Testimony of
Dr. Kelly Dawn Askin
Senior Legal Officer
Open Society Justice Initiative

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Rape as a Weapon of War:
Accountability for Sexual Violence in Conflict

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Chairman Durbin, Ranking Member Coburn, and distinguished members of this Subcommittee, I commend you for taking up the issue of wartime sexual violence, a crime that is destroying the lives of millions of individual victims, their families and communities in dozens of conflicts world wide—but which is all too often ignored by those who can help. I am heartened and appreciative that this remarkable Subcommittee–which in less than a year has provided extraordinary leadership on ensuring accountability for genocide, gross human rights abuses, conscripting child soldiers and trafficking in women–is turning its sights to this horrific scourge and tackling one of the most frequently committed crimes.

My testimony will first briefly address the contemporary problem of wartime sexual violence worldwide. I will then provide an overview of the historical treatment of rape as a war crime, and highlight the key contemporary jurisprudence redressing sexual violence in the context of war or mass atrocity in the jurisprudence of international and hybrid courts established since the 1990s. Next, I will examine some of the reasons why women need justice and why punitive measures are necessary to both prevent rape crimes and to reverse stereotypes which attach to sex crimes and serve to perpetuate their commission. Finally, I will suggest action which can be taken by this Subcommittee to close loopholes in U.S. law which may deny accountability to those who commit, aid, and abet wartime sexual violence.

Global Context: Wartime Sexual Violence is Rampant Worldwide

In 2004, the Bush Administration set up the Darfur Atrocities Documentation Project in which the U.S. State Department and the Coalition for International Justice assembled dozens of investigators to interview over 1100 victims and witnesses in Chad about the crimes committed against them in Darfur. As a result of the testimonies, then-Secretary of State Colin Powell termed the Darfur crimes a genocide. I collaborated with this project, and at refugee camps and in makeshift huts on the border of Darfur, I met with camp leaders and women survivors who told heart-wrenching and consistent stories of

gang rape, sexual slavery, and other crimes committed by the government of Sudan and their *Janjaweed* puppets. Earlier this year, I spent a couple of weeks in the eastern provinces of the Democratic Republic of Congo, where I met more survivors who told terrible stories of their own sexual abuse, as well as the rape of babies from eleven months old to 86-year-old women. I travel frequently to Rwanda, Uganda, and Sierra Leone, where sexual violence has been committed in epidemic proportions, affecting millions of lives. Rarely are these crimes prosecuted, particularly when government leaders are architects of the crimes. Rape is exceedingly common during armed conflict.

But make no mistake about it: sexual violence, including wartime sexual violence, is not just an African problem, it is a problem of enormous magnitude in every region of the globe. I have worked with each of the international and hybrid courts set up in the past fifteen years and have traveled to dozens of conflict and post-conflict zones. During the course of my work on international crimes and gender justice, I have had the opportunity to speak with rape and sexual slavery survivors of World War II from Europe and Asia, with women from Burma who have been subjected to rape campaigns by the Burmese military, with Cambodian women who were forced into marriage to Khmer Rouge soldiers in the late 1970s, with Bangladeshi/Bengali women raped during the war with Pakistan, with Haitian women who had their gang rapes amnestied, with women in East Timor who were held as sex slaves by Indonesian forces, with Iraqi and Kurdish women leaders who have shared stories of the sexual violence inflicted under the Saddam regime, with men and women from Chechnya who were raped with foreign objects, with women from Bosnia, Croatia, Serbia, and Kosovo who survived repeated or systematic rape, with Afghani girls who were sold into sexual slavery, and with women from Colombia, Guatemala, Argentina and Peru who were gang raped repeatedly during years of war and oppression. And their stories, like those of the women and girls in Africa, and those of some men, are strikingly similar. They were used and abused by men with weapons, often attacking in gangs, often committing the crimes in public, often in front of cheering crowds or before the victim's own families. They were often left naked, bleeding, and publicly displayed as a terrifying and very real threat to others as to what might happen to them—or their daughters, wives, mothers, or sisters—soon.

The Historical Treatment of Wartime Rape

I have been deeply involved in pursuing ways to redress wartime rape for the past 15 years. In 1993, I decided to seek my doctorate in law on the topic of Prosecuting War Crimes Against Women after meeting women who were survivors of rape camps in Bosnia-Herzegovina and hearing debate about whether the rapes they endured were even war crimes. I had never worked on women's issues or sexual violence up until that time, but as a lawyer I was shocked that as we approached the end of the 20th century, there was still confusion about whether international law prohibited wartime sexual violence. There was widespread acknowledgement that atrocities such as massacres, torture, and slave labor were prosecutable, but there was skepticism, even by legal scholars and military officials, as to whether rape was sufficiently serious to be prosecutable in an international tribunal set up to redress the worst crimes.

