pour la Libération du Congo (FPLC).²⁹⁹ On March 14, 2012, Lubanga was tried and convicted of the “war crimes of enlisting and conscripting of children under the age of 15 years and using them to participate actively in hostilities.”³⁰⁰ Lubanga was not charged with rape or sexual violence despite extensive testimony and evidence regarding sexual violence committed against child soldiers. In the trial judgment, the majority of Trial Chamber I found that it was precluded from considering this evidence, because factual allegations concerning sexual violence had not been included in the Pre-Trial Chamber's confirmation of charges decision.³⁰¹

It is important to note that international human rights NGOs such as Human Rights Watch, Amnesty International and Women’s Initiatives for Gender Justice, and other activists and experts on sexual violence have investigated and documented the high frequency of rape and sexual violence in the conflict in the DRC. These organizations have shared their investigative findings and reports both publicly and privately with the Office of the Prosecutor. From the preliminary stages of the Prosecutor’s investigation into Lubanga and throughout the trial, Women’s Initiatives for Gender Justice has advocated for the Office of the Prosecutor to both investigate and include charges of gender-based crimes and sexual violence against Lubanga.³⁰²

Women's Initiatives for Gender Justice advocated that sexual violence was a central component of each of the three crimes for which Lubanga was charged.

²⁹⁹ Women’s Initiatives for Gender Justice, “Trial Chamber I issues first trial Judgment of the ICC: Analysis of sexual violence in the Judgment,” *Legal Eye on the ICC eLetter*, Special Issue 1, May 2012, Accessed June 1, 2012. <http://www.iccwomen.org/news/docs/WI-LegalEye5-12-FULL/LegalEye5-12.html>.

³⁰⁰ International Criminal Court, “Situations and Cases: Democratic Republic of Congo,” Accessed June 1, 2012. <http://www.icc-cpi.int/menus/icc/situations%20and%20cases/situations/situation%20icc%200104/related%20cases/icc%200104%200106/democratic%20republic%20of%20the%20congo?lan=en-GB>.

³⁰¹ Women’s Initiatives for Gender Justice, “Trial Chamber 1.”

³⁰² Ibid.

However, their advocacy efforts were not successful. On 16 August 2006, the Women's Initiatives submitted a letter and confidential report to the Office of the Prosecutor, outlining concerns that gender-based crimes had not been adequately investigated in the Lubanga case, and encouraging the Prosecutor to investigate further.³⁰³ On 7 September 2006, the Women's Initiatives became the first NGO to file before the Court, in respect of the absence of charges for gender-based crimes in the Lubanga case.³⁰⁴ Legal Representatives of Victims also made an additional attempt to broaden the charges faced by Lubanga by urging the Prosecution to specifically include crimes of sexual slavery and inhuman and cruel treatment.³⁰⁵ Unfortunately, sexual violence charges were not added and any evidence of sexual violence was considered irrelevant because the Prosecutor's Office did not include sexual violence allegations in the charges.

The fact that the Lubanga case did not have charges of sexual violence is not enough to simply dismiss the efficacy or influence of transnational human rights advocacy networks on the prosecution of sexual violence in international criminal courts. It should be noted that Prosecutors did refer to sexual violence in the opening statements and closing arguments of the Lubanga trial. Sexual violence was further recognized in a separate and dissenting opinion by Judge Odio Benito, who dissented from the majority's findings on sexual violence regarding enlistment, conscription, and use of child soldiers. In this case, the Prosecutor could have included charges or amended the indictment to include charges of rape, torture, sexual slavery, and or

³⁰³ Women's Initiatives for Gender Justice, "Legal Filings," Accessed June 1, 2012. <http://www.iccwomen.org/publications/articles/docs/LegalFilings-web-2-10.pdf>.

³⁰⁴ Ibid.

³⁰⁵ Women's Initiatives for Gender Justice, "Trial Chamber 1."

outrages upon personal dignity. The failure to include charges of sexual violence are most likely due to investigations by the Prosecutor's Office that were not conducted in a thorough manner. In an interview regarding the Lubanga conviction, former legal advisor for gender at the ICTY and ICTR, Patricia Viseur Sellers noted,

Given the evidence or information on sexual violence that came out in court, it appears to me that there was the potential for even greater probative evidence, had it been thoroughly investigated and included initially in the charges or even amended into the charges.³⁰⁶

Analysis of Advocacy Networks at the ICC

Even though advocacy networks did not ultimately influence the prosecution and conviction of sexual violence in the Lubanga case, there are still many ways in which advocacy networks continue to advocate for sexual violence prosecution at the ICC. The level of influence and participation of transnational human rights advocacy networks at the ICC has not waned since the negotiations for the Rome Statute. In fact, the work of advocacy networks focusing on the ICC has become increasingly professional, complex, and organized.

Although Women's Initiatives for Gender Justice is the major organization that focuses exclusively on issues of gender and sexual violence at the ICC, it is important to note that they have a broad based collaboration with the Coalition for the ICC, which currently has 2,500 member civil society organizations, and other major international NGOs who monitor the ICC. Since the Rome Conference, the thematic caucuses and focus groups under the umbrella of the Coalition for the ICC have re-structured their goals, like Women's Initiatives for Gender Justice. Following the advocacy efforts geared

³⁰⁶ FIDH, "Crimes of Sexual Violence and the Lubanga Case: Interview with Patricia Viseur Sellers," March 16 2012, Accessed on June 1, 2012. <http://www.fidh.org/Crimes-of-sexual-violence-and-the>.

towards the Rome Statute, the Women's Caucus for Gender Justice changed its name to the Women's Initiatives for Gender Justice and opened an office in the Hague to monitor and advocate gender issues and sexual violence prosecution at the ICC.³⁰⁷ The other various thematic caucuses and focus groups generally direct their advocacy efforts towards ratification. They also lobby State Parties regarding international justice issues, work to implement ICC provisions into national law, spread ICC awareness, and ensure effective functioning of the Court.³⁰⁸

In addition to this continued organized advocacy work, NGOs have a unique recognition and access to the Court that has not existed with previous international criminal courts. Since the ICC was established, the ICC hosts one full week of meetings twice a year where they have strategy discussions about their work with NGOs, who are members of the Coalition for the ICC. The Office of the Prosecutor discusses prosecutions, and arrests, while the Registry hosts discussions on issues such as outreach and victim participation.³⁰⁹ The groups represented regularly at these NGO meetings include major international NGOs like Human Rights Watch, Amnesty International, No Peace Without Justice, International Crisis Group, International Bar Association, and Women's Initiatives for Gender Justice. Local and regional NGOs are able to participate on a rotating basis based on funding made available by the Court or international NGOs.³¹⁰

³⁰⁷ Karen Engle, "Feminism and Its (Dis)contents: Criminalizing Wartime Rape in Bosnia and Herzegovina," *The American Journal of International Law*, Vol. 99, No. 4 (2005), 784.

³⁰⁸ Coalition for the International Criminal Court, "Who We Are and What We Do: Thematic Caucuses," Accessed on June 1, 2012. <http://www.iccnw.org/?mod=caucuses>.

³⁰⁹ Géraldine Mattioli-Zeltner interview.

³¹⁰ Ibid.

Although the Women's Initiatives for Gender Justice is able to focus exclusively on gender issues and sexual violence at the ICC, other international human rights NGOs that have broader objectives have devoted resources to continued focus on international justice and the ICC. For example, both Human Rights Watch and Amnesty International have international justice divisions. Since the establishment of the International Justice Division at Human Rights Watch, the organization has broadened their advocacy efforts towards the ICC, compared to the single-minded focus of advocating sexual violence prosecution at the ICTR.³¹¹ With that being noted, Human Rights Watch has still been able to advocate for sexual violence prosecutions and charges at the ICC specifically through their expertise in the situation of sexual violence in the Democratic Republic of Congo. Expert researchers have shared information regarding sexual violence investigations in the DRC through public reports, letters to the Prosecutor, and direct meetings with the Prosecution.³¹²

NGOs like Human Rights Watch and Women's Initiatives for Gender Justice not only have developed professional staff, but they have also developed a high level of expertise in specific fields, which makes them strategic dialogue partners.³¹³ The expertise that these organizations have been able to provide to the Court also makes them relevant to the Court, particularly regarding cases where the Court does not have local connections or background information and analysis. Human Rights Watch and Women's Initiatives for Gender Justice have been able to provide trainings and expertise on gender sensitivity and sexual violence. These organizations along with other

³¹¹ Sara Darehshori Interview by Jessica Welker. Taped recording over the phone. March 21, 2012. Transcript available in Appendix II.

³¹² Juliane Kippenberg. Interview by Jessica Welker. Taped recording over the phone. April 19, 2012. Transcript available in Appendix II.

³¹³ Géraldine Mattioli-Zeltner interview.

international NGOs have been able to share information on sexual violence from investigations, research, and analysis that they have conducted. Advocacy at the ICC for general human rights issues and specifically sexual violence is a combination of personal contacts within the Court and more formal advocacy tools.³¹⁴ Additional advocacy strategies and tools are similar to the techniques used at the ICTY and ICTR such as group meetings, private meetings with Court officials, letters, position papers, expert documents, reports on specific issues, and press releases to the media.

The internal dynamics of these international NGOs have been able to mature and develop with their collective and cumulative advocacy experiences. This experience has enabled these organizations to expertly analyze proceedings at the ICC, as well as to strategically decide which advocacy tools should be utilized and when. An important internal dynamic to note is the make-up of the staff and advisors of these organizations. For example, not only are the majority of staff members of these organizations professionals with law degrees, but they also have diverse professional experiences that lend rich perspectives and insights to advocacy work.

The professional development and lateral career moves of staff members has given transnational human rights advocacy networks unique personal contacts with the ICC. In the case of Women's Initiatives for Gender Justice, advisory council members have been activists who worked extensively on advocacy for sexual violence prosecution at the ICTY and ICTR. Rhonda Copelon, who directed the CUNY Law School clinic on International Women's Rights, was an advisory council member, as well as Ariane Brunet, who co-founded the Coalition for Women's Human Rights in Conflict

³¹⁴ Elizabeth Evenson, Interview by Jessica Welker. Taped recording over the phone. March 28, 2012. Transcript available in Appendix II.

Situations.³¹⁵ In the case of Human Rights Watch, Sara Darehshori, who was a prosecutor at the ICTR, worked in the International Justice Division at Human Rights Watch. Although I have been unable to look into the professional backgrounds of all advisors and staff members of NGOs, these examples illustrate a broader pattern of the internal make-up of NGOs within transnational human rights advocacy networks. All of these staff members and advisors bring with them not only expertise and professional experiences, but a spectrum of professional and personal contacts.

Transnational human rights and women's rights networks were able to build upon the strategic objectives and expertise that they gained during their advocacy work at the ICTY and ICTR. The Court is not only a potentially important concrete mechanism of accountability; it also establishes basic norms of sexual violence prosecution that operate as a model for political advocacy and domestic systems.³¹⁶ Time will tell if the advocacy for the inclusion of sexual violence and gender issues in the Rome Statute will influence domestic and regional justice systems. Time will also tell if the advocacy efforts will influence future convictions and charges in cases at the ICC. As the influence of advocacy networks deepens on a variety of factors, including political will of prosecutors and Court staff, the recent appointment of Fatou Bensouda as Chief Prosecutor may influence improved sexual violence prosecutions at the ICC. Fatou Bensouda is the first African woman to ever be appointed as Chief Prosecutor to an international tribunal.³¹⁷ She spent more than ten years working as a prosecutor at the ICTR and the ICC, and she

³¹⁵ Ariane Brunet interview.

³¹⁶ Copelon, 217.

