

Women Accused of International Crimes: A Trans-Disciplinary Inquiry and Methodology

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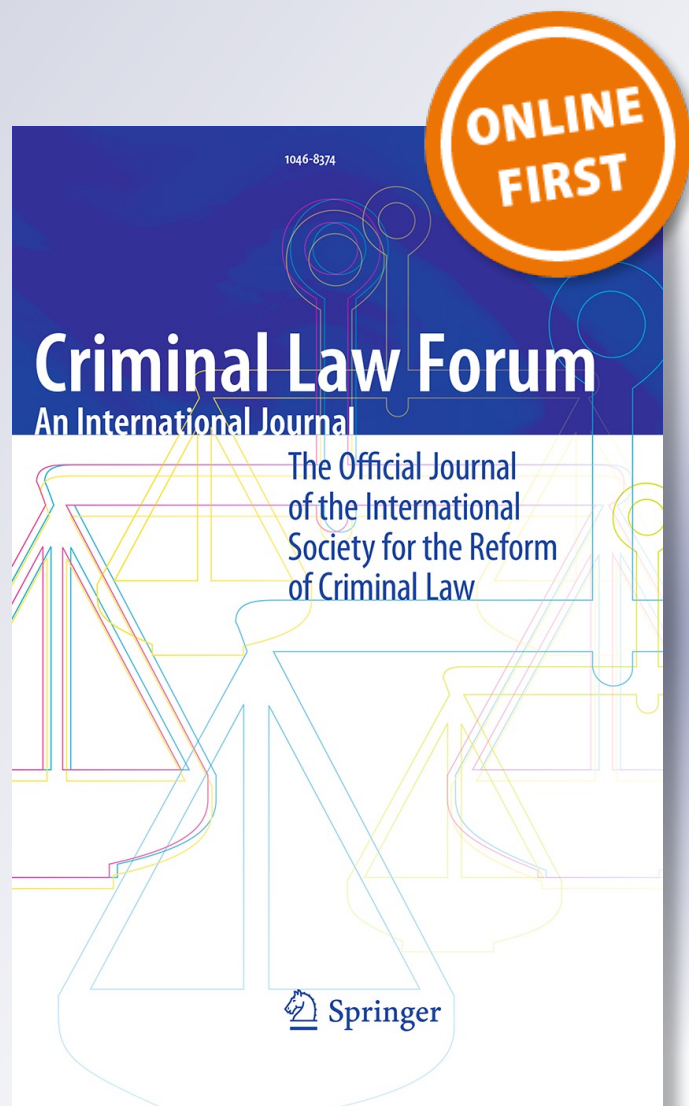
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WOMEN ACCUSED OF INTERNATIONAL CRIMES: A TRANS-DISCIPLINARY INQUIRY AND METHODOLOGY

ABSTRACT. This paper tackles one of the gender silences in situations of atrocity: women accused of international crimes ('WAIC'). It is part of a larger body of work that is ongoing. Debate and discussion that shine light into this murky area is essential, for with hundreds of women tried after World War II, some 96,000 females processed in Rwanda through gacaca alone, some 30–40% of the combatants in the Liberian civil war being females and over 25% of reported gang rapes in Sierra Leone alleged to involve female perpetrators, it is hardly an insignificant challenge to peace and security. The hypothesis motivating the author's study, at this stage, is a methodological one. It is that an open-minded and non-ideological study of WAIC can be developed as a field in its own right. In seeking to tackle the 'elephant in the room' and understand WAIC, the author has engaged in a prospecting methodology that begins with global contextualisation, engages with work done across relevant disciplines (the transdisciplinary approach) leading to identification of rich seams of future research. Within the trans-disciplinary approach, work done to understand instances of serious female criminality is of particular value. These 'hard' cases, involving female serial killers and sexual offenders, females engaged in torture and female terrorists, suicide bombers and others within extremist ideological or religious movements are particularly close to the criminality that lawyers label as 'international'. Much work has been done on these situations across disciplines, and this paper draws from that to identify meaningful lines of inquiry into WAIC. The author's approach has been pluralistic, drawing in diverse perspectives and interpretations within and from different disciplines. This, it is argued, is the best – if not the only way – to gain a genuine and meaningful understanding of female participation in atrocity. This paper therefore presents that prospecting exercise, and opens doors to new ways of thinking about WAIC. By its nature, the work raises more questions than answers. Future publications will address discrete themes, where possible presenting a new paradigm or hypothesis.

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I FACING UP TO THE 'ELEPHANT IN THE ROOM'

In recent years, there has been, very rightly, focus on females as victims of international criminality. Critical as this work is, it enhances the stereotype of the female as weak, lacking autonomy and a perpetual victim of men. It creates a simplistic dichotomy of 'man is violence, woman is peace'. It maintains the fantasy that women are not capable of committing crime since that would be contrary to the female maternal instinct, and also their physical and intellectual makeup. In extreme situations, we are left with a distorted picture of the complexities of armed conflict and repression, and a serious neglect of the issue at the international level. This is dangerous in light of the reality that since the end of the Second World War, there have actually been thousands of females who have participated in acts as grave as extermination, mass murder, torture, sexual violence, inhumane treatment, and euthanasia. A major study on genocide prevention has found that

Women create nurturing environments for husbands, sons, and brothers to rejuvenate from the trauma of mass killing and, in so doing, may be seen as complicit in this crime. Women cheer on killers from the sidelines. Women are likely to be the main perpetrators of property crimes against targeted victims across genocidal outbreaks. Ultimately, a small percentage of women have participated in hands-on assault and murder in all documented instances of genocide.¹

Women taking part in group or political violence is nothing new, even if it is not as prevalent as male violence. Ancient Britain's Boadicea is known around the world as a warrior queen. Legend has it that Cambodia's first ruler was a female and she has at moments in time thereafter been ruled by females with 'ultimate political authority'.² Joan of Arc is an example of the woman warrior. In more

¹ Reva N Adler, Cyanne E Loyle & Judith Globerman, 'A Calamity in the Neighborhood: Women's Participation in the Rwandan Genocide' (2007) 2(3) *Genocide Studies and Prevention* 209 ('Adler, Loyle & Globerman, 'A Calamity in the Neighborhood: Women's Participation in the Rwandan Genocide') 228 footnotes omitted.

² Known as Liu Yie (Chinese), Soma (Sanskrit) or Nagi Som (Khmer). See Trudy Jacobsen, *Lost Goddesses: The Denial of Female Power in Cambodian History* (Nordic Institute of Asian Studies 2008) ('Jacobsen, *Lost Goddesses: The Denial of Female Power in Cambodian History*') 1, 19, 22; Miriam T Stark, 'New Perspectives on Early Cambodia from the Lower Mekong Archaeological Project', Khmer Institute E-Newsletter, at <<http://www.khmerinstitute.org/>> accessed 25 July 2015

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recent times, women have taken part in the American Civil War,³ the First World War including as part of the Russian Imperial Army,⁴ the Peoples Liberation Army in China⁵ and German units such as the SS.⁶ Women have been part of armed ideological movements such as the Tamil Tigers in Sri Lanka⁷ and the Nepalese Maoists,⁸ and have been guerrillas in Nicaragua, El Salvador, and Chiapas in Mexico.⁹ Women were actively involved in the Rwandan Genocide.¹⁰ Women have been suicide bombers in numerous situations ranging from Sri Lanka to Chechnya to Israel to Iraq.¹¹ And, as is now regularly reported by the media, women are joining the movement known as Islamic State, notorious for its barbarity against those it views as infidels and opponents within the same faith, and an extreme attitude towards females across the board.

Thanks to pioneering scholars, we now know much about women as criminals in a domestic context. The academic view has moved on from the days when female criminals were seen as either deranged, amoral or overly masculine. Work on female criminals has been confined to particular disciplines, such as criminology, sociology, history and gender studies, and has elicited controversy and debate. Feminist approaches have further stirred the lack of intellectual cohesion. Some situations have proved to be very challenging to emerging doctrine, notably female serial killers, sex offenders and suicide bombers. A substantial amount of research has been done, especially in the German language, in relation to women in the extreme situation of National Socialist Germany. Some of the women who committed international crimes were tried, and some, such as *SS-Aufse-*

Footnote 2 continued

(at 4); Rudiger Gaudes, 'Kaundinya, Preah Thaong, and the "Nagi Soma": Some Aspects of a Cambodian Legend' (1993) 52 *Asian Folklore Studies* 333.

³ DeAnne Blanton, 'Women Soldiers of the Civil War' (1993) 25(1) *Prologue Magazine* at <<http://www.archives.gov/publications/prologue/1993/spring/women-in-the-civil-war-1.html>> accessed 5 June 2015.

⁴ Kate Lindsay, 'The She-Soldiers of World War One' at <<http://ww1centenary.oucs.ox.ac.uk/?p=98>> accessed 5 June 2015.

⁵ Xiaolin Li, 'Chinese Women Soldiers: A History of 5,000 Years' (1994) 58(2) *Social Education* 67.

⁶ See later discussion.

⁷ See later discussion.

⁸ See later discussion.

⁹ See later discussion.

¹⁰ See later discussion.

¹¹ See later discussion.

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herin Irma Grese, have drawn much fascination in a way that in itself is worthy of study. Academic studies and one particularly high profile case at the International Criminal Tribunal for Rwanda ('ICTR') have established that Rwanda was the site of extreme crimes by women, on a large scale.¹² Sierra Leone is another country where women appear to have played a notable role in criminal conduct.¹³

Yet, women accused of international crimes ('WAIC')¹⁴ seems to be the 'elephant in the room'. It is a topic that cannot but challenge dominant contemporary dogmas in the international arena, and so that could be why it is a topic that seems to be avoided (see later discussion in Part III). There is certainly some important work that has been done, notably by Laura Sjoberg,¹⁵ but we do not know enough, let alone have a holistic or pluralistic approach that transcends disciplinary divides. We do not have an accurate global picture of the extent to which women have been engaged in international crimes, or the numbers that have faced trial. We do not have an informed view of the kinds of crimes, or the mode of female participation. We have yet to situate female participation in atrocity around the world in its cultural, political and social context. We do not understand the social dynamics within which these women committed atrocities, or the role that gender played in the organisations that they were associated with. We do not understand the relationship between sex and gender with ethnicity, class, age, peer groups, and community. We have not grasped the extent to which power and individual autonomy fit into this. We do not understand the coping strategies of these women when they committed these crimes. We have not evaluated the fairness of laws and procedures when applied to women accused of international crimes. We do not know if and how gender and cultural expectations affected the processes and outcomes. We have little sense of the legal defences or justifications that these women raised, or the role that mitigating factors played in sen-

¹² See later discussion.

¹³ See later discussion.

¹⁴ This is clearly an awkward term, but it serves the present author's objective of examining those who have simply been accused of participation in atrocity, as well as those who have actually been through a criminal justice process. It also avoids the use of categorical notions such as 'genocide', 'war crimes' and 'crimes against humanity'. The term includes girls.

¹⁵ Relevant works include her *Gender, Justice, and the Wars in Iraq* (Lexington 2006), *Mothers, Monsters, Whores: Women's Violence in Global Politics* (with Caron Gentry, Zed Books 2007), *Gender, War, and Militarism: Feminist Perspectives* (with Sandra Via) (Praeger Security International 2010), *Women, Gender, and Terrorism* (with Caron Gentry) (University of Georgia Press 2011).

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tencing. We do not understand the implications of such crime on victims, affected families and society. In short, we have a poor holistic understanding of women accused of international crimes.

This dearth means that we have much to learn in international law, domestic law, history, gender studies, criminology, sociology, psychology, human rights, crime prevention, conflict prevention and management, and human society today. The present author's research makes it clear that there is a major gap in research and understanding. A gender-sensitive approach to violence in armed conflict and repression cannot be all about women and girls, and it also cannot continue to view the female through just a victimhood-and-disempowerment lens whilst ignoring the crimes committed by some of them. This present work is therefore an attempt to begin to address this complex matter. This quest, which crosses disciplines and jurisdictions, may stimulate a new specialised multi-and-inter disciplinary approach and could make an important lasting impact. The contribution goes beyond academic knowledge and understanding, for there is also wider pedagogical contribution in the sense of contributing to public awareness and understanding, and policy impact. There will be those who will feel that this entire topic detracts from the far more pressing challenge of crimes against women and girls. To them, the present author stresses that the importance of that work is not being denied in any way. But, debate and discussion that shine light into this murky area of female participation in atrocity is in fact essential. For, with some 96,000 females processed in Rwanda through *gacaca* alone,¹⁶ some 30–40% of the combatants in the brutal Liberian civil war being females¹⁷ and over 25% of reported gang rapes in Sierra Leone alleged to involve female perpetrators,¹⁸ it is hardly an insignificant challenge to peace and security. This work is

¹⁶ *Gacaca* Report Summary, Summary of the report presented at the closing of *Gacaca* court activities (National Service of *Gacaca* Jurisdictions, Kigali, Rwanda 2012) ('*Gacaca* Report Summary'): the data shows 96,653 women processed out of 1.2 million, this is some 9% of the total.

¹⁷ According to the Liberian Truth and Reconciliation Commission, 10–30% of armed forces & groups were female. This was a constant feature of Liberia's civil wars, some units were wholly composed of female combatants. See *Report of the Truth and Reconciliation Commission*, Vol 3, Title 1 (Women and the Conflict) ('Liberia TRC Report, 'Women and the Conflict') 48.

¹⁸ Dara Kay Cohen, 'Female Combatants and the Perpetration of Violence: Wartime Rape in the Sierra Leone Civil War' (2013) 65(3) *World Politics* 383 ('Cohen, 'Female Combatants and the Perpetration of Violence: Wartime Rape in the Sierra Leone Civil War'), 399–400.

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essential, for the ongoing silence also denies the victimhood of those who have suffered at the hands of females and allows the female perpetrator to hide behind the assumption of victimhood that currently permeates all work addressing human violence and harm. It is through such engagement that individual, societal and global perceptions change, and policies can be improved or developed to deal with what is presently a non-issue.

This paper is part of a larger body of work that is ongoing. At this stage, the hypothesis motivating the author's study is a methodological one. It is that an open-minded and non-ideological study of WAIC can be developed as a field in its own right. In seeking to tackle the 'elephant in the room' and begin to understand WAIC, the author has engaged in a prospecting methodology that begins with global contextualisation, engages with work done in across relevant disciplines (what will be referred to henceforth as the trans-disciplinary approach) leading to identification of rich seams of future research. Within the trans-disciplinary approach, work done to understand instances of serious female criminality is of particular value. These 'hard' cases, involving female serial killers and sexual offenders, females engaged in torture and female terrorists, suicide bombers and others within extremist ideological or religious movements, are particularly close to the criminality that lawyers label as 'international'. Much work has been done on these situations across disciplines, and this paper draws from that to identify meaningful lines of inquiry into WAIC. The author's approach has been pluralistic, drawing in diverse perspectives and interpretations within and from different disciplines, without excessive focus on particular ideologies or pursuit of political agendas or being tied to dogma. This, it is argued, is the best – if not the only way – to gain a genuine and meaningful understanding of female participation in atrocity. This paper therefore presents that prospecting exercise, and opens doors to new ways of thinking about WAIC. By its nature, such work raises more questions than answers. Future publications will take critical themes forward, where possible presenting a new paradigm or hypothesis, and answering some of the many questions that emerge here.

II HOW EXTENSIVE IS FEMALE PARTICIPATION IN ATROCITY: A GLOBAL SNAPSHOT

Preliminary research starting with the World War II cases already paints an unexpected picture that goes well beyond caricatures of

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blonde Nazi dominatrixes in black jackboots with fierce dogs, whipping and abusing their helpless victims.¹⁹ From the domestic post-war proceedings, the following have been identified: a minimum of 45 cases from ex-West German records, 194 cases from ex-East German records, 1 Russian case, 3 Dutch cases, 8 cases from Austria, 1 case from Czechoslovakia and 12 cases from Poland.²⁰ The present author's consultation of the records at the International Research and Documentation Centre for War Crimes Trials at Marburg University unearthed some 200 odd cases from France, and also cases from Belgium, leading to at least 579 cases against female perpetrators in Europe. These are mainly to do with concentration camps, euthanasia centres and denunciation.²¹ To this, we can add the fig-

¹⁹ For more on this, see Lawrence Baron, *Projecting the Holocaust Into the Present: The Changing Focus of Contemporary Holocaust Cinema* (Rowman & Littlefield 2010) 50; Daniel H Magilow et al., *Nazisploitation! The Nazi Image in Low-Brow Cinema and Culture* (A&C Black 2012).

²⁰ At this stage, the author has not yet been able to identify the precise charges in some of the German cases, which at times used domestic law notions to handle international crimes. There were a range of legal concepts under German law that were used: *Denunciation* (informing on persons to Third Reich state authorities or party organizations in so far as this led to the death of the denounced person), *Euthanasia* (homicidal crimes within the context of the National Socialist Euthanasia Program), *Early NS Crimes* (homicidal crimes committed before, during or shortly after Hitler's ascent to power on 30 January 1933), *Judicial Crimes* (homicidal crimes committed by judges, public prosecutors or other judicial civil servants in the administration of justice), *War Crimes* (homicidal crimes against soldiers and prisoners of war in so far as they constituted violations of the laws and customs of the international laws of war), *Mass Extermination Crimes by Einsatzgruppen* (acts of genocide committed by Einsatzgruppen), *Mass Extermination Crimes in Camps* (acts of genocide committed in extermination, concentration, and other camps), *Other Mass Extermination Crimes*, *NS Crimes in Detention Centres* (homicidal crimes committed in detention centres of all kinds (concentration camps, prisons, forced labour camps, POW camps, etc.), *Administrative Crimes (Schreibtischverbrechen)* (the administrative preparation and organization of homicidal crimes, excluding euthanasia), *Final Phase Crimes* (homicidal crimes committed during the period of the collapse of the Third Reich), and *Other NS-Crimes*. Details are from the compilation of *German Trials Concerning National Socialist Homicidal Crimes*, at the Institute of Criminal Law of the University of Amsterdam (Christiaan F Rüter & Dirk W de Mildt) see <<http://www1.jur.uva.nl/junsv/>> accessed 11 October 2014.

²¹ For example, Hilde Berthold (born Schreiner) was convicted of denunciation by the LG Würzburg. After a row with her husband over her suspected unfaithfulness, she reported her husband for derogatory remarks about the German war situation. She confirmed her statement under oath before a military court, which pronounced a death sentence on Herr Berthold. Dagmar Imgart was convicted by the LG Kassel. The crime concerned her denunciation of the members of the 'Kaufmann circle'

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ures from the Allied trials: there appear to have been 9 women in American trials and 66 in British trials (these are from cases such as the Medical Trial, the Belsen Trial, the Buchenwald Trial and the Ravensbrück Trials, the latter being the most significant). The records at Marburg show 5 cases involving females outside of this grouping, one of which was from the Kyushu University Vivisection Case tried in Japan. Here too, the women were predominantly medical staff and camp guards, and were generally engaged in indirect crime.

While the reality of the World War II picture may raise eyebrows, the statistics from Rwanda are on a wholly different scale. This should stimulate more rigorous questioning of the all-females-are-victims narrative that currently dominates the debate. Former Rwandan Minister for Family Welfare and Advancement of Women, Pauline Nyiramasuhuko, is infamous for being the only woman tried and convicted by the International Criminal Tribunal for Rwanda. In 2011, she was convicted of genocide, including sexual violence.²² Sentenced to life, Nyiramasuhuko was found to have made statements ordering particular targeting of Tutsi women, including for sexual attacks prior to their being killed (see later discussion). But, while the deviation from what she should have been doing with that particular ministerial portfolio was astounding, as a woman perpetrator she was far from being an exceptional case. The final report on the *gacaca* proceedings stated that out of the 1.2 million persons who had been processed through that complementary mechanism, 96,653 were females.²³ This female participation amounted to some 9% of

Footnote 21 continued

within the Christian student association 'Wingolf' in Giessen. They had allegedly listened to foreign broadcasting stations, and made derogatory remarks about Adolf Hitler and the National Socialist regime. Another case involved denunciation of an acquaintance for anti-National Socialist views and for listening to foreign broadcasting stations. A further example involved denunciation of the leader of the 'Una Sancta Movement', Father Metzger, for his contacts with foreign members of the clergy. Some of the denounced persons were sentenced to death by the *Volksgerichtshof* and executed, others received prison sentences from the *Volksgerichtshof* and from the *Sondergerichte*, and, in part, landed in concentration camps after having served their sentences. These details can be gleaned from the records compiled by Rüter and de Mildt at the University of Amsterdam, *ibid*.