My research found that wartime rape had indeed been outlawed for centuries, but the prohibition was rarely and only selectively enforced. Further, many of the laws were couched in obscure or antiquated terms, such as violating "family honour and rights" or committing "attacks against honor," "outrages upon personal dignity," or "indecent assault." In 1863 the United States codified customary international law in its U.S. Army regulation on the laws of land warfare. This code–known as the Lieber Code or General Orders No. 100–formed the cornerstone of subsequent codified humanitarian law and served as the foundation for military codes in many other countries. Article 44 explicitly declared that "all rape . . . is prohibited under the penalty of death" and Article 47 dictated that "[c]rimes punishable by all penal codes, such as …rape… are not only punishable as at home, but in all cases in which death in not inflicted, the severer punishment shall be preferred."[1] Regrettably, the United States is no longer on the forefront of criminalizing and protecting against wartime sexual violence and the many different forms the crimes take in contemporary wars. It has been and remains one of the leaders however in establishing international accountability for atrocity crimes.

The United States played the lead role in setting up the landmark International Military Tribunals at Nuremberg and Tokyo to prosecute war crimes, crimes against humanity, and crimes against peace committed during World War II.[2] U.S. Supreme Court Justice Robert Jackson became the lead U.S. prosecutor of the Nuremberg trial of major Nazi war criminals, and General Douglas MacArthur, as the Supreme Allied Commander for the Far East, was the progenitor of the Tokyo trials. At these trials of the chief architects of the war and the atrocities committed against millions of innocent civilians, rape and other forms of sexual violence were implicitly, and to some degree explicitly, prosecuted. They were also prosecuted in some of the subsequent war crimes trials of so-called 'lesser' war criminals held in Germany and Japan. After reviewing tens of thousands of pages of transcripts of the postwar trials, it became clear to me that vast amounts of various forms of sexual violence had been documented and entered into evidence during trials, and that the sexual atrocities were subsumed within the judgments even if they were not highlighted or explicitly mentioned in them.[3]

While a variety of gender related crimes–including rape, enforced prostitution, forced sterilization, forced miscarriage, and forced nudity–were prosecuted at the Nuremberg and Tokyo trials, countless sex crimes were ignored. Let me mention just two examples: First, the sexual slavery to which the Japanese military subjected some 200,000 so-called "comfort women" was not prosecuted at the Tokyo tribunal, and to this day the survivors of these sex crimes have received no substantial legal redress. Second, as the Russian army advanced through eastern Europe towards Germany "an estimated two million women were sexually abused with Stalin's blessing."[4]

After the postwar trials, and in large part due to the Cold War, there were scant efforts to enforce the legal principles established at Nuremberg and Tokyo. For five decades, dictators, despots, and war lords around the world waged war on innocent civilians without facing a legal reckoning.

Gender Jurisprudence of Contemporary War Crimes Tribunals

The crimes committed during the 1990s conflicts in the former Yugoslavia finally snapped the international community out of its complacency. Around the world people were horrified as stories of ethnic cleansing, murder, and mass rape camps emerged. In Bosnia-Herzegovina, it was reported that women and girls were repeatedly raped until they became pregnant and detained until they gave birth. Horror story after horror story continued until televised images of emaciated detainees behind barbed wire fences demonstrated that horrific crimes were again happening on European soil, evoking reminders of promises after the Holocaust that 'never again' would such acts be allowed to happen, much less go unpunished. A U.N. Commission of Experts investigated and reported that crimes, including sex crimes, were rampant.

As a result, the United Nations Security Council established the International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993.[5] The Statute of the ICTY authorized prosecution of genocide, crimes against humanity and war crimes (grave breaches and violations of the laws or customs of war, including Common Article 3 to the Geneva Conventions). Rape was specifically listed as a crime against humanity in the Statute. The United States provided extraordinary leadership in establishing, supporting, and even staffing the ICTY, particularly in its formative years.