³¹⁷ Women's Initiatives for Gender Justice, "Statements from Civil Society Welcoming Prosecutor Fatou Bensouda," Press Release, June 15, 2012, accessible at <http://www.iccwomen.org/documents/Welcoming-Prosecutor-Bensouda.pdf>, accessed on July 1, 2012.

has publicly expressed intentions to prioritize grave crimes against women and children and to develop a strong gender policy.³¹⁸

³¹⁸ Ibid.

Conclusion

Given the information that was presented in this thesis on sexual violence prosecution at the ICTY, ICTR, and the ICC, it is clear that transnational advocacy networks have made contributions to the prosecution of sexual violence in international courts and they have raised global awareness on the issue. Arguments can certainly be made as to whether or not advocacy campaigns have been successful in prosecuting conflict-related sexual violence. Although the progression of sexual violence prosecution has not been particularly linear, the influence of transnational human rights advocacy networks on the issue cannot be so easily dismissed.

As previously mentioned in this thesis, realist critics have cast doubt on the influence of transnational advocacy networks. In fact, realist critics can look at the three case studies here and point to the uneven norm change and reactive based strategies of advocacy networks. I have argued that these criticisms of transnational advocacy networks are entirely premature because the study of transnational advocacy networks requires more development into the internal processes of these networks. A specific internal dynamic that I highlighted and explored in this thesis is the professionalization of NGOs and their focus on legal mechanisms and judicial frameworks.

Although transnational advocacy networks do experience some limitations in the international system due to the dominance of states, transnational human rights advocacy networks did wield a considerable amount of influence in the prosecution of sexual violence in international courts and tribunals. This thesis has linked the professionalization of international human rights NGOs and legal coalitions to the increased recognition and prosecution of sexual violence in international criminal courts.

I have demonstrated that well-established international human rights NGOs and legal coalitions have been the primary actors in human rights advocacy networks to influence the investigation and prosecution of conflict-related sexual violence in international criminal courts. I have additionally argued that these international NGOs and legal coalitions are primary actors and major players in human rights advocacy networks by examining their evolution of tactics, strategies, and professionalization. International NGOs play a prominent role in human rights advocacy networks by introducing new ideas, providing information, and lobbying for policy changes.

Since the watershed prosecutions at the ICTY and the ICTR, advocacy networks of human rights organizations have honed their skills in influencing judicial frameworks and working within legal mechanisms. Legal communities maintain transnational contacts based on professional interests, which suggests that human rights advocacy networks rely on more than just the politics of information, symbols, leverage, and accountability. Human rights advocacy networks have professionalized and legitimized themselves by becoming legal and investigative experts, in addition to their roles as advocates. They have in turn refined their investigative and report writing skills regarding conflict-related sexual violence to a level acceptable to legal institutions. This professionalization and legitimization has led to professional contacts and has given them access to legal institutions of international criminal tribunals and courts.

Additional strategies and tactics of human rights advocacy organizations in influencing sexual violence prosecution include publicizing the issue, detailing investigations and research in reports, providing information to the courts based on reports and investigations, submitting amicus briefs to the courts, provide expert

witnesses in court, providing specific trainings to court personnel, linking victims and local NGOs to the courts, and developing personal contacts within the legal institutions. The personal contacts suggests that organizations have legitimized and professionalized themselves through contacts with legal experts, thus sustaining contacts for professional interests, not just by shared principles. The professional networking and contacts with the legal communities also indicates some of the ways in which human rights advocacy networks have strategically evolved. Participation of legal scholars and research skills of staff members of international human rights NGOs informed the transnational human rights networks internally and further legitimized the campaign from the perspective of the courts.

The most notably evolved and highly professionalized tactics included sharing information from investigations, serving as expert witnesses, and providing constructive criticism and professional support to the prosecution units of courts. The ICTY, ICTR, and ICC have been susceptible to being influenced by well-established international human rights NGOs because they are considered to be independent experts. The consultative recognition as experts has given these major human rights NGOs unique and unprecedented access to international courts, particularly in the case of sexual violence prosecution.

As previously noted, part of the professionalization of these well-established international human rights NGOs is their financial capacity to form specific divisions within their organizations to focus on the international justice and gender, to hire thematic researchers, and to send those experts and representatives to locations around the globe to conduct research and lobby courts. With the evolution of advocating for

sexual violence prosecution, today there is even a specific organization that exclusively focuses on advocating gender sensitivity and sexual violence at the ICC. These international human rights NGOs have then been able to mature and develop with their collective and cumulative advocacy experiences. A significant part of that professional development is the make-up of the staff and advisors of these organizations. All of these staff members and advisors bring with them not only expertise and professional experiences, but a spectrum of professional and personal contacts, which lead to improved and informed advocacy strategies and lobbying tactics.

Although this thesis highlighted the professionalization and evolved tactics of well-established international human rights organizations in influencing sexual violence prosecution, I was unable to delve further into more detailed findings regarding the internal dynamics of these organizations. As it proved difficult to obtain in-depth information on additional internal dynamics of advocacy organizations and networks, it is clear that additional research should be conducted into the internal dynamics of transnational advocacy networks. Also, in light of the relatively recent formation of the ICC, it is recommended that further research be made into how international human rights organizations and specifically the Women's Initiatives for Gender Justice are able to influence sexual violence prosecution at the ICC.

Appendix I-Names and Biographical Information of Interviewees

1. Sara Darehshori

Sara Darehshori is senior counsel for the US Program of Human Rights Watch where she researches and advocates on issues related to police handling of sexual assault cases.³¹⁹ Darehshori was senior counsel for the International Justice Program where she conducted advocacy on the ICC. Prior to working at Human Rights Watch, Darehshori worked as a prosecutor in at the ICTR and she has experience working as a corporate litigator for a law firm in New York. Darehshori is based in New York City.

2. Elizabeth Evenson

Elizabeth Evenson is senior counsel at Human Rights Watch in the International Justice Program, where she conducts research and advocacy related to the ICC.³²⁰ Evenson has a Juris Doctorate degree. Evenson is based in Brussels.

3. Juliane Kippenberg

Juliane Kippenberg is a senior researcher for the Children's Rights Division of Human Rights Watch and is based in Berlin.³²¹ She has over 15 years of experience conducting human rights research and investigations in Africa. She has specific expertise on sexual violence in the armed conflict in the Democratic Republic of Congo. Before working at Human Rights Watch, Kippenberg worked as a campaigner for Amnesty International. She is based in Berlin, Germany.

4. Géraldine Mattioli-Zeltner

Géraldine Mattioli-Zeltner is the advocacy director of the International Justice Program at Human Rights Watch, where she conducts advocacy on the ICC.³²² She focuses on justice issues in the Democratic Republic of Congo, universal jurisdiction, and advocacy on international justice matters with the European Union institutions and member states. Before joining Human Rights Watch, she worked with the International Justice Project of Amnesty International. Mattioli-Zeltner is based in Stuttgart, Germany.

³¹⁹ "Sara Darehshori," Human Rights Watch Expert Biographies, accessible at <http://www.hrw.org/bios/sara-darehshori>, accessed on March 26, 2012.

³²⁰ "Elizabeth Evenson," Human Rights Watch Expert Biographies, accessible at <http://www.hrw.org/bios/elizabeth-evenson>, accessed on March 26, 2012.

³²¹ "Juliane Kippenberg," Human Rights Watch Expert Biographies, accessible at <http://www.hrw.org/bios/juliane-kippenberg>, accessed on March 26, 2012.

³²² "Géraldine Mattioli-Zeltner," Human Rights Watch Expert Biographies, accessible at <http://www.hrw.org/bios/g-raldine-mattioli-zeltner>, accessed on March 26, 2012.

5. *Gaëlle Breton-Le Goff*

Gaëlle Breton-Le Goff is a member of the Coalition for Women's Human Rights in Conflict Situations and she is an international consultant.³²³ She is a Lecturer in International Human Rights Law at the University of Québec in Montreal, in the faculty of political sciences and law. She studies the role of NGOs in the development of international norms and their contribution to international justice. She is based in Montreal, Canada.

6. *Ariane Brunet*

Ms. Brunet was the Coordinator of the Women's Rights Program for Rights & Democracy in Montreal between 1992 and 2008.³²⁴ Ms. Brunet contributed to establishing the Coalition for Women's Human Rights in Conflict Situations. Ms. Brunet is a co-founder of the Urgent Action Fund for Women's Human Rights, established in 1999. Ms. Brunet was a member of the International Advisory Committee for the Women's International War Crimes Tribunal on Japan's Military Sexual Slavery, popular tribunal held in Tokyo, December 2000. She was a board member of the Women's Caucus for Gender Justice and is now on the Advisory Council of the Women's Initiatives for Gender Justice (WIGJ). She is based in Montreal, Canada.

7. *Binaifer Nowrojee*

Binaifer Nowrojee is the executive director of the Open Society Initiative for Eastern Africa (OSIEA).³²⁵ Prior to joining OSIEA, she worked for 11 years as legal counsel with the Women's Rights and Africa Divisions of Human Rights Watch. Ms. Nowrojee wrote the Human Rights Watch report, *Shattered Lives*, about sexual violence in the genocide in Rwanda. She also served as an expert witness at the ICTR regarding sexual violence. Before her work at Human Rights Watch she served as a staff attorney with the Lawyers Committee for Human Rights. She is also a lecturer at Harvard Law School. She is based in Kenya.

³²³ Coalition for Women's Human Rights in Conflict Situations, "About the Coalition-Current Members of the Coalition's Working Group: Biographies," accessible at http://www.womensrightscoalition.org/site/about/workinggroup_en.php, accessed on March 28, 2012.

³²⁴ Ibid.

³²⁵ Open Society Institute, "Binaifer Nowrojee," accessible at

<http://www.soros.org/initiatives/osiea/about/bios/binaifer>, accessed on March 28, 2012.

Appendix II-Interview Transcriptions

On March 21, 2012, Jessica Welker interviewed Sara Darehshori over the phone.

In your position as a prosecutor for the Tribunal for Rwanda, did you have any interactions or professional contacts with activists advocating for the prosecution of sexual violence? If so, whom were the primary people advocating for that?

Yes. The people primarily advocating for that...well it was Human Rights Watch actually, It was researchers at Human Rights Watch who I mostly remember having contact with.

Was it several people at Human Rights Watch or just one person?

There were two that I remember because they came to Rwanda on mission. One was Binaifer Nowrojee and one was Janet (I am not sure of her last name).

How did they advocate for the prosecution of sexual violence?

They told me that they found a lot of sexual violence in Taba, where the crimes primarily took place for that first case and they informally shared information that they gathered in their investigations. Essentially, they were trying to convince me that there was sexual violence in Taba and that we needed to prosecute. We had overlap with witnesses. We were on the ground interviewing a lot of the same people. In general terms, they shared information that they gathered from witnesses and information that they received from Taba.

Were they submitting any other information to the tribunal?

They wrote a letter to the prosecutor and then eventually they filed a brief in the court.

In your experience at ICTR, how was HRW perceived by the ICTR? Were they perceived as professionals with expertise or just as amateurish NGOs who had testimonies?

There are two different responses to that question. On the one hand, we had Allison Deforge, who was a senior person at Human Rights Watch, as our primary expert witness and she was spectacular. So we recognized her as the leading expert in Rwanda, I don't think there was anyone who was really comparable to her and she was amazing and we really...I know the court really relied heavily on her testimony, we really valued her expertise, I mean she was a phenomenal expert witness.

