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Jeanine Oury
Loyola University Chicago, School of Law

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THE RAPE EPIDEMIC IN THE CONGO: WHY IMPUNITY IN THE CONGO CAN BE SOLVED BY INTERNATIONAL INTERVENTION

Jeanine Oury[†]

I. Introduction

On November 25, 2008, United Nations (hereinafter “U.N.”) Secretary General Ban Ki-moon issued a report to the Security Council proposing that the largest group of U.N. peacekeepers in the world should continue its mission in the Congo until 2009.¹ The same report suggested that war crimes and crimes against humanity have occurred and continue to occur in this ravaged, central African nation.² Ki-moon’s report accused the Congolese and foreign armed forces of “serious crimes against humanity including mass killings, rapes, torture, and sexual slavery.”³

This article will focus on why rape in the Congo is the worst in the world, and argue that it deserves international attention. However, foreign interveners must be careful when meddling in this warring country due to its history of exploitation by outsiders. International intervention to protect women at this point is necessary because there seems to be no end to the fighting despite attempts at ceasefires, and thus no end to the wartime rape tactics. Moreover, the Congo’s rape epidemic can be attributed to the culture of impunity that exists due to a lack of a centralized government and long-standing social beliefs. Therefore, not only does the International Criminal Court (hereinafter “ICC”) need to prosecute individuals to emphasize that rape in the Congo is a crime against humanity, but a system must also be instituted to repair the damage to victims, perpetrators, and the society as a whole. This approach to solving the rape epidemic in the Congo is both wide-scale and individualistic, and will require the cooperation of the international community and the Congo itself.

II. The Congo: A History of Foreign Intervention

The Congo’s history in the past century leading up to “Africa’s First World War” has been long, tumultuous, and strongly affected by foreign interveners.⁴ Part of its tumult is a direct cause of its wealth of natural resources, such as

[†] J.D., Loyola University Chicago, expected May 2010.

¹ John Heilprin, *U.N. Investigates Possible War Crimes in Eastern Congo*, THE OREGONIAN, NOV. 30, 2008.

² *Id.*

³ *Id.*

⁴ STUART NOTHOLT, *FIELDS OF FIRE - AN ATLAS OF ETHNIC CONFLICT* § 2.28 (Troubadour Publishing Ltd. ed. 2008).

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cobalt, copper, tantalum, and diamonds.⁵ Throughout its history, other nations, corporations, and individuals have continuously pillaged the Congo's minerals and other resources for their own profit.⁶ As a result, although the Congo is rich in resources, millions of its citizens die from starvation or other causes related to poverty.⁷

Congo began as "Congo free state," possessed by Leopold, King of the Belgians, but was eventually appropriated to Belgium as a nation in 1908.⁸ In 1960, the Congo became an independent state despite Belgian objection.⁹ In the wake of its newfound independence, the Congo and its more than 250 different ethnic groups found it extremely difficult to unify.¹⁰ With help from the Belgians, the southern Congo Katanga province broke away from the Congo in July 1960.¹¹ When the elected Prime Minister Patrice Émery Lumumba asked the U.N. to send peacekeeping troops, the U.N. instead placed Lumumba under house arrest.¹² Without adequate help from the international community, the secession left the Congo a chaotic, disjointed nation until around 1975.¹³

In November 1996, the Congo (then known as Zaire) mandated that all Tutsis, the victims of the Rwandan genocide, must leave the country or be subject to death.¹⁴ The Tutsis rebelled and in May 1997, captured the capital, Kinshasa and replaced the government with one led by Laurent Kabila.¹⁵ As a result of the Tutsi overtaking, Hutu extremists, the perpetrators of the Rwandan genocide, moved into the Congo, attacking the Tutsis in forceful combat.¹⁶ The U.N. reacted to this humanitarian crisis by sending a "temporary multinational force" to ensure humanitarian aid was able to reach those who needed it.¹⁷ Unfortunately, the U.N.'s intentions failed to address the true causes of the deadly battles -the conflicts arising in the aftermath of the Rwandan genocide.¹⁸ In 1998, with the support of other nations in the region, rebel groups ambushed Kabila's govern-

⁵ Owei Lakemfa, *Congo- Africa's Bleeding Heart*, Oct. 17, 2008, <http://allafrica.com/stories/200810170422.html>.