Less than a year after the Security Council established the ICTY, a genocide raged through Rwanda, with as many as 700,000 people massacred and hundreds of thousands of others maimed, raped, and otherwise brutalized during 100 days—the swiftest killing and raping spree in recorded history. By the end of 1994, the Security Council also set up the International Criminal Tribunal for Rwanda (ICTR) to prosecute war crimes, crimes against humanity, and genocide committed there.[6]

The Yugoslavia and Rwanda Tribunals have been unparalleled in their treatment of gender-related crimes, and this has had and will continue to have a major impact on other international or hybrid courts (courts having a mixture of international and national judges, prosecutors, and defense counsel and applying both domestic and international laws), namely the Special Court for Sierra Leone, the Serious Crimes Panels in East Timor, the Kosovo Regulation 61 Panels, the Bosnian War Crimes Chamber, and the Extraordinary Chambers in the Courts of Cambodia, as well as the permanent International Criminal Court.

Case law from these contemporary courts stands in marked contrast to the textual silence of the Nuremberg Tribunal when it came to crimes of sexual violence. Let me illustrate by briefly describing seven pioneering cases which set much of the precedent on a variety of gender-related crimes.

Akayesu Judgment

The most groundbreaking judgment in history on redressing crimes committed exclusively or disproportionately against women is the *Akayesu* Judgment, rendered by

the International Criminal Tribunal for Rwanda (ICTR) in September 1998, which found rape to be a crime against humanity and an instrument of genocide.[7] In this case, the mayor of a commune in Rwanda was charged with twelve counts of war crimes, crimes against humanity, and genocide for murder, extermination, torture, and cruel treatment for crimes committed by individuals in his commune.

There were no sex crime charges in the original indictment. During trial, a witness on the stand spontaneously spoke of the gang rape of her six-year-old daughter by three *Interahamwe* soldiers and a subsequent witness testified that she had been raped and she had witnessed other rapes, prompting the prosecution—led by American prosecutor Pierre Prosper (who went on to become the U.S. Ambassador-at-Large for War Crimes Issues)—to conduct additional investigations to determine if Akayesu could be held responsible for sexual violence. Ample evidence of sex crimes was found, including evidence which attributed culpability to Akayesu and the indictment was thus amended to add rape charges.

Ultimately, Akayesu was convicted of nine counts of crimes against humanity and genocide. The Trial Chamber found rape formed part of a widespread and systematic attack against civilian women in the commune, constituting a crime against humanity. Moreover the Chamber found rape and other forms of violence were committed with a specific intent to destroy the Tutsi group by causing serious bodily and mental harm to members of that group—a crime defined as genocide under the 1948 Genocide Convention. The judges stressed that in Rwanda, "[s]exual violence was a step in the process of destruction of the Tutsi group—destruction of the spirit, of the will to live, and of life itself."[8] It was never charged that Akayesu physically committed any rapes himself. But he held a leadership position in his commune, and not only failed to forbid sexual violence when it was rampant, but also actively encouraged, by his words or presence, gang rape and forced nudity, and in some instances even ordered them. Many of these crimes were committed directly outside his office, a place where the community had fled to seek protection from attacks.

Čelebići Judgment

The *Čelebići* Judgment, handed down by the Yugoslavia Tribunal in November 1998, held superiors responsible for torture by means of rape. The Trial Chamber held concentration camp leaders responsible for, among other offenses, various sex crimes committed against both males and females by their subordinates in the camp.[9] Sex crimes were not charged explicitly in the indictment, as the charges were for such war crimes as torture, cruel treatment, inhuman treatment, murder, and plunder. The war crime of torture was charged in instances when a woman was repeatedly raped in an attempt to secure information, to punish her for reporting abuse, to intimidate her, or to discriminate against her because she was a woman of the opposing side. The Trial Chamber found that the rapes inflicted severe physical and mental pain on the victims. For instances when men's genitals were abused, the war crimes were charged as cruel treatment or inhuman treatment. When male detainees were forced to publicly perform

fellatio on each other, the judges emphasized that if the war crimes charge had been rape instead of inhuman treatment, they would have convicted the accused of the former.

The *Čelebići* Judgment noted that it is well established that people in positions of *de facto* or *de jure* authority can be held responsible for failing to act when they have a legal duty to control subordinates under their effective control, they know or should have known about criminal activity, and they fail to take necessary and reasonable measures to prevent the crime or punish the perpetrator(s) thereof. Two of the accused were thus convicted of command/superior responsibility for failing to act on crimes committed by subordinates.