However, the efforts to get the prosecution of sexual violence were, I would say, considered on the amateurish side. One, when they advocated for sexual violence...first of all...it is very hard when you are advocating for things at the prosecutors office because from the outside, you don't know what is going on the inside. The perception (of NGOs) was that there was no interest in prosecuting sex crimes at the prosecutors office

until we got outside pressure. That is totally inaccurate. We had Patricia Sellers at the Tribunal already and she had already done trainings on sexual violence. So everyone knew that this was going to be a landmark issue and it was a big thing within the office that people wanted it to be prosecuted regardless with what was happening with the NGOs. So that was one thing. The second thing, was the problem with all the evidence that kept being presented to us was that there was no link to the defendant. So even though the Human Rights Watch people rightfully shared information with us that indicated that there had been a lot of sexual violence in Taba, we were charging the Mayor of the commune with his involvement in the genocide. So there had to be a link between the rapes and the mayor. You can't just charge the mayor because rapes took place in his commune. He wasn't committing the rapes himself. No one was giving us evidence that he raped people, nor was anyone giving us evidence that people under his direct control were raping people. Remember he was a civilian authority, who had almost nobody in his control. He had a couple of police officers that we could argue were under his control and that was it. And no one was saying that the police officers were committing the rapes and that he knew about it and didn't stop it. There was no link.

The evidence that we kept getting was that people were raped in the fields and it was horrible. But there was no link to the defendant. So no matter how much evidence we got from the NGOs, that there were people being raped in the fields, we couldn't tie it to the defendant, and you can't charge the mayor for all the crimes that happened in his village just because he was a mayor. And I remember that it was a frustrating exchange because they couldn't understand why if all these rapes were happening and he was the leader of the town, he couldn't be pinned with those crimes. But we couldn't do it unless there was a link. So that was one frustrating aspect about the advocacy around sexual violence.

What ended up happening was that while we were preparing one witness for trial, she said that she was present while there were rapes in the area of the commune office, which was the mayor's office, and that he was present. And more importantly, she knew people who she would tell to talk to us about rapes that took place at the commune office when the mayor was there. But it wasn't until she told us that and she told her people to talk to us...and even some of those people we talked to already but they didn't tell us. So it wasn't until that point when we were able to make the link to the defendant. So it didn't have anything to do with the advocacy done by the NGOs and nor did it have anything to do what is commonly known as this revealing moment in court when she suddenly revealed that there were rapes in the commune under questioning. Because actually it came out on direct testimony anyway, we already knew it because she told us in prep. So we already started to pursue that investigation.

So the other big misconception is the amicus brief. There was an amicus brief filed by a group of NGOs, but under the ICTR procedures you have to file a motion in which you request to file an amicus brief. And if they are allowed to file an amicus brief, then you can submit an amicus brief. They submitted an amicus brief without filing that motion, so it wasn't considered by the court. And from our perspective that amicus brief was a

terrible disaster that put the entire trial at risk because the amicus brief contained a lot of testimony from witnesses. So to put before the judges testimony from witnesses that the defense did not have a chance to cross examine, was potentially extremely unfair and could have caused a mistrial. So from our perspective we dodged a bullet by that brief not being accepted by the court. The other thing about the testimonies was that it was really easy to interview people and have them say, "I saw this, I know that." But when you question them you actually find out that it was hearsay, they weren't there, or they heard it from someone. You have to ask them "where were you exactly standing," "what could you see," in order to ascertain whether they were an eyewitness or just a hearsay witness. And so to have people putting in testimony before the judges without even knowing for sure whether it was direct testimony and then not even having the defense have the ability to cross examine the witness could have been very prejudicial...we thought that it was a very bad move.

What did you do after being a prosecutor at the ICTR? Do you join Human Rights Watch immediately?

No, I worked for a law firm and then I joined Human Rights Watch.

When you joined HRW, were you involved in advocacy for the ICC? If so, was any advocacy related to sexual violence?

Yes. Well it wasn't the same level. In the International Justice Program we have done a lot of advocacy with respect to encouraging the prosecutor to broaden his charges or investigate all the groups that have committed war crimes in the conflict and some of that includes charges of sexual violence as representative charges against a particular group, but it wasn't the same single minded focus I think that Human Rights Watch used in the Rwanda Tribunal.

How do you think Human Rights Watch changed or improved their strategies for advocating at the ICC after some of the mishaps that happened with the ICTR?

Well the advocacy and the way Human Rights Watch has approached the court has changed over time. There is a real caution for protecting our witnesses. Well, it is mixed because one of Human Rights Watch's missions or objectives is to get justice for the most serious international crimes. So in that case it is not surprising that we would want to encourage the prosecutor to prosecute and that we would offer background information about where he should go and what type of charges to pursue based on the research that we have done. But on the other hand we also have to be cautious about appearing too linked to the prosecutor's office. So I think that as international prosecutions have broadened there is a certain arm's length distance that we try to keep from the prosecutor's office. Both because we need to have continued access to conflict areas and if people think that we are just secretly prosecutors then it will be harder for us to do that. Also in our other role at Human Rights Watch, we critique the court in order to encourage them to be as effective as possible. So it is a little easier to do that if you have a professional arm's length...relationship.

Do you think that the staff at HRW has become more professional since the ICTR?

I think that with experience, people have learned quite a bit about how to advocate for charges. I think that in the early days, before I came to Human Rights Watch, I think that we put together some lengthy letter with a lot of detailed information...I think that we tried to push prosecutors in a more detailed way. I think that it ended up being a big pain in the neck for us because then they started requesting information from us about sources and the defense starting requesting information about sources. So I think that Human Rights Watch has developed just by virtue of practice over time, its own methodology for dealing with the court that it definitely improved. In part, you don't know until the court actually functions how all this stuff is going to play out.

So I think that just by virtue by the fact that the court has been in operation for longer and that we have a better sense for what is going to happen and how we can be useful and what makes sense...naturally the relationship evolves in a way we figure out better what we can do that makes the most sense, both for our purposes and for the court. But the people I dealt with, even the people who I thought made pretty big mistakes in how they advocated for sexual violence charges were still extremely sharp professional people and experts in their area. But I think they just didn't understand how it worked from the prosecutor's perspective. I think that one of the reason's why I came to HRW is because I really have a lot of respect for HRW and I thought that it would be beneficial for HRW to have someone with an inside perspective so that we didn't overstep.

What type of tactics does the International Justice Program at Human Rights Watch use when they are advocating the ICC?

It is a combination of things. Sometimes it is letters to the prosecutor, I mean there is a lot of communication and opportunities for interaction with the court. They have a lot of meetings with NGOs and whatnot. So there is certainly some advocacy that takes place in those direct channels with meetings with the court. We have also done a number of private letters to the prosecutors and when we feel that that isn't sufficient we have done public letters. And we have done reports. And there is one report, "Unfinished Business," which is probably, I mean, it has caused a bit of tension with the court itself. But if you look on the website it is probably a very good example of the way in which Human Rights Watch...because it combines a lot of advocacy that we have done over the years into one paper about things we think the prosecution should be looking into.

How has your inside perspective as a prosecutor helped with your advocacy at Human Rights Watch?

It is helpful...both in thinking a little about how some of things I did in that role working with people who were getting information to the court...mostly a combination of having been in the court and of having been in practice was helpful in terms of trying to figure out how to protect Human Rights Watch's interests and also be useful. It informed any advocacy that I was involved with in respect to the court and I think my colleagues. But I

think that they are more sensitive to that now...I mean the group working was the Women's Rights Division. There wasn't even an International Justice Program when they were advocating to add the sexual violence charges...that was the Women's Rights Division. So the International Justice Program started a few years after that and I think that the International Justice Program is more sensitive anyway to a lot of the issues that they may have not been familiar with at the Women's Rights Division back in the mid 90s.

When they started the International Justice Program, who was involved? Was it just a couple of staff members or was it a full division?

It started with Richard Dicker. He was the main force behind the International Justice Program. The main stay has been Geraldine and Elise Keppler.

Was it a priority of the staff of this division to have law degrees and experience practicing law?

I think that it has worked out that everyone has a law degree, except for Geraldine. She has a Master's in international human rights law, but she is not actually a lawyer. Most of the time when we hire people, they are lawyers. It is useful when they have relevant court experience, I think that that is definitely viewed as a plus. It would be unusual now for the program to hire someone who isn't a lawyer. But Geraldine is so masterful, she knows a lot, but she is probably unusual in that regard.

Do you think that for staff members in this division having law degrees and advanced degrees has helped to legitimize the way that they are perceived with the ICC and other international courts?

It is hard to know how much that matters. What everyone relies on is the work. So if your work is legitimate, you are considered legitimate. I think that it is easier to do the work if you are a lawyer. There is a fair amount of legal stuff involved in addition to policy analysis. I mean, it is much more technical than most divisions at Human Rights Watch.

Was the International Justice Program the only division in Human Rights Watch that has advocated for including prosecutions of sexual violence at the ICC or have other divisions been involved?

I think that there has been some involvement of the Women's Rights Division, but I think that a lot of involvement comes from the researcher of the country. For example, the real example where this is an issue is DRC.

Besides that, it is mostly the International Justice Program advocating the ICC?

Yes. The International Justice Program pretty much does all that effort.

Regarding prosecuting conflict-related sexual violence in international criminal courts in general, who do you think have been the major players in advocacy networks in helping push for this prosecution and raising awareness about prosecution?

I don't think it is domestic NGOs as much as it has been international NGOs. There is one organization that has been particularly known for this. I am blanking on the name, but it is based in Belgium. This organization, it is its primary focus. I think that they have probably done reports, but they definitely do advocacy. But it is mostly international organizations. Other ones have been REDRESS. There is a handful of other groups that have done advocacy with the court.

I know that you have said that it is a misconception that NGOs were influencing the prosecution of sexual violence because the Prosecutors Office was already looking into it. Do you think that NGOs played any type of role in prosecuting sexual violence in Rwanda?

I think that the role that they played was marginal. I mean, it was good to know from their perspective how much sexual violence had taken place because we initially did not gather that much evidence/testimony on that specific subject. The case was kind of done in a not normal prosecutorial way, because the subject was arrested when the investigation started. So it wasn't like...the initial investigation found out mostly about the massacres and not so much about sexual violence. So getting information about sexual violence (from NGOs) was interesting. And we did send teams of women investigators in to look into specific acts of sexual violence...but it wasn't that successful. I mean, they drew attention to the issue in a way that was probably helpful. And the other thing was they sent letters to The Hague and did advocacy with the chief prosecutor at The Hague. But I have no idea how effective that was. I mean it was really distant; the contact was pretty intermittent with the head office. But at the end of the day, they didn't have the evidence that linked the defendant. So all their efforts...they definitely drew attention to the issue. The question is...how much difference did that make because that was already a priority for the office. They created an atmosphere where there was certainly pressure to do this, but there was already a certain amount of pressure to do that. The information they gave us ended up not being that helpful and the brief ended up being potentially disastrous. It is one of those things where there is a lot of mythology around this where NGOs think they were really helpful and NGOs changed the course of the court by encouraging it to do this and that is actually just not true.

Has HRW submitted amicus briefs to the ICC or are they mostly publishing reports and sending letters?

As far as I know, there have not been any amicus briefs submitted. Nor would we ever try to sneak in evidence through an amicus brief, which is what happened last time. Well, there may have been an amicus brief...on outreach or something but certainly nothing comparable to that (the amicus brief submitted at the ICTR).

Does the ICC ever request legal expertise or investigative information from HRW?

Not legal expertise. But they do sometimes communicate with us and ask us for information. And if you look at the court records, you see that they reference our reports.

On March 22, 2012, Jessica Welker interviewed Géraldine Mattioli-Zeltner over the phone.

So I know that prior to working at Human Rights Watch, you worked for the International Justice Project at Amnesty International in London. I wanted to know what you did when you worked there?