²² Prosecutor v Pauline Nyiramasuhuko et al (ICTR, IT-98-42).

²³ *Gacaca* Report Summary (n 16). Among the females convicted were RTML broadcaster Valerie Bemeriki, convicted of genocide and sentenced to life imprisonment in 2009; Dr. Jeanne-Marie Nduwamariya, convicted of genocide and sentenced to seven years imprisonment in 2009; Therese Kampire, convicted of genocide

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the total.²⁴ With a reported conviction rate of approximately 65%,²⁵ it seems likely that something in the region of 50,000 women were convicted for their participation in the genocide. Nicole Hogg, in an article for the International Review of the Red Cross in 2010, noted some 2000 women detained as genocide suspects and interviewed 71.²⁶ A Thomson Reuters Foundation article in 2015 reported there were still some 2000 women serving time in Rwanda for genocide.²⁷ There were also military proceedings: Major Ann Marie Nyirahakizimana was convicted with two others in a military court of genocide and crimes against humanity.²⁸

Footnote 23 continued

by a *gacaca* court in Butare in 2007 and sentenced to 19 years imprisonment; Beatrice Nirere, convicted of genocide by a *gacaca* court in Kigali in 2009; and Sister Theophister Mukakibibi, convicted of genocide by a *gacaca* court in Butare in 2006.

²⁴ For a profile, see Michelle McPhee, 'The Monster Next Door', Boston Magazine (April 2015), at <<http://www.bostonmagazine.com/news/article/2015/03/24/rwandan-genocide/>> accessed 27 September 2015.

²⁵ This percentage is widely cited, including by the BBC, but it is not clear what the source is.

²⁶ Nicole Hogg, 'Women's participation in the Rwandan genocide: mothers or monsters' in (2010) 92 International Review of the Red Cross 69 ('Hogg, 'Women's participation in the Rwandan genocide: mothers or monsters'). A 2014 study by Kaitesi cites the statistics of the Rwanda Correctional Services as authority for the following statement: 'Out of a total of 4,060 current female inmates, 2,230 are genocide indictees serving jail sentences ranging from a few years to life imprisonment and most of these women are first category offenders including those convicted of rape and sexual torture. A total of 426 female genocide indictees are serving the alternative sentence of community service for participating in category two acts of genocide. These figures do not reflect the number of women falling into the third category that committed genocidal acts relating to property'. See Usta Kaitesi, *Genocidal Gender and Sexual Violence: The legacy of the ICTR, Rwanda's ordinary courts and gacaca courts* (Intersentia 2014).

²⁷ Magdalena Mis, 'Our children should not forgive us': Rwanda women killers recall genocide', Thomson Reuters Foundation (17 July 2015).

²⁸ The US State Department's report on Rwanda for 1999 gives the following account: 'In a military court in Gitarama presided over by Lt. Col. Jackson Rwahama, Nyirahakizimana and civilian Pastor Athanase Ngirinshuti were found guilty of genocide and other crimes against humanity committed in Kigali urban prefecture and Gitarama prefecture in 1994. The defendants, along with the Government and the Free Methodist Church, were ordered to pay compensation of more than \$31.4 million (11 billion Rwandan francs).' The judgement was submitted as a defence exhibit in the ICTR's Bagosora case, see <<http://trim.unict.org/webdrawer/rec/39047/>> accessed 13 October 2014. See also <http://www.judiciary.gov.rw/uploads/tx_publications/ARRET%20DE%20RENVOI%20MAJOR%20NYIRAKIZIMANA.pdf> accessed 13 October 2014.

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At time of writing, there are 6 women who are sought by Rwanda on Interpol's list.²⁹ Rwandan women have also faced legal action abroad. Beatrice Munyenyezi, wife of ICTR convict Shalom Ntahobali, and daughter-in-law of Pauline Nyiramasuhuko, had her US nationality stripped from her in 2013 after a jury found she lied on her citizenship application forms; this and her 10 year sentence were upheld on appeal.³⁰ Two Rwandan nuns were tried and convicted in Belgium in 2004: Mother Superior Gertrude (Consolata Mukangango) and Sister Maria (Julienne Mukabutera) were convicted of homicide and war crimes during the Rwandan Genocide.³¹ Yvonne Basebya was convicted of inciting genocide in Rwanda by The Hague District Court in 2013.³² On the other hand, former Rwandan First Lady Agathe Kanziga Habyarimana remains in France, untried, despite years of attempt by Rwanda for her to be extradited to stand trial for genocide.³³

What sort of criminal activity did these Rwandan women engage in? Nyseth Brehm and colleagues, in research published in 2013, revealed how the pattern of crimes committed by females in the Rwandan Genocide matched what criminologists have noted about female domestic crime around the world: men generally commit more crimes, and that percentage is higher for crimes of violence, and the percentage of women convicted of crimes involving prostitution or indirect crime such as stealing is higher than for violent crime. The Nyseth Brehm et al. research into the Rwandan *gacaca* records found that more females were convicted of property crimes than crimes against people: looting (10.6%), killing (5.5%), organising & inciting genocide (5.5%).³⁴

²⁹ Rose Karushara, Agenesta Mukarutama, Pelaga Uwimana, Brigitte Tuyishime, Agathe Kanziga and Sperancie Karwera, although it is not clear if they are wanted for trial or to serve sentence.

³⁰ Lynne Tuohy, 'Beatrice Munyenyezi sentenced in Rwanda genocide fraud case', Huffington Post, 14 September 2013.

³¹ For comment, see Max L Rettig, '*Transnational Trials as Transitional Justice: Lessons from the Trial of Two Rwandan Nuns in Belgium*' (2012) 11 Washington University Global Studies Law Review 365.

³² See the International Crimes Database case summary at <<http://www.internationalcrimesdatabase.org/Case/971/Basebya/>> accessed 9 April 2016.

³³ See <<http://www.internationalcrimesdatabase.org/Case/773/Habyarimana/>> accessed 10 October 2014.

³⁴ Hollie Nyseth Brehm et al, 'Age, Sex and the Crime of Crimes: Towards a Life-Course Theory of Genocide Participation', paper presented to the Population Association of America Annual Meeting 2015, at <<http://paa2015.princeton.edu/abstracts/152617>> accessed 24 September 2015, 22–23.

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In Sierra Leone too, women were participants in atrocity. According to the Truth and Reconciliation Commission,

Women involved in the conflict as perpetrators also committed notable human rights violations. Female commanders were often given appellations that characterised the forms of behaviour for which they were notorious: Adama “Cut Hand”; Lieutenant “Cause Trouble”; Kumba “Blood”; Lady “Jungle Law”; and Hawa “Two Barrel”, for example. Killing, maiming, looting, burning and amputations were among the violations attributed to females in the TRC database.³⁵

Here too, we see female participation in sexual violence. Dara Cohen, in a 2013 article in the journal *World Politics*, presented findings about the extent of such participation.³⁶ Out of 31,759 reported rapes studied, 75.8% were gang rapes. Of the reported gang rapes, 74.4% were committed by male-only groups. This means that just over 25% of reported gang rapes involved women. Female-on-female rape included inserting objects into victims’ bodies. Women were involved in gang rape by holding down the victim. Others assisted at an earlier stage by identifying victims. The Truth and Reconciliation Commission’s report had a section on women as perpetrators and collaborators, and raised a matter about female combatant behaviour that could affect substantive criminal law issues in relevant proceedings:

... in a perverse way, a combatant could only receive adulation and respect from his or her comrades by attaining a certain level of sheer ruthlessness and notoriety. The question of “survival” also profoundly motivated and influenced women perpetrators in their involvement in gross human rights violations. Engaging in acts of violence provided women with a guarantee of security and survival from their own colleagues. Women had to prove themselves to their peers, as well as their individual commanders, by carrying out violations without flinching or displaying any outward signs of weakness.³⁷

Such participation in criminality is also mirrored in neighbouring Liberia, where the Truth and Reconciliation Commission reported that 10–30% of armed forces and groups were comprised of females, something that was a ‘constant feature of Liberia’s civil wars, some

³⁵ Sierra Leone Truth and Reconciliation Commission Report, Vol 3 B Ch 3 (Women and the Armed Conflict) (“Sierra Leone TRC Report, ‘Women and the Armed Conflict’”) para 394.

³⁶ Cohen, ‘Female Combatants and the Perpetration of Violence: Wartime Rape in the Sierra Leone Civil War’ (n 18).

³⁷ Sierra Leone TRC Report, ‘Women and the Armed Conflict’ (n 35) para 398.

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units wholly composed of girls and female combatants'.³⁸ The Truth Commission did name some women as suitable for accountability proceedings (notably Martina Johnson, discussed shortly), but very clearly viewed the issue of women perpetrators through the lens of victimhood:

... women in Liberia... found ways and means to fight back and organize. Stripped of their livelihoods, families and self-determination, some women chose to join armed resistance struggles such as the NPFL, so they could feed themselves and their families with the provisions provided by the combatants. Many young girls had no choice. In 2004, Human Rights Watch published a report that described how another armed faction LURD, 'abducted girls, trained them to use guns and other weaponry, and sexually assaulted many to the point of death'.³⁹

Cohen's 2013 study was more specific about the sexual aspect of female-on-female and female-on-male violence: 'In Liberia, female fighters were implicated in the rape of women, including rape with objects such as guns, and in sexual crimes against men, such as cutting off their genitals'.⁴⁰ To date, former NPF artillery commander Martina Johnson is the only person facing legal proceedings. A resident of Belgium, she has been charged in relation to crimes during the 1992 military operation code-named Octopus, launched on the capital Monrovia.⁴¹ Johnson was specifically 'named' by the Truth and Reconciliation Commission for killing; one of the witnesses who testified named her as being involved in cannibalism (cooking human body parts).⁴²

³⁸ Liberia TRC Report, 'Women and the Conflict' (n 17) 48.

³⁹ *Ibid.*, 44.

⁴⁰ Cohen, 'Female Combatants and the Perpetration of Violence: Wartime Rape in the Sierra Leone Civil War' (n 18) 385, citing Specht and Advocates for Human Rights.

⁴¹ According to Hironelle on 12 March 2015, 'Martina Johnson was arrested in Belgium in September 2014 and charged with crimes against humanity. She was a commander in Taylor's NPFL, and is suspected in particular of participating in "Operation Octopus", an infamous 1992 NPFL attack on the Liberian capital Monrovia which left scores of civilians dead. She is said to be ill, and to have a sick child. In October 2014, Johnson was released from jail and put under house arrest, but is still under investigation in Belgium. She must wear an electronic bracelet and is consigned to her home, although she may be authorized to leave for medical appointments.' See <<http://www.hironelle.org/index.php/en/our-media-outlets/completed-projects/hironelle-news-agency/news/649-european-arrests-of-liberian-war-crimes-suspects-refuel-impunity-debate-in-liberia>> accessed 6 June 2015.

⁴² See transcript at the Truth and Reconciliation Commission website, <<http://trcofiberia.org/transcripts/68>> accessed 29 September 2015.

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A final African example comes from South Africa, where, unknown to many, the Truth and Reconciliation Commission's report contained a minor section with a few paragraphs on Women as Perpetrators.⁴³ A small number of women applied for amnesty, and several deponents at hearings testified about the role of women in abuse, particularly in prisons. The small discussion also devoted several paragraphs to underscoring incidents where kindness was shown by women warders, and explaining how derelictions were often of the 'turning a blind eye' variety, which the sensitised eye would recognise as fitting into what criminologists say is the dominant pattern of females engaging in indirect criminality.

Some insight from Asia comes from Cambodia, where there are two examples. The late Ieng Thirith, daughter of a judge and member of the inner circle of the Khmer Rouge, was charged in Case No. 2 at the Extraordinary Chambers with genocide, crimes against humanity, war crimes and Cambodian crimes. She was declared unfit to stand trial due to mental illness, and escaped the trial that led to conviction of her two co-accused, Khieu Samphan and Nuon Chea, before passing away in 2015. Im Chaem was a farmer who became an enthusiastic administrator of agricultural policies for the Khmer Rouge; she was charged in Case 004.⁴⁴ The charges are of homicide, as a violation of the 1956 Cambodian Penal Code, allegedly committed at Phnom Trayoung security centre and Spean Sreng worksite; the crimes against humanity of murder, extermination, enslavement, imprisonment, persecution on political grounds, and other inhumane acts at allegedly committed at the Phnom Trayoung security centre; and the crimes against humanity of murder, enslavement, imprisonment, and other inhumane acts allegedly committed at the Spean Sreng worksite.

⁴³ South African Truth and Reconciliation Commission Final Report, Vol 4, Ch 10, <<http://sabctrc.saha.org.za/originals/finalreport/volume4/volume4.pdf>> accessed 29 September 2015, 314-317.

⁴⁴ The Documentation Centre of Cambodia, which has conducted 2401 interviews with female cadre, has an interview with Im Chaem, at <http://www.dccam.org/Archives/Interviews/Sample_Interviews/Former_Kh_Rouge/Im%20Chem.htm> accessed 14 October 2015, and she was also interviewed by Sim Chi Yin for The Straits Times in 2014, see <<http://www.straitstimes.com/the-big-story/trial-khmer-rouge-leaders/story/their-own-words-madam-im-chaem-20140807>> accessed 6 June 2015. There are interviews with women members of the Khmer Rouge, also by the Documentation Centre of Cambodia, at <http://www.dccam.org/Archives/Interviews/Sample_Interviews/Former_Kh_Rouge/Former_Kh_Rouge.htm> and <http://www.dccam.org/Projects/Magazines/English_version.htm> both accessed 14 October 2015.

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Former academic and President of the Republika Srpska, Biljana Plavšić, is generally believed to have been the only woman tried in relation to the crimes in the Balkans. She was convicted of persecution as a crime against humanity in Bosnia–Herzegovina by the International Criminal Tribunal for the former Yugoslavia in 2003.⁴⁵ This followed a plea bargain agreement, which saw charges of genocide being abandoned in return for a guilty plea to crimes against humanity, and expressions of remorse. However, the present author's investigations reveal a number of women who were tried and convicted of atrocities at the domestic level. A former member of the Bosnian Army, Rasema Handanović, was convicted of war crimes in Bosnia–Herzegovina by the Bosnian War Crimes Chamber in Sarajevo in 2012. Albina Terzic, once a member of the Bosnian Croat Army's military police was convicted of war crimes in Bosnia–Herzegovina by the Bosnian State Court in Sarajevo in 2012. Monika Karan Illić, former partner of ICTY convict Goran Jelisić, was convicted of war crimes in Bosnia–Herzegovina by the Elementary Court of Brčko District in 2013. Bora Kuburić was convicted of war crimes in Bosnia–Herzegovina in 2015 by the local court in Bihac along with Radmila Banjac. In Serbia, Nada Kalaba was convicted of war crimes in 2009 (War Crimes Court in Belgrade) for abusing detained persons linked to Vukovar's notorious Ovčara massacre.

The overview thus far, limited as it is, has already demonstrated that female participation in atrocity is hardly insignificant. Concluding the exercise is a brief consideration of the role of women in terrorist crimes, which has since the 1970s been a topic of scholarly attention across many disciplines. It is not the place here to discuss when political violence becomes an international crime, or labour over the definition of terrorism. However, the OSCE pointed out in its 2011 final report on Women and Terrorist Radicalisation that

a woman should not be assumed to be more or less dangerous, nor more prone to peace, dialogue, non-violence and co-operation than a man. In fact, the very image of the peaceful woman has been used by terrorist groups to recruit women and to claim an innocent and non-violent character by highlighting the involvement of women in their organizations.⁴⁶

⁴⁵ Prosecutor v. Biljana Plavšić (ICTY, IT-00-39 & 40/1).

⁴⁶ Final Report on Women and Terrorist Radicalization, OSCE Secretariat-ODIHR Expert Roundtables (OSCE 2014) 3.

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Writing in 2011, Sjoberg and Gentry, the editors of the compilation *Women, Gender, and Terrorism*, explained that women have increasingly taken active roles in carrying out suicide bombings, hijacking airplanes, and taking hostages in locations such as Palestine, Iraq, Afghanistan, Sri Lanka, Lebanon, and Chechnya.⁴⁷ Contemporary examples include Englishwoman Samantha Lewthwaite, widow of one of London's 7/7 bombers Germaine Lindsay and said to have been involved in deadly attacks in East Africa, and France's most wanted woman Hayat Boumedienne, involved in the 2015 Paris attack on a Jewish supermarket. Well-known female terrorists from an older generation include airline hijacker Leila Khaled of the Popular Front for the Liberation of Palestine; Ulrike Meinhof of the German Baader-Meinhof Gang; Fusako Shigenobu, founder of the Japanese Red Army; Dora Maria Téllez Arguello, one of the Sandanista commanders leading the attack on Nicaragua's National Palace in 1979; and Suzanne Albrecht of the Red Army Faction. These women were in positions of leadership.

Among terrorists, there is a distinct group of females who use the human body as a weapon. Brown argued that between 1981 and 2000, women carried out some 26% of all suicide attacks, and this has risen since 2005.⁴⁸ The situation may actually be more complex, for statistics from the Chicago Project on Security and Terrorism show that between 1982 and 2015, 3.9% of suicide bombers were women.⁴⁹ Individual women who are known to have been suicide bombers include Dhanu the member of the Tamil Tigers who assassinated Indian Premier Rajiv Gandhi and killed scores of others (1991); Wafa Idris, the first Palestinian female suicide bomber (2002); and Reem Saleh Al-Raiyshi who blew herself up at the Erez Crossing point between Israel and the Gaza Strip (2004). In Russia, Chechen women who have lost their husbands to the security services have been notable suicide bombers. Known as 'Black Widows', they have been involved in high profile terrorist acts such as the 2002 seizure of a theatre in Moscow, and the 2004 hostage-taking of some 1200 children, parents and

⁴⁷ Laura Sjoberg & Caron E Gentry (eds.), *Women, Gender, and Terrorism* (University of Georgia Press 2011).

⁴⁸ Katherine E Brown, 'Blinded by the Explosion: Security and Resistance in Muslim Women's Suicide Terrorism' in Laura Sjoberg & Caron E Gentry (eds.), *Women, Gender, and Terrorism* (University of Georgia Press 2011) 194.

⁴⁹ This is the result of a search on attackers and fatalities by gender, using the materials of the Chicago Project on Security and Terrorism, at <http://cpostdata.uchicago.edu/search_results_new.php> accessed 27 September 2015.

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teachers at a school in Beslan, North Ossetia. Dzhanelt Abdullayeva and Maryam Sharipova killed 38 people when they detonated themselves on a Moscow train in 2010. Since 2014, the Nigerian group known as Boko Haram has been deploying female suicide bombers, mainly young teenage girls and children and including those said to have been abducted, raising issue of whether they have acted as a result of free, informed and autonomous decisions.⁵⁰

One could go on, but it is abundantly clear that the participation of females in atrocity cannot be brushed off as a matter of a few deviant women who are either mad or bad. The matter crosses educational and social divides, draws in direct and indirect modes of participation, ranges across political leaders, combatants, ideologues and civilians, and takes place around the world.

III DRAWING DIVERGENT SEAMS TOGETHER: A PLURALISTIC AND TRANS-DISCIPLINARY REVIEW

This section will employ a prospecting methodology that begins with global contextualisation, engages with work done in the identified areas across relevant disciplines (the trans-disciplinary approach) and will lead to identification of rich seams for future research presented in Part IV. Multiple database and internet searches confirm in a non-scientific way that the study of women and crime, whether domestic, comparative or international, is overwhelmingly about women as victims of crime. Even so, there is a diverse body of work on female criminals when it is viewed across disciplines. It is simply impossible to do more than an overview here, and the focus will go on drawing together the seams of particular interest for present purposes.