Furundžija Judgment

The *Furundžija* Judgment, handed down by an ICTY Trial Chamber in December 1998, focused on the rape of one woman during one day of the conflict in Bosnia.[10] The accused verbally interrogated a woman while a fellow co-commander raped her in multiple ways, hence the accused was charged with the war crimes of torture and outrages upon personal dignity for the role he played in facilitating the rapes. Perhaps the most significant aspect of this case is the court's recognition that sexual violence does not need to occur as part of a package of crimes (e.g. the murder, rape, and pillage of a village) or on a widespread or systematic basis before it is prosecutable as a war crime. The rape of one person can constitute a serious war crime worthy of prosecution.

Kunarac Judgment

The *Kunarac* Judgment, handed down by an ICTY Trial Chamber in February 2001, represented the first time the Yugoslavia Tribunal rendered convictions for rape, enslavement, and torture as crimes against humanity for a series of sex crimes committed against a large number of women and girls in Bosnia.[11] The Chamber found the three accused guilty of enslavement for conduct essentially constituting sexual slavery. The Trial Chamber held that when the women and girls were held for weeks or months and repeatedly raped by their captors or persons to whom their captors rented them, and one young girl was eventually sold to a passerby for a box of washing powder (and was never seen or heard from afterwards), these acts constituted both rape and enslavement (the ICTY Statute lists 'rape' and 'enslavement' as acts which may constitute crimes against humanity; it does not specifically enumerate 'sexual slavery.') In essence, the defendants were exercising rights of ownership over the victims—a classic form of enslavement. One man was also convicted of "outrages upon personal dignity" for forcing women and girls to dance nude on a table to entertain soldiers and to humiliate and control the girls.

Kvočka Judgment

In November 2001, an ICTY Trial Chamber rendered the *Kvočka* Judgment, in which rape was found to form part of the persecution committed in a prison camp. The case was against five accused who had worked in or regularly visited the Omarska prison camp in Bosnia.[12] Judge Patricia Wald, the U.S. judge on the ICTY at the time, sat on this case

and was the leading author of this judgment. (I had the great privilege of working with Judge Wald on this judgment as a legal consultant.) In Omarska camp, some 3300 men and 36 women were detained and subjected to a number of abuses, including sexual violence. The accused were charged with war crimes and crimes against humanity for murder, torture, rape, persecution, and inhumane acts. Only one of the five defendants was charged with physically committing rape, but all were charged with responsibility for rape in connection with the charge of persecution as a crime against humanity, brought for the varied and concerted efforts to humiliate, degrade, subjugate and otherwise mistreat detainees in the camp.

The *Kvočka* Trial Chamber, relying on jurisprudence developed at Nuremberg and the ICTY itself, found that when two or more persons enter into an agreement to commit a crime and the accused participates in the execution of the common criminal plan, liability for participating in a joint criminal enterprise may ensue. The Chamber found that Omarska camp operated as a joint criminal enterprise to persecute non-Serbs. It held that all who knowingly participated in the criminal endeavor could be held responsible not only for all crimes which were agreed upon, but also for any which were natural or foreseeable consequences of the criminal enterprise, including rape. It thus held each accused responsible for rape as part of the persecution as a crime against humanity count, since several women in the camp were persecuted by means of rape and threats of rape.

Krajišnik Judgment

In September 2006, an ICTY Trial Chamber delivered the *Krajišnik* Judgment, essentially making leaders responsible for repeated and known crimes, including rape, to which they fail to object.[13] Momčilo Krajišnik, a member of the Presidency of the Bosnian-Serb Republic and a colleague of Slobodan Milošević, Radovan Karadžić and Ratko Mladić, is the most senior person yet convicted by the ICTY. He was charged with eight counts of genocide and crimes against humanity. Sexual violence was included in a charge of persecution as a crime against humanity, and the case was prosecuted under the joint criminal enterprise theory of liability.

The Chamber found that originally the common criminal plan was to deport and forcibly transfer non-Serbs out of the territory. However, additional crimes, including rape, became frequent, and once the Serb leadership, including Krajišnik, had information available about these other crimes and not only made no attempt to prevent or halt them, but continued their same discriminatory policies and practices, these additional crimes were deemed to have become just as much a part of the joint criminal enterprise as the originally intended crimes. The *Krajišnik* Judgment thus has major implications for holding senior leaders, whether military or civilian, responsible for sex crimes when committed during the course of a scheme of persecution or other criminal endeavor: if sex crimes are notorious or widespread, and leaders make no effort to prevent or halt the crimes, an inference can be made that the leaders sanction the crimes, essentially aiding and abetting, tacitly encouraging, or otherwise facilitating them, and the leader far from the battlefield can be held individually liable for the crimes. This constitutes individual, not superior/command, responsibility, as leaders are held criminally liable for their own

role in facilitating sex crimes by their tacit approval through silence or acquiescence when there is common knowledge of the crimes.