I did a couple of things. I was there in 1999 and I worked on issues related to universal jurisdiction. This was the year when Pinochet was arrested. So I was helping them with a couple of things. They did a comprehensive study on universal jurisdiction laws, which have since been updated. But I helped them work on the first version. I had some kind of fellowship with them. And then I helped them out on the Pinochet case by putting together some jurisprudence and other things to present to the court. So I helped them with that. And then the last thing that I did was to go to one of the prep conferences for the ICC. And there was a big conference that was held in Paris to discuss the role of victims and how to develop the rules around the role of victims at the ICC.

Did you do any type of advocacy regarding victims of sexual violence when you went to that conference?

No. That is what I wanted to tell you. I don't have specific expertise in terms of the push for provisions regarding sexual violence in the Rome Statute because I came on board after the conference. I was hired by Human Rights Watch in 2003. But I know that civil society was key in pushing for those provisions to be included. One of the people I was going to suggest you can talk to, if you can, is Whidney Brown. She was at the time, during the preparatory commissions and the Rome Conference, in 1998 she was with Human Rights Watch. And she helped develop the provisions in the ICC statute on sexual violence and she is now at Amnesty International. She actually just wrote an Op-ed regarding the Lubango case. She would really have the historical perspective.

Who do you think are the major players advocating for international criminal courts...whether it is specifically sexual violence charges or other issues? Would you say that it is bigger NGOs or do domestic NGOs exert any pressure with these courts?

I think that it is important for you to know that the ICC is very different from other Tribunals. Civil society has managed to establish a very unique relationship with the ICC through mostly the Coalition for the International Criminal Court that developed almost a consultancy status, even though we don't have a consultancy status, but almost so in terms of our interaction with the ICC. So since the ICC was established in 2003, we have twice a year, one full week of meetings with the ICC, usually two days with the Office of

the Prosecutor and two days with the Registry, where we have strategy discussions about their work. With the Office of the Prosecutor, we discuss prosecutions, arrests, cooperation...these kinds of things. And with the Registry, things that fall under their mandate; outreach, victim participation, and defense issues. So as far as I am aware, this is really unique. The groups represented at these meetings...of course some of the major NGOs like Human Rights Watch, Amnesty International, Parliamentarians for Justice, No Peace without Justice, International Crisis Group, International Bar Association, Women's Initiative for Gender Justice, etc. These bigger NGOs attend regularly. And then usually there is also funding from the court or from some of the bigger NGOs to enable local activists to participate as well, from regions where the ICC is investigating. And they make sure that the local NGOs rotate so that it is not always the same activists coming and so that there is an opportunity for different voices to be brought to the table.

So the local NGOs would rotate?

Yeah.

Would the bigger NGOs rotate?

No, the bigger NGOs are always there. There may be different people going to represent the NGOs, but the bigger NGOs are always there. And the other way that we work...the Coalition for the ICC has established teams on different topics. So those are all email teams. There is one on legal representation issues, one on protection, one on the use of intermediaries, one on outreach, etc. So for each topic that is of interest to civil society, there are teams, and for the teams there are both local and large NGOs involved. Through these teams we try to establish a common position on the issues that we want to push for the ICC. So through this means there is also a possibility for local NGOs to voice their concerns. Another way that local NGOs can be involved in a discussion is through a group that has been set up by REDRESS, which is also present at the meetings twice a year, I forgot them. They set up something called the victim's rights working group and that is a very big group composed of both international and local NGOs that works specifically on victim participation reparations and therefore would relate to issues of sexual violence. Basically how to best represent the interests of victims and obviously victims of sexual violence would fall in their mandate. There is therefore a lot of work through email. There is a lot of work going in terms of civil society advocating at the ICC; either through direct bilateral meetings, the meetings twice a year that are regulated, email teams that produce papers, and the working group. So really there is a flurry of activity that follows the work of the ICC. Whether we have impact depends on the issue of course.

Given the legal framework that these civil society groups are working in, do you think that there has been a professionalization of these advocacy organizations? If so, how has the professionalization contributed to their influence at the ICC?

Of course. That is really not a question. If you look at all the NGOs I mentioned, and even to be honest with you, the local NGOs...have professionalized. This is not an

associated movement with voluntary people coming in and out. These are professional NGOs with staff, who have developed a certain type of expertise, which makes them so relevant in the field of international justice. It was like that in Rome and it continues to be like that that some people in certain NGOs have more expertise sometimes than...ICC staff. That makes us a good strategic dialogue partner because we have this kind of expertise. So if I give you an example...we at Human Rights Watch know the region of Eritrea and the Congo a lot better than the Office of the Prosecutor of the ICC because we have researchers who have been documenting the conflict and the crimes there since 1998. So that makes us a resource potentially for the Office of the Prosecutor to ask us advice about some of the key massacres or advice about which translator to use...we of course, have a good sense of what people on the ground are expecting from the ICC because we talk a lot to civil society and the local population in those regions. And then the same can be true in victim participation...some groups like REDRESS are used to representing victims in legal proceedings. So they bring that experience and that expertise to the ICC. So in answer to your question...absolutely all of these organizations are professionalized, but beyond having a professional staff, they have staff that are experts on the issues and then can therefore provide good advice to the court.

Can you provide a little bit of the history of the International Justice Program at Human Rights Watch?

So basically it started very small in 1995 when the International Law Commission started drafting the Statute for an International Criminal Court. That is when Human Rights Watch started paying close attention to these developments and we entered the Coalition for the ICC at the time in 1995. But at the time it was more the involvement in Human Rights Watch of one key person, who continues to be the Director of the program, Richard Dicker. But the International Justice Program was not created until 2000 at Human Rights Watch and it initially focused exclusively on pushing the ratification of the Statute for the ICC. It was a very small program with about three to four staff. And then when I joined in 2003, the focus of the program at the time...you know of the course the Statute had entered into force, but the Bush Administration launched a very nasty attack against the ICC...so at the time we were really focused on backing the ICC against this fierce attack by the Bush Administration of the United States. And then in 2003, the first prosecutor and the judges were elected at the ICC and the program shifted its attention to really trying to influence the policies of the ICC. We also focused on other international courts...the Special Court of Sierra Leone, the ICTY...so we extended our focus from the ICC to all aspects of international justice. Nowadays it is the same with a heavy focus on the ICC (maybe 60% of the time is spent on the ICC), but we also work on other issues of international justice. We have also shifted to dealing with how to encourage more national prosecutions.

Through your experience working with Amnesty International and Human Rights Watch, do you think that these organizations' strategies have evolved to be more focused and efficient when they are advocating at the ICC and other international criminal courts? Or are their strategies still the same?

I think that strategies have evolved. We continue to use a lot of the same means, like the ones I already told you about-in terms of bilateral meetings and group meetings, letters, position papers, expert documents, reports on specific issues-I think one way our advocacy has evolved with the Office of the Prosecutor was at the beginning we raised our concerns more privately with the Office of the Prosecutor in those meetings and with little success, we have become more public with our criticisms of the court and the Office of the Prosecutor in general. So I think that maybe that is the key change I can identify in terms of our work. We continue to work on the same type of issues with the same means, but maybe we are more willing to be public of our criticisms. In the past when the court was so new, we felt that we should bring our concerns directly to the ICC and be less public about it.

You said that one of your strategies is to raise your concerns privately. So how does an organization like Human Rights Watch or Amnesty International gain access to the Office of the Prosecutor for private meetings?

Well that has changed over time as well. At the beginning we used to have a really broad access to the staff in the Office of the Prosecutor, but now it is a little bit more controlled so they have designated staff to talk to civil society and NGOs. But we do have good contacts in the Office, so there are many different staff members at the Office of the Prosecutor that we can contact to have discussions and we also have direct access to the Prosecutor himself. So we could call him, send him an email, request a meeting, see him at different events.

How do you think these bigger NGOs were able to establish these key contacts and this direct access to staff at the Office and the Prosecutor himself?

I think it is a combination of things. When Ocampo took office in 2003, one of the first things that he did was to have a consultation hearing at which he invited the big NGOs, small NGOs, academics, and others. So I do think that he did show that he was open for discussion and then as I explained to you earlier, the Coalition for the ICC then set up these bi-annual meetings, which has been a very good way for him to get to know us in a way that creates an opening for a way to be in touch directly with him. We also do send him letters...it is a combination of personal contacts and more formal advocacy tools.

I know that you have worked in this specific field for a while. What type of self-reflection or self-criticism do you have regarding this type of advocacy? Does the organization itself have any type of self-reflection about their advocacy efforts in how they have advocated for the ICC?

I don't want to sound like we do it all perfect. I would have to think more about that.

Have there been strategies at Amnesty International or Human Rights Watch that have not been as effective in your advocacy campaigns?

No. We use a lot of the same advocacy strategies...sometimes they work and sometimes they don't work. It depends on the advocacy target and their openness. I don't really think it is the tool or the strategy that is the problem...there are many factors. Something that we don't do...because we have decided that we don't want to do it very much, but I think that it is an important strategy more generally for civil society to use...is to be more involved in judicial proceedings. And a lot of the advocacy that we do is typical human rights advocacy. You know, meetings, letters, discussions, positions papers, etc. But of course, the ICC is a court. So sometimes you can bring your issues directly to the judges through amicus briefs and other things and this can be very effective. This is not something that Human Rights Watch does, and as I said, we have decided not to do it...so that's our issue. But I think that it is effective and that it is a good strategy for those to pursue who can and would like to do it. If you look for example at sexual violence issues...like Women's Issues for Gender Justice...they pushed for additional charges (like sexual violence) to be placed on Lubanga. But we at Human Rights Watch do a more traditional way of doing advocacy. We raised the issue publicly, we went to meetings with the Office of the Prosecutor, etc., and that did not have a result because the Prosecutor was not convinced. The Women's Initiative for Gender Justice tried to file an amicus brief...they tried to go directly to the judges to influence them. And I think that in some way it had some impact because one of the judges was at least convinced. But that is another way of doing advocacy. Some advocacy organizations are doing it, but not all. But it is an interesting way of doing advocacy in a judicial environment.

On March 28, 2012, Jessica Welker interviewed Elizabeth Evenson over the phone.

So could you just describe for me what you do at Human Rights Watch?

Sure. So I am a senior counsel for the International Justice Program at Human Rights Watch and I work almost exclusively on the International Criminal Court, but also on some initiatives where we are trying to get prosecutions of the same crimes that the ICC prosecutes, the core international crimes-genocide, crimes against humanity, and war crimes, to be prosecuted at the national level. And I guess I would describe my job as having a few different components. It is part policy research and policy analysis. So doing research and analysis to make recommendations to the court about its different policies and strategies. Also, to the members of the ICC that the court relies on for many different things. And then it is also part advocacy. So taking those recommendations to the court and to member states, trying to get them enacted. And also there is a certain component to work with the press to try to explain what is going on with these different international justice proceedings and try to get support for them and to put our recommendations out there into the media in order to have an impact on court officials or on states.

What type of strategies do you use when you are advocating at the ICC?

Well it really it depends on the issue. I guess we can really divide it into two categories; policies that the ICC has that we are trying to influence or change and a second category would be the actions of the member states. So the policies that the court has could be anything from how they do their outreach and public efforts to what cases and investigations that the prosecution undertakes. And there are different strategies. We do some amount of meeting directly with court officials or court staff...trying to pass our recommendations on directly privately, not necessarily confidentially, but not in a formal paper or a press release. There is a level of communication that happens directly with court officials. Sometimes we take it another step further and it might be helpful to have something in writing, some type of public document to communicate recommendations to court officials so that there might be interest by some states or the media, or other NGOs working together on these issues, in order to move the court.