⁶ NOTHOLT, *supra* note 4, § 2.28.

⁷ Lakemfa, *supra* note 5.

⁸ NOTHOLT, *supra* note 4, § 2.28.

⁹ Lakemfa, *supra* note 5.

¹⁰ NOTHOLT, *supra* note 4, § 2.28.

¹¹ GEORGE NZONGOLA-NTALAJA, *THE CONGO FROM LEOPOLD TO KABILA 99* (Zed Books ed. 2002).

¹² *Id.*

¹³ NOTHOLT, *supra* note 4, § 2.28.

¹⁴ *Id.* § 2.29. As a group, Tutsis are often the victims of racism, scorned for their "clannishness, entrepreneurial success, and alleged snobbery." *Id.*

¹⁵ *Id.*

¹⁶ Laurence Juma, *The War in Congo: Transnational Conflict Networks and the Failure of Internationalism*, 10 GONZ. J. INT'L L. 97, 136 (2006-2007).

¹⁷ *Id.*

¹⁸ *Id.*

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ment.¹⁹ Thus, the Congo's civil war was an internal conflict supported by external forces.²⁰

Terrified of his government's obliteration, Kabila appealed to Namibia, Zimbabwe, Angola, and Chad to send troops.²¹ These troops, along with Hutu Interahawe, fought for Kabila's government.²² On January 18, 1999, Uganda, Rwanda, Angola, Namibia and Zimbabwe signed the Lusaka cease-fire agreement, causing the nations to remove most of their troops from the conflict.²³ However, a cease-fire never occurred because rebel groups remained, and fighting continued in the region.²⁴

In January 2001, Kabila was assassinated and replaced by his son, Joseph.²⁵ After the U.N. assigned the Congo trusteeship in 2001, the Mission de l'Organisation des Nations-Unies au Congo (hereinafter, "MUNOC") began.²⁶ This became the largest UN undertaking in the world with 17,000 peacekeeping troops sent to the region.²⁷ Attempts at agreements and cease-fires were made several times over the years, but still the fighting continued.²⁸

In 2003, peace was temporarily reached in the country, but when warlords and other nations realized that this might limit their access to the natural resources in the eastern part of the Congo, the fighting reappeared in full force.²⁹ This area, with its more than twenty-three warring groups and abundant natural resources, has always suffered from instability and brutality.³⁰ In late 2007, Rwanda and the Congo tried to disarm the Hutus together.³¹ Afterward, Nkunda and the Congo agreed to a cease-fire in January 2008.³² However, the fighting resur-

¹⁹ Lakemfa, *supra* note 5. Uganda and Rwanda each supported the Mouvement pour la liberation du Congo and Rwanda supported the Rassemblement congolaise pour la democratie. NOTHOLT, *supra* note 4, § 2.29.

²⁰ Lakemfa, *supra* note 5.

²¹ *Id.* Namibia sent troops under Sam Nujoma, Zimbabwe under Robert Mugabe, Angola under Jose Eduardo, and Chad under Idris Deby. *Id.*

²² *Id.*

²³ *Id.*

²⁴ NOTHOLT, *supra* note 4, § 2.289; Lakemfa, *supra* note 5.

²⁵ NOTHOLT, *supra* note 4, § 2.29.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Juma, *supra* note 16, at 153-56 (highlighting the April 2002 Sun City Agreement, the July 2002 Pretoria Accord, and the December 2002 Gbadolite Agreement).