AFRC Judgment

In 2007, the Special Court for Sierra Leone (SCSL) rendered the *AFRC* Judgment, finding the accused guilty of rape and sexual slavery as crimes against humanity. The case was upheld and amended in part by the SCSL Appeals Chamber in February 2008.[14] In this case, three leaders of the Armed Forces Revolutionary Council (AFRC) were charged with 14 counts, including the crimes against humanity of rape, sexual slavery, and other inhumane acts ('forced marriage'). This was the first verdict of the Special Court for Sierra Leone and it represented the first time the charge of "sexual slavery" was formally prosecuted by an internationalized tribunal. The prosecution disappointingly charged 'forced marriage' as an inhumane act instead of as 'other forms of sexual violence,' which would have recognized it as a distinct crime and indicated the sexual nature of the crime. Nevertheless, this charge was used for when a woman or girl was forced to provide sexual services solely to one man as well as look after his household, doing cooking and cleaning and other chores. 'Forced marriage' is essentially a more exclusive form of sexual slavery where the victims are treated as 'wives,' but unlike sexual slavery victims, the victims of 'forced marriage' are typically rejected by their community as collaborators with the enemy. Therefore, the victims are essentially denied victim status by their community, and further victimized by their banishment.

While all of these cases represented a major advance, progress is neither foregone nor absolute. It took the extraordinary confluence of circumstances, including the presence of women judges and major pressure by non-governmental organizations, to achieve these results. It should also be emphasized that while enormous progress has been made in investigating, charging, prosecuting, and rendering judgment on various forms of sexual violence, the cases tried represent a miniscule percentage of the sex crimes actually committed and for the tens of thousands of other cases there will likely be wholesale and absolute impunity. Holding leaders responsible, then, for the policies and practices of sexual violence in conflict greatly increases the number of victims who are vindicated far beyond that addressed by prosecuting individual perpetrators.

Expanded Articulation of Sex Crimes

The *Akayesu, Čelebići,* and *Furundžija* cases were ongoing during deliberations in Rome in 1998 to draft the Statute for the International Criminal Court (ICC) and the cases left an indelible footprint on the gender provisions of the Statute.[15] The U.S. delegation in Rome played a monumental role in ensuring that gender crimes were prominently featured and adequately covered in the Statute, including by explicitly enumerating rape, sexual slavery, enforced prostitution, forced pregnancy, and enforced sterilization as both crimes against humanity and war crimes. The U.S. team played a leading role in the legally and symbolically significant effort to de-link sex crimes from the misguided language of 'outrages upon personal dignity' or violations of honor, thus acknowledging rape as a crime of violence, not a crime against dignity or honor. They also played an

important role in adding into the Statute language stressing the importance of gender equity on the court and expertise in gender crimes. The sex crimes in the Rome Statute, like the other crimes, have been deemed amongst the most serious crimes of international concern, threatening peace and security when committed in large numbers and with impunity. Of the nine individuals currently indicted by the ICC for crimes committed in Uganda, the Democratic Republic of Congo, and Darfur, eight are charged with crimes against humanity, including rape and sexual slavery. Only the first trial, that of D.R. Congo's Thomas Lubanga, focuses exclusively on the war crime of conscripting child soldiers.

The United States has been a driving force in the field of international justice and in establishing courts to try individuals most responsible for atrocity crimes. The Clinton and Bush Administrations have played key roles in establishing, supporting, and funding international and hybrid war crimes tribunals. Providing justice to victims, including victims of sexual violence, through both international and domestic trials has been strongly supported by Republicans and Democrats alike. The specific acts that make up war crimes, crimes against humanity, and genocide, including the sexual atrocities, are crimes in every jurisdiction, and have been since at least the Second World War. Under international law these crimes are not subject to statutes of limitation.