Now in all of that, I just want to be clear, there are important issues of independence...it is a judicial institution. So the lobbying that we do with the court is a little different than the lobbying that you might do with the Parliament or a Foreign Ministry. There are careful lines...we are making recommendations and suggestions. When it comes to the choices that the Prosecutors make, it is obviously an independent decision within the Office of the Prosecutor. And when it comes to the judges...we really wouldn't lobby judges. If we wanted to make a point of legal interpretation, we would apply to do an amicus brief before the court. So in that case we might provide material for informational purposes to the judges, but we are not really doing advocacy to the judges. If we wanted to do that, we would try to do that through the legal process itself. So the

strategy itself really depends on what we are trying to achieve and what we think would be the best routes for that to be. We work a huge amount in Coalitions, so we are part of the Coalition for the ICC and we do a tremendous amount of work with NGO partners, which consists mostly of joint position papers, joint meetings, and joint press conferences. Not exclusively, but a lot of the work happens through Coalitions. Then with issues that are in control of the States, it depends, it could be public documents followed up by meetings, could just be meetings, or it could be trying to get press interest to put pressure on States...it really depends what the goal is.

Who is a part of these Coalitions? Are they composed of mostly international NGOs or are they composed of local NGOs?

Yeah, it is a real mix. So the Coalition for the ICC has 2500 members and you have a real range from international NGOs to local NGOs. The most active members, in terms of brainstorming, strategizing, and putting together joint positions, do tend to be the large, international NGOs. Some of those, like FIDH are federations with local and domestic partners, so in a way there is a direct connection for those groups working within a country. When it comes to the advocacy that we do regarding the budget of the court, in order to make sure that it has the resources that it needs to be effective...that discussion and that strategizing tends to be more about the international NGOs, but we try to get as many NGOs involved as possible and that communication is made by mostly email and conference calls.

We aren't doing this strategizing in person so that kind of opens up so that gives the ability to have a more inclusive process. And the Coalition for the ICC has a secretariat that runs the Coalition. We are a steering committee of the Coalition, but there is a Secretariat managing these kinds of issues, communications between members, informing members of different decisions, trying to get input on different issues. I see that from more of a member side, rather than being responsible for administering the Coalition. We also work with a more loose, ad hoc network of NGOs, that is not a Coalition of any kind. Specifically in Africa...so African civil society organizations or international organizations with an African presence like Human Rights Watch and they work on international justice issues as they relate to the African continent and certain specific concerns that have come out of that relationship between international justice, African states, and African civil society. And with that, that is mostly NGOs from different countries in the continent and a few international NGOs who have a presence and who are working in Africa.

Who would you describe as being the major players directing their advocacy towards the ICC?

The Coalition for the ICC for sure as the umbrella organization, Amnesty International, FIDH, REDRESS, and No Peace Without Justice. Many countries have a national coalition for the ICC, so you have the Ugandan Coalition for the ICC, the Congolese Coalition. It depends on the issue, but those Coalitions can be pretty significant players.

The Open Society Justice Initiative does a lot of work on the ICC. Those are the ones who come to mind, but I am sure I am leaving some out though.

You were describing one advocacy strategy regarding policy at the ICC was to have direct meetings and private meetings with the ICC. How has Human Rights Watch been able to gain access to the ICC through those meetings? Do you think that it is because HRW has a professional staff, the name recognition...or would any NGO be able to gain access to those meetings?

Well it is actually a very interesting story with the ICC because (I have a feeling that it might be unique) NGOs were just such a huge part of the push to create the court in the first place. So leading up to the conference in 1998 where the Rome Statute was adopted...NGOs were there, they were in the aisles, they were working with country delegations. After the treaty was adopted, there was all kinds of preparatory work that was done for the time when the treaty would enter into force and the court would come into being. And NGOs were a part of those meetings. So in a way, it is almost...you know, once a year all the countries that belong to the ICC (120 countries) get together for an annual session and we go as observers. I think that it is kind of unique the kind of access that is just expected that NGOs would have to these meetings...that they would be there and that from time to time they would be given the floor. I mean there is still a definite demarcation between governments and civil society and court staff. But it is almost like having a seat at the table in a way that I think is somewhat unique, partly due to the historic role of NGOs getting the court up and going. That seat at the table and then just kind of continued, at least for now, to roll over.

Who knows from now, as the court gets more established, maybe states will start to question how much...I think they have always thought that NGOs have a particular expertise to offer because the court is working in X number of countries at a time and the work it is doing at some level is supposed to be providing justice and responding to the concerns of affected communities in these different countries. So NGOs have that perspective to bring and the prospective of having seen other justice processes. I don't want to overstate it because it can still be hard to keep that state at the table and have a voice that states respect.

I do think that there has been a level of acceptance that NGOs have something to offer to this joint enterprise and institution. So that is just by way of background to say that I think NGOs have a unique role or seat at the ICC. It is not specific to Human Rights Watch, although since we were a part of that process to get this court created, we have stayed at the table. I don't know what the experiences of other NGOs who haven't been a part of the process the whole time...they have access to the court but again I think that the Coalition for the ICC has taken on many new members. It is through that Coalition umbrella that these kind of meetings take place. So twice a year there is a roundtable at the court with staff of the court and members of NGOs, which is facilitated by the Coalition for the ICC. There are different pathways that NGOs have had a seat at the table and it is hard for me to say how unique of a position Human Rights Watch has. Certainly the fact that we are part of a larger organization, that we have research in many

of these countries, in addition to the advocacy that we are doing on international justice...that certainly gives us an extra profile and an extra level of interest in our views and our position. But overall the position of NGOs, I think, is unique to the ICC.

What type of expertise is required for Human Rights Watch if you are going to be advocating at the ICC for the International Justice Program?

Well it is kind of hard to answer because if I look at my colleagues...well most of us are lawyers, but not all and most of us have had prior experience with international justice issues. I didn't for example. I was a fellow at Human Rights Watch and was working on Uganda and there was a big overlap with the ICC because of the ICC arrest warrants there. So I had some relevant experience, but not experience directly related to the international justice system. But I am a lawyer. I think that it is kind of difficult to give an answer on that. I think that there are different kinds of expertise that goes into what makes us effective researchers or effective advocates.

Do you know much about the history of the International Justice Program and how it was formed?

Well I should know more than I do know, but my understanding is that there was work being done on the push to establish the ICC. There was a lot going on. There was the ICC being created and there was the Pinochet case in the UK and Spain. So there were a lot of new developments going on in international justice and new opportunities to enforce human rights law. There were new opportunities to document and to get accountability for those human rights violations. I know that one of the priorities...there was sort of a strategic planning process within the organization and one of the priorities was decided to be international justice and the fight against impunity. It was out of that that the program was created and I believe that was in 2002, but I don't actually know.

And through your advocacy, have you been involved in any advocacy campaigns regarding the prosecution of sexual violence at the ICC?

Not so specifically. So the kind of advocacy that I have done has been trying to make sure that the charges are brought and the cases that are brought reflect the underlying patterns of crime that has taken place. So in that sense...you know there are some crimes that might be overlooked like sexual violence crimes or crimes against particularly vulnerable or are particularly not visible populations...and our advocacy has been at the somewhat general level. The strategy here should be selecting charges that reflect the breadth of an underlying pattern and of course where that includes sexual violence, to ensure that there are charges on sexual violence. So, it is advocacy more on a holistic strategy as opposed to a strategy of just trying to increase the prosecution of sexual violence. Which brings to mind one very important organization that I forgot to mention before is Women's Initiative for Gender Justice. They have been, along with Amnesty, have a more specific focus on gender violence. (The Executive Director there is Bridgid Inder. And someone who has a similar position as mine there is Kate Orlosky. She

actually used to be a consultant for Human Rights Watch. I know that there is a woman at Amnesty International, Indira Rosenthal, works at Amnesty International on specific themes of gender violence and international justice. She actually used to work for Human Rights Watch as well). I have to say that I have been here at Human Rights Watch for four years and we may have done more specific work on gender violence, but I am not so aware of it. Again, we have certainly called for its prosecution when it has been part of that underlying pattern of crime. The Office of the Prosecutor has a gender and children's unit, with expertise on gender. We have certainly joined the call for making sure that there is that gender expertise in the office and other parts of the court but I think we haven't had that much focus on looking why or why not sexual violence is being prosecuted or why it has not been as successfully prosecuted at the ICC.

What did you do in Uganda when you were a fellow for Human Rights Watch?

Well I was doing several different projects but my main project was documenting abuses by the army operations in the Northeast of the country. Not the area affected by the Lord's Resistance Army, it is another part of the country that has a really high rate of gun violence. The government was engaged in an operation to disarm and kind of get rid of guns in the region and they were committing a number of human rights violations in the enforcement of these operations.

I just wanted to jump back to when you were explaining that Human Rights Watch has direct meetings with the ICC. What information is presented at the meetings? Is it information that Human Rights Watch has gathered through their research and investigations or is it just general recommendations that the International Justice Program has for the ICC?

Well I would actually rather not get into the specifics of that. Some of the meetings are more open than others but I think that it probably would not be appropriate for me to go into the details of the private meetings. What I can say is that when we do a report on a country that the ICC is investigating, we certainly make sure that the court has that information and we certainly make sure that that information is passed along. You can see in a lot of our public materials that we would call for the Prosecutor to investigate a specific pattern or to make sure that investigations are impartial. We certainly make sure that the court is aware of our research.

Does the court ever request specific research or investigative findings from Human Rights Watch?

Yes it does.

What type of information do they request?

Again, I don't think that I can get into that.

I think that there are going to be limits to your research. I mean much like how I don't want to get into the specifics of what we might discuss in these meetings, there might be limits to what people might want to tell you because there is some confidentiality attached. Also, we also don't just relate to the Office of the Prosecutor. There is also defense and victims representatives at the ICC. We are a human rights organizations so we have an interest in fair and credible trials. So it is not just a relationship, by no means at all, with the Office of the Prosecutor. I think that the Coalition for the ICC would be helpful for you. I know that people are busy and they may not make it a priority to get back to you, but I would definitely keep trying to get interviews.

It might be useful for you to understand that there are different kinds of interactions NGOs have with the ICC. On the one hand, there are policy discussions. These could be on a range of issues – victim participation, witness protection, outreach, prosecutorial strategies. But they are not part of the investigations per se. Then, on the other hand, the Office of the Prosecutor in the course of its investigations may contact NGOs to facilitate investigations or to call NGO experts as witnesses. I think both kinds of interactions are relevant to your thesis – on the one hand, NGOs play a role in pushing as a general matter for the mainstreaming of the prosecution of gender and sexual violence crimes. On the other hand, some NGO experts may be witnesses in investigations.

On April 2, 2012, Jessica Welker interviewed Gaëlle Breton-Le Goff over Skype video call.

So I saw on your bio that you are a member of the Coalition for Women's Human Rights in Conflict. I was wondering how long you have been a member of that coalition and what you have done as a member of the coalition.

I have been a member of the coalition since 1999.

What have you done specifically as a member for the coalition?

Well I did a lot on monitoring the ICTR. Also investigating the prosecution and the choices made by the prosecution to prosecute sexual violence. I also worked for Sierra Leone. I had two field missions in Sierra Leone to work with the truth and reconciliation commission and to monitor the work of the Special Court for Sierra Leone. I also participated in the writing of the report on the courts, specifically the chapter on sexual violence. I was part of a group of people who were working on that.

Who else was working on that with you?

Binaifer Noworjee, Rhonda Copelon, Isabelle, etc.

And when you were monitoring the ICTR regarding sexual violence, were you doing any specific advocacy along with the monitoring?

Well we had people in the courtroom who were monitoring and observing, but at the same time this person had contacts with investigators or prosecutors. So we had different ways to get information. We had the official way, going to the courtroom, and also having small talks in the corridors.