Over a hundred years ago, criminologist Cesare Lombroso introduced the thesis that female crime was related to the primitive biological construction of the female of the species (i.e. they behave that way because of their sex).⁵¹ Female offending was explained in

⁵⁰ 'The Rising Trend of Suicide Bombers in Nigeria', <<http://library.fundforpeace.org/blog-20150328-nigeriawomenbombers>> accessed 1 October 2015.

⁵¹ Cesare Lombroso & Enrico Ferrero, *The Female Offender* (D Appleton 1900) 2–3: '... women have many traits in common with children; that their moral sense is deficient, that they are revengeful, jealous and inclined to vengeance of refined cruelty. In ordinary cases these defects are neutralized by piety, maternity, want of passion, sexual coldness, by neatness and an undeveloped intelligence. But when piety and maternal sentiments are wanting, and in their place are strong passions and intensely erotic tendencies, much muscular strength and a superior intelligence for

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terms of biological determinism and physiology: the female of the species was seen as lower on the evolutionary scale compared to the male, and this meant that her physical embodiment did not predispose her to criminality. For Lombroso, because of her sex the female has a natural passivity that restrains her from deviance, this being because of lack of intelligence and initiative to commit crime. The female who breaks those restraints would have excessive male characteristics, for example, excessive male hormones. The female criminal is, by this reasoning, biologically abnormal. Sigmund Freud's psychodynamic theory of female delinquency was based on the assumption that everyone is born with the potential to be a criminal in that the basic human instincts, if uncontrolled, will lead to anti-social behaviour.⁵² Freud believed in genetic differences between men and women, and that women are more passive than men, have a greater need for approval and affection, and avoid provoking male wrath by committing crimes. Otto Pollak, in his book on *The Criminality of Women*, argued that female crime is different from that of men because their biological nature in a given cultural setting requires deceit and manipulation of others, usually men (this has been called 'masked crime').⁵³ Thus, when females do commit crime, they commit different types of crime from males (shoplifting, domestic theft, public order offences).

These men were not the first to note differences in male and female criminality. Long before them, Shakespeare had Lady Macbeth pleading with the spirits to 'unsex' her to keep her resolved to murder Duncan: 'fill me from the trow to the toe top-full of direst cruelty! Make thick my blood; Stop up the access and passage to remorse...'. Steffensmeier and Allen summarise the state of modern knowledge: '[c]riminologists agree that the gender gap in crime is universal: Women are always and everywhere less likely than men to commit criminal acts.'⁵⁴ Furthermore, they assert that

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the conception and execution of evil, it is clear that the innocuous semi criminal present in the normal woman must be transformed into a born criminal more terrible than any man.'

⁵² Jocelyn M Pollock, *Women's Crimes, Criminology, and Corrections* (Waveland Press 2014) 72–76.

⁵³ Otto Pollak, *The Criminality of Women* (University of Pennsylvania Press 1950) ('Pollak, *The Criminality of Women*').

⁵⁴ Darrell Steffensmeier & Emilie Allan, 'Gender and Crime: Toward a Gendered Paradigm of Female Offending' (1996) 22 *Annual Review of Sociology* 459 ('Steffensmeier & Allan, 'Gender and Crime: Toward a Gendered Paradigm of Female Offending') 459.

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Both men and women are more heavily involved in minor property and substance abuse offenses than in serious crimes like robbery or murder. However, men offend at much higher rates than women for all crime categories except prostitution. This gender gap in crime is greatest for serious crime and least for mild forms of lawbreaking such as minor property crimes.⁵⁵

Statistics have confirmed that there are differences between men and women when it comes to crime, not least in the fact that across the board, men commit far more crime and especially serious crime involving loss of life or bodily harm.⁵⁶ The experts tell us that when women kill, they tend to kill their children or the men in their lives; they tend to use different weapons, such as poison, rather than brute force.⁵⁷ However, Steffensmeier also pointed out that ‘the gender gap varies significantly by age, race, geographic area, and time’ and has drawn on this to argue that ‘[i]f the gender gap had a biological basis, it would not vary, as it does, across time and space’.⁵⁸

Adler and Simon also tackled the sex-based arguments, claiming that sociological factors, not physiology, are better explanations for female criminality.⁵⁹ Taking this forward, in her 2005 work *Doubly Deviant Doubly Damned*, Ann Lloyd argued that women are not expected to be criminals and if they are, they may be described as ‘*mad* not *bad*’.⁶⁰ The fact that men are traditionally more aggressive than females is not, she argues, necessarily bound to biological factors, but is instead heavily influenced by socio-cultural and environmental factors.⁶¹ The perception that women may be *mad* because they ‘dared to go against their natural biological givens such as ‘passivity’ and a ‘weakness of compliance’ appears, Feinman argued,

⁵⁵ Ibid, 460.

⁵⁶ For example, UK crime statistics in 2012 – over a ten year period, 90% of those convicted of murder in England and Wales were men. See <<https://www.gov.uk/government/statistics/women-and-the-criminal-justice-system-2013>> accessed 15 September 2015.

⁵⁷ Pollak, *The Criminality of Women* (n 53).

⁵⁸ Darrell Steffensmeier & Robert E Clark, ‘Sociocultural vs. biological/sexist explanations of sex differences in crime: a survey of American Criminology textbooks 1919–1965’ (1980) 15 *The American Sociologist* 246.

⁵⁹ Freda Adler, *Sisters in Crime: The Rise of the New Female Criminal* (McGraw-Hill 1975) (‘Adler, *Sisters in Crime: The Rise of the New Female Criminal*’); Rita Simon, *Women and Crime* (Rowman & Littlefield 1975).

⁶⁰ Ann Lloyd, *Doubly Deviant Doubly Damned* (Penguin Books 1995) xvii.

⁶¹ Ibid, 29.

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to originate from the view that women who conform as pure, obedient daughters, wives and mothers benefit society and men.⁶²

The early authors did not see women as rational or wilful or possessing the faculty of reasoning, and are accused of having subjected women to 'voyeuristic studies concerned only with their sexuality'.⁶³ Leading on from this school, and Pollak, is the argument that when the exceptional minority of individual women do offend, they do so in ways that are different from men, because women have a natural desire to be caring and nurturing (these are not crime-supporting values). 'Normal' women are therefore less likely to commit crime, and 'abnormal' women commit crime. As Allen noted, just as with the popular stereotypes of women in society generally, women offenders are portrayed as hysterical, irrational and incapable of being fully responsible for their actions and crimes due to their biology and sex.⁶⁴ Recognition of the capacity of the female criminal to make rational choices eventually developed through the rational choice perspective, set out in works such as *The Reasoning Criminal: Rational Choice Perspectives on Offending*.⁶⁵ Steffensmeier has applied a gendered perspective to the rationality theory; he studied criminal organisations, and concluded with regard to women that '...if women are less into crime and are relatively less successful at it, this is less a result of single-mindedness in the rational pursuit of crime than because they lack access to organizations and social contacts that would enable them to pursue criminal enterprise more safely and profitably.'⁶⁶

Much contemporary work on women and crime is by feminists, which does to some extent balance out the reality that most theories about crime were developed by males about male crime.⁶⁷ Feminist criminology takes the view that different approaches are needed to

⁶² Clarice Feinman, *Women in the Criminal Justice System* (Praeger Publishers 1994) 16.

⁶³ Dorie Klein & June Kress, 'Any Woman's Blues: A Critical Overview of Women, Crime and the Criminal Justice System' (1976) 5 *Crime and Social Justice* 34.

⁶⁴ Hilary Allen, *Justice Unbalanced: Gender, Psychiatry and Judicial Decisions* (Open University Press 1987).

⁶⁵ Derek B Cornish & Ronald V Clarke, *The Reasoning Criminal: Rational Choice Perspectives on Offending* (Springer-Verlag 1986) (reprinted with a new introduction by Ronald V Clarke, Transaction 2014).

⁶⁶ Darrell Steffensmeier, 'Organization Properties and Sex-Segregation in the Underworld: Building a Sociological Theory of Sex Differences in Crime', 61(4) *Social Forces* 1010, 1025.

⁶⁷ For a concise overview, see Darrell Steffensmeier & Jennifer Schwartz, 'Contemporary explanations of women's crime: Offenders, Prisoners, Victims, and

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understand female criminality.⁶⁸ As Daly and Chesney-Lind explained in 1988, underpinning these approaches is an emphasis on gender rather than biological difference; gender is a complex product of society, history and culture.⁶⁹ Gender is important because it orders our social life, which is a construct of masculinity and femininity. However, our societies are such that this construct is not based on equality, but on male superiority. That superiority can be extensively illustrated, such as the way that systems of knowledge reflect a male view of the social and natural world. For feminists, this needs to be rebalanced by putting women at the centre of the intellectual inquiry. In criminology, it means looking at crime and criminal matters from the female perspective. This is the 'gender perspective'.

Schwartz and Steffensmeier are among those who challenge feminist arguments that the traditional criminological theories are not just gender neutral but in fact male-specific and are inappropriate in explaining female crime. Instead, they take the position that

in spite of their androcentric origins, traditional structural and social process theories are more or less gender neutral. These theories are as useful in understanding overall female crime as they are in understanding overall male crime. They can also help explain why female crime rates are so much lower than male rates. However, we also contend that many of the subtle and profound differences between female and male offending patterns may be better understood by a gendered approach.⁷⁰

They identified, based on the American context, nine clusters of explanation for contemporary female criminality, arguing there is considerable overlap with male criminality: law and the organisational management of crime, 'net-widening' and more punitive laws; gender equality and female emancipation; increased economic

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Workers' in Barbara Raffell Price & Natalie Sokoloff (eds.), *The Criminal Justice System and Women: Offenders, Prisoners, Victims, and Workers* (McGraw-Hill 2003).

⁶⁸ For an overview of the leading feminist literature see Claire M Renzetti, 'Feminist Theories' at <<http://www.oxfordbibliographies.com/view/document/obo-9780195396607/obo-9780195396607-0013.xml>> accessed 5 June 2015.

⁶⁹ Kathleen Daly & Meda Chesney-Lind (1988) 5 'Feminism and criminology', *Justice Quarterly* 497.

⁷⁰ Jennifer Schwartz & Darrell Steffensmeier, 'The Nature of Female Offending: Patterns and Explanation' in Barbara Raffell Price & Natalie Sokoloff (eds.), *The Criminal Justice System and Women: Offenders, Prisoners, Victims, and Workers* (McGraw-Hill 2003) 57.

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marginalisation of women; increased inner-city community disorganisation; expanded opportunities for female type crimes; changes in the criminal underworld; trends in drug dependency; and crime prevention programmes targeted at males.⁷¹

Steffensmeier, in a paper with Allen, has also noted that the evidence suggests considerable overlap in the causes of male and female crime, and that both traditional and contemporary theoretical perspectives 'can help explain both female offending patterns and gender differences for less serious crime, the explanation of serious female crime and of gender differences in serious crime is more problematic'.⁷² Also, the profile of male and female offenders is similar: female offenders, especially the more serious ones, are apparently 'typically of low socioeconomic status, poorly educated, under-or unemployed, and disproportionately from minority groups. The main difference in their social profile is the greater presence of dependent children among female offenders.'⁷³

Polemic and stereotyping are notable features in the study of females and crime, with feminists coming across as being as willing as traditionalists to use generalisations (all women are victims, all men are potentially rapists; women are inherently non-violent, men are inherently violent etc.) and employing the same methods of categorising and labelling (e.g. women are viewed in different ways, e.g. 'the masculine criminal woman', 'the respectable woman', 'the victim' etc.). There is great diversity within the movement and inconsistency in the writings. Some complain that when women are treated as women, that is discriminatory; yet when women are treated like men, others complain that it is discriminatory. When female criminals receive attention, it is puerile and sensationalist; yet when they are ignored, that is interpreted as being about female invisibility. Such contradictions reflect divisions within the feminist movement, for example among major groupings that can be described as 'liberal', 'radical', 'socialist' or 'women of colour'.

It also bears noting that many of the well-known works such as those cited above are from Western cultures, and ideas of femininity, race and accompanying ideologies do not immediately transfer to other societies, let alone to the situations of crisis in which international crimes are committed. Relevant for this present project, there has been growth in feminist approaches from the 'Global South',

⁷¹ Ibid.

⁷² Steffensmeier & Allan, 'Gender and Crime: Toward a Gendered Paradigm of Female Offending' (n 54) 465.

⁷³ Ibid.

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which are more nuanced towards context and culture.⁷⁴ It was only in 2014 that the first global study of women, crime and criminal justice seems to have been published.⁷⁵ Rosemary Barberet assessed the role of globalization and development in patterns of female offending, and how a human rights framework can help explain women's crime, victimization and the criminal justice response. For Barberet, globalisation's negative impact, for example inequality and poverty, on women's daily lives is not sufficiently recognised, and we fail to see the extent of gendered victimization and offending. Women's involvement in crime is a point on a continuum of acts and meanings. *Women, Crime and Global Justice: A Global Inquiry* contains a chapter critiquing international law and human rights frameworks in the area of female crime and victimization, and another that considers criminological explanations of female crime. Barberet has, very helpfully, produced a comparative analysis of sex-disaggregated crime data based on UN materials, a review of data from the European Sourcebook on Crime and Criminal Justice Statistics, and most valuably for present purposes, conducted a close investigation of women involved in four international crimes: transnational drug trafficking, human trafficking, Genocide, and suicide bombings. Barberet's work is also insightful in terms of methodology, for she uses comparative and feminist research methods and draws from criminology, international relations, development studies, public health and political science.

The treatment of women in the criminal justice system, for example in terms of the investigative and trial phases, sentencing, correction and rehabilitation, is of great relevance for this evaluation of WAIC. Paternalism has been identified as a distinct feature in the way that women are treated. In 1950, Otto Pollak argued that women are treated leniently by the criminal justice system, which is primarily male, on the grounds of what he called chivalry (the first such claim suggesting paternalism was apparently as early as 1907, by Thomas in *Sex and Society*).⁷⁶ The rationale has been that women are more leniently treated because they are perceived as pitiable beings, who are vulnerable and lacking intellectual ability, and therefore are not

⁷⁴ An early work of this genre is Chandra Talpade Mohanty et al (eds.), *Third World Women and the Politics of Feminism* (Indiana University Press 1991), a more recent work is Radhika Coomaraswamy & Nimanthi Perera-Rajasingham, *Constellations of violence: feminist interventions in South Asia* (Women Unlimited 2008).

⁷⁵ Rosemary Barberet, *Women, Crime and Criminal Justice: A Global Enquiry* (Routledge 2014).

⁷⁶ Pollak, *The Criminality of Women* (n 53).

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fully responsible for their criminal actions. 35 years later, Frances Heidensohn presented an opposing argument – she argued that female offenders are in fact more harshly treated, subjected to double jeopardy, in that they are on trial for the crime they commit and for their femininity.⁷⁷ Heidensohn's research uncovered bias against women in the criminal justice system as certain female offenders receive tougher sentences (for example, prostitutes). Heidensohn suggested that women are actually treated more harshly when they are seen to deviate from social norms of female sexuality. A 2006 US-focused study affirmed that the 'vast majority of research in the USA shows that adult female offenders tend to receive milder sentences than male offenders'⁷⁸ although some studies, such as by Chesney-Lind in 1977 and 2004 showed that females actually receive harsher treatment than males, but these findings pertain to juveniles.⁷⁹ The same study found that '[w]hen crime type is disaggregated, however, and violent, property, and drug offenses are analysed separately, we find that the relationship between gender and sentencing varies considerably, but in ways that are inconsistent across the in/out and sentencing-length decisions.'⁸⁰

Should justice regimes for men and women be exactly the same or differentiated to account for sex and gender variations? What do international human rights standards say about the treatment of the female offender? In her 2005 Longford Trust Lecture, the United Kingdom's Lady Justice Hale spoke forcefully about the importance of properly understanding the meaning of equality in the criminal justice system, pointing out that 'it is now well recognised that a misplaced conception of equality has resulted in some very unequal treatment for the women and girls who appear before the criminal justice system. Simply put, a male-ordered world has applied to them its perceptions of the appropriate treatment for male offenders'.⁸¹ She argued that the criminal justice system and those involved in the implementation of justice and punishment must consider the special needs of females who commit crime, pointing to nine specific areas:

⁷⁷ Frances Heidensohn, *Women and Crime* (Macmillan 1985).

⁷⁸ S Fernando Rodriguez et al, 'Gender Differences in Criminal Sentencing: Do Effects Vary Across Violent, Property, and Drug Offenses?' (2006) 87(2) *Social Science Quarterly* 318, 319-320, citing a long list of works to support this claim.

⁷⁹ *Ibid*, 320.

⁸⁰ *Ibid*, 334.

⁸¹ Lady Justice Hale, Longford Trust Lecture 2005, 'The sinners & the sinned against, women in the criminal justice system'.

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1. The challenges females face in accessing justice on an equal basis with men in many countries.
2. Their disproportionate victimization from sexual or physical abuse *prior* to imprisonment.
3. A high level of mental healthcare needs, often as a result of domestic violence and sexual abuse.
4. Their high level of drug or alcohol dependency.
5. The extreme distress imprisonment causes to women, which may lead to mental health problems or exacerbate existing mental disabilities.
6. Sexual abuse and violence against women in prison.
7. The high likelihood of having caring responsibilities for their children, families and others.
8. Gender-specific healthcare needs that cannot adequately be met.
9. Post-release stigmatization, victimization and abandonment by their families.

The significance of differentiated treatment within the context of equality has been taken up in the 2010 Bangkok Rules which provide a supplement to the existing international framework on treatment of prisoners and persons in detention, which is gender neutral.⁸² The Bangkok Rules are exclusively about females, and are underpinned by the understanding of equality as treating like alike, and treating differences differently. The core recognition of difference is laid out in Rule 1, which requires States to address the particular challenges that confront women in the criminal justice and penitentiary systems. The remaining rules provide comprehensive standards for the treatment of women prisoners and offenders, and deal with issues such as non-custodial measures, mental and physical health care, safety and security, contact with family members, educational and skills development, staff training, the needs of pregnant women and mothers with children in prison, and prisoner rehabilitation and reintegration, among other things. Barberet's *Women, Crime and Global Justice: A Global Inquiry*, discussed earlier, contains a contemporary analysis of female incarceration, including global rates of female imprisonment and conditions of detention, identifying the need for the implementation of new UN guidance on female prisoners. Perhaps unsurprisingly, the Special Rapporteur on Violence against Women's 2013 study of women's pathways to crime indicated little progress:

The prevalence of dire prison conditions with a lack of a gender focus is a global problem, and female prisoners often face conditions that are worse than

⁸² UN Rules for the Treatment of Women Prisoners and Non-Custodial Sanctions for *Women Offenders* (the Bangkok *Rules*), adopted by General Assembly Resolution A/RES/65/229, 16 March 2011.

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those experienced by their male counterparts. It is argued that prisons were made with men in mind, and gender-neutral policies can have serious negative consequences for women prisoners. Furthermore, opposition and hostility from policymakers and male corrections officials is common. The view is held that women prisoners unfairly receive preferential treatment.⁸³

Given the focus of this study, it is relevant to point out here that unlike the less fortunate women convicted in domestic proceedings in the Balkans and Rwanda, the two senior women politicians convicted by the ICTR and ICTY have been housed at Sweden's specialised female prison, Hinseberg. This can be described as a five-star prison, with gym, sauna, massage, high quality accommodation, horse-riding, extensive freedom of movement, conjugal visits, a flat for children to stay overnight, etc. Yet, during her short stay there, Biljana Plavšić is widely reported to have complained about conditions at the prison (e.g. the air-conditioning, being housed with drug traffickers and prostitutes, bad smells, threats from Bosnian inmates, that the cake the prison warders made for her birthday was not big enough, etc.). To date, Pauline Nyiramasuhuko, serving a life sentence, is not reported to have made any complaints.

