

designation of a crime as a 'grave breach' carries a great deal of weight because it confers obligations on the State. By designating a crime as a 'grave breach' States are then obliged to search for persons who are alleged to have committed them, and if found within their territory to either try them in their national courts or extradite them for prosecution.²³¹ While some argue that sexual violence is effectively considered a grave breach by virtue of Article 147 of the Fourth Geneva Convention, the failure to explicitly recognize it as such has in many minds "accorded [it] a secondary status in international law, and presents a significant obstacle to improved enforcement of the existing provisions."²³²

The case of Rwanda is indicative of the extent to which a gender hierarchy in IHL is reflected in the work of the UN and the ICTR. The next section will explore the ways in which the consideration of sexual violence as a lesser crime has informed the work of the ICTR and that specific interventions by women's organizations were necessary to address gender bias in the ICTR. In concrete terms, sexual violence as a lesser breach has had an impact on the way in which crimes of sexual violence were investigated, criminals were indicted and how and whether the ICTR was able to issue judgments on sexual violence.

The War Crimes Tribunal for Rwanda

In November 1994, the UN created an ad hoc tribunal to prosecute suspected war criminals from the Rwandan conflict. The Statute of the Rwandan Tribunal provided the scope for the investigation of sexual violence, including the identification of rape as a crime against humanity as well as an extremely progressive approach to other forms of sexual violence. Specifically, the Rwanda Statute refers to "rape, enforced prostitution and indecent assault" as violations of Common Article 3 of the 1949 Geneva Conventions and Additional Protocol II. Although the Statute did provide the authority to investigate, it was only in August 1997 that the first indictment including