In your experience monitoring the courts and working with the Coalition, were you influential in the prosecution of sexual violence?

Yeah, we produced the amicus brief in a case...we wrote it and we sent it to the court. Even if the court didn't accept the amicus...the court denied the request...first they decided to stop the trial and second they decided to invite the prosecutor to take more time for a deeper investigation into sexual violence. And the result...well the amendment...in the indictment they added sexual violence as charges of crimes against humanity.

Who exactly submitted this amicus brief?

Well it was a coalition of non-governmental organizations. We have in our coalition people who had experience working in Rwanda and people who knew real well the civil society in Rwanda. So because of these different contacts and specially with having

contacts with women's organizations we were successful in organizing this coalition and writing an amicus and sending the amicus to the court.

So was the coalition composed of international NGOs or was it predominantly local NGOs?

Well you have to understand that the coalition is a virtual network of people. The coalition members are people, not really non-governmental organizations. We have people who run NGOs, like Carla who runs REDRESS in the UK. We also have Congolese partners who run NGOs. But most of the people who are there are there as individuals, not as representatives of an NGO. It is because they have special expertise of sexual violence in conflict. So we are a group of people coming from Africa and North America and the UK.

So this amicus brief that you were talking about earlier...what specifically was in the amicus? Was it information regarding the investigations that members had conducted? What exactly was in the amicus?

Well you probably know at that time that in 1996, Human Rights Watch published a report about sexual violence in Rwanda. They documented the fact that rapes were systematic at this time. Anyway, first we wrote to Goldstone, who was the prosecutor of both tribunals at the time. He understood that it was necessary to prosecute sexual violence and apparently he had information for Yugoslavia, but not really for Rwanda. And you probably know that Goldstone didn't stay for long there. So when the next prosecutor came we contacted her to ask her what is going on with sexual violence (in Rwanda) because it was enormous and nobody was willing to prosecute it at the ICTR. At the beginning she wasn't convinced about this. And you also have to understand that this context was very hard for a prosecutor to work on ICTY and ICTR. She was the prosecutor for both trials and her task was very large and heavy.

After trying to encourage to prosecute sexual violence unsuccessfully we decided to submit an amicus. There was an article in the ICTR that allowed people to file an amicus brief. An amicus brief is an expert argument. So what we did in this amicus...we didn't do it without having any evidence. What happened in the Akeyou case is that four witnesses talked about sexual violence when they were testifying. They were not supposed to do it but they did. So once we noticed that we had an opportunity to file an amicus we used this information because it was in the court and in transcripts. So we used it and we used the information from the Human Rights Watch report and we said that there are witnesses and testimony about sexual violence, you just have to find it and document it. We also had different legal arguments. Usually amicus briefs are not supposed to be factual, they are supposed to be legal. So we developed legal arguments and specifically talked about rape and crimes against humanity. We also talked about rape as a tool of genocide.

We also sent another amicus brief in another case with three people being prosecuted in a joint indictment. We knew at that time that the prosecutor had testimonies and evidence

of sexual violence in those cases. We also knew that...it was a different prosecutor at this time and we knew her. We knew that it was the choice of Carla del Ponte not to prosecute sexual violence even though they had evidence of sexual violence. So we also sent an amicus brief, but this time it didn't work and the amicus was denied and we were not successful.

Do you know why the amicus was denied?

Well, yes. First the court said that the amicus came too late in the trial. Second, it was because we asked the court to stop the trial and invite the prosecutor to amend the indictment to add sexual violence charges. They said that we were overruled by the power of the court, so they didn't accept this. And you have to understand that an amicus brief, accepted or not, is something that is discretionary. The court is not obliged to accept it.

Have you been involved in any advocacy efforts to prosecute sexual violence at the ICC?

Yes.

And what specifically have you done?

Well all the DRC cases and also the Bamba case.

What type of strategies or tools have you used to advocate for sexual violence prosecution?

There is an organization in The Hague called the Women's Initiative for Gender Justice. They are doing a lot of advocacy regarding sexual violence at the ICC. So we choose not to redo this work. We are located in Montreal and we are not at The Hague and we don't have enough resources to go to the Hague often and be involved in discussions. So we decided not to do the kind of advocacy that we were used to doing at the ICTR and to let the Women's Initiative do it. Of course we did some press conferences and went to the Parliament in Canada to sensitize our parliamentarians to do something for the women in DRC because the situation is absolutely awful. This was more of a development approach and we did this to convince our parliamentarians to adopt some policies in favor of the fight against impunity regarding sexual violence in the DRC. We began to work on the reparation issue, because all these women need to be compensated and need reparation for what happened...we organized a seminar conference on reparation.

When you say "we" who do you mean?

Well, the Coalition.

What role do you think that NGOs played in contributing to the prosecution of sexual violence at the ICC?

There are two things. First, local NGOs were called by the ICC prosecutors to be intermediaries between witnesses and the ICC. Why? Because for security reasons, most of the time, the ICC prosecutors could not go into the field to find witnesses. So they contact NGOs known to work with victims and they have the NGOs bring the victims to them. If you read the Lubango judgement, you will find the role of intermediaries from local NGOs. And you will also find what kind of problems are coming from this. Second, when the first prosecution began in DRC...there was a state of war and it was dangerous. At the same time the Security Council sent the Darfur file to the ICC because at the time the ICC did not have so many investigators. So Ocampo (the ICC prosecutor) decided to take those investigators out from Congo and send them to Sudan. So what happened...they stopped the investigation to go to Sudan. When the investigation returned to the Congo, the investigators were different because there is a lot of turnover at the ICC. So that is why it was difficult. Ocampo wanted to go very fast with the case because he wanted to show to the world that the ICC was working. So he decided to go with this case on Lubango. There were only two kind of charges...recruitment of child soldiers and nothing about sexual violence. So what happened at this time, the Coalition for Women's Human Rights in Conflict and the Women's Initiative for Gender Justice...we thought about filing an amicus brief. Finally we sent an amicus brief and as you probably know, this did not succeed. So the Lubanga case went to the court and did not have charges of sexual violence. And after that we had press releases and we went to the ICC...we decided to be part of the Coalition for the ICC committee on sexual violence. On the Katanga case you have some sexual violence charges, but you could have more. Of course, we continue to monitor the work of the ICC and the way they are charging sexual violence.

What role do you think that bigger international NGOs have in prosecuting sexual violence in international criminal courts?

What I know...they don't have a lot of influence. The Prosecutor decides his own strategy and he has to report to nobody. He is the only one who decides the prosecutorial strategy. Ocampo was not really interested in prosecuting sexual violence because it would have been possible for him to have the court amend the indictment in the Lubanga case. After the Lubanga fiasco on sexual violence, big international NGOs like Human Rights Watch and Amnesty International and FIDH...we were so upset by this lack of understanding about sexual violence. We made a lot of noise. And if you go onto the Human Rights Watch website or the Amnesty website or the FIDH website, there is a mountain of documents documenting sexual violence in DRC. For after that it is not really possible to ignore sexual violence. I think that because the NGOs were so vocal...you had the first amicus brief...he knows that he is being watched by NGOs on this issue of sexual violence. It is interesting to see how this issue of sexual violence is attracting attention. Every international NGO is interested in this matter.

Do you think that given this legal environment that NGOs are working in, these NGOs have professionalized to be perceived as more legitimate and improve their advocacy strategies?

You have NGOs like Human Rights Watch for a long, long time working on sexual violence. They have knowledge and they have money. They can send people to the field and they can maintain people in the field for one to two years. They publish and do reports.

Do you think that since the ICTR these organizations have become more professional?

I have no idea, I cannot answer.

What about your experience with the members of the Coalition that you are a part of?

We are all lawyers.

And how do you think that that has helped with your advocacy efforts in prosecuting sexual violence?

Well it helps toward the legal argument. It helps to identify what kind of strategy to use. It helps to understand and identify through the course of the trial what is problematic and that is why we can sometimes have small legal discussions with prosecutors and judges in the corridors regarding specific parts of law. It could be a technicality but it could be a technicality that is important for the court. Yes, it helps us. Also we monitor the work of the ICC, we are able to see how crimes are interpreted and the evolution of this interpretation and the danger of this kind of interpretation or not. Most of the time the discussion that we can have is informal. We are going in public when we usually didn't succeed to do it informally.

Have there been any tactics that have evolved within this broader network of advocacy for sexual violence prosecution?

Before it was only us doing this advocacy. Since that time it has changed a lot, especially with the ICC. So strategies didn't really change since that time but there are more players now. There are more organizations working on this issue.

Who do you see as being the major players for influencing the prosecution of sexual violence?

Well I wouldn't say influence because the Prosecutor is hardly influential. But in the ICC on Bemba, FIDH played apparently a very important role in documenting sexual violence and identifying witnesses and they sent this information to the Prosecutor. I would not generalize...I can only tell you about what happened with FIDH in the Bemba case. In the DRC there have been many reports and documentation has been sent to the Prosecutor in the Lubanga case and they didn't succeed. So the effects of two same kind of actions are different. I don't know what happened. I have an idea. I think that in the Lubanga case the Prosecutor was in such a huge hurry to push the first case for the ICC. And Bemba was after and they had more time and more people who were better trained like investigators.

On April 19, 2012, Jessica Welker interviewed Juliane Kippenberg in-person in Berlin.

Due to technical difficulties, this interview was not recorded and therefore could not be transcribed.

On May 8, 2012, Jessica Welker interviewed Binaifer Nowrojee over the phone.

Where you the only researcher doing research for Human Rights Watch on sexual violence in Rwanda or were there other researchers?

There were two of us. Me and a woman named Janet Fleishman. And we basically put together the report, Shattered Lives, which came out in 1998.

I understand that you were an expert witness for ICTR. Did you serve as an expert witness because of your work in Shattered Lives?

Yes, I served as an expert witness for the prosecution at the Rwanda Tribunal based on the research that I had done interview rape victims about rape as a weapon of war during the Rwandan genocide.

Did the tribunal reach out to you to be a witness or was it part of your advocacy for the report to reach out to them and offer yourself as an expert witness?

Well if I can just tell you the story of how it all came to be. Essentially, the Rwandan genocide took place in 1994. At that time at Human Rights Watch, I worked for the Women's Rights Division, looking at gender based violence issues. And there had been a lot of discussion of rape as a weapon of war in the former Yugoslavia and discussions about justice for women. And it had been assumed that the gains that had been made in terms of prosecution for perpetrators of sexual violence at the Yugoslav Tribunal would essentially continue into the work of the Rwanda Tribunal. So 1995, 1996 we continued to watch the work for the Tribunal for Rwanda and began to realize that in fact, there wasn't much done in terms of looking into crimes against women. So in 1996, two years after the genocide, I traveled with a colleague to Rwanda and we spent some time tracking down women victims who had been raped to get their testimonies. That eventually became the basis for the report, Shattered Lives. Now when that first came out, when we were finalizing the report, the first indictment came out of the Rwanda Tribunal against the mayor of a place called Taba. A man named John Paul Akeyesu. And he was charged with 19 counts and none of them included sexual violence. We had been to Taba several times because there had been so many victims of rape there. So we contacted the Tribunal to say how could these be there was extensive sexual violence that took place in this area, how could you not count him responsible for sexual violence? At the Rwanda Tribunal you are charging people for not necessarily doing the crime themselves but also for being in the position of responsibility to prevent or punish it.