3.1 *Women as Serial Killers and Sex Offenders*

These women challenge the standard feminist theories. For example, women sex offenders like the UK's Myra Hindley⁸⁴ and Rosemary West⁸⁵ challenge Susan Brownmiller's claim that 'Man's structural

⁸³ Report of the Special Rapporteur on Violence against Women, 'Pathways to, conditions and consequences of incarceration for women', UN Doc A/68/340, 21 August 2013.

⁸⁴ Myra Hindley and her partner Ian Brady were convicted of the 'Moors Murders' in the UK. The killings, of at least five children, took place between 1963 and 1965. Some of the children were sexually assaulted. Police discovered pornographic photographs taken of one of the victims, Lesley Ann Downey, naked and with a scarf tied across her mouth, along with a 13 min tape recording of her screaming and pleading for help. The pair were tried, convicted and sentenced to life in 1966. Hindley's demonization as the 'most evil woman in Britain' has been well documented (e.g. Helen Birch (ed) (1994), *Moving Targets: Women, Murder, and Representation* (University of California Press 1994) 32). Her notoriety meant that she was never released, and died in prison in 2002.

⁸⁵ After the suicide of her husband Frederick West, Rosemary West was the only person to stand trial for murders committed when they lived at 25 Cromwell Street in the English town of Gloucester. Some of the bodies were buried in the garden. Rosemary West was convicted of the murder of ten young women and girls between April 1973 and August 1979, including that of her daughter Heather and step-

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capacity to rape and woman's corresponding structural vulnerability are as basic to the physiology of both our sexes as the primal act of sex itself' and 'Man's discovery that his genitalia could serve as a weapon to generate fear must rank as one of the most important discoveries of prehistoric times...[Rape] is nothing more or less than a conscious process of intimidation by which all men keep all women in a state of fear'.⁸⁶ These are said to be masculine crimes, challenging stereotypes about men and women committing different types of crimes due to their sexuality.

Addressing the matter of women serial killers from a psychological perspective, Harrison et al. see evolutionary issues and argue that 'Female serial killers gather and male serial killers hunt'.⁸⁷ They profiled 64 American female serial killers active from 1821 to 2008. The women used a range of techniques to kill: they poisoned, smothered, burned, choked, shot, bludgeoned, and shot newly born infants, children, elderly, and the sick as well as healthy adults. Many of the victims were known to them and trusted them. Their paper 'Female serial killers in the United States: means, motives, and makings' asserted that many of these women were engaged in work associated with the feminine, such as nurses and baby-sitters; they were also apparently above average in terms of physical attractiveness, which may have helped to engender trust in their victims. Nearly half the sample shared what was described as a 'hedonistic' motive, which for forensic psychologists means killing for financial gain, lust or thrill. The second most common motive was what the authors called 'power-seeking', the killing of those within their power. A striking contrast with male serial killers was the relative absence of sexual violence and deviance (male serial killer murders apparently tend to involve sex in some way).

Some studies of women in this admittedly small grouping argue that they are compartmentalised as either mad or bad. This is about

Footnote 85 continued

daughter Charmaine. The victims were sexually abused before being killed. For more insight into Rosemary West, see Jane Carter Woodrow, *Rose West: The Making of a Monster* (Hodder & Stoughton 2012).

⁸⁶ Susan Brownmiller, *Against Our Will: Men, Women and Rape* (Ballantine Books 1993).

⁸⁷ The quote is attributed to Marissa A Harrison, in an interview by the Washington Post on 6 March 2015 about research published as Marissa A Harrison, Erin A Murphy, Lavina Y Ho, Thomas G Bowers & Claire V Flaherty, 'Female serial killers in the United States: means, motives, and makings' 26(3) *Journal of Forensic Psychiatry and Psychology* 383.

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the use of labels as a way to comprehend female criminality.⁸⁸ The mad woman conformed more to the conventional stereotype about women and could elicit pity, but the bad woman was an aberration. Women seen as bad were especially demonised, and were sentenced not just for their actions, but also for their deviation from conventional gender expectations. An evil woman must, the thinking goes, be much more evil than a man because she has deviated so far from the gender role assigned to her. This is called 'double deviance', linking back to Heidensohn.⁸⁹ Other studies, flowing from the work of Freda Adler, have pointed to the growth in equal opportunities creating spaces for women in areas that were traditionally male (women's liberation led to an increase in violent crime by women).⁹⁰ Thus, equal opportunities thinking should also colour how we view women who commit crimes; that should be no great surprise, since they are equal to men. This view has been challenged by authors such as Smart and Chesney-Lind, who argued that statistics showing increases in crimes by women may also be down to the consciousness and perceptions of law-enforcement officers.⁹¹

Yet another area of work points out that the way female accused are portrayed in the media, and the way they present in court, significantly affects the outcome. The argument is made that if the accused woman presents in a way that is compatible with the gender expectation (such as being victimised, weak and compliant, manipulated or forced by an abusive male, or mentally unbalanced) some sympathy is shown by those who decide her fate.⁹² On the other

⁸⁸ Georgie Ann Weatherby, Jamie Blanche & Rebecca Jones, 'The Value of Life: Female Killers and the Feminine Mystique' (2008) 1(1) *Journal of Criminology and Criminal Justice Research and Education* at <<http://www.scientificjournals.org/journals2008/articles/1440.pdf>> ('Weatherby et al, 'The Value of Life: Female Killers and the Feminine Mystique') accessed 5 June 2015, citing Dean John Champion (*Research methods for Criminal Justice and Criminology* (Prentice Hall 2006) 39-40).

⁸⁹ Eamonn Carrabine et al, *Criminology: A Sociological Introduction* (Routledge 2008).

⁹⁰ Adler, *Sisters in Crime: The Rise of the New Female Criminal* (n 59).

⁹¹ Carole Smart, 'The New Female Criminal: Reality or Myth?' (1979) *British Journal of Criminology* 50; Meda Chesney-Lind, 'Re-discovering Lillith: Misogyny and the New Female Criminal' in Curt Taylor Griffiths & Margit Nance, *The Female Offender: Selected Papers from an International Symposium* (Criminology Research Centre, Simon Fraser University 1990) 1.

⁹² For consideration of Lyndie England's portrayal in the media, see Howard & Prividera, 'The Fallen Woman Archetype' (n 106).

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hand, if one presents as tough, 'masculine', unrepentant and non-compliant, there is no sympathy. In 2002, Berrington and Honkatukia compared the trials of two women killers. One was in Finland, Sanna Sillanpaa, and the other was the United Kingdom's Rosemary West. The authors observed how the perception of Rosemary West as 'bad', and Sanna Sillanpaa as 'mad' skewed the outcomes and sentences.⁹³ West was seen as evil personified for her deviance from expected norms, while Sillanpaa was seen as a poor sick unstable female who could only be pitied. West was sentenced to life, Sillanpaa was sent to a mental hospital. Another insightful study, 'The Value of Life: Female Killers and the Feminine Mystique', compared how the media reported on the trial of Aileen Wuornos, and that of another female killer who presented herself very differently, Andrea Yates. Wuornos was a bi-sexual prostitute who shot six of her clients dead, while Yates was an 'all American' wife and mother who drowned her five children. Wuornos was executed further to conviction, while Yates was found not guilty by way of insanity. The authors observed how the media reported differently on the trials of these female killers as opposed to male killers, and how sex-role stereotypes fed into the trial. The authors found that 'the media manipulated the perceived lifestyles of these female killers, and that this portrayal affected the severity of their sentences'.⁹⁴ The authors of 'The Value of Life: Female Killers and the Feminine Mystique' have been able to explain the contrasting treatment of the two women in the media and public, and by the criminal justice system in terms of three leading criminological theories: labelling, anomie and chivalry. Their study of twenty-seven media articles on the two trials led to them to conclude that '[when] a woman is deemed to be a "mad" case, her sentencing and verdict is notably lighter than that of a female criminal who [sic] is thought to be "bad"'.⁹⁵ They also observed reluctance to consider mitigating circumstances in the case of the 'bad' woman, Wuornos, who had a particularly troubled childhood, as opposed to the case of the 'mad' woman, Yates.

Myra Hindley and Ian Brady were co-perpetrators in the notorious Moors Murders in 1960s Britain. Both were convicted and sen-

⁹³ Eileen Berrington & Paivi Honkatukia, 'An Evil Monster and a Poor Thing: Female Violence in the Media' (2002) 22 *Journal of Scandinavian Studies in Criminology and Crime Prevention* 50.

⁹⁴ Weatherby et al, 'The Value of Life: Female Killers and the Feminine Mystique' (n 88).

⁹⁵ *Ibid.*

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tenced to life. Hindley died in November 2002, widely accepted as the more reviled of the two, having been demonised in the British media. It appears that she was particularly reviled for going against the natural maternal role of women, which expects kindness, compassion and protection. There have been at least two conflicting approaches used to try to understand Hindley: the first is that she was Brady's object, under his control and did what she did in order to please him, and the other is that she was an evil creature with individual autonomy. The first played up on societal expectations including of the weak and un-autonomous woman led astray, the second was about deliberate deviation from societal roles. According to Warner, '[a] woman like Myra Hindley is seen to embody a violent sexuality that is more appropriate to the male than the female'; she argues that in the public perception such women 'still act as biological women, but they have disqualified themselves from the rank of mother, and the category of women altogether.'⁹⁶ Motz, in an interview with the United Kingdom's Daily Telegraph about the more recent case of Miranda Barbour, who claims to have killed up to 100 people, said that they are not just betraying society's idea of their gender but also an unspoken, idealised, notion of motherhood: 'The typical image of the female killer links her with a kind of sexually depraved immoral beast, to the extent that she is seen as wholly monstrous, outside of the realm of humanity and motherhood altogether'.⁹⁷

The Lust to Kill was published in 1988.⁹⁸ In this, sociologists Debbie Cameron and Elizabeth Fraser argued that sexual murder, meaning murder of the object of sexual desire motivated by sadistic sexual impulses, is only committed by men and is gender specific. Their position was that gender identities and sexual desires are socially constructed rather than 'natural' or biological, and they predicted that because of changes in contemporary Western cultures in the areas of gender equality and sexual liberation, there could emerge women sexual murderers. What about Hindley, how does she fit in?

⁹⁶ Warner cited in Anna Motz, *The Psychology of Female Violence: Crimes against the Body* (Routledge 2008) 228.

⁹⁷ Dina Rickman, 'Why are we so obsessed with female killers?' at <<http://www.telegraph.co.uk/women/womens-life/10658987/Why-are-we-so-obsessed-with-female-killers.html>> accessed 5 June 2015.

⁹⁸ Deborah Cameron & Elizabeth Frazer, *The Lust To Kill: A Feminist Investigation of Sexual Murder* (Polity Press 1987).

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In 1996, Cameron returned to the issue of women sexual murderers.⁹⁹ The horrors of 25 Cromwell Road, Gloucester, had come to light, and Rosemary West had by then been convicted and sentenced to life for the murder of ten young women and girls.¹⁰⁰ The study of women and crime had come a long way in the decades since the trial of Hindley, and there have been many studies of Rosemary West and why she did what she did. Cameron's paper suggests that Rosemary West's behaviour was particularly reviled because she transgressed social norms about women, and because she committed the most grotesque transgression by killing her own biological children. The focus went on this, rather than an objective assessment of abuse and murder of other human beings. Male criminals are not, it is argued, regarded this way. Cameron's work on the media's representation of West is insightful in light of the way that WAIC are portrayed in the media (particularly the German camp guard Irma Grese and Rwandan Minister Pauline Nyiramasuhuko). She identified media coverage as using two 'framing devices' to facilitate the reporting of the Rosemary West case: the woman as serial killer, and the mother as murderer. She further noted how

[c]ommentary on the case was pervaded by a contradiction between two basic theses: on one hand that women are, axiomatically, the same (that is, 'just as bad') as men, and on the other hand, equally axiomatically, that they are different (which in this context means 'worse'). While commentators overtly made much of the equal depravity of the two partners in crime, they did not treat them equally.¹⁰¹

But, how did Cameron explain Rosemary West without making excuses for her? She took the view that 'the various socially and sexually transgressive activities of Fred and Rose West need to be considered in their totality if we are to make any sense of the case.' She noted that '[to] feminists, the evidence strongly suggested Rose West was not only an abuser but also a victim herself', citing to her childhood and the relationship between husband and wife. It should be noted here that the American Aileen Wuornos had a history of being sexually abused and victimised followed by a dysfunctional lifestyle, yet did not elicit sympathy. Speaking of West, Cameron wrote that 'Her

⁹⁹ Deborah Cameron, 'Wanted: The Female Serial Killer' at <<http://www.troubleandstrife.org/articles/issue-33/wanted-the-female-serial-killer/>> ('Cameron, 'Wanted: The Female Serial Killer') accessed 5 June 2015.

¹⁰⁰ See earlier synopsis at n 85.

¹⁰¹ Cameron, 'Wanted: The Female Serial Killer' (n 99).

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abuse of others was seen as the consequence of the hideous abuse she had suffered, and perhaps was still suffering herself'. As Cameron herself recognises, this does not explain why others who have similar experiences do not commit murder. Her subsequent argument explained Rose, but in conjunction with Fred. She argued, based on studying of numerous case histories, that what Rose and Fred West were doing in the course of their criminal career was constructing a form of identity based on 'sexual transgression' and 'existential transcendence', and that this fit into the broader pattern. She argued that all their sexual practices represented the 'forbidden'. She then drew from ideas 'connecting sexual transgression (that is, flouting taboos, what Queer Theorists romanticise as being a 'sexual outlaw') with personal freedom and transcendence of the social constraints which restrict more 'ordinary' people.' For her, the Wests appear to have embraced virtually all of them. So much for Fred and Rose. Cameron went on:

On balance, however, I think Rose West really is a sexual killer, by which I mean a person who kills the (generic) object of their sexual desire, often after sexually abusing and torturing them, and derives sexual gratification from these activities. Furthermore, I believe Rose West is the first and only female sexual killer to become known to the authorities in any part of the world. The other women whose cases I am familiar with, including Myra Hindley and Aileen Wuornos, may have been labelled in the same way, but in my view they are not the same.¹⁰²

Such works illustrate the challenges at doctrinal and human levels in getting to grips with women who commit such serious crimes. They do not provide answers, but helpful insights, and these will obviously be of utility in tackling WAIC.

3.2 Women as Torturers

In May 2004, evidence emerged of particularly grave abuse of detainees in a US-controlled prison in Iraq called Abu Ghraib. A notable participant in some of the photographs – standing over piles of bodies of Iraqis with the 'thumbs up' sign, smiling behind a pyramid of naked men, holding an Iraqi prisoner on a leash like a dog – was a young woman, Lynndie England. Two other women were later found to have also been involved in this detainee abuse. What was going on? Why did they do it? How could they do it? Were they mad, bad or something else? What does this say about

¹⁰² Cameron, 'Wanted: The Female Serial Killer' (n 99).

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stereotypes about female non-violence and inherent peacefulness? Is this what the military does to women soldiers? Perhaps more radically, why do we react differently to the male and female abusers?

Female participation in the torture of the Iraqi detainees was considered by the contributors to *One of the Guys: Women as Aggressors and Torturers*.¹⁰³ In her foreword, Barbara Ehrenreich drew from the prevailing feminist ideology that violence and cruelty are almost exclusively male traits, that women possess an innate aversion to violence; she ended up declaring that such feminism 'died in Abu Ghraib'. One of the contributors was Janis Karpinski, the commander of Abu Ghraib who was herself implicated in the abuse and demoted. This female soldier offered an explanation that reverted to one of the two stereotypes (the woman perpetrator as victim) arguing that England was manipulated by her then-partner, Specialist Charles Graner, into posing for the photos. The 'she must have been a victim' explanation was also reflected in Eve Ensler's contribution speculating that England was probably a 'working-class woman who had very few choices in her life' and had likely been the victim of sexual abuse or other serious injuries. Jumana Musa, in her chapter on 'Gender and Sexual Violence in the Military', saw women torturers within the 'larger culture of gender devaluation and sexual aggression' in the military. Barbara Finlay considered gender and race in her chapter on 'Pawn, Scapegoat, or Collaborator? US Military Women and Detainee Abuse in Iraq'. The dynamics of group violence seemed to be an issue here, and LaNitra Walker contributed a chapter 'Women's Role in Mob Violence: Lynching and Abu Ghraib' that was developed further with racial implications by Timothy Kaufman-Osborn in his chapter on 'Gender Trouble at Abu Ghraib?'. Strangely, no contribution addressed England as a rational actor, with individual autonomy, making considered choices. The rethinking of feminism that Ehrlich called for, the contributions seemed to suggest, required reconsideration of values that are not sufficiently rated in the military, what are stereotypically associated with women: care, empathy, and connectedness.

Critics of this collection have pointed out that the overall effect is simplistic, failing to grasp the complexity of the issues, offering no satisfactory explanation, and the contributions are inherently con-

¹⁰³ Tara McKelvey (ed.), *One of the Guys: Women as Aggressors and Torturers* (Avalon Publishing 2006) ('McKelvey, *One of the Guys: Women as Aggressors and Torturers*').

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tradictory.¹⁰⁴ In the view of the present author, it may just be the nature of what we are dealing with, and that there may really be no one simple explanation for the behaviour of England and the other women that is satisfactory across the disciplines. But, a fair, pluralistic and open-minded approach should recognise the diversity of views in the area of women and crime, and that insights can come from different approaches and perspectives, even if there is no 'magic formula'. This clearly applies to the present project on WAIC too. Also of relevance is the fact that this book has been criticised for focusing on the women as perpetrators, eclipsing the women who were tortured at Abu Ghraib.¹⁰⁵ This seems to be unfair and misdirected criticism. *One of the Guys: Women as Aggressors and Torturers* (and the present research) addresses an area that has been neglected by the feminist movement. Studies addressing the challenging area of serious female criminality are seeking to bring to light what has been neglected, whether deliberately or not, and are just not the right place for assessing other victims who may, or may not have been ignored.

To return to the idea of the woman having agency, a contrasting view about Lynndie England emerges from the work of Howard and Privera. They analysed media coverage from 4 May 2004 to 31 October 2005, and this revealed to them that the media reportage attempted to bestow complete agency on England. The coverage, they argued, focused on England in terms of morality, presenting her as a flawed individual, the Victorian archetype of the 'fallen woman', diverting away from the bigger issues of responsibility:

[t]he U.S. public is led to question women, femininity, and the female body and their place in the military and in war through the centering of England in the Abu Ghraib scandal. Consequently, the larger issues of institutional failures, organizational gender bias, military responsibility, oppression, and imperialism went unexamined as women's marginal military status was validated.¹⁰⁶

¹⁰⁴ See for example, the book review essay by Jennifer Kelley in *Anamesa*, at <http://www.nyu.edu/pubs/anamesa/archive/spring_2008_violence/one-of-the-guys.pdf> accessed 5 June 2015.

¹⁰⁵ *Ibid.*

¹⁰⁶ See John W Howard III & Laura C Privera, 'The Fallen Woman Archetype: Media Representations of Lynndie England, Gender, and the (Ab)uses of U.S. Female Soldiers' (2008) 31(3) *Women's Studies in Communication* 287, 307.

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As was suggested in the previous section, media coverage of female criminals is an area worthy of closer attention. Howard and Prividera also point out the genderised nature of the media coverage of England, noting that she was objectivised, and in a distinctly feminine way. The media coverage, they observed,

consistently described her as “small,” “petite,” and “pixie-like”... almost universally infantilized her as the “poster girl,” “young girl,” and “poster child” of the Abu Ghraib scandal... In short, her female body and identity drew the media eye to her. If media reported fact alone, Graner, who is said to have orchestrated the abuse rather than England, would have been centralized as “the story.” Instead, the media placed Graner’s story secondary to England’s.¹⁰⁷

The authors also asserted that:

The media constructed England’s distinctly female fall on numerous levels, the most prominent being her failure to adhere to the code of ethics expected of military personnel. England’s failings then expanded into the personal-civilian realm with the concurrent highlighting of her sexual indiscretions, character, and rural working-class upbringing. England’s soldier identity, as a result, is reconstituted: She becomes a civilian rather than a soldier via the fallen woman archetype. The media framed England’s behavior as immoral, embarrassing, deviant, and shameful, hardly soldier material.¹⁰⁸

3.3 *Women Suicide Bombers, Terrorists and Members of Revolutionary Movements*

This section deals with another cluster of less common crime that is of particular importance in trying to understand WAIC. Work done in this area of political violence is diverse, and offers much that can be drawn from for the study of WAIC. There emerges the already familiar tendency to stereotype, but these stereotypes vary enormously: female criminals are either passive victims of male manipulation (‘zombies’), mentally unstable or in emotional distress because of personal conditions (‘black widows’), religious fanatics, or feminist warriors who challenge the social order by violating conventional notions of gender and power (‘empowerment’). The Organisation for Security and Cooperation in Europe has pointed out that ‘specific conditions conducive to the terrorist radicalization of women may

¹⁰⁷ Ibid, 297.