²⁹ Stephanie Nolen, *Rape Again Rampant in Congo*, VDAY, Oct. 18, 2008, <http://newsite.vday.org/node/1204>; Stephanie Nolen, *Not Women Anymore*, Ms. MAG., Spring 2005, <http://www.msmagazine.com/spring2005/congo.asp> (last visited Jan. 9, 2009).

³⁰ *Id.*

³¹ Joe Bavier, *Congo Agrees With Rwanda to Disarm the Hutus*, REUTERS, Nov. 11, 2007, <http://www.reliefweb.int/rw/rwb.nsf/db900sid/KKAA-78V2Y2?OpenDocument&Click=>.

³² Todd Pittman, *Analysis: Hutu Militias Key to Congo Conflict*, USA TODAY, Nov. 2, 2008, http://www.usatoday.com/news/world/2008-11-02-1120858431_x.htm.

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rected in the fall of 2008, evidence that the peace process in the Congo is certainly not over.³³

The Congo has a long history of international intervention gone awry. Rebels and neighboring nations alike have regularly exploited the country's resources and caused years of fighting and death. It is clear that the conflict has its roots in foreign intervening. For this reason, the international community needs to meddle carefully, establishing a self-sustaining independent punishment system in the Congo while also prosecuting criminals in an international criminal tribunal so that it can achieve full independence from those that regularly exploited it in the past.

III. Congo: Rape Capital of the World

The war in the Congo is said to be the "deadliest war since World War II."³⁴ Approximately 5 million people have died due to this war, a large portion of them because of disease and malnutrition.³⁵ Half of them children, they die at a rate of 45,000 per month.³⁶ Between 2000 and 2006, 1,250 people died per day in the Congo as a direct result of the war.³⁷

One of the most disturbing aspects of the civil war is the scale of sexual abuses, assaults, and rapes the Congo sees every day. Some label the Congo as the "rape capital of the world."³⁸ Andre Bourque, a Canadian consultant, remarked that "sexual violence in Congo reaches a level never reached anywhere else."³⁹ In October 2008, there were up to 50 rapes committed daily.⁴⁰ South Kivu is the most affected region, with 4,066 reported cases of rape and sexual violence occurred in the first three months of 2008.⁴¹ In the Shabunda district of South Kivu, an estimated 70 percent of females have been victimized by rape.⁴² U.N. officials claim that rapes are occurring less and less frequently, however

³³ *Rapes in Congo Increase, Aid Group Says*, CNN.COM, Nov. 25, 2008, <http://www.cnn.com/2008/WORLD/africa/11/25/congo.rape/index.html>.

³⁴ REBECCA FEELEY & COLIN THOMAS-JENSEN, GETTING SERIOUS ABOUT ENDING CONFLICT AND SEXUAL VIOLENCE IN CONGO, ENOUGH STRATEGY PAPER #15, 2 (Mar. 20, 2008), http://www.americanprogress.org/issues/2008/03/pdf/enough_congo.pdf; see also Simon Robinson, *The Deadliest War in the World*, TIME, May 28, 2006, <http://www.time.com/time/magazine/article/0,9171,1198921,00.html>.

³⁵ Edmund Sanders, *Uganda's Conflict Spreads to Congo, Where LRA Rebels Massacre Villagers*, LATIMES.COM, Jan. 11, 2009, <http://www.latimes.com/news/nationworld/world/la-fg-congo-massacre11-2009jan11,0,2035198,print.story>.

³⁶ FEELEY & THOMAS-JENSEN, *supra* note 34, at 2.

³⁷ See Robinson, *supra* note 34.

³⁸ Ben Borland, *McConnell's mission. . .to bring peace to the world's 'rape capital'*, UK EXPRESS, Oct. 12, 2008.

³⁹ Jeffrey Gettleman, *Rape Epidemic Raises Trauma of Congo War*, N.Y. TIMES, Oct. 7, 2007, <http://www.nytimes.com/2007/10/07/world/africa/07congo.html> (quoting André Bourque, a Canadian consultant who works with aid groups in eastern Congo).