What is called command responsibility. So essentially we went back to the Tribunal and said how can this be and we shared testimony without providing the names, but testimonies. And they eventually sent another team to go back and re-do the interviews and look for sexual violence victims. We continued to try to push the Rwanda Tribunal to do something and another year went by and nothing happened. And eventually I went to a group of women lawyers to file an amicus brief at the court, which basically two to three weeks after that was filed and there was an appearance of two rape victims, who spoke about rape on the stand. The court recommended that the prosecution go back and look into the issue of sexual violence and they amended the charges almost to the point where the prosecution was going to close the case. And then when the judgment came out it was a groundbreaking judgment that was essentially historic in that it charged sexual violence as a crime of genocide for the first time ever and it also charged sexual violence under the Geneva Conventions in an internal conflict. So the judgment became a groundbreaking judgment in terms of ensuring justice for sexual violence victims at the international level. But it was a long struggle to get it and had the tribunal at the get go had been able to just follow some its own course, it is very unlikely that without the advocacy and pressure for them to look at justice for women, they wouldn't have done it on their own. Subsequent to that, they began to look much more at this issue and you have different prosecutors that come forward. So the first prosecutor was Richard Goldstone, who basically set up a lot about charging sexual violence as a group but actually nothing happened. You have the second prosecutor Louise Arbour, who actually does significant work. She creates the sexual violence team that begins collecting testimonies. She begins to think of ways that this can be incorporated and added as amendments to the charges. So during her tenure you begin to see a number of cases starting to get amendments adding sexual violence charges in to the point where by the time she leaves, up to 100% of cases coming in under her watch include sexual violence charges. She has been replaced by Carla del Ponte, who has no commitment to this issue. And over Carla del Ponte's time she begins to ignore these issues. So that by the time that Carla leaves, there are zero percentage of sexual violence charges being brought in the new cases filed under Carla. So you begin to see how the political will of the prosecutor in looking at these issues is extremely important. So you are still at the stage where sexual violence charges aren't being incorporated as crimes of war. It is very much dependent on the political will of leaders in place. The next thing that you find is that the skill set of investigators looking at this crime is often wanting. So when you start looking at the witness statements that are collected by investigators...you find hit and miss. Sexual violence is added on as an afterthought. It is not properly integrated at the beginning of the ICTR's work, amendments are brought later, it is not put into the case mapping at the get go. And so what you find is that when prosecutors are ready to walk to the courtroom they have a situation where the cases that they are bringing are weak because it has not been properly investigated in terms of training of the investigators on how to collect evidence, the elements of the crimes and what they need to gather and incorporating it in part of a bigger picture. So if you think about the scale of sexual violence and the fact that in Rwanda hundreds of thousands of women were raped and often in public places, virtually every indictment should include culpability and responsibility for sexual violence crimes but in fact that is not the case at all because it has been added on as afterthought.

So what type of pressure did you place on the court? Besides the amicus brief, were there any other type of advocacy tools that you used when you were pushing for this type of prosecution at the ICTR?

Well essentially the report published by Human Rights Watch was one of the first reports that had collected and documented these crimes in a way that showed the widespread nature of them. So the report itself became an advocacy tool because it was out in the public domain so that at first tribunal officials were saying “well it is different,” “well African women won’t speak about it.” But it was clear when Shattered Lives came out that in fact the interviews were conducted in a conducive manner where women had enough privacy and trusted to speak that they would talk about these things. The other thing that I did was to work to help the prosecution team to look through their cases and assist them. So it wasn’t just a matter of criticizing and pointing out the short falls, but also trying to constructively assist the prosecutor’s office in terms of looking at the evidence, looking at their witness statements, and serving as an expert witness in some of the trials.

After you published the report, did you have any other type of follow up advocacy?

Absolutely. That report, well any Human Rights Watch report that is done is just the starting point for a whole campaign to bring this issue to the attention of policy makers, of women’s rights groups. So there were a large number of meetings that were held with government officials, with humanitarian groups, with the Rwandan government, etc. You will find in the report that there are also recommendations for different actors, including the Tribunal. So the report becomes a starting point for meetings and discussions about how those recommendations could be implemented.

I saw in the report for Shattered Lives that it was a collaboration with FIDH. At the time were you collaborating with any other international NGOs in your advocacy campaign?

Yes. I was part of a group called Women’s Coalition Against Violence Against Women in Armed Conflict. So I worked with a broad based group of other feminists and legal scholars who were interested in ensuring justice for women. So it was very much a collaborative effort. It was never a solitary pursuit. And of course there were people within the Tribunal who were individually interested in ensuring that this issue was covered and we also worked with them. There were those in the Rwandan government, there were women’s groups themselves working to make sure that justice was an issue that was covered and doing awareness raising.

Besides Human Rights Watch, which organizations were the major players in pushing for prosecuting sexual violence at the ICTR?

Well the Coalition that I was talking about, which was a number of different groups and individuals. Rights and Democracy in Canada the organization that housed the Coalition so it was critical. The Open Society's Justice Initiative came later on. There was some attention at the get go but eventually there was not that much attention to the situation in Rwanda.

When you were interacting with the prosecution at the Tribunal for Rwanda do you feel that they interacted with you as a professional or did they view NGOs as mostly amateurish?

I think that it is very much mixed. I don't think that there was an institutional policy at all. I think that it was very much independent on the individual prosecutor. But after a number of years of being criticized for not taking this issue too seriously I think that there was a number of trainings and awareness raising and ultimately a lot of respect. My colleague Alison des Forges also served as an expert witness in virtually every single trial. Her background was Rwanda.

Have you done any advocacy at the ICC?

I have done trainings. I trained the Sudan and Central African Republic teams on collecting evidence and human rights victims. But I am not involved in those trials in the same way that I was at the ICTR.

How many years were you involved in an advocacy campaign geared towards the ICTR?

About ten years. And then I got a fellowship and I took a year off work and spent a year in Rwanda talking to the women who testified at the tribunal in order to get their views of international justice from the perspective of a rape victim. We all celebrate the judgment if we are lawyers but nobody goes back to check how the women and witnesses perceive this justice. I took a fellowship and I ended up writing an article called "Your Justice is Too Slow."

While working on this campaign for ten years did your tactics and strategies for advocacy change?

Absolutely. Over the years I got to know a lot of people at the tribunal and work collaboratively with them, I was a witness. I wasn't just advocating, I was also providing as much as I could in terms of assistance and lending my skills to what they were working on. The Tribunal itself also matured. In 1996 the Prosecution office was saying "women don't talk about these things" and you won't find anyone who will say that now. So I think that they has been a change in the Tribunal at all levels.

So are you saying that after a while that they matured and changed and at the same time you were doing a lot of work with them? And as a result your tactics and strategies evolved as well.

Yes, that is correct. I think that you are articulating that correctly.

What specific advocacy tools were you using in the last couple of years?

In the last couple of years I was basically part of the training that was for staff in the Prosecutor's office. So I served as a trainer. I served as an expert witness in the trial. I assisted in terms of research or brainstorming with the prosecution. And I still play a bit of a role in terms of trying to push prosecutors who say that we should drop these charges because they are not strong enough. So I am still an advocate for retaining these charges and prosecuting them properly.

So when you say that you did trainings, were you doing trainings on investigative strategies?

Yes. On investigating and prosecuting. The first stage is to actually collect the evidence, which is the investigative stage. The second stage is to actually make the case in the courtroom, which is the prosecution stage. So trying to assist at both levels. A lot of the work on investigations was done early on when there wasn't proper investigations, which were hampering lawyers who were even interested in these prosecutions. The experience in the Rwanda Tribunal, I think, very heavily influenced the way in which the Special Court of Sierra Leone undertook their investigations. If you look at the way they have undertaken their investigations, they did all the things that the ICTR didn't do, which is that it incorporated sexual violence at the beginning. It allocated specific, experience staff to look at the sexual violence charges, it brought those charges into the courtroom in an integrated way. Actually you will see the latest conviction of Charles Taylor actually incorporates sexual violence charges. I think the lessons were learned from the Rwanda Tribunal. You have to remember that the prosecution of sexual violence crimes is a relatively new phenomenon. The Nuremburg trials did not prosecute sexual violence at all. And the Yugoslav Tribunal was the first to do it, it was the first international court to look at the issue seriously. So it is a very young development in law. So we are basically creating history here. It takes a bit of time.

Were there any other organizations besides Human Rights Watch that were providing trainings and investigative strategies and expertise to the prosecution at the ICTR?

There must be because again I said...you must speak with some people from the prosecution to check what they relied on. But obviously they looked at UN peacekeeping operations, they looked at the UN Human Rights Council, etc. So they were relying on a number of places to get assistance, not just the NGOs.

During your advocacy campaign were you also collaborating with local NGOs?

Yes, absolutely. A lot of the work, in fact, all of the work was done with local NGOs, who we assisted in a number of different ways around what the...in terms of continuing to meet and support groups, helping them to access international advocacy venues and to

raise their voice in different places, bringing them to speak at the UN and other places to ensure that their position was not forgotten.

So was a bigger NGO like Human Rights Watch able to facilitate access on an international level for the local NGOs?

No, this wasn't through Human Rights Watch, this was through the Coalition for Women's Human Rights in Conflict, which was a basically a coalition of many different groups that worked through Rights and Democracy in Canada. That Coalition really did a lot..it was an amalgamation of different interests; legal, feminists, women's rights groups, and individuals who came together around this issue. And just to say nothing is ever done by just one person, it is always a collective effort of a large number of people; the judges on the bench, the prosecution, people in the registry, etc. So it is always a collective effort.

What was your professional background before you began to work on the research for Shattered Lives?

So by training I am a lawyer and my background was human rights. So I started with the Lawyer's Committee for Human Rights and then I moved to Human Rights Watch. And I have a Master's in International Law from Harvard Law School.

On May 11, 2012, Jessica Welker interviewed Ariane Brunet over the phone.

Tell me about how you created the Coalitions for Women's Human Rights in Conflict Situations.

Well in the 1990's, 1993 and 1994, we had published a report on Rwanda genocide. There was very little attention given to the issue at the time, neither by the UN or by the international community for the violence that women had gone through in conflict situations in the context of Rwanda. At the time there was the UN Commission and the European Commission that came just after it, who went to Yugoslavia where the war was raging on. So I tried to study why that was...I was at the time working as well to influence...we won that battle to influence the Canadian government to become the leader on that resolution for the appointment of United Nations Human Rights Special Rapporteur on violence against women at the United Nations Human Rights Commission, which is now called the Human Rights Council.

Then again I noticed that very little had been written on this issue. Then came in 1996 a report Human Rights Watch that had been written by a woman called Binaifer Nowrojee on the situation of violence against women, particularly rape, in the context of the genocide. It was called "Shattered Lives." That is what interested me and that is when I started to phone Human Rights Watch, the Women's Rights Division, and Africa Watch. I talked to them about whether they had an interest in being part of a coalition that would look at the issue of impunity on violence against women in conflict situations. Immediately Africa Righthst Watch was interested as well as the Women's Rights Division of Human Rights Watch. So after that I went to the Canadian universities and then to CUNY, to the Women's International Human Rights Law Clinic, which was then directed by Rhonda Copelan (who died two years ago). The University of Toronto and CUNY Women's International Human Rights Law Clinic.

Well at the beginning I had many young third year university students and Ph.D. students who got very much interested in doing the legwork for us. Then Jon (last name undecipherable), which is now a refugee lawyer in Boston...but she was based in the Ministry of Justice in Rwanda for a good three years at the time got interested. Then Women in Rural Development Association in Rwanda. Then a lawyer's women's group in Rwanda started to develop an interest in the violence that occurred towards women during the genocide. Then a women's lawyers association based in Kenya got interested. Then the Human Rights Center at Berkley got interested. All that happened within a year to a year and a half of the creation of the Coalition. Then I got some women's groups and human rights groups in Belgium to be interested and be a part of the Coalition. The core group of people making decisions were a group of six or seven of us. And we made the decision to try to look for a way to introduce ourselves with the Tribunal for Rwanda, which had barely been established at the time.