¹⁰⁸ Ibid, 300.

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include gender-based inequality and discrimination, violence against women, lack of educational and economic opportunities and lack of opportunities for women to exercise their civil and political rights and engage in the political process with lawful and non-violent means' as well as human rights violations committed in the course of anti-terrorist measures.¹⁰⁹ Schweizer argued that '[f]emale suicide bombers appear almost exclusively in societies that are heavily traditionalist and conservative, where women lack equal rights and their status in society is much lower than that of their male counterparts.'¹¹⁰ He also noted that

[e]xamination reveals that despite their high profile, women play a marginal role in their organizations, both numerically and in the corporate structure (even if in some areas such as Turkey they comprised around 40 percent of all the suicide bombers, in Sri Lanka, 20-25 percent, and in Chechnya, 43 percent). They are definitely not the leaders in their organizations, but serve rather as pawns and sacrificial lambs.¹¹¹

There is, however, work that stresses the importance of context and culture, and presents holistic strategies for countering the phenomenon. Some work indicates sensitivity about viewing the world through a Western feminist lens. Laura Sjoberg, whose groundbreaking work is of importance for anyone studying WAIC, challenges the amount and quality of analysis of women, gender and terrorism in her co-edited collection of feminist writings on that topic.¹¹² This insightful study of gender in terrorism is sensitive to political, gender, racial, and cultural dynamics, and is global in its consideration of the motivations, strategies and impact of female terrorists. Interviewees in *Women, Gender, and Terrorism* include the Palestinian female terrorist, Leila Khaled, in a chapter entitled 'The Committed Revolutionary'; such interviews provide significant insight about the complex reasoning process behind female participation in terrorism.

Ness has argued that

[f]or all intents and purposes, the female terrorist had not been treated as a legitimate subject for serious inquiry before Wafa Idris, the Palestinian Red

¹⁰⁹ OSCE, *Women and Terrorist Radicalisation Final Report* (OSCE 2013) 3.

¹¹⁰ Yoram Schweitzer (ed.), *Female Suicide Bombers: Dying for Equality?* (Tel Aviv University, Jaffee Center for Strategic Studies 2006) 10.

¹¹¹ *Ibid.*, 9.

¹¹² Laura Sjoberg & Caron E Gentry (eds.), *Women, Gender, and Terrorism* (University of Georgia Press 2011).

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Crescent paramedic, blew herself up on Jaffa Road in downtown Jerusalem on January 27, 2002. This was the case, even though several of the most active left-wing terrorist groups of the 1960s and 1970s, ones central to ushering in the era of modern terrorism, were co-created or co-led by women—Ulrike Meinhof of the Bader–Meinhof group, Leila Khalid and Fusako Shigenobu of the Popular Front for the Liberation of Palestine (PFLP), and Adriana Faranda of the Red Brigades held leadership positions in their respective organizations.¹¹³

In her 2008 edited collection, *Female Terrorism and Militancy: Agency, Utility, and Organization*, Ness and her contributors examined some of the structural conditions that play a part in female radicalisation and their decisions to commit violence, with focus on political agency.¹¹⁴ For example, Berko and Erez raised the questions of women terrorists as martyrs or murderers, victims or victimisers.¹¹⁵ Bloom's 2011 study, *Bombshell: The Many Faces of Women Terrorists*, tackled some of the myths about women terrorists and considered women involved in terrorism in Chechnya, Colombia, Germany, Indonesia, Iraq, Ireland, Israel, Italy, Lebanon, Palestine, Somalia, Sri Lanka, Syria, Turkey, the United Kingdom, and the USA. *Bombshell: The Many Faces of Women Terrorists* probed issues such the psychology, culture and social networks of women who become terrorists, the routes taken to enlistment (voluntary or coerced) and the impact that such participation has on the role of women within the movement and in wider society.¹¹⁶ Alison, based on interviews with female combatants in the Irish Republican Army in Northern Ireland and the Sri Lankan (Tamil Tigers) argued that the reported greater female aggression in those conflicts was perhaps because female combatants need to 'compete for status and recognition in a traditionally patriarchal context.'¹¹⁷ This resonates with

¹¹³ Cindy D Ness (ed.), *Female Terrorism and Militancy: Agency, Utility and Organization* (Routledge 2008) ('Ness, *Female Terrorism and Militancy: Agency, Utility and Organization*') 1.

¹¹⁴ Ibid.

¹¹⁵ Anat Berko & Edna Erez, 'Martyrs or Murderers? Victims or Victimizers? The Voices of Would-Be Palestinian Female Suicide Bombers' in Ness, *Female Terrorism and Militancy: Agency, Utility and Organization* (n 113). Also see Radika Coomaraswamy, 'Women of the LTTE: The Tiger's and Women's Emancipation' (10 January 1997) *Frontline* 61.

¹¹⁶ Mia Bloom (ed.), *Bombshell: The Many Faces of Women Terrorists* (C Hurst & Co 2011).

¹¹⁷ Miranda Alison, 'Women as Agents of Political Violence: Gendering Security' (2004) 35(4) *Security Dialogue* 447, 457.

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the observation of the Sierra Leone Truth and Reconciliation Commission discussed in Part II.¹¹⁸

The 2014 Global Terrorism Index pointed out that '[r]eligious ideologies as a motivation for terrorism is not a global phenomenon. While it is predominant in Sub-Saharan Africa, MENA and South Asia, in the rest of the world terrorism is more likely to be driven by political or nationalistic and separatist movements.'¹¹⁹ Female participation in a number of modern revolutionary movements claiming to pursue gender equality and social transformation has been notable.¹²⁰ Yet, in 1884, the relationship between gender roles, female emancipation, modes of production and class revolution was already identified by Engels in his work on *The Origin of the Family, Private Property and the State*.¹²¹ In *Women and Guerrilla Movements: Nicaragua, El Salvador, Chiapas, Cuba*, Karen Kampwirth pursued the political, structural, ideological and personal factors that motivated female revolutionaries in Nicaragua, El Salvador, Mexico and Cuba. Like Timothy Wickham-Crowley before her, she observed that 'a quantum leap occurred in women's participation in Latin American revolutionary movements, roughly between 1965 and 1975'.¹²² Her 205 interviews led her to identify a number of factors that drew women to the guerrilla movements. The reasons given were as follows: to end the dictatorship, to end the exploitation of the poor and the indigenous, to create more just countries for their children.¹²³ Pull factors included existential issues surrounding land insecurity for the rural poor, migration, ideological and organisation developments, mass mobilisation by guerrilla movements, State repression, the need for security,

¹¹⁸ See fn 37 and accompanying main text.

¹¹⁹ Global Terrorism Index 2014, <http://www.visionofhumanity.org/sites/default/files/Global%20Terrorism%20Index%20Report%202014_0.pdf> accessed 20 September 2015, 32.

¹²⁰ See generally Miranda Alison, *Women and Political Violence: Female Combatants in Ethno-national Conflict* (Routledge 2009).

¹²¹ Cited in Sara Schneiderman & Judith Pettigrew, 'Women in the Maobaadi: Ideology and Agency in Nepal's Maoist Movement' at <<http://old.himalmag.com/component/content/article/4272-women-in-the-maobaadi-ideology-and-agency-in-nepals-maoist-movement.html>> ('Schneiderman & Pettigrew, 'Women in the Maobaadi: Ideology and Agency in Nepal's Maoist Movement') accessed 6 June 2015.

¹²² Karen Kampwirth, *Women and Guerrilla Movements: Nicaragua, El Salvador, Chiapas, Cuba* (Penn State University Press 2002) (Kampwirth 'Women and Guerrilla Movements: Nicaragua, El Salvador, Chiapas, Cuba') Introduction, citing Timothy Wickham-Crowley 1992, 216–217.

¹²³ Ibid, 6.

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personal factors such as age and family circumstances.¹²⁴ Gender justice was a motivation for just one interviewee.

The Liberation Tigers of Tamil Eelam ('LTTE') were once described as 'the most dangerous and deadliest terrorist group in the world and certainly the most violent guerrilla organization of South Asia'.¹²⁵ The movement's female soldiers have been described as 'the most fierce, extremely disciplined and courageous women combatants in the world',¹²⁶ and there has been much written about them.¹²⁷ The literature clusters the incentives of female combatants around the following: Tamil nationalism and the spirit of martyrdom, the need for security and protection including from rape and sexual assault, responses to the deaths or loss of nearest and dearest, and social justice in the sense of a desire for female liberation and emancipation from culturally and socially oppressive practices. According to Alexander, '[f]rom the movement's inception in 1983, the LTTE has drawn tens of thousands of women into its ranks, transforming the concept of the ideal Tamil Woman into one who is militarized, independent, and empowered'.¹²⁸ Jordan and Denov are among the

¹²⁴ Ibid, the present author's summary of the Introduction.

¹²⁵ Cecile Van de Voorde, 'Sri Lankan terrorism: Assessing and responding to the threats of the Liberation Tigers of Tamil Eelam (LTTE)' (2005) 6(2) *Police Practice and Research* 181, 185.

¹²⁶ Adele Ann Balasingham, *Women Fighters of Liberation Tigers* (LTTE Publication Section 1989) 9.

¹²⁷ Mangalika de Silva, 'Women in the LTTE: Liberation or Subjugation?', (1994) 3/7 *Pravada* 28; Vidyamali Samarasinghe, 'Soldiers, Housewives and Peace Makers: Ethnic Conflict and Gender in Sri Lanka' (1996) 14(2) *Ethnic Studies Report* 213; Sitralega Maunaguru, 'Gendering Tamil Nationalism: The Construction of "Woman" in Projects of Protest and Control', in Pradeep Jegathanan & Qadri Ismail (eds.), *Unmaking the Nation: The Politics of Identity and History in Modern Sri Lanka* (Social Scientists' Association 1995) 163; Radhika Coomaraswamy, 'Tiger Women and the Question of Women's Emancipation' (1997) 4/9 *Pravada* 10; Joke Schrijvers, 'Fighters, Victims and Survivors: Constructions of Ethnicity, Gender and Refugeeess among Tamils in Sri Lanka', (1999) 12(3) *Journal of Refugee Studies* 328, Erin Alexander, 'Honorable Mention – Women of War: The Female Fighters of the Liberation Tigers of Tamil Eelam' (2014) *Yale Review of International Studies*, at <<http://yris.yira.org/essays/1347>> ('Alexander, 'Honorable Mention – Women of War: The Female Fighters of the Liberation Tigers of Tamil Eelam') accessed 6 June 2015. For a sample individual account from a former woman fighter, see <<http://www.telegraph.co.uk/news/worldnews/asia/srilanka/5283438/Life-as-a-female-Tamil-Tiger-guerilla-relieved-by-one-of-first-female-soldiers.html>> accessed 6 June 2015.

¹²⁸ Alexander, 'Honorable Mention – Women of War: The Female Fighters of the Liberation Tigers of Tamil Eelam' (n 127).

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authors who have argued that a large number of female LTTE soldiers made autonomous rational choices of engaging in 'non-traditional gender roles and experiences, which represents a drastic change in the expected behavior of Tamil women, and a disruption in conventional gender constructions'.¹²⁹ There has also been a counter narrative about these warrior women as victims of manipulation: Radhika Coomaraswamy described them as 'cogs in the wheel' of the LTTE's male leadership and Christine Sixta argued that the LTTE females were caught within a 'triple bind of oppression' of Western oppression, societal or State oppression and internal oppression within the movement.¹³⁰ Their roles were apparently as 'implementers of the missions designed by others; they are soldiers, fighters and suicide bombers, but not planners, deciders or designers'.¹³¹

In 1983, the LTTE founded its female division, the Women's Front (Tamil: *Vituthalai Pulikal Munani*) also known informally as the Freedom Birds. They reportedly engaged in their first combat operation in 1986.¹³² One view is that the division was 'constructed around gender equality and transforming the gender status quo', focused on achieving the following objectives: the right of self-determination of the Tamil people and attainment of an independent democratic state of Tamil Eelam, abolition of caste discrimination and division, and feudal customs such as the dowry system, elimination of all discrimination and attainment of substantive social, political and economic equality. For Alexander, '[t]he LTTE's proposal of these doctrines spoke to Tamil women and their desire for a

¹²⁹ Kim Jordan & Myriam Denov, 'Birds of Freedom? Perspectives on Female Emancipation and Sri Lanka's Liberation Tigers of Tamil Eelam' (2007) 9(1) *Journal of International Women's Studies* 42, 56.

¹³⁰ Radhika Coomaraswamy, 'Tiger Women and the Question of Women's Emancipation' (1996) 4/9 *Pravada* 8; Christine Sixta, 'The Illusive Third Wave: Are Female Terrorists the New "New Women" in Developing Societies?' (2008) 29(2) *Journal of Women, Politics & Policy* 264. Also, Neloufer De Mel, 'Agent or Victim? The Sri Lankan Woman Militant in the Interregnum' in Wenona Giles, Malathi de Alwis, Edith Klein & Neluka Silva, (eds.), *Feminists under Fire: Exchanges across War Zones* (Between the Lines 2003); Mangalika De Silva, 'Women in the LTTE: Liberation or Subjugation?' (1994) 3/7 *Pravada* 28.

¹³¹ Peng Wang, 'Women in the LTTE: Birds of Freedom or Cogs in the Wheel?' (2011) 4(1) *Journal of Politics and Law* at <<http://ccsenet.org/journal/index.php/jpl/article/viewFile/9595/6888>> ('Wang, 'Women in the LTTE: Birds of Freedom or Cogs in the Wheel?') accessed 6 June 2015.

¹³² Miranda Alison, 'Cogs in the Wheel? Women in the Liberation Tigers of Tamil Eelam' (2003) 6(4) *Civil Wars* 37 ('Alison, 'Cogs in the Wheel? Women in the Liberation Tigers of Tamil') 39.

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more equalized society, in which they could achieve everything that their male counterparts could attain'.¹³³ In 2007, Jordan and Denov wrote that one third of the LTTE's core combat strength was comprised of female soldiers, and they were 'inducted in all units of the movement including its naval force (the Sea Tigers), and its suicide squad; an elite force known as the Black Tigers'.¹³⁴ 30–40% of the suicide missions up to 1987 were carried out by female combatants.¹³⁵ Alexander argued that

... the LTTE's propaganda appealed to those women who wished to simultaneously better their Tamil nation and empower themselves. Posters depicting dynamic, militarized female bodies proclaimed, "Woman you light the flames of liberation! We are calling upon you. Pick up the torch of liberation and struggle with each heartbeat, our nation is taking form – Tamil Eelam!"[xii] The LTTE propagated equal rights for women from the very start of their campaign, and declared that it was the only way to ensure female emancipation, while simultaneously working towards an autonomous homeland.[xiii] The LTTE propaganda of "Tamil Liberation," for example, enabled the construction of female militants who could fight for their nation and for themselves.[xiv] Thus, the LTTE's various recruitment tactics all sought to mobilize the female population in hopes of reaching their ultimate goal of autonomy.¹³⁶

Alison has presented a different perspective, arguing *inter alia* that the debate over whether LTTE females were agents or victims, liberated or subjugated, emancipated or oppressed, has been 'an unnecessary and unsophisticated binary'.¹³⁷ She agreed with Rajasingham-Senanayake's use of the phrase 'ambivalent empowerment' as being more appropriate: this notion is that

[t]he reality of LTTE women is probably somewhere in-between. For while they may have broken out of the confines of their allotted domesticity and

¹³³ Alexander, 'Honorable Mention – Women of War: The Female Fighters of the Liberation Tigers of Tamil Eelam' (n 127).

¹³⁴ Kim Jordan & Myriam Denov, 'Birds of Freedom? Perspectives on Female Emancipation and Sri Lanka's Liberation Tigers of Tamil Eelam' (2007) 9(1) *Journal of International Women's Studies* 42, 46.

¹³⁵ Yoram Schweizer, cited in Wang, 'Women in the LTTE: Birds of Freedom or Cogs in the Wheel?' (n 131).

¹³⁶ Alexander, 'Honorable Mention – Women of War: The Female Fighters of the Liberation Tigers of Tamil Eelam' (n 127).

¹³⁷ Alison, 'Cogs in the Wheel? Women in the Liberation Tigers of Tamil' (n 132) 52.

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taken on new roles as fighters, it is indeed arguable that they are captive both to the patriarchal nationalist project of the LTTE leader Prabhakaran and the history and experience of oppression by the Sri Lankan military. However, to deny these Tamil nationalist women their agency because they are nationalist is to once again position them within the “victim” complex, where the militant woman is denied her agency and perceived to be acting out a patriarchal plot.¹³⁸

Another country of interest for the study of WAIC is Nepal, where some have estimated that up to 40% of all combatants and civilian political supporters of the Maoist Peoples Liberation Army were females.¹³⁹ The civil war was a conflict said to have been ‘deeply gendered’, not only concerning its consequences, but also involving its origin, the ideologies underlying it and the discourse generated around it.¹⁴⁰ In a paper examining the role of females in the movement, Schneiderman and Pettigrew explained how just one of the 40 Maoist demands in their revolutionary struggle referred specifically to females, and this focused on an issue specific to Nepali law: “Patriarchal exploitation and discrimination against women should be stopped. Daughters should be allowed access to paternal property”.¹⁴¹ In fact, another author has pointed out that

[w]omen became professional revolutionaries by joining [the Maoists], militias, production brigades. They became policy makers; they worked as couriers, organizers, as barefooted health workers, as radio anchors. For the first time they were taught to target the feudal state apparatus as an instrument of class and gender oppression. For the first time they were taught to fight for new democracy, a state which will do away with feudalism completely. For the first time they got the opportunity to compete on an equal footing with men combatants in war fronts. For the first time they could get married or remarried irrespective of caste, class, region and ethnicity, choosing a partner on the basis of love and ideology. For the first time the women’s mass front was not only geared to addressing women’s oppression but also to producing red and expert women for running cottage industries, producing soldiers and

¹³⁸ Ibid.

¹³⁹ Mandira Sharma & Dinesh Prasain, ‘Gender Dimensions of the People’s War: Some Reflections on the Experiences of Rural Women in Michael Hutt (ed.), *Himalayan People’s War* (Hurst & Co 2004), although the UN mission in Nepal has lower statistics (some 20%, i.e. 3, 846 of the 19,602 people making up the PLA).

¹⁴⁰ María Vilellas Ariño, ‘Nepal: A Gender View of the Armed Conflict and the Peace Process’, Peacebuilding Paper No 4, June 2008, at <http://escolapau.uab.cat/img/qcp/nepal_conflict_peace.pdf> accessed 6 June 2015.

¹⁴¹ Schneiderman & Pettigrew, ‘Women in the Maoist Movement: Ideology and Agency in Nepal’s Maoist Movement’ (n 121).