⁴⁰ Borland, *supra* note 38.

⁴¹ *Id.*

⁴² *Id.*

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recent spikes in fighting might jeopardize this trend.⁴³ Therefore, due to the seemingly endless nature of the rebel fighting in the Congo, it is necessary to address the rape problem specifically and not wait for the fighting to stop for the rape to end also.

Rape in the Congo is a “part of the spoils of war . . . a policy, a casual encounter . . . and a weapon of terror.”⁴⁴ The rape is systematic, planned, ordered, and a collective public rape.⁴⁵ Each warring group in the Congo has a unique tactic: some rape women with guns, shooting them afterwards; some rape both men and women; and some engage in group rape.⁴⁶ It is not uncommon to hear stories like the one told by Honorato Kizende: “They kicked me roughly to the ground, and they ripped off all my clothes, and between the two of them, they held my feet. . .they proceeded to rape me. Then all five of them raped me.”⁴⁷

Towns fall under the control of rebel groups, making their female citizens easy targets of sexual violence. For instance, Interahamwe, the militia group who initiated the genocide in Rwanda, seized control over Kaniola, a Congolese town on the outskirts of a large national park.⁴⁸ They invaded Kaniola regularly, abducting women and turning them into sexual slaves afterwards.⁴⁹ At the Interahamwe’s camp, the women were violently raped, occasionally being branded on their buttocks to the enjoyment of the rebels.⁵⁰ This is just one example of the brutality and organization of the systematic rape taking place in the Congo.

It is estimated that a fifth of survivors of rape sustain injuries to their internal organs, and many contract HIV or AIDS.⁵¹ These injuries are severe because of the methods used to rape: offenders insert guns, branches, or and other foreign objects inside women, sometimes obliterating their internal organs and leaving them barren.⁵² Afterwards, the women suffer for years, and often, there is a lack of medical treatment.⁵³ “There is one hospital in the region in the capital Bukavu which can deal with severe sexual injuries . . . women . . . often have to walk for days to receive medical attention,” says a spokesman from the Scottish Catholic International Aid Fund.⁵⁴

The conditions in the Congo are highly supportive of a culture of rape and impunity. It is difficult to catch offenders, because they are typically bandits

⁴³ Jeffrey Gettleman, *Congo Rape Victims Tell Stories*, SEATTLE TIMES, Oct. 18, 2008, http://seattletimes.nwsourc.com/html/nationworld/2008281517_congo18.html.

⁴⁴ Lakemfa, *supra* note 5.

⁴⁵ Nolen, *Rape Again Rampant in Congo*, *supra* note 29.

⁴⁶ *Id.*

⁴⁷ Gettleman, *supra* note 43.

⁴⁸ Nolen, *supra* note 29.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Borland, *supra* note 38.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

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attacking villages at night and then disappearing into the thick forest.⁵⁵ There are only two hospitals in the eastern Congo that are able to treat rape injuries, and victims get trapped deep in the bush due to the lack of roads, transport, money and the endless fighting.⁵⁶

The status of women in the Congo makes them more vulnerable to sexual attacks, and makes rape a more accepted practice. In the Congo, it is common for women to be physically abused even without a war.⁵⁷ Female rape victims are instructed not to speak of their rapes because it is embarrassing to their families.⁵⁸ Rape victims are often exiled from their villages.⁵⁹ Society within the Congo has created an environment where women are more vulnerable than in other places, an important reason why rape in the Congo is the worst in the world. The international community needs to interrupt this perpetual cycle of sexual violence because the problem seems to only be getting worse.