The Need for Gender Justice and Reversing Harmful Stereotypes

Criminal prosecution of sex crimes is absolutely critical in order to punish the crime and highlight its gravity. Rape and other forms of sexual violence are frequent crimes in virtually every domestic jurisdiction. If they are common in so-called peacetime, the frequency and savagery multiplies when there is a war and atmosphere of violence, chaos, and oppression. In virtually all wars, there is opportunistic rape, rape committed because the atmosphere of violence, the prevalence of weapons, and the breakdown of law and order present the opportunity. But over the last couple of decades, we have witnessed a trend toward using women's bodies as the battlefield in a calculated and concerted effort to harm the whole community through physical, mental, and sexual violence inflicted on the women and girls, the bearers of future generations. In most war-torn countries, the legal system is in shambles and there is little or no means to secure accountability for the crimes.

Another common theme that runs throughout survivors from Asia, Africa, Latin America, and Europe, one that shines a bright spot on human beings and gives hope for the future, is one of the extraordinary strength, resilience, creativity, perseverance, and goodness of survivors. Most survivors, though extremely traumatized and angry, have not sought revenge or retribution, although they do want justice and reparation. They have survived despite not only the sexual violence committed against them, but also often the loss of family members, their homes, land, possessions and jobs, sometimes even the loss of their country if they have been forced to flee or forcibly evacuated. Their extraordinary courage and tenacity in the face of such cruelty and hardship is truly amazing. They have lost so much yet they remain ever ready to share their meager possessions, provide hospitality to strangers, and to struggle for a better future for their children and others in

their community. They need the full protection of the law and for it to be rigorously enforced. The survivors want, need, and deserve justice. They also need support for trauma counseling, rehabilitation, medical services, and economic survival.

In the past decade, there has been a growing movement to make crimes against humanity the central charge in most of the war crime tribunals, as this crime does not carry the onerous intent proof requirement that genocide requires, but it captures the widespread or systematic nature of the crimes which war crimes fail to portray. The Yugoslavia Tribunal, Rwanda Tribunal, and the Special Court for Sierra Leone in particular have shown that using crimes against humanity to prosecute rape and other forms of sexual violence can be powerful and successful–it is not necessary to prove, for example, that rape itself was widespread or systematic in order for there to be a conviction, although rape is itself often both widespread and systematic. But to render a conviction (in addition to linking the crimes to the accused), the prosecution must simply prove that the *attack* was widespread or systematic, and that rape formed part of the attack. And as more leaders are being charged with both individual and superior responsibility for their role in ignoring, facilitating, or ordering crimes, including sex crimes, crimes against humanity allows for a larger victim pool to be covered by a conviction.

The Tribunals have unequivocally established that rape is not a mere "spoil of war" or incidental byproduct of war, but is instead one of the most serious and violent crimes committed during armed conflict. For greater justice, peace, and security, it is especially crucial to go after the leaders, the policy makers, the authorities who order, encourage, allow, or ignore the use of rape as a weapon of war, terror, and destruction. The United States must ensure that it has the capacity to prosecute crimes against humanity whenever and wherever it occurs, particularly when perpetrators have found safe haven in the United States.

In addition to prosecuting rape crimes, the United States and other countries must also pour resources and effort into redressing gender stereotypes that serve to perpetuate sex crimes. The shame and stigma attached to sex crimes must be *reversed* before it has significant deterrent effect and before it is reported in closer proportion to the crimes actually committed. I use the term "reversed" instead of "deconstructed" or "rejected" quite intentionally. One of the reasons rape has been such a potent weapon of terror and destruction is because the shame and stigma wrongfully attached to the victims makes the crime more attractive to perpetrators seeking to inflict maximum harm on all members of the enemy group.

Women and girls are often rejected by their families and communities if they suffer a sexual assault, but not if they are shot in the arm or knifed in the back, as there is no stigma typically attached to non-sexual crimes. Women and girls are considered the vessels of family honor by their sexual purity or faithfulness, but such attributes rarely attach to the male, who can in some religions even have several wives lawfully. As the bearers of children, women's sexual lives are rigorously monitored in most societies, and males are blamed for failing to maintain or protect the sexual purity or exclusivity of their daughters, wives, sisters, or mothers. Many crimes evoke paralyzing terror, and rape is

one of the most common, attacking one of the most private and intimate parts of a person's body. But the shame and stigma attached to sex crimes causes harm-*plus*.