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leaders for the Party, militias and the PLA, running communes, co-operatives etc. Similarly by associating with the masses at the grass roots level, the new women leaders became sensitized at a deep level to regional, ethnic, class and caste oppression.¹⁴²

While there is certainly attention paid to women revolutionaries and terrorists as phenomena, this preliminary review indicates that there has hardly been any attention paid to the matter of women revolutionaries as perpetrators of international crimes outside of suicide bombing. There is only informal anecdotal evidence from Nepal about the involvement of Maoist women in Torture and abuse¹⁴³ and the present author is presently working towards a scoping study of Cambodia.¹⁴⁴

3.4 *Women and International Crimes*

The discussions in the preceding sections have built up towards the present, which directly addresses WAIC. Of course, some of the preceding section also addressed this matter under rubrics of terrorism, torture and the like. A notable feature of contemporary international criminal justice is the enormous focus on women and girls as victims of international crime. The dialogue about females in this field invariably builds on gender stereotypes about violence, and assume male perpetration of harm. Gender sensitivity is too often seen in terms of a female perspective. Where there is recognition of female engagement in non-peaceable behaviour, it is often presented as being on the sidelines: '[y]oung or old, in or out of uniform, women's involvement in these conflicts is overwhelmingly as eggheads, camp followers, and victims.'¹⁴⁵ The contemporary international

¹⁴² Hsila Yami, 'Women's role in the Nepalese movement: Making a peoples' Constitution', Monthly Review (21 March 2010) at <<http://monthlyreview.org/commentary/womens-role-in-the-nepalese-movement/>> accessed 6 June 2015.

¹⁴³ Email from Mandira Sharma, former Director of Advocacy Forum, Nepal (9 June 2015). Ms Sharma advises that this is an area that has not yet been researched, and an original contribution can be made here.

¹⁴⁴ Three works on Cambodia provide particular insights: Jacobsen's *Lost Goddesses: The Denial of Female Power in Cambodian History* (n 2) a chapter of which is devoted to women in the Khmer Rouge, Fieson's *Cambodian Women in the Revolutionary War for the People's National Liberation* and Karkaria's Masters Dissertation at Canada's Concordia University entitled 'Failure Through Neglect: The Women's Policies of the Khmer Rouge in Comparative Perspective'.

¹⁴⁵ Martin Van Creveld, 'The Great Illusion: Women in the Military' (2000) 29(2) Millennium: Journal of International Studies 429, 441.

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justice dialogue speaks about justice for women in the sense of justice for females as victims of crime, above all sexual and gender violence, with stress on women and girls as passive, non-violent, innocent and helpless victims.¹⁴⁶

There is, however, a silence about WAIC. This silence about female criminals is ironic, given that the ground-breaking work that introduced feminist approaches to international law spoke of gender silences, or silences about women in international law. Charlesworth and Chinkin's landmark study in 2000 on *The Boundaries of International Law* argued that issues of sex and gender matter in international law, and they reviewed a decade of feminist scholarship in international law and examined core issues in the international legal order through the lens of feminism.¹⁴⁷ Their thesis was that the absence of women in the development of international law resulted in a narrow and inadequate jurisprudence claiming to be objective and rational; this has legitimated the unequal position of women worldwide. They argued that the institutions, methodologies and substantive principles of international law are biased against women. In sum, international law's gender blindness reinforces the domination of women and affects them detrimentally. They sought to 'redraw the boundaries' of international law so that it responds to these injustices.

Yet, as noted earlier, one of those silences or injustices about women exists in feminist legal works themselves, and it is about

¹⁴⁶ There is an extremely large body of work on victims of international crimes, and especially in the area of sexual and gender violence, with most of the materials focusing on the experiences of women and children as victims. A weighty feminist view of international justice that does not consider WAIC can be found in Christine Chinkin, 'Feminist reflections on international criminal law' in Andreas Zimmermann (ed.), *International Criminal Law and the Current Development of Public International Law* (Duncker and Humblot 2003) 125–160. Other more recent works also do not discuss WAIC, see for example Catherine O'Rourke, see *Gender Politics in Transitional Justice* (Routledge 2013), 'International Law and Domestic Gender Justice, or Why Case Studies Matter' in Martha Albertson Fineman & Estelle Zinsstag (eds.), *Feminist Perspectives on Transitional Justice: From International and Criminal to Alternative Forms of Justice* (Intersentia 2013). Here too, there is silence on WAIC. Similarly, Vol 16(4) of the *International Feminist Journal of Politics*, published in 2014, is dedicated to 'The International Criminal Court – A Site of Gender Justice' and does not include any consideration of WAIC.

¹⁴⁷ Hilary Charlesworth & Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester University Press 2000). Among the many feminist writings inspired by this work are Sari Kouvo & Zoe Pearson (eds.), *Feminist Perspectives on Contemporary International Law? Between Resistance and Compliance* (Hart Publishing 2011); Zoe Pearson & Sari Kouvo *Gender and International Law* (Vol. I–IV) (Routledge 2013).

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WAIC. The valuable approaches of Charlesworth, Chinkin and other feminists have been influential in the global victims' movement that has focused on the experiences of women as victims of international crimes. However, a credible and truly gender-sensitive approach to violence in armed conflict, one that argues for the holistic appreciation of the experience of armed conflict for both genders, cannot continue to ignore the crimes committed by women. We cannot continue to turn our eyes away from this inconvenient reality. The prevalence of female participation in violence including sexual violence against males and females that has already come to light in this preliminary inquiry shows that the standard assumptions about male and female roles in armed conflict, and explanations for wartime violence need to be recalibrated. The scale of female participation in atrocity and its ramifications are not to be brushed aside as mere anomalies. The scale of female participation in atrocity suggest that this *is* a trend. We are not dealing with a situation of insignificance, of a handful of female aberrations, but thousands of women involved in very serious criminality. The research presented in this paper is an attempt to begin to address the blind spot about such women in law, and across relevant complementary disciplines, and open the doors to future work.

There is broad agreement in the literature that political struggles and armed violence reinforce peacetime gender roles.¹⁴⁸ Feminists argue that the standard social expectation, around the world, is that men are the ones who take up arms, and they fight, *inter alia*, to protect their women and girls. Females need protection because they are non-violent, fragile and vulnerable, and they are doomed to suffer passively as victims of male violence. The traditional expectation of the function and role of the woman is as wife and mother who nurtures and cares for the family. The assigned gender role, as identified in the literature, dictates that they do not fight. The emphasis on female victimhood and helplessness, even in feminist writings, reinforces such stereotypes. Of course, these stereotypes are shattered by the reality that was examined in the previous section – some women do choose to participate in crime and violence, through terrorism and

¹⁴⁸ See for example, Miranda Alison, 'Women as Agents of Political Violence: Gendering Security' (2004) 35(4) Security Dialogue 447, Jessica West, 'Feminist IR and the Case of the 'Black Widows': Reproducing Gendered Divisions' (2004) 5 Innovations: A Journal of Politics 1, Dorit Naaman, 'Brides of Palestine/Angels of Death: Media, Gender, and Performance in the Case of the Palestinian Female Suicide Bombers'(2007) 32(4) Signs: Journal of Women in Culture and Society 934.

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military struggles. And, some of these women do go on to commit crimes of the utmost seriousness. McKelvey's 2007 collection *One of the Guys: Women as Aggressors and Torturers* and other works referred to in this paper challenge the notion that females are inherently nurturing and face the reality that they may be equally as prone to brutality as men.¹⁴⁹

In the area of international crimes and women, preliminary research reveals significant concentration on females in Nazi Germany, and secondary clustering in relation to the Rwandan Genocide, with ad hoc studies elsewhere. These materials span half a century, and are focused on women as victims, with very minor foray into the roles of females in criminality (interest in such crime is clear for Germany, and there is growing interest in relation to the participation of women in Rwanda, presumably stimulated by the case of Pauline Nyiramasuhuko at the ICTR). Within the latter category, the studies are almost exclusively historical, anthropological, sociological and political. These studies are notably mono-contextual and uni-disciplinary. International comparisons have not yet been made to place this in a wider context. *Legal* literature is particularly limited, as studies have focused on crimes committed against women, and women as victims, and sexual violence in particular. A leading example that bucks the trend is by Mark Drumbl.¹⁵⁰ The political scientist and feminist Laura Sjoberg is a rare scholar who has studied women's participation in what she describes as 'war crime of genocidal rape against other women' and sought to go beyond Rwanda by way of very brief 'snapshots' into other situations where women have allegedly committed such acts: Darfur, Biljana Plavšić, Pauline Nyiramasuhuko, Nazi Women Guards and the Armenian Genocide.¹⁵¹ So, while there has been some work done, the global picture is absent, the literature is highly specialised, and reveals how much more there is to do.

A major feature of the academic discourse in the field of history has been over whether women were victims or perpetrators, this has

¹⁴⁹ See earlier discussion.

¹⁵⁰ Mark Drumbl, "'She makes me ashamed to be a woman': The Genocide Conviction of Pauline Nyiramasuhuko" (2011) 34(3) *Michigan Journal of International Law* 101 ('Drumbl, 'She makes me ashamed to be a woman').

¹⁵¹ Laura Sjoberg, 'Women and the Genocidal Rape of Women: The Gender Dynamics of Gendered War crimes' in Debra Bergoffen, Paula Gilbert, Tamara Harvey & Connie McNeely (eds.), *Confronting Global Gender Justice: Women's Lives, Human Rights* (Routledge 2010) ('Sjoberg, 'Women and the Genocidal Rape of Women').

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been called the *Opfer-Täterin* debate. Historian Timothy Mason's ground-breaking class based study of Germany in 1976 showed the extent to which Nazi domestic policies on women work, family life and work penetrated and controlled the private spheres of German society; women were 'silent sufferers'.¹⁵² Some years later, Gisela Bock published studies in 1983 and 1984 examining National Socialist policies on sterilisation and eugenics; what came to be very controversial was her claim in 'Racism and Sexism in Nazi Germany: Motherhood, Compulsory Sterilization and the State' that all women in the Third Reich were to some degree victimized.¹⁵³ Claudia Koonz's landmark study *Mothers in the Fatherland: Women, the Family and Nazi Politics* challenged this generalisation.¹⁵⁴ Her work revealed the paradoxes of women who could be caring and loving to their own families, yet displayed extraordinary cruelty to Jews and others vilified by the National Socialist regime. Her work also underscored how women were as supportive as men of Hitler's ideology, despite the militaristic, misogynist and sexist ethos of National Socialism.

From this dispute about whether women were victims or perpetrators emerged new scholarship which sought to move beyond into probing subtleties and complexities rather than engage in dichotomised and simplistic polemic.¹⁵⁵ Elizabeth Harvey, in her work on *Women and the Nazi East: Agents and Witnesses of Germanization*¹⁵⁶ examined the active role of women in Nazi Germany's 'nationality

¹⁵² Timothy W Mason, 'Women in Germany, 1925–1940: Family, Welfare and Work, Part I' (Spring 1976) *History Workshop* 75, 88–89; also Timothy W Mason, 'Women in Germany, 1925–1940: Family, Welfare and Work. Part II Conclusion' (Autumn 1976) *History Workshop* 2.

¹⁵³ Gisela Bock, 'Racism and Sexism in Nazi Germany' in Renata Bridenthal et al (eds.), *When Biology Became Destiny: Women in Weimar and Nazi Germany* (Monthly Review Press 1984), 271–296.

¹⁵⁴ Claudia Koonz, *Mothers in the Fatherland: Women, the Family and Nazi Politics* (St Martins Press 1987).

¹⁵⁵ This is summarised in David A Guba Jr, 'Women in Nazi Germany: Victims, Perpetrators and the Abandonment of a Paradigm' (2010) 33 *Concept* at <<http://concept.journals.villanova.edu/article/view/327>> accessed 11 October 2015. Influential examples of the new wave include Mary Nolan, 'Work, Gender and Everyday Life: Reflections on Continuity, Normality and Agency in Twentieth century Germany' in Ian Kershaw & Moshe Lewin (eds.), *Stalinism and Nazism: Dictatorship in Comparison* (CUP 1997), and Adelheid von Saldern, 'Victims or Perpetrators? Controversies about the Role of Women in the Nazi State', in David F Crew (ed.), *Nazism and German Society, 1933–1945* (Routledge 1994), 141–165.

¹⁵⁶ Elizabeth Harvey, *Women and the Nazi East: agents and witnesses of Germanization* (Yale University Press 2003).

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struggle' in the pre-War years, and then as agents of the Germanisation of occupied Poland. Her other works, such as 'Visions of the Volk: German Women and the Far Right from Kaiserreich to Third Reich' have gone further into the actual roles that women played.¹⁵⁷ In 2014, Lower published a study of 13 of the young women who went to work in Poland and then Ukraine and Belarus as part of the German regime of occupation.¹⁵⁸ They were secretaries, nurses, schoolteachers or the spouses of serving SS officers. Lower's study reveals how they – being representative of German women of that age and background – were part of the devastation wrought on the occupied territories. These women assisted the men who committed crimes, participated in the persecution of Jews, stole, and also committed murder themselves. The SS wives 'displayed a capacity to kill while also acting out a combination of roles: plantation mistress; prairie Madonna in apron-covered dress lording over slave laborers; infant-carrying, gun-wielding hausfrau.'¹⁵⁹ Lower argued that these women did have choices, they could have chosen not to be part of this. She wrote that '[i]n favoring perceived duty over morality, men and women were more alike than different.'¹⁶⁰

These studies of Germany are critical, but they must now be seen in the context of a broader endeavour at a modern, pluralistic and trans-disciplinary global study. Such literature on the historical role of women is completed by work done in criminology and psychology on women offenders in Germany, which has focused on nurses and medical staff at the euthanasia centres and concentration camps.¹⁶¹

¹⁵⁷ Elizabeth Harvey, 'Visions of the Volk: German Women and the Far Right from Kaiserreich to Third Reich' (2004) 16(3) *Journal of Women's History* 152.

¹⁵⁸ Wendy Lower, *Hitler's Furies: German Women in the Nazi Killing Fields* (Houghton Mifflin Harcourt 2013) ('Lower, *Hitler's Furies: German Women in the Nazi Killing Fields*').

¹⁵⁹ *Ibid.*, 131.

¹⁶⁰ *Ibid.*, 111.

¹⁶¹ See the examples of the following works by Susan Benedict: 'Caring while killing', in Elizabeth R Baer & Myrna Goldenberg (eds.), *Experience and Expression: Women, the Nazis, and the Holocaust* (Wayne State University Press 2003); 'Duty and 'euthanasia': the nurses of Meseritz-Obrawalde' (2007) 14(6) *Nursing Ethics* 781 (with Traute Lafrenz); 'Killing while caring: the nurses of Hadamar' (2003) 24(1) *Issues in Mental Health & Nursing* 59; *Nurses and Midwives in Nazi Germany: The "Euthanasia Programs"* (Routledge 2014); 'Nurses and the sterilization experiments of Auschwitz: a postmodernist perspective' (2006) 13 *Nursing Inquiry* 277 (with Jane M Georges); 'Nurses' participation in the euthanasia programs of Nazi Germany' (1999) 21(2) *Western Journal of Nursing Research* 246 (with Jochen Kuhla); 'Nurses in the Nazi "euthanasia" program: a critical feminist analysis' (2009) 32(1) *Advances in Nursing Science* 63 (with Jane M Georges); 'The nadir of nursing: nurse-perpe-

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There are many other studies that can, if applied to female criminals, shed light on their crimes and their behaviour. Examples are the recognition that division of labour was a means for diffusion and displacement of responsibility among perpetrators of atrocity (for example, I never killed anyone, I just guarded them when they arrived by train, someone else was responsible, etc.),¹⁶² and also 'doubling' and 'splitting'.¹⁶³

The discourse about women in criminology has evolved in many ways, including in the consideration of female transformation, such as from female nurses and medical staff to murderers or accomplices to murder. Benedict's extensive work on the Nazi nurses, for example, explained how this came about through an infinite and unknowable number of factors, which included the social context of the euthanasia policy in National Socialist Germany, deliberate devaluation of certain groups such as those with disabilities as well as those of targeted ethnic groups, utilitarian thinking about the greater good of the community (the 'useless eaters' were not contributing to the national effort), instructions from higher authorities, belief that killing the handicapped and others deemed 'inferior' was an act of goodness and kindness, dehumanisation of the victims, and individual psychological coping measures such as 'splitting' and 'numbing'.¹⁶⁴ Even so, Partee noted that 'while social and historical discourses have tended to present SS men as complex characters influenced by a variety of factors and motivations, SS women continue to be portrayed as sexually depraved monsters'.¹⁶⁵ She argued that in fact, the women were in the main, ordinary:

Footnote 161 continued

trators of the Ravensbrück concentration camp' (2003) 11 *Nursing History Review* 129; Susan Benedict & Tessa Chelouche, 'Meseritz-Obrawalde: a 'wild euthanasia' hospital of Nazi Germany' (2008) 19 (73 pt 1) *History of Psychiatry* 68.

¹⁶² Zygmunt Bauman, *Modernity and the Holocaust* (Cornell University Press 1998).

¹⁶³ Robert J Lifton used these concepts to try to understand the Nazi doctors in his 1996 book, *The Nazi Doctors: Medical Killing and the Psychology of Genocide* (Basic Books 1986), in the chapter 'The Psychology of Genocide'.

¹⁶⁴ See works at n 161.

¹⁶⁵ Kimberley Partee, 'Evil or Ordinary Women: the Female Auxiliaries of the Holocaust', in April Anson (ed.), *Evil, Women, and the Feminine* (Inter-Disciplinary Press 2011), at <<http://www.inter-disciplinary.net/wp-content/uploads/2011/04/parteepaper.pdf>> accessed 15 September 2015, 2.

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Most Aufseherinnen [female overseers in the camps] could be described as average. They tended to be single; hail from lower-middle class families in rural areas; and most received only rudimentary schooling. After the war their neighbours and peers generally described them as “pleasant” and “friendly” though “not remarkable in any way.” Many claimed that there “was certainly no cruelty” or depravities in the young women’s pre-war dispositions. However, due to the nature of their future jobs, one can possibly assume that some of the women were quite ambitious and even adventurous. After all, becoming a guard in a concentration camp offered unparalleled opportunities for females that were not available in normal civilian life during the Third Reich, including career advancement, privileged living conditions, and opportunities to meet men. Initially, female guards were almost entirely volunteers; however, by 1943, the majority were conscripted.¹⁶⁶

Such work is instructive in understanding the SS women who were part of what Partee calls the ‘warped social universe of the concentration camp’, and can obviously be extended to study the participation of women in armed formations in contemporary situations such as Sierra Leone, Liberia, Nepal and Sri Lanka (see earlier discussion). Ravensbrück was the only all-female camp, as well as the site of the training camp for women guards. The SS training in the camps involved mental conditioning, and was brutal and militarised, with obedience and political loyalty stressed. Violence was normalised, and it is alleged that many women guards lashed at prisoners in frustration. In fact, it seems that the nature of the cruelty in Ravensbrück was impersonal:

By examining post-war testimonies of Ravensbrück survivors it is noticeable that many former prisoners viewed their overseers as automatons, performing their job without thought or feeling. They hit and beat without provocation or passion. They were simply part of the Ravensbrück order of terror and death. When a third party reads these survivor testimonies they cannot help but be struck by the apparent lack of hatred and violence exhibited on behalf of the Aufseherinnen towards the inmates. The guards appear impulsive, senseless, and acting according to prescribed mechanical reactions. In other words, the women were part of the “order of terror” constructed, enforced, and rewarded by the Nazi regime which was further supported through the influence of peer pressure and camaraderie amongst the guards themselves.¹⁶⁷

Agency is another issue which very clearly arises in the context of these female criminals. *States of Conflict*, an edited collection emphasised female agency in creating and challenging conflict. In this, a paper by

¹⁶⁶ Ibid, 3 footnotes omitted.

¹⁶⁷ Ibid, 6 footnotes omitted.