IV. Impunity in the Congo

Impunity to perpetrators of sexual violence is the primary cause of the mass rape epidemic in the Congo. Impunity is “exempting someone from facing the due penalty and the consequence of his or her breach of a norm or principle, which holds society together; and protects it against disorder and collapse.”⁶⁰

Impunity during the war is the force driving the prevalence of rape in the Congo. Army officials turn their heads and at times even encourage their soldiers’ immoral sexual activity and violence.⁶¹ In their view, soldiers are immune from punishment for their behavior during wartime, and that it is the woman’s fault that she was raped.⁶² One army official commented in Goma at a 2008 educational event that “women should know not to go out in places where there are armed men.”⁶³ A national army that is “more a predator than a protector” causes citizens to depend on armed militias to protect them.⁶⁴ However, the armed militia are more likely to guard their stake in the Congo’s mineral resources than to adequately protect civilians.⁶⁵

In 2006, the Congolese government enacted new laws and penalties to address the rampant sexual violence.⁶⁶ Law No. 06/018, amending a 60 year penal code

⁵⁵ Gettleman, *supra* note 43.

⁵⁶ Nolen, *Rape Again Rampant in Congo*, *supra* note 29.

⁵⁷ Gettleman, *supra* note 43.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Patrice Vahard, *The Duty to Protect, an Attribute of Masculinity in Modern Africa*, SYMP. ON ENDING IMPUNITY FOR VIOLENCE AGAINST WOMEN I (Mar. 12, 2007), available at <http://www.unece.org/acgd/new/Presentation-MenImpunity-Patrice.doc>.

⁶¹ FEELEY & THOMAS-JENSEN, *supra* note 34.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

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decree, defined what constitutes sexual violence as “indecent assaults on minors without violence . . . indecent assaults on minors with violence . . . rape”.⁶⁷ Despite these changes, the Congo still exists with very little state-instituted framework to ensure punishment.⁶⁸ The penal code is still lacking in many ways. The 2006 amendment does not include language regarding being raped by a gun or weapon or when the perpetrator shoots a women in the vagina.⁶⁹ Prosecutions are often slow, there is little to no action if a man escapes from prison, there is no witness protection program in place, and prisoners can often pay their way out of jail.⁷⁰ There are even cases of victims being re-raped for reporting their attacker where their mouths are cut off so they “won’t tell again.”⁷¹ Impunity in the Congo is the most influential reason for the scope of rape the country has seen.

V. Defining Rape in an International Framework

Rape during war is not a new concept to the world. In fact, war rapes have been reported since the rape of the Sabine women in ancient Rome.⁷² The twentieth century brought many opportunities for sexual violence against women such as in Japan in World War II, Bangladesh in 1971, and Uganda in the early 1980s.⁷³ Sexual violence during war gives power and control to the perpetrators.⁷⁴ The purpose of raping a woman is both to disgrace her and to instill defeat in the men of the community, showing their failure to defend their women.⁷⁵ During war, rape becomes a weapon.

The international community views rape as an infringement of the laws and practices of warfare.⁷⁶ The Nuremburg Charter, enacted during the International Military Tribunal to try Nazi officials, first defined crimes against humanity under Article 6 as “murder, extermination . . . and other inhumane acts,” but failed to specifically name rape as one.⁷⁷ In 1949, Article Four of the Geneva Convention stated that “women shall be especially protected against any attack on their honour, in particular against rape.”⁷⁸ Later, in 1993, the World Conference on Human Rights in Vienna declared that systematic rape and sexual slav-

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Nolen, *Rape Again Rampant in Congo*, *supra* note 29.

⁷⁰ FEELEY & THOMAS-JENSEN, *supra* note 34.

⁷¹ *Id.*

⁷² Eileen Meier, *Prosecuting Sexual Violence Crimes During War and Conflict: New Possibilities for Progress*, 10 INT’L LEGAL THEORY 83, 84 (Fall 2004).

⁷³ *Id.* at 85.

⁷⁴ *Id.* at 87

⁷⁵ *Id.*

⁷⁶ *Id.* at 90.

⁷⁷ *Id.* at 91.