So how were you all able to establish yourselves and introduce yourselves with the tribunal?

Well mostly because we did the amicus briefs. Well we wrote letters to the Registrar, informing them of the creation of the coalition. We didn't get much response at the time. And then when we decided that we would particularly focus on the first case, which was Jean Paul Akayesu's case, then we decided with the help of the students both at Toronto and CUNY University to zero in on the issue of the Jean Paul Akayesu case. We presented an amicus brief, which was signed by well over 160 NGOs around the world, demanding that rape be considered as an act of torture, as a war crime, as a crime of genocide. By the defense and certainly for the jury to be aware of that and the only way that we could do that was to submit an amicus brief.

And so what was the response of the court?

The usual...technicalities and uneasiness by the court to see NGOs, although willing to answer us in polite ways. They started to give us the run around about technicalities. We tried to respond to those technical points at the time, but nonetheless insisted that our amicus brief be accepted. So we continued that fight. We didn't win that fight, but the fact that we continued to present amicus briefs, to correct the technicalities, certainly raised the issue. At the time there was a sexual violence group that was created within the Prosecutor's Office, so we befriended the head of it at the time and we started to write letters about Akayesu insisting that this issue had to be taken up by the Prosecution. So I think that by constantly harping the point, first by the amicus brief, the correction to the amicus brief, the technical letters that we sent to the Registrar's Office, the articles that we managed to get into various websites, and the interest that started to gather with big NGOs like Human Rights Watch. Although Amnesty was never part of the coalition, Amnesty started to become very much interested. They were not yet very involved with the criminal courts as they now are with the ICC.

So when you first submitted that amicus brief and it wasn't accepted, you said that you made some corrections. What corrections did you have to make before re-submitting it?

Well it was really technical and I can't remember. I am not a lawyer, but everyone else at the coalition is a lawyer. But if my memory is correct, it had a lot to do with the fact that we hadn't submitted the amicus brief in the proper time. We argued that other amicus briefs had been presented and as far as we knew they were also not submitted in the time that was cited on the webpage. There was also an issue that we hadn't noticed and we had been looking at their website regularly. I mean, this was an essential part of our work to look at the ICTR's website and we never saw it. So there was discrepancy between what they were saying and what we actually witnessed through the times when we were actually looking at this website. I mean that was not admitted on the website or was written in a way that was not visible and it was added as an afterthought they did put the information on the website about the amicus and that it would be accepted by the court.

You initially said that when you were advocating at the tribunal there was an initial uneasiness to recognize NGOs. Did that change over time? Do you feel that the court was more receptive to the advocacy of the coalition and other NGOs on the specific topic of sexual violence?

Unfortunately there weren't that many NGOs. We have to be honest. And it was not easy for Rwandan NGOs to bypass their government to make their own decisions. That is why it was interesting that they were part of our coalition. But every year the Rwandan government would hire within the Ministry of Justice the women who were working with us in the various NGOs. So it was very difficult to keep track...that lawyer's group that I told you about...their lawyers kept being hired by the Ministry. And I can well understand that the Rwandans would go to the Ministry because the Rwandans were very poor at the time and such an offer could not have been bypassed. I am just trying to explain to you why we were so few NGOs working on the Rwandan Tribunal. We were really a minority and the NGOs that were working on the Rwanda Tribunal were part of the Coalition. So for the longest time we (the Coalition) were alone. Just as Medical Mundial has pretty much been alone working with the ICTY on violence against women. It is around the same thing, it is German NGO that is based in Colon, which has done extraordinary work on keeping track of the cases of the ICTY. They were our counterpart working on that while we were working on the ICTR.

You had mentioned that Human Rights Watch was one of the bigger NGOs in the Coalition, were there any other major international NGOs that were part of the Coalition.

Yes, as I said at times and on and off...FIDH, African human rights organizations, Berkley Human Rights Center. You know my memory is faulting, but in those days...but the core group pretty much stayed the way we are now. That was the beauty of the Coalition. There wasn't a membership...nothing like a constituency. The Coalition was composed of people who actually wanted to do the work and were volunteering their time. So I am very happy to say that for nearly 20 years is the same people that are a part of the working group (within the Coalition) that were doing this work on a volunteer basis. They put in a lot of hours over the years.

I forgot the CCR (Center for Constitutional Rights). The CCR was very important...it was a core member and still is. There were Rwandans and Kenyans who were part of the Coalition who would go and meet with the Prosecution and talk about the cases that they were going to present to the court. They would talk to them about our own research that we had done in Rwanda. They told them that they should include violence against women in the charges. They sat in on some of the cases to report to us what was going on and how the Tribunal, judges, defense, and prosecution was handling the cases that we were following. We could not follow every case. This was impossible because as I said we were volunteering our time and the only persons that were paid were basically the persons who were working at Rights and Democracy Center, where I initiated the Coalition. People like Binaifer Nowrojee because she had been at Human Rights Watch and wrote the only report that we knew of at the time, on sexual violence against women during the genocide. Binaifer ended up being an expert to the court more than once,

which was very good for us because it not only made our work visible but it also showed the kind of research that we were able to do to assert the points that we were trying to make and for the prosecution to deem our work important enough. So that was useful for us.

Do you think that after having Binaifer as an expert witness at the court, the court viewed the work of the Coalition and other NGOs as more professional or were they always viewed as professional?

Well I don't think that professionalism was the big issue. I think that the court has always found that there was professionalism in the way that we were working. The doors were open to us at the Registrar's Office and the Prosecution Officer. So that was never an issue for us. The issue more importantly was how much influence an NGO could have on the proceedings and how much the court was willing to consider civil society as part of the push to prosecute sexual violence. In 2004-2005 we did an analysis of the cases that were presented to the Tribunal and how many of the cases add rape as part of the accusations and how many times these cases had been dropped when there was an out of court agreement. And 90% of the time the charges were dropped. Of all the charges that the defendant had against him or her, rape was the first charge dropped and referred to mediation and negotiation. If NGOs weren't pushing, the situation would have been worse and there would have been less chances for rape to be a part of the charges.

You were a board member for the Women's Caucus for Gender Justice. And then you were on the advisory council for the Women's Initiatives for Gender Justice. I was wondering if you used any similar advocacy tools and tactics that you used from your time advocating at the ICTR.

You have to remember that one of the members of the Coalition was Rhonda Copelan. She is key in this discussion because she was the first feminist lawyer who made a case and wrote extremely important article to prove that rape was an act of torture and should be considered as an act of torture. She was a member of the Coalition before she was a member of the Caucus for Gender Justice. The Caucus worked to include violence against women into the Rome statute. About eight of us from the Coalition were part of the Caucus. And there were about 40-45 women in the whole process to advocate the Rome Statute. And don't forget that the judgment for the Jean Paul Akeyesu case had already happened before the Rome Statute.

So we had few legal tools available to us when we sat and worked on the Caucus and the various tactics and strategies to ensure that women's rights and violence against women would be included in the Statute. The fact that the Akayesu case concluded that Akayesu had command responsibility and that rape was an act of genocide and a form of torture, was a huge help for the Caucus when the time came to lobby and strategize in Rome. You see what was interesting with the Coalition and the Caucus was that we knew how to work from the European/African/North American perspective. Then came in the Latino women who had done extraordinary good work at the American court. They came in

with their sophisticated analysis of this issue. Some of our students finished their PhDs with focus on command responsibility, who were key in the negotiations because of her deep knowledge of the issue at the time. The Canadian government was very important in the negotiation of the Rome Statute. So there is no doubt in our minds that the presence of the Women's Caucus for Gender Justice and the many members of the Coalition, there would not have been the inroads made at the Rome Statute. It is linked.

And are you still part of the advisory council on the Women's Initiatives for Gender Justice?

Yes, but I am not participating in the way that I used to. There is no doubt about that...for the past two years.

When you were a little bit more active on the advisory council, what did you do?

We received strategies and issues to address at the ICC we would basically give our opinion on that. And I did that as an individual, not as part of the Coalition.

Were other advisory council members people who had worked on advocating prosecution of sexual violence at other criminal courts?

Yes, many. If you look at the advisory board, which I am sure you have, you will notice that the quality of the people there. I think of Cecilia Medina, who did so much work at the American court. I think of Elizabeth D, who left the advisory board because she is now a judge at the court. I think of Kristin Chinkins who is a lawyer/professor who was one of the judges on the War Crimes Tribunal on Sexual Slavery by the Japan military during the Second World War. She was a very important judge for that popular tribunal and who has done a lot of work on this issue. I see Rhonda Copelan, who is now deceased but she was an advisory board member. And many more who do not come to my mind. But it is a very rich advisory board.

So the advisory council strategizes and gives opinions on different tactics?

At the time, although more and more it started to be less so. Transitional justice was something that donors were more and more willing to give money to, I would say in the last four or five years. In our days when we started, nobody was interested in it. When we started the Coalition, besides my own organizations which I cajoled and pushed to do this...it was difficult to convince donors at the beginning because nobody was doing it. But today that has tremendously changed and there is a lot of money out there for transitional justice whether it is from a national basis or an international basis. I know that there are millions of dollars in transitional justice. There are also budgets at UNDP, UNHCHR, UN Women, which have changed the portraits of action in transitional justice.

So are you saying that because there has been more funding at the Women's Initiatives for Gender Justice to have a staff that there is less reliance on strategizing from an advisory board?

That is the impression that I have, but I don't know this for a fact because I haven't really been a part of the board for the past two years. So I am not a good judge of that. But I can say that they have more capacity to make decisions now because they have a stronger staff. Before when they were very ill staffed, they needed to rely on our expertise. There is a change in how decisions are made when you have a staff and in house decision making processes instead of trying to reach people who are not always readily available.

And one last point. In as long as the international community gives an interest on a particular country, transitional justice, as precarious and difficult to work, functions more or less. But when civil society wants and insists on such a process, it is very different battle. It is important to understand that states see civil society as a nuisance rather than as a capacity to help. It is also true that these groups that have managed to work closer with the ICC.

There is also victim support and reparation. Also we saw an immense need to bring victims within the coalition and they have stayed with us. Usually women who are victims do not want to stay victims and they become activists and it is certainly the case in conflict situations. Victims kept saying to us years after years that transitional justice did not mean much for them, it wasn't doing much for them. They had been ridiculed. You can read in Binaifer Nowrojee's excellent essay on the Rwandan Tribunal, the issue of the laughing judges. It was a case where the defending lawyer pushed and pushed the victim to describe exactly the rape in detail and she couldn't. It is not her culture to say that kind of stuff in front of men she didn't know, she fumbled, and at one point the judges laughed at her. To us, it was the biggest scandal that we could think of. Binaifer wrote a beautiful and heartfelt piece on this. This was 2004-2005 and we started to understand that couldn't only be technical and looking at the impunity issues, we have to pay attention to what the victims are saying. Redress, an organization that focused on victims joined the Coalition. We started to look at two issues. Number one was that we had to pay attention to the laughing judges and what that meant. We decided to fight for the protection of witnesses. We wrote numerous letters on how women who were raped needed to be differently protected and how their needs needed to be met when they were coming to the Hague and Tanzania. How they themselves viewed the protection and services offered to defendants at the court. They saw the accused with protection and medicine. The second struggle was looking at the remedy of reparations. We invited victims, activists, and lawyers from all over the world to present a declaration to the judges of the ICC. We were amazed by the excellent reception that we got from the ICC and the voluntary fund of the ICC. We have to admit that an old member of the Coalition became the president of the voluntary fund for the victims at the ICC, which helped. It is important to say this because I don't want to say that the only thing that counted to use was the relation to the court. But the relations with the victims and how to improve their protection and reparations were also important.

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