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El-Bushra demonstrated how although women may be active in peace work, they are also often 'in the forefront of demands for aggression in defence of their and their group's interests'.¹⁶⁸ Gulaid has rightly observed that the actions of women *génocidaires*

are viewed and understood as unnatural and most likely a result of male manipulation. Thus we witness a discourse wherein women are not allocated free will in their decision to perpetuate [sic] and contribute to genocide. It is crucial for our understanding of genocide that we understand that women can be, and in the specific case of Rwanda that they were, active agents of horrific mass killings and mass rapes.¹⁶⁹

Sjoberg further pointed out that

the question of why women commit violence generally and genocide specifically is treated as a different question than the question of why men commit such violence. Women's violence is often almost exclusively explained by gender-specific theories or gender-specified versions of traditional theories of individual violence. Women's violence is explained as women's violence rather than as women committing violence.¹⁷⁰

Lamenting how '[t]hose with a political interest in the gender order cannot hear or tell those stories of women's participation in genocidal rape; instead, stories are produced and reproduced where women's agency in their violence is denied and violent women are characterized as singular and abnormal aberrations', Sjoberg argued that these examples of women-on-women subordination require reconsideration of the feminist constructions of gender subordination and offers a reformulation.¹⁷¹

In more recent times, we have come to know about the remarkable role of women as perpetrators of atrocity in Rwanda. It is increasingly being studied, thanks no doubt to the high profile trial of the former Rwandan Minister of Family Affairs and Women's Development, Pauline Nyiramasuhuko. Sentenced to life, she was found to

¹⁶⁸ Judy El-Bushra, 'Transforming Conflict: Some Thoughts on a Gendered Understanding of Conflict Processes' in Susie Jacobs, Ruth Jacobsen & Jennifer Marchbank (eds.), *States of Conflict: Gender, Violence and Resistance* (Zed Books 2000).

¹⁶⁹ Hodan Gulaid, 'Ordinary Women: Understanding Female Agency in the Perpetration of Genocide', *Armenian Weekly*, 21 January 2011 ('Gulaid, 'Ordinary Women: Understanding Female Agency in the Perpetration of Genocide').

¹⁷⁰ Sjoberg, 'Women and the Genocidal Rape of Women' (n 151) 12.

¹⁷¹ *Ibid.*

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have made statements ordering particular targeting of Tutsi women, including for sexual attacks prior to being killed:

4985. The Chamber finds that the testimony of Prosecution Witness FAE, provides sufficient and unchallenged detail so as to establish beyond a reasonable doubt the allegation that Nyiramasuhuko came to Cyarwa-Sumo *secteur*, Ngoma *commune*, in the beginning of June 1994 and distributed condoms for the *Interahamwe*, to be used in the raping and killing of Tutsi women in that *secteur*. The Chamber further finds that Nyiramasuhuko ordered the woman to whom she distributed the condoms to “[g]o and distribute these condoms to your young men, so that they use them to rape Tutsi women and to protect themselves from AIDS, and after having raped them they should kill all of them. Let no Tutsi woman survive because they take away our husbands.”

2268. Witness QBP testified that Nyiramasuhuko descended from the vehicle and went to the veranda of the BPO. Nyiramasuhuko told the soldiers and *Interahamwe* “these are the accomplices who are here ... there’s still a lot of dirt at the BPO, such as these Tutsi women, who previously were arrogant and did not want to marry Hutu men. Now it’s up to you [the Hutus] to do whatever you want with them.”

These extracts reveal a female–female dynamic. It was however not probed by the ICTR which scrupulously pursued a gender-neutral approach, and addressed this simply as evidence of her intent to destroy, in whole or in part, the Tutsi group.¹⁷² One explanation for this dynamic can be found in the work of Brown and Maier, who in separate papers argued that gender-specific mobilization occurred in Rwanda.¹⁷³ Maier observed that within the abuse directed at the Tutsi as a group (‘denounced both before and during the genocide as *inyenzi* (cockroaches) and filth, snakes and cannibals’), their females were ‘often especially singled out as vixens, temptresses and spies who had to be eliminated’; in fact, ‘[t]he perception that Tutsi women were superior, more desirable, more beautiful than Hutu women, and also more haughty was a generalized cliché of pregenocide Rwanda’.¹⁷⁴

¹⁷² See for example paras 5939 and 5871 of the Trial Judgment.

¹⁷³ Sara E Brown, ‘Female Perpetrators of the Rwandan Genocide’ (2014) 16(3) *International Feminist Journal of Politics* 448–469 (‘Brown, ‘Female Perpetrators of the Rwandan Genocide’’).

¹⁷⁴ Donna J Maier, ‘Women Leaders in the Rwandan Genocide: When Women Choose To Kill’ (2012–2013) 8 *Universitas: The University of Northern Iowa Journal of Research, Scholarship and Creative Activity*, at <<http://www.uni.edu/universitas/article/women-leaders-rwandan-genocide-when-women-choose-kill>>, accessed 15 September 2015 (‘Maier, ‘Women Leaders in the Rwandan Genocide: When Women Choose To Kill’’).

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Brown revealed how carefully crafted propaganda built on simmering resentment of Tutsi females by their Hutu sisters, and specifically encouraged and sanctioned female perpetration of genocide-related crimes. An example is the first three of the so-called Hutu Ten Commandments, published in the hardline Hutu Kangura magazine:

1. Every Hutu male should know that Tutsi women, wherever they may be, work for the interest of their Tutsi ethnic group. As a result, a Hutu who marries a Tutsi woman, befriends a Tutsi woman, or employs a Tutsi woman as a secretary or a concubine shall be considered a traitor.
2. Every Hutu should know that our daughters are more suitable and conscientious in their role as woman, wife, and mother. Are they not beautiful, good secretaries, and more honest?
3. Hutu women, be vigilant, and try to bring your husbands, brothers, and sons back to reason.¹⁷⁵

Brown's feminist analysis of what was going on here is very insightful.¹⁷⁶ She has argued that the first commandment 'labels the Tutsi woman as a dangerous enemy and traitor who is working for a cause that is, according to this publication, counter to Hutu interests. This message was deliberate and meant not only to 'warn' Hutu men and women of the Tutsi threat'. Brown further contended that this call had another agenda: 'sowing intragender divisions by 'othering' Tutsi women in particular.' She explained how this developed a recurring theme in Hutu extremist materials such as Kangura, which targeted Tutsi females in a pornographic way, labelling them as deviant. 'By demonizing and othering Tutsi women, the shared identity of 'female' that may have bound individuals across ethnic boundaries was compromised.' According to Brown, 'the second commandment follows a similar thread of logic, raising up Hutu women and serving to boost their sense of identity and worth at the expense of Tutsi women.' The final commandment, directly addressed to women, is a 'direct appeal to female agency and calls upon Hutu women to take action, tasking them to stand up to Hutu men and make them 'see reason'.'

The first study to bring to light the extent of female participation in Rwanda's Genocide appears to have been by the NGO African Rights in the report *Rwanda: Not so innocent – when women become killers*.¹⁷⁷ The report documented how many women needed no

¹⁷⁵ Brown, 'Female Perpetrators of the Rwandan Genocide' (n 173) 454–455.

¹⁷⁶ Ibid, 455.

¹⁷⁷ African Rights, *Rwanda: Not so innocent – when women become killers* (African Rights 1995).

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encouragement, and participated enthusiastically in the abuse and killing of Tutsi women. It speculated about ethnic motivations stemming from the way that Tutsi females had been treated as Rwanda's sexual elite, and pointed out how the focus on victimhood obscured the extent and nature of female aggression in the genocide. These females were not puppets of males, they had agency, linking back to Brown's arguments discussed above. Jones has asserted that the role of females in the Rwanda conflict is historically unprecedented, 'in terms of the scale and directness of involvement'.¹⁷⁸ He suggested, in his 2002 study, that Hutu females had behaved like their male counterparts, and reflected that 'it seems a valid prima facie assumption that they are capable of such participation everywhere'.¹⁷⁹ Gulaid argued that '[w]omen in Rwanda had, along with the men, been equally exposed to the notion of "them" versus "us"'. The role of the Hutu female and her understanding of herself as a vital component of her ethnic group should therefore not be underestimated.¹⁸⁰ She went on to argue, using Pauline Nyiramasuhuko, as an example, that rape was used by Hutu females as a way of humiliating and oppressing Tutsi females, who had long been 'constructed as more beautiful than the Hutu woman in colonial discourse'.¹⁸¹ Nyiramasuhuko was, Gulaid argued, 'in many ways obsessed with the act of degrading women' and 'her motives can generally be understood as being the result of centuries of Tutsi women being viewed as sexually superior to their Hutu counterparts'.¹⁸² Another important study into female participation in the Rwandan Genocide was by Adler, Reva and Globerman, as part of a wider study on addressing the root causes of genocide.¹⁸³ In 'A Calamity in the Neighbourhood: Women's participation in the Rwandan Genocide', they presented and discussed critical aspects from interviews with ten women who admitted to their participation in

¹⁷⁸ Adam Jones, 'Gender and Genocide in Rwanda', in Adam Jones (ed.), *Gendercide and Genocide* (Vanderbilt University Press 2004) 65, 88.

¹⁷⁹ *Ibid.*, 221.

¹⁸⁰ Gulaid, 'Ordinary Women: Understanding Female Agency in the Perpetration of Genocide' (n 169).

¹⁸¹ *Ibid.*, citing Erin Baines.

¹⁸² *Ibid.*

¹⁸³ Adler, Loyle & Globerman, 'A Calamity in the Neighborhood: Women's Participation in the Rwandan Genocide' (n 1). This study is also important for initiating a comparison of the gender expectations of women in National Socialist Germany and Rwanda (226–227).

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genocide. The authors found four distinct experiential pressures leading to genocide in these interviews: disaster mentality that flowed from the downing of Habyarimana's aeroplane, fear of the new social order as Rwanda descended into chaos, confusion or ambivalence about events on the ground, and consonance with gender roles. The authors argued that females were, like males, caught up in the social upheaval, and affected by the destructive ideology, rapid militarisation of civil society, fear of extremism and greed. The interviews revealed that females were under pressures to conform with gender-based expectations of being a homemaker and compliant spouse, while also expected to participate in genocidal activities which could range from passive support such as cheering killers on and looting, to the active engagement in killing and direct acts of violence. Interestingly, they noted that the small number who took part in direct violence against the person 'faced community censure for stepping outside traditional gender constraints'.¹⁸⁴

In her study of female combatants in the civil war in Sierra Leone, Dara Kay Cohen considered the role of females as participants in wartime sexual violence.¹⁸⁵ She reported that in a survey of female survivors of rape in the Democratic Republic of Congo, over 40% reported other females involved as perpetrators, as did 10% of the male victims. She wrote that

population-based survey data show that groups that included women perpetrated nearly one in four incidents of the reported gang rape in Sierra Leone... Some women committed the actual rape of victims (that is, by inserting objects into victims' bodies), other women were involved in gang rape by holding down the victim ... In Liberia, female fighters were implicated in the rape of women, including rape with objects such as guns, and in sexual crimes against men, such as cutting off their genitals. Women in armed criminal gangs, paramilitary, and self-defense groups in Haiti are reported to have committed sexual violence, including gang rape, against other women and members of enemy gangs. During the 1994 genocide in Rwanda, women were active perpetrators of both killing and sexual violence.¹⁸⁶

Cohen's interviewees in Sierra Leone spoke of females as especially vicious fighters and with a reputation for encouraging excessive violence. They told of the role of female fighters from the RUF in

¹⁸⁴ Ibid, 223.

¹⁸⁵ Cohen, 'Female Combatants and the Perpetration of Violence: Wartime Rape in the Sierra Leone Civil War' (n 18).

¹⁸⁶ Ibid, 384–385.

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identifying victims, capturing them, restraining other females as they were being raped, and raping with objects such as bottles and sticks. For Cohen, this spoke to sexual violence as a group cohesion activity, or bonding, and she concluded that 'pressures that compel men to participate in gang rape affected women in similar circumstances'. Cohen theorised that in certain extreme situations, both males and females respond to social pressure to participate in violence – including sexualised violence. She noted internal structuring of groups, and that 'rape, and especially gang rape, enables armed groups with forcibly recruited fighters to create bonds of loyalty and friendship from difficult initial circumstances of fear and mistrust.' Further, she noted the fact that 'women perpetrate wartime atrocities is surprising only because of the gendered assumptions that scholars and policymakers often make about women's capacity to commit violence.'¹⁸⁷ Cohen did not rule out the possibility that females were pressured to take part in such violence, but points out that males were also subjected to similar pressures.

In a rare gendered study of this topic by an international lawyer, Mark Drumbl examined the trial of Pauline Nyiramasuhuko, former Rwandan Minister of Family Affairs and Womens Development in some depth.¹⁸⁸ He noted, *inter alia*, the judgement's deliberate gender neutrality and its silence in relation to gender, pointing out that:

this conscious textual gender neutrality may present shortcomings and lost opportunities. For example, neutrality skips over the reality that, when disaggregating the multiple motivations that prompt a person to commit atrocity, it is somewhat stilted (perhaps even scripted) not to consider the role of gender in that process. Moreover, degendering runs the risk of glossing over the acute etiological need to better understand the role of femininities and masculinities in how mass atrocity emerges and, by logical extension, the cultivation of more effective reintegrative and preventative efforts in its aftermath.¹⁸⁹

Thus, we are again prompted to ask: should justice be gender neutral or gender sensitive?

¹⁸⁷ *Ibid*, 386.

¹⁸⁸ Drumbl, 'She makes me ashamed to be a woman' (n 150).

¹⁸⁹ *Ibid*.

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IV STARTING TO MAKE SENSE OF WAIC

This paper has been motivated by the desire to generate fresh and meaningful approaches to the study of WAIC. It is rooted in confidence about the ability of a methodology drawing from a global comparative review and a trans-disciplinary evaluation of work that has been done on the extreme edges of female criminality to develop significant lines of inquiry that are pluralistic and that draw in diverse perspectives and interpretations without excessive focus on particular ideologies or pursuit of political agendas. So, what has this prospecting exercise that looks at the big picture identified? What specifically does the study of WAIC benefit from this exercise?

Parts II and III have both been able to place WAIC into global and historical context, and both demonstrate the scale and seriousness of female participation in atrocity around the world. Existing data is undeniably incomplete, and that in itself tells us that more work is needed. It is clear, however, that Germany and Rwanda were not one-off situations of a few exceptional females breaking the stereotypical expectations of feminine passivity, gentleness, lack of agency, and non-violence. Even at this preliminary stage of research, it seems as if female participation in atrocity is on the increase. That in turn leads to more questions. One may speculate about whether this is due to the greater flow of information allowing for data about female participation in criminality to be collected, or whether it is due to greater opportunities for females to engage in crime, lighter modern weapons, the impact of mass media and strategic propaganda use, or greater willingness of females to be active participants in the situation around them due to changing perspectives about their role in society. What one can say is that this realisation of the scale and seriousness needs to permeate policies and strategies, for example, in tackling radicalisation, and post conflict approaches to social repair. Once more, this leads to further questions. For example, given that the gender-sensitive approach that has become obligatory in reconciliation work today is focused on the female as disempowered citizen and victim of crime, what calibration is needed to deal with the reality of the female as perpetrator of atrocity? Specifically, what calibration is needed when it is not just a handful of women, but thousands of them as in Rwanda? How does one address female–female social repair in light of the evidence of the gender-targeted radicalisation in Rwanda that built on pre-existing ethnic tensions at the female–female level? This flow of questions strongly supports the value of the big picture contextualisation approach taken in this paper.

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The pluralistic and trans-disciplinary review carried in Part III has also facilitated identification of some of the lines of inquiry that should direct future research into WAIC. These lines have also generated flows of follow-up questions and possible linkages. Part III has not provided answers, but opened the door to many possibilities and different ways of looking at WAIC. These are *a few* of the lines of further inquiry into WAIC that can be identified.

We have seen how research has demonstrated that the patterns of female crime in the Rwandan Genocide matched what that criminologists have found in non-crisis situations (e.g. more men than women commit crime, female crime tends to be indirect and against property, although they still do commit direct crimes against human persons).¹⁹⁰ However, we currently only have data from Rwanda, and there seems to be just one study to date on this issue. Much more empirical research is needed, not just into Rwanda, where useful data exists because of the *gacaca* and legal processes, but elsewhere such as in the records of truth and reconciliation commissions around the world.

The analysis of raw data obviously needs to go into deeper consideration of patterns at macro and micro level, and drawing in a range of theoretical approaches. By way of example, we can consider the post World War II trials. The second tier trials by the occupying powers involving females were predominantly concerned with medical abuse such as nurses engaged in euthanasia, and camp guards brutalising inmates. These present women in typically genderised roles, and usually in subordinate roles to men. The nurse, in particular, is a classic 'female' role and as has been extensively shown, the National Socialist regime had particular expectations of what it was to be a 'good' German woman.¹⁹¹ That role was encapsulated in the notion of *Kinder, Küche, Kirche* (in English: Children, Kitchen, Church). There were defined paths for contributing to the struggle: as children already, roles were defined by gender (the boys would be trained militarily, and the girls would be groomed for *Kinder, Küche, Kirche*, or for nursing soldiers or contributing to the home front; both would, however, be subject to heavy Nazi indoctrination). Further, a significant number of the domestic cases against females after World War II involved denunciation, which is about indirect criminality, or betrayal of others to the authorities.¹⁹² This links to Otto Pollak's

¹⁹⁰ Supra fn 34 and accompanying main body text.

¹⁹¹ Supra fn 161–165 and accompanying main body text.

¹⁹² Volume XI of the United Nations War crimes Commission, Law Reports of the Trials of War Criminals has some discussion on Dutch law on this – the Dutch

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sociological theory about women committing ‘masked crime’ involving deceit because of ‘their biological nature in a given cultural setting’ (*The Criminality of Women*, 1950, discussed earlier). Joshi’s work on women denouncers is particularly interesting, as is her claim that women used denunciations as a way to subvert German patriarchy and male domination, and to attack the strong and redress wrongs, play the game, use and abuse power ‘in an uninhibited and fearless way’.¹⁹³ One could certainly consider contemporary denunciations in this light, for example, females giving away places of Tutsi refuge to Hutu persecutors, which occurred during the Rwandan genocide.

In light of this, what are we to make of the role of women as combatants, women as political leaders who stir up outpourings of genocidal killings, or of women with the archetypal ‘blood on their hands’? What are we to make of the role of females in sexual violence, in sexual attacks on other females and also on men, ranging from issuing orders to men to specifically rape females of a targeted group to avenge perceived prior wrongs, to identifying attractive females for sexual abuse by men, to holding women down during rape, to egging males on in their abuse, to raping themselves through use of objects such sticks and bottles? Sexuality and violence were present in some the World War II situations, notoriously in the way that the SS camp guard Irma Grese was perceived and presented, but the sexual violence by females that this paper has considered did not emerge from the older cases. We seem to be seeing something new here and this needs to be closely examined. What is this about? Is it about the growth in numbers of female combatants in highly masculine militarised situations, who then have to prove themselves in terms of courage and also in terms of loyalty? Is Cohen’s theory about group bonding and belonging convincing when tested outside of Sierra

Footnote 192 continued

cases that have been identified involve denunciation. For non-legal literature that will be helpful, see also Andrew Szanajda, *Indirect Perpetrators: The Prosecution of Informers in Germany, 1945–1965* (Lexington Books 2010); Vandana Joshi, *Gender and Power in the Third Reich: Female Denouncers and the Gestapo (1933–1945)* (Palgrave Macmillian 2003), Robert Gellately, *The Gestapo and German Society: Enforcing Racial Policy* (OUP 1990) and Robert Gellately, ‘Denunciations in Twentieth-Century Germany: Aspects of Self-Policing in the Third Reich and the German Democratic Republic’ (1996) *Journal of Modern History* 68.

¹⁹³ Vandana Joshi, *Gender and Power in the Third Reich: Female Denouncers and the Gestapo (1933–1945)* (Palgrave Macmillian 2003).