⁷⁸ Stephanie K. Wood, *A Woman Scorned for the “Least Condemned” War Crime: Precedent and Problems with Prosecuting Rape as a Serious War Crime in the International Criminal Tribunal for Rwanda*, 13 COLUM. J. GENDER & L. 274, 282-83 (2004). Protocols I and II of the Fourth Geneva Convention generally state that all women shall be protected against any attack on their honor such as in rape. Meier, *supra* note 72, at 91-92.

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ery especially deserve an operative remedy, although none was specifically constructed.⁷⁹ Up to that point, rape had never been prosecuted as a war crime.⁸⁰ Additionally, the Convention on the Elimination of Violence Against Women defined gender crimes as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm of suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty.”⁸¹ The Trial Chamber of the International Criminal Tribunal for Rwanda (hereinafter “ICTR”) and the International Criminal Tribunal for Yugoslavia (hereinafter “ICTY”) both placed rape under the umbrella of genocidal acts.⁸² Furthermore, the Rome Statute of the ICC states that rape is one of the “crimes against humanity” when a large group of people are victimized.⁸³

VI. An International Criminal Tribunal for the Congo

If it is clear under international law that rape is a form of genocide, then it is unclear why the mass scale rape occurring in the Congo is going unpunished by the international community. U.N. Secretary General Ban Ki-Moon’s report to the Security Council proves that an international tribunal similar to the ones in Rwanda and Yugoslavia is a sincere possibility for the Congo.⁸⁴ The ICC already issued warrants in the Congo for such officials as Bosco Ntaganda, who is wanted for recruiting child soldiers, in April of 2008.⁸⁵ In fact, the U.N.’s peacekeeping mission, MONUC began inquiring about alleged massacres and extra-judicial executions long before the November 2008 report.⁸⁶

On November 20, 2008, the Security Council agreed to send 3,100 more peacekeeping troops to the Congo, even though rebel troops recently agreed to withdraw.⁸⁷ Although this might have been a positive step for international intervention, peacekeeping troops are often ineffective. This is partially because the U.N. mission in the Congo rarely use its Chapter 7 mandate from the Security Council, which allows it to use whatever method needed to safeguard civilians.⁸⁸ Marie-Jeanne Rwankuba, head of a Kaniola Catholic parish, says “We have a

⁷⁹ Meier, *supra* note 72, at 92-93.

⁸⁰ *Id.* at 93.

⁸¹ Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 93, U.N. Doc. A/34/46, 1249 U.N.T.S. 13, 19 I.L.M. 33 (Dec. 18, 1979). “Recognizing the urgent need for the universal application to women of the rights and principles with regard to equality, security, liberty, integrity and dignity of all human beings.”

⁸² Meier, *supra* note 72, at 94-95.

⁸³ Naomi Cahn, Beyond Retribution and Impunity: Responding to War Crimes of Sexual Violence, 1 STAN. J. CIV. RTS. & CIV. LIBERTIES 217, 240 (Apr. 2005).

⁸⁴ Heilprin, *supra* note 1.

⁸⁵ Heilprin, *supra* note 1. For example, the UN initiated investigations into a massacre in Kiwandi where dozens of people were killed while defending themselves against the pro-government Mai-Mai. *Id.*

⁸⁶ *Id.*

⁸⁷ Borland, *supra* note 38.

⁸⁸ Nolen, Rape Again Rampant in Congo, *supra* note 29.

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MUNOC base [a half-hour's drive from Kaniola] but we can't turn to them. When we have a problem they say, 'we are here for observation only.'"⁸⁹

Because peacekeeping troops prove ineffective, it is necessary for the ICC to intervene. Article 5 of the ICTY enabling statute states that "[t]he International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population: . . . (g) rape."⁹⁰ Furthermore, the ICC must establish jurisdiction over the crimes.⁹¹ By signing and ratifying the Rome Statute in 2000 and 2002, respectively, the Congo agreed to be under the ICC's jurisdiction.⁹² Additionally, the Congo's judiciary must demonstrate a failure to independently try and punish perpetrators before the ICC can intervene.⁹³ Even though the Congolese Penal Code forbids rape and indecent assault, little has been done to enforce this code and prevent this conduct from occurring.⁹⁴ Moreover, corruption and bribery in the legal system has prevented Congolese courts from adequately providing retribution for victims and punishment to criminals.⁹⁵ Because the legal system in the Congo insufficiently safeguards against violence towards women, the ICC needs to independently investigate and convict perpetrators committing rape as a war crime.⁹⁶