With sexual violence, terror as well as physical and psychological harm are frequently only the beginning of a terrible sequence of consequences visited upon the victim. These are all the more destructive because, as the perpetrator well knows, many emanate from the victim's own support network of family and friends. Sex crime victims face possible rejection from their family or community; plus a strong possibility that she will never marry because she's considered "spoiled goods" or she rejects all contact with men after her assault; plus a possibility that HIV/AIDS or other diseases will be caught and can be passed on; plus a possibility that the damage caused from the rape(s) will destroy her reproductive capacity; plus a probability that violence inflicted upon pregnant women will result in miscarriage; plus a likelihood that the woman or girl will get pregnant from the rapes and they will be forced to either abort or bear the child of the rapist; plus a possible jail term or public whipping for the victim in societies where sex outside of a marital context is a crime if the victim cannot prove rape by producing four male witnesses; plus a re-victimization by the justice system in most countries where the presumption is often that the victim "asked for" or otherwise is responsible for the attack. These additional forms of pain and suffering caused by sex crimes distinguish them from other crimes that also evoke sheer, unbridled terror. Therefore, a key method of providing protections against sex crimes is reversing the shame and stigma, and placing it squarely on the shoulders of the perpetrators and others responsible for the crime: the weak cowards who prey on vulnerable portions of the population–people typically without guns or other weapons and those forced to look after children, the sick, and the elderly or to venture far from the beaten path to scrounge for firewood or food during armed conflict situations.

The majority of rapes committed during wartime are committed publicly, and in gangs, with no fear of legal–much less societal or moral–repercussion. If instead of the victims, it is the perpetrators who are outcast, ostracized and rejected by their communities, including by their armed forces/militia groups and their own families, and treated as pathetic and cowardly, I am confident that the numbers of these crimes and their strategic use as a tool of destruction would be reduced. The United States can provide effective and desperately needed leadership in this area.

The United States should close the gaps in its criminal codes which might allow perpetrators to escape justice or to find safe haven in this country. Given the long record of U.S. leadership in this area, it is unfortunate that there are loopholes in U.S. law that may have the unintended effect of making the United States a safe haven for criminals who have committed these heinous offenses. The United States should be able to prosecute any person found in this country who is responsible as an individual or superior for genocide, crimes against humanity, or war crimes, including the crimes of rape, sexual slavery, forced pregnancy, enforced sterilization, and other crimes of sexual violence of comparable gravity. For example, the War Crimes Act of 1996, as amended, is enforceable only where the perpetrator or victim of a war crime is a U.S. citizen or a member of the U.S. Armed Forces. The U.S. cannot prosecute rape under that law if a

non-citizen commits the rape outside the United States against a foreigner and then arrives in the U.S. The United States also cannot prosecute rape under that law if a non-U.S. citizen commits a rape in the U.S. with a nexus to an armed conflict, but the victims are also non-U.S. citizens.

Persons the U.S. chooses not to prosecute should be returned to their home country or the country where the crime occurred for prosecution only if such state is able and willing to prosecute and has fair trial standards or they should be extradited to a third country willing to do so.

Recommendations

I have a several recommendations to this Subcommittee to improve U.S. laws and practices and bring domestic sex crime laws up to the same standard as contemporary international laws and practices and those of many of our close Allies:

Enact a Sexual Violence in Wartime Accountability Act that criminalizes wartime sexual violence, provides for prosecution of anyone who commits sexual violence with a nexus to an armed conflict, whether in the United States or abroad, and provides for penalties commensurate with the gravity of these offenses. The law should also designate non-U.S. nationals who commit wartime sexual violence as inadmissible aliens, allow the deportation of non-U.S. nationals who commit wartime sexual violence, and deny impunity and safe haven to persons responsible for wartime sex crimes.

Provide a legislative remedy to thousands of victims who might otherwise be left without a remedy if statutes of limitations and retroactive application of atrocity related crimes, including rape and other forms of sexual violence, do not go back at least 20-30 years. It would be important, for example, that persons responsible for rape during the 1994 genocide in Rwanda or sexual violence as crimes against humanity in Iraq in the 1980s do not receive impunity when the acts they committed were clearly crimes at the time of commission, even if not explicitly enumerated in our federal criminal or military code. Therefore, criminal (and tort) legislation needs to be clarified regarding retroactivity and statutes of limitations.

Enact legislation making crimes against humanity, including various forms of sexual violence, particularly rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and other forms of sexual violence of comparable gravity, crimes under U.S. law.

As an alternative to the Sexual Violence in Wartime Accountability Act, consider amending the Federal Criminal Code, Title 18, War Crimes (§2441) (also known as the War Crimes Act) to enable the prosecution of wartime sex crimes by non-U.S. nationals committed against non-U.S. nationals.