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Leone?¹⁹⁴ Is Brown's theory of genderised propaganda a sufficient explanation for why women like Pauline Nyiramasuhuko specifically targeted Tutsi women?¹⁹⁵ The scale and seriousness of female involvement in sexual violence presented in Parts II and III require reconsideration of some of the most celebrated (and critiqued) feminist theories of genderised crime: Brownmiller's claim that women are raped by men to keep them in a continuous state of fear,¹⁹⁶ Copelon's claim that women are actually targeted by all sides in a conflict because they are women, i.e. rape is gender specific,¹⁹⁷ and her claim that 'rape embodies male domination and female subordination'.¹⁹⁸

We would also learn much by looking into the personal backgrounds of WAIC which can be helpful for issues such as crime prevention and rehabilitation. Does Talcott Parsons' sociological theory that masculinity is linked to crime¹⁹⁹ have traction here, are these 'masculine' women committing 'masculine' crimes? Browning's study of *Ordinary Men: Reserve Police Battalion 101 and the Final Solution in Poland*²⁰⁰ and Goldhagen's *Hitler's Willing Executioners: Ordinary Germans and the Holocaust*²⁰¹ have been very influential contributions in the quest to understand the mentality of those who commit atrocity. These studies looked at males, and those from the Germanic, Northern European culture. A fresh approach would be to consider women: does one have to be an 'abnormal' woman to commit crime? Is a woman who commits atrocity an even greater aberration than a merely 'abnormal' woman? Can such a discussion have any meaning at all if it is detached from the cultural context? And, above all, what is 'normal' and 'abnormal'? These lines of

¹⁹⁴ Supra fn 186–187 and accompanying main body text.

¹⁹⁵ Supra fn 175–176 and accompanying main body text.

¹⁹⁶ Supra fn 86 and accompanying main body text.

¹⁹⁷ Rhonda Copelon, 'Gendered War Crimes: Reconceptualizing Rape in Time of War', in Julie Peters & Andrea Wolper (eds), *Women's rights, human rights* (Routledge 1996).

¹⁹⁸ Rhonda Copelon, 'Rape, Genocide, and Women's Human Rights', in Alexandra Stiglmayer (ed.), *Mass Rape: The War Against Women in Bosnia-Herzegovina* (University of Nebraska Press 1994) 207.

¹⁹⁹ Talcott Parsons, *Social Structure and Personality* (Free Press of Glencoe 1964).

²⁰⁰ Christopher Browning, *Ordinary Men: Reserve Police Battalion 101 and the Final Solution in Poland* (Harper Perennial 1992).

²⁰¹ Daniel Jonah Goldhagen, *Hitler's Willing Executioners: Ordinary Germans and the Holocaust* (Abacus 2001, first published 1996).

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discussion have already been considered in Part II and can certainly be explored further. Given the global nature of this issue, the cultural backgrounds are obviously diverse, but comparisons can nevertheless be made at a country and regional level (for example, looking at the profiles of Rwandans, and also the West African cases from Liberia and Sierra Leone). The three women political leaders, Biljana Plavšić from Bosnia's Republika Srpska, Pauline Nyiramasuhuko from Rwanda and Ieng Thirith from Cambodia, although from very different cultures, have features in common and afford an excellent comparative study into individual motivations, personality types and pathways to criminality.²⁰² Not just were these political leaders, but they were respectively steeped in Serb nationalism, Hutu supremacist doctrine and Khmer Rouge dogma. Of course, having extreme political views does not make one not 'ordinary' in the sense of Browning and Goldhagen, but logic suggests there are likely to be more threads of commonality between these three women political leaders. Three female soldiers from different countries also present the opportunity for a fascinating case study: Bosnian Rasema Handanović (member of the Bosnian Army's Zulfikar Unit) Liberian Martina Johnson (artillery commander with the NPFL) and Rwandan Army Major Ann Marie Nyirahakizimana. Two were convicted, and one is facing charges in Belgium (Johnson). They afford the opportunity to study at close quarters how female soldiers operate, and what ramifications this should have when crimes occur. One wonders, for example, how females exercise their authority, do they have to be more brutal than male counterparts in order to gain the obedience of subordinates as was claimed by the Sierra Leone Truth Commission? What are the dynamics of mixed group and single group armed formations? Studies of the gendered dynamics of armed conflict with female identity and agency such as those in Jacobs,

²⁰² They are other women leaders who could be profiled, such as former Rwandan Minister of Justice, Agnes Ntamabyariro. Some insight about her can be found in Jacqueline Novogratz, *Blue Sweater: Bridging the Gap between Rich and Poor in an Interconnected World* (Rodale Books 2009) 163. The author interviewed the former Minister of Justice, with whom she had previously worked, in prison. She noted her lack of remorse and expressions of continuing ethnic hatred. 'Many individuals believe that if women ruled the world we'd finally have a chance at peace. While that may be true, Agnes stood as a reminder that power corrupts on an equal-opportunity basis... Agnes loved the trappings of power and when all was said and done she'd traded integrity and whatever good she'd built'. A good balance for this study would be Im Chaem, charged before Cambodia's ECCC, representing lower mid-level authority in the Khmer Rouge regional administration.

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Jacobsen & Marchbank (*States of Conflict: Gender, Violence and Resistance*)²⁰³ and ideas about coping and compensation strategies in militarised environments would be insightful. Sjoberg's 'Women fighters and the 'beautiful soul' narrative' in the International Review of the Red Cross is instructive.²⁰⁴ The two clusters – women political leaders and women soldiers – obviously raise striking issues of female agency, dominance and power. These issues are arguably also present in cases of other women committing crime, although perhaps to a lesser extent. Such a linking together of the two clusters would enable study of the effects of equality and women's liberation, and tapping into the Freda Adler thesis that gender equality would lead to more female crime,²⁰⁵ and crime of a different sort. It would facilitate engagement with the lively rebuttal by Carol Smart, Meda Chesney-Lind and others.²⁰⁶ There is also much to reflect on in the work of Jones, who in comments on Rwanda that resonate elsewhere, suggested that growing changes and tensions in gender relations, as women availed themselves of increasing opportunities to advance themselves, may help to account not only for the lifting of 'taboos' against the mass murder of women, but (in the Rwandan context) Hutu women's conscription and active participation in the slaughter can be seen as a

reflection in its macabre way, of women's greater independent agency in the Rwandan social equation. The added element of Hutu women's 'subordination' to Tutsi women was doubtless a powerful motivation for the atrocities these Hutu women would inflict on other women.²⁰⁷

Obviously, this opens the door to more questions about pathways to criminality, which is a method used in feminist criminology. Looking at the pathways into crime can draw from the study of background discussed above, but also factors such as the impact of education, relationships, personal history of abuse, race and ethnicity, exposure to violence and trauma, substance abuse, mental illness, peer pressure, societal pressure, etc. Each of these can have spin-off; for

²⁰³ Susie Jacobs et al (eds.), *States of Conflict: Gender, Violence and Resistance* (Zed Books 2000).

²⁰⁴ Laura Sjoberg, 'Women fighters and the 'beautiful soul' narrative' (2010) 92 (877) *International Review of the Red Cross* 53.

²⁰⁵ *Supra* fn 90 and accompanying main body text.

²⁰⁶ *Supra* fn 91 and accompanying main body text.

²⁰⁷ Jones, 'Gender and genocide in Rwanda' (n 179) 78.

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example, taking up Brown's work on the way that women were systematically radicalised through propaganda in Rwanda.²⁰⁸ Similar approaches were employed many decades earlier in Nazi Germany, and may well be at play in other situations such as those involving revolutionary movements. As researchers, we need to be alert and pursue them. James Waller's *Becoming Evil: How Ordinary People Commit Genocide and Mass Killing*²⁰⁹ can be of interest here: he called for transcending gender expectations and stereotyping about female criminals being mere deviants or just abnormal, and looking at them as ordinary people influenced by dispositional, situational and environmental factors. One of the points made by truth commissions is that females have faced challenging situations, some of them surviving major personal harms and traumas, and some have chosen to go down a particular path in order to survive. Others have been forced into criminality, for example, girl soldiers. Yet, it seems clear that many females have made rational choices that have had nothing to do with victimhood. We can think of women such as Irma Grese, and those profiled in Lower's *Hitler's Furies*. They were not under any form of duress and chose their paths in life, sometimes even being path-breakers. Certainly, the women political leaders were all innovators in some way, regardless of their criminal acts. Some WAIC have been highly educated and from privileged backgrounds (for example Cambodia's Ieng Thirith studied at the Sorbonne). On the other hand, some have raised issues of their victimhood at trial (for example, Bosnian Rasema Handanović claimed she was traumatised by being raped and losing several family members including her fiancé, and Monika Karan-Ilić claimed that she was an abused woman under duress). We have here issues of the woman as victim and as perpetrator, allowing for mining of the very fertile academic work that has been done in this area particularly in relation to Germany. We obviously need fresh data sets and to view them with new approaches and theoretical frameworks, and also perhaps to revisit old issues. One theory that could be of interest here is Adler's claim that female crime is based on accessibility and opportunity, as opposed to planning and forethought.²¹⁰ Shoplifting is frequently committed by women because they often go shopping, prostitution is about the availability of a desired commodity, the female body. It is essentially

²⁰⁸ Supra 175 and accompanying main body text.

²⁰⁹ James Waller, *Becoming Evil: How Ordinary People Commit Genocide and Mass Killing* (OUP 2002).

²¹⁰ Supra 59 and accompanying main body text.

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a theory about how socio-economic influences affect female criminality. There are many other theories, such as the notion that sexuality lies at the root of female criminality, linking back to the original thinking about biological reasons being behind their delinquency.

This issue of pathways to crime in turn leads to punishment. As discussed in Part III, the treatment of women and girls in the penitentiary system raises major challenges across the board, and around the world. The specific matter of the detention conditions of women who have been convicted of international crimes is a matter that has not yet been studied, to the present author's knowledge. We can use the United Kingdom as an example, to provide a picture of the challenges that the prison authorities face when dealing with females in detention in a first world country. A 2011 Parliamentary survey showed that at that time, although women made up only 5% of the prison population, they committed about 50% of the self-harm incidents.²¹¹ The UN *Handbook on Women and Imprisonment* (2nd edition) reports that in the United Kingdom, 80% of women prisoners suffer from diagnosable mental health problems; 66% are drug dependent or use alcohol to dangerous excess; 50% have experienced domestic violence; 33% have suffered from sexual assault; round one-third of women prisoners lose their homes, and often their possessions, whilst in prison; 37% say that they have attempted suicide at some time in their life.²¹² According to the Prison Reform Trust, UK women prisoners are 10 times more likely to self-harm in prison than men, 1 in 4 women in prison has spent time in local authority care as a child, 48% of women surveyed the Ministry of Justice reported having committed offences to support another's drug use, compared to 22% men.²¹³ Research published in *The Lancet* in 2014 found that women's prisons in England and Wales are undergoing an 'epidemic of self-mutilation', with one in four female prisoners having self-harmed. Women prisoners are four times more likely to self-harm than their male counterparts.²¹⁴ The study also found female pris-

²¹¹ All Party Parliamentary Group on Women in the Penal System, Second Report on women with particular vulnerabilities in the criminal justice system, 2011.

²¹² UN Office on Drugs and Crime, *Handbook on Women and Imprisonment* (2nd ed., United Nations 2014), 9.

²¹³ See <<http://www.prisonreformtrust.org.uk/Portals/0/Documents/Prison%20the%20facts%20May%202014.pdf>> accessed 1 October 2015).

²¹⁴ Keith Hawton et al, 'Self-harm in prisons in England and Wales: an epidemiological study of prevalence, risk factors, clustering, and subsequent suicide' (2014) 383(9923) *The Lancet* 1147.

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oners were much more likely to repeatedly harm themselves. They found 102 women, but just two men, who had harmed themselves more than 100 times a year. In light of this profile of extreme vulnerability amongst the women caught up in the criminal justice system in a country like the United Kingdom, one wonders about the challenges that are involved with females who have been through genocidal and other situations that this paper has been concerned with. One is prompted to ask, what were prison conditions like for the German and Austrian women convicted after the World War II trials? What are they like for the women serving sentence in Kigali Prison and in Bosnia? Of course, one would have to point out the anomalous situation that persons who are convicted by international tribunals serve out their sentences in prisons that are of a vastly different quality than their counterparts back home (contrast Sweden's Hinseberg Women's Prison with Kigali Prison). And of course, the inquiring mind must surely be curious about what the women were like when they were released after serving their sentences.

One of the issues that has emerged from this review is major deviation from social expectation of behaviour, not just in the gender sense but in the professional sense. Three examples particularly call out for greater scrutiny. The first is the members of the medical profession who engaged in euthanasia, medical abuse and experiments in Germany during National Socialism (relevant trials include that of Herta Oberhauser tried with other medical personnel in the Medical Trial, the British Leftitz Children's Home trial, the *Frankfurter Schwesternprozess* (1948) and the Austrian Klagenfurt trials). The second concerns the Rwandan nuns convicted of genocide (there were of course Mother Superior Gertrude and Sister Maria tried in Belgium, but also other nuns were tried in Rwanda such as Sister Theophister Mukakibibi, convicted of genocide by a *gacaca* court in Butare in 2006). The third example is the female Minister for Family Welfare and Advancement of Women who specifically targeted Tutsi females, who were in all likelihood going to be killed, for the additional horror of extreme sexual violence. In all three examples, the legitimate social expectation of behaviour given their official functions is astonishingly opposite to the way they actually behaved. As already noted in Part III, much work has been done on the role of the females of the nursing community in the National Socialist era, particularly by Benedict.²¹⁵ Helpful studies on the role of the Church in Rwanda include Longman's *Christianity and Genocide in*

²¹⁵ Supra fn 161 and fn 164 with accompanying main body text.

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Rwanda²¹⁶ and McGeal's, *Chaplains of the Militia: The tangled story of the Catholic Church during Rwanda's genocide*.²¹⁷ There is much written about Pauline Nyiramasuhuko.²¹⁸ The drawing together of the three constructs of nurse (carer), nun (religion, spirituality, compassion), public servant (particularly women and the family) will surely make for a uniquely original contribution.

We have seen how the use of labelling has been extensive in the area of female criminality, including by those who are studying them. Academic literature is rife with terms such as 'mad or bad', 'mothers or whores', 'mothers or monsters'. Perhaps this study's use of the term WAIC can be seen as a label too, although the cumbersome term was chosen in order to avoid being unduly provocative. Sensationalist writing abounds.²¹⁹ The Nazi female camp guards spawned a veritable industry of what has been called Nazisploitation, to borrow from the title of one study of so-called 'lowbrow literature'.²²⁰ Specific terms of abuse used about WAIC have included:

- *Irma Grese*: 'Beast of Belsen', 'Beautiful Beast', 'Angel of Death', 'Blond Beast', 'Queen of Auschwitz', 'Angel of Hell'
- *Hermine Braunsteiner*: 'Mare of Majdanek'
- *Ilse Koch*: 'Beast of Buchenwald', 'Bitch of Buchenwald'
- *Pauline Nyiramasuhuko*: 'White Boned Demon', 'Butcher of Butare', 'Mother of Atrocities'
- *Biljana Plavšić*: 'Iron Lady', 'Serb Empress', 'Madam Thatcher'
- *Monika Karan-Ilić*: 'Female Monster'

²¹⁶ Timothy Longman, *Christianity and Genocide in Rwanda* (CUP 2011).

²¹⁷ Chris McGeal, *Chaplains of the Militia: The tangled story of the Catholic Church during Rwanda's genocide* (Guardian shorts 2014).

²¹⁸ See for example, Hogg, 'Women's participation in the Rwandan genocide: mothers or monsters' (n 26), the entry on Nyiramasuhuko in Paul R Bartrop (ed.), *A Biographical Encyclopedia of Contemporary Genocide: Portraits of Evil and Good* (ABC Clio 2012); Druml, 'She makes me ashamed to be a woman' (n 150) and Peter Landesman, 'A Woman's Work', *New York Times* (15 September 2002).

²¹⁹ Sensationalist titles are particularly rife: for example, the United Kingdom's Mirror newspaper had an article on 21 November 2005 entitled 'Nazi she-devils'. Books are given titles such as 'Nazi Women: The attraction of evil' and 'Hitler's Furies'. On the internet, one can find websites writing about 'the most evil women Nazis' and the 'ordinary faces of evil' and 'evil female guards of the Nazi concentration camps'. One can reasonably predict that there is far more sensationalist material in the darker recesses of cyberspace.

²²⁰ *Supra* (n 19).

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Is this need to put a label on someone a form of dehumanisation, and what purpose does this dehumanisation serve? Men get labelled too, but is there something different going on when women are labelled in this way? Here, Sjoberg and Gentry's 2007 compilation entitled *Mother, Monster, and Whore* will be a useful resource, as it considers the use of stereotype and myth in the media to dehumanise the accused woman, and women at large. It will also be insightful to reflect on the caution expressed by Durham and O'Brien that 'the use of gender stereotypes as a lens through which to view, condemn or justify atrocities is not only an unhelpful means of analysis, but one that ultimately diminishes our humanity'; they argued in a 2010 paper in the *International Review of the Red Cross* that '[a] gender perspective on IHL enforcement attempts to debunk this kind of mythology by traversing more dynamic understandings of the different experiences of gendered actors in differing contexts.'²²¹ Directly addressing the stereotypes applied to Pauline Nyiramasuhuko, in particular the juxta-positioning of the conflicting stereotypes of mother and monster, they argued that she 'should be recognized not just as a woman acting within a certain power structure, but as a human being. It is this fact, rather than her femininity or lack thereof, which compounds the monstrosity of her alleged actions'.²²²

A final stream for inquiry – and there is obviously far more than those identified here – lies in the criminal justice process, and how it is applied to WAIC. Within that, there are many possible avenues to explore such as modes of responsibility (especially ordering, superior orders and command responsibility for the female combatants), sentencing including aggravating and mitigating factors (several cases have raised the 'perpetrator as victim' issue), and conditions of detention for women who are sentenced to terms of imprisonment. An issue that keeps arising as one reflects on criminal justice is whether fairness requires the law should be gender-neutral or gender-sensitive. Does gender neutrality fail to cater for essential differences? Does gender sensitivity entrench stereotypes and improperly impose subjective and universalist assumptions about differences between male and female across cultures? And, do any of these actually matter in terms of whether WAIC receive fair trial with due process? Given

²²¹ Helen Durham & Katie O'Byrne, 'The dialogue of difference: gender and international humanitarian law' 2010 92(877) *International Review of the Red Cross* 31 (Durham & O'Byrne, 'The dialogue of difference: gender and international humanitarian law') 41.

²²² *Ibid.*, 42.

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the scale of women who have been tried in different jurisdictions, there is ample material to carry out research into whether the substantive law, the procedure through which it is implemented and the institutions that carry out justice whether using domestic or international law, have functioned in a way that is fair to WAIC. In our present day context, the domestic Rwanda and Bosnia proceedings against women accused are a good starting point, as there is sufficient material there. Expansion can go in many different directions, including comparison with the trials of women accused of terrorism, torture, sex crimes and murder in domestic courts, and of course, with males tried for similar crimes (although some feminists may challenge comparison with male proceedings, as they involves comparing subjects that are different). Fairness in this context encompasses the notion of equality and non-discrimination, which as discussed earlier in Part III should mean treating like alike, and differences differently. Part III engaged with some of the critical works that argued that international law is the product of a male world view and directed towards an audience perceived to be masculine. Within international law, the most important sub-groups for this discussion are international criminal law and procedure, the law of armed conflict and international human rights law. Gardham and Jarvis, in their 2001 work *Women, Armed Conflict and International Law*²²³ are among those who have pointed to international humanitarian law's dated and stereotyped perceptions of male and female. However, Durham and O'Byrne have pointed to a number of provisions within these treaties dealing with protections afforded to women as combatants.²²⁴ A powerful example for our purposes is Article 88 of Geneva Convention III: 'In no case may a woman prisoner of war be awarded or sentenced to a punishment more severe, or treated whilst undergoing punishment more severely, than a male member of the armed forces of the Detaining Power dealt with for a similar offence.' It is certainly an interesting provision in its recognition of female combatant status, but it is also one that could be read to suggest women are to be treated either equally or more leniently but most definitely not more seriously. There is no equivalent provision about men.

²²³ Judith Gardham & Michelle Jarvis, *Women, Armed Conflict and International Law* (Kluwer Law International 2001).

²²⁴ Durham & O'Byrne, 'The dialogue of difference: gender and international humanitarian law' (n 221) 34–37.

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The need for generation of fresh research, as well as open-minded probing of materials that already exist has been repeatedly demonstrated in this paper. The prospecting exercise carried out in the preceding pages has also presented many possibilities for further inquiry that will contribute to our knowledge and understanding about WAIC.