VII. International Intervention is needed

The rape epidemic alone in the Congo is severe enough to warrant further international intervention. Customary international law mandates that states must intervene in a nation's affairs when there is proof of genocide.⁹⁷ Under the current definition of rape, as a crime against humanity and not as genocide, states do not have a duty to intervene.⁹⁸ States were hesitant to intervene due to the lack of a genocidal label in the early weeks of the Rwandan genocide.⁹⁹ Alison Des Forges, in her report for Human Rights Watch, observed that international leaders avoided labeling the situation as genocide so they would not have a duty to intervene under international law.¹⁰⁰ By not classifying the acts in Rwanda as

⁸⁹ *Id.*

⁹⁰ U.N., Updated Statute of the International Criminal Tribunal for the Former Yugoslavia art. 5 (Feb. 2008), available at <http://www.un.org/icty/legaldoc-e/basic/statut/statute-feb08-e.pdf> (compiling United Nations Resolutions regarding the ICTY).

⁹¹ Tina R. Karkera, The International Criminal Court's Protection of Women: The Hands of Justice at Work, 12 Am. U. J. Gender Soc. Pol'y & L. 197, 210 (2004).

⁹² *Id.* at 212.

⁹³ *Id.* at 211.

⁹⁴ *Id.* at 212.

⁹⁵ *Id.*

⁹⁶ *Id.* at 217.

⁹⁷ Alexandra A. Miller, *From the International Criminal Tribunal for Rwanda to the International Criminal Court: Expanding the Definition of Genocide to Include Rape*, 108 PENN ST. L. REV. 349, 362 (Summer 2003).

⁹⁸ *Id.*

⁹⁹ Miller, *supra* note 97.

¹⁰⁰ *Id.*

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genocide, nations who were parties to the Genocide Convention were not compelled to act.¹⁰¹ If rape were a form of genocide, the international community would be required to intervene when mass atrocities of rape occurred.¹⁰² This will deter the practice and use of rape in internal armed conflicts.¹⁰³ Rape alone is enough to require an international intervention because it is a form of genocide.

VIII. Establishing a Penal System in the Congo

International criminal tribunals cannot be the only form of punishment in the Congo because they do not necessarily deter future crimes.¹⁰⁴ The tribunals' purpose is to hold wrongdoers responsible for their illegal actions.¹⁰⁵ The tribunals do not provide victims with what they need after the attacks, such as therapy, medical attention, and a means to live their life without fear.¹⁰⁶ As a result of the efforts in 2008 by many world organizations, more rapists are apprehended, prosecuted, and incarcerated for their crimes than ever before.¹⁰⁷ For instance, in Bunia, rape prosecutions increased 600 percent since 2002.¹⁰⁸ In instances of sexual violence, both restorative and criminal justice approaches must be used to handle such a complex issue.¹⁰⁹

Aside from establishing a penal system, a system of returning victims and offenders to society is necessary. Efforts by non-governmental organizations have proven to be most effective in achieving this goal. The restorative approach to the Congo's impunity problem emphasizes the change societal habits and norms instead of simply finding a criminal guilty or allowing them to return to their life without punishment.¹¹⁰ The purpose of restorative justice is to bring victims and perpetrators together so the victim receives reparations, the offender takes responsibility, and the community is involved in the healing process.¹¹¹ An example of a means of restorative justice is a truth and reconciliation commission, where witnesses report violence and the commission assembles a report.¹¹² This allows for the synthesis of information rather than the conducting of trials, but its success depends greatly on how the government of the Congo digests the reports.¹¹³

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ Cahn, *supra* note 83, at 241.