Amend the Federal Criminal Code, Title 18, Torture (§2340) (also known as the Torture Statute of 1994), or add an authoritative commentary to the statute, to explicitly

recognize what is implicit but should be made absolutely clear: sexual violence, and threats thereof, may constitute a form and means of torture. The Torture Statute is currently being used, for the first time, to prosecute Emmanuel "Chuckie" Taylor (son and henchman of infamous warlord Charles Taylor, now on trial in The Hague) in Miami. It is likely that this prosecution will result in future use of the Torture Statute to prosecute other crimes, including sexual violence. The Subcommittee should also consider using its oversight authority to inquire why this statute has not been used to redress gender crimes and what steps, if any, could be taken to facilitate greater use of the statute in appropriate cases, including prosecuting wartime sexual violence and other gender crimes.

Amend the Federal Criminal Code, Title 18, generally to enable our domestic courts to prosecute genocide, war crimes and crimes against humanity, including rape and other forms of sexual violence, in conformity with international criminal law.

Finally, the Subcommittee should provide support for putting additional resources into combating gender stereotypes which perpetuate sexual violence, as well as supporting trauma counseling, rehabilitation, reparation, and medical assistance for victims of wartime sexual violence.

The bottom line: The U.S. should be at the forefront in promulgating legislation on wartime sexual violence. It is crucial to modernize our criminal codes to provide more protections to the victims of wartime sexual violence and ensure that perpetrators neither escape justice nor find safe haven in the United States. The U.S. should have the ability to prosecute a range of sex crimes when committed with a nexus to an armed conflict, as a crime against humanity, and as genocide.

I would be pleased to endeavor to answer any questions the Subcommittee may have.

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[1] Instructions of the Government of the United States in the Field by Order of the Secretary of War, Washington D.C. (April 24, 1863), Rules of Land Warfare, War Dept, Doc. No. 467.

[2] Agreement for the Prosecution and Punishment of Major War Criminals of the European Axis, Aug. 8, 1945, 59 Stat. 1546, 82 U.N.T.S. 79; Charter for the International Military Tribunal of the Far East, Jan. 19, 1946, T.I.A.S. No. 1589, 4 Bevans 20 (1968).

[3] See extensive references to gender crimes in the Nuremberg and Tokyo trial transcripts in Kelly D. Askin, War Crimes Against Women: Prosecution in International War Crimes Tribunals (1997). There is a common perception that sex crimes were not prosecuted in the post World War II trials. This is in large part due to the facts that a) the focus of the trials was principally on crimes against peace and mass slaughter of innocent civilians, b) sex crimes were not mentioned in the tribunal's Charters, and were given inadequate or no explicit attention in the indictments and judgments, and c) the table of contents and the indexes of the trial transcripts and judgments largely failed to include mention of rape or any other form of sexual violence, despite the vast documentation and testimony of various forms of sex crimes entering into evidence throughout the trials. They are included under 'atrocities' in the judgments.

[4] Geoffrey Robertson, Crimes Against Humanity (2000), p. 306.

[5] S.C. Res. 827, U.N. Doc. S/827/1993 (1993).

[6] S.C. Res. 955, U.N. Doc. S/INF/50 (annex) (1994).

[7] Prosecutor v Akayesu, ICTR-96-4-T, Sept. 2, 1998 (Akayesu Trial Judgment).

[8] Akayesu Trial Judgment, para. 732.

[9] Prosecutor v. Delalić, Judgement, IT-96-21-T, Nov. 16, 1998.

[10] Prosecutor v. Furundžija, Judgement, IT-95-17/1-T, Dec. 10, 1998.

[11] Porsecutor v. Kunarac, Judgement, IT-96-23-T & IT-96-23/1-T, Feb. 22, 2001.
[12] Prosecutor v. Kvočka, Judgement, IT-98-30-T, Nov. 2, 2001.
[13] Prosecutor v. Krajišnik, Judgement, IT-00-39-T, Sept. 27, 2006.
[14] Prosecutor v. Brima, Kamara, Kanu, Judgment, SCSL-2004-16-T, June 20, 2007 (AFRC Trial Judgment); Prosecutor v. Brima, Kamara, Kanu, Judgment, SCSL-2004-16-A, Feb. 22, 2008 (AFRC Appeal Judgment).
[15] Rome Statute of the International Criminal Court, 1998 Sess., U.N. Doc. A/CONF. 183/9 (1998) (entered into force July 1, 2002).