¹⁰⁵ *Id.*

¹⁰⁶ *See id.* at 241-42.

¹⁰⁷ Gettleman, *supra* note 43.

¹⁰⁸ *Id.*

¹⁰⁹ Cahn *supra* note 83, at 247.

¹¹⁰ *Id.* at 242

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *See id.*

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One such method of increasing accountability is led by European aid agencies that are spending tens of millions of dollars constructing courthouses and prisons in the eastern Congo.¹¹⁴ Additionally, there are mobile courts conducting rape trials in villages in the heart of the forest.¹¹⁵ In January 2008, the American Bar Association opened a legal clinic to encourage rape victims to file their cases in court.¹¹⁶ As of October 2008, there have been eight convictions since the clinic's establishment.¹¹⁷ The Scottish Catholic International Aid Fund is working with local lawyers to establish strong criminal cases against rapists.¹¹⁸ In addition, Congolese investigators are learning forensic techniques in Europe.¹¹⁹ U.N. officials report positive results with more arrests than the past, but the recent spikes in combat threaten these advances.¹²⁰ One woman who was raped in 2006 says, "It's safer today than it was, but it's still not safe."¹²¹

Some organizations are trying to change the way the Congolese think of rape and women by encouraging women to speak out about their rape in open forums.¹²² One such organization attempting to give victims some sort of peace is V-Day, an organization led by *Vagina Monologues* creator Eve Ensler.¹²³ Partnering with the United Nations Children's Fund (hereinafter "UNICEF"), this group arranges truth-telling sessions in ninety villages.¹²⁴ At the sessions, women stand in front of their peers to speak about what happened to them, forcing officials and other men to acknowledge the rapes.¹²⁵ Additionally, V-Day organizes street demonstrations and is developing a list of pleas for women's safety.¹²⁶ Women at an event in Bukavu in September 2008 wore T-shirts reading in Kiswahili: "I refuse to be raped. What about you?"¹²⁷ This is just one example of how organizations are trying to give a voice to rape victims to change society's view of the crime.

There also needs to be an appeal to the Congolese government to acknowledge and deal with rape reports. One women's rights organization, Enough!, argues international donors and the U.N. can help the Congo eradicate impunity by working with the Congolese government in enhancing its ability to investigate, arrest, and try criminals.¹²⁸ They also support the ICC's investigation into the

¹¹⁴ Gettleman, *supra* note 43.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ Lakemfa, *supra* note 5.

¹¹⁹ Gettleman, *supra* note 43.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ Nolen, *Rape Again Rampant in Congo*, *supra* note 29.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ Gettleman, *supra* note 43.

¹²⁸ FEELEY & THOMAS-JENSEN, *supra* note 34.

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use of rape as a war crime in the eastern Congo.¹²⁹ Efforts by these international organizations are commendable, however, it is difficult for them to make an impact without wide-scale prosecution of war criminals. Doing so will cause a trickle-down effect, so that fewer and fewer small scale perpetrators commit crimes that their high-ranking officials are encouraging.

IX. Conclusion

The rape epidemic in the Congo requires international intervention to prosecute criminals guilty of large-scale sexual violence, as well as implement a system of punishment within the Congolese legal system. An International Criminal Tribunal for the mass-scale rape occurring in the Congo will establish accountability and show the rest of the world that such violence will not be tolerated by shining a light on the atrocities. However, there must be a two-way approach to solving the rape epidemic in the Congo. First, the ICC must prosecute high-ranking individuals for their encouragement of rape as a war crime. Second, international organizations need to continue their victim-centered approach to reconciliation, both returning perpetrators to society and giving closure to the victim. Neither of these approaches alone will cure the rape epidemic in the Congo, but working together they can destroy the culture of impunity that is fueling it.

¹²⁹ *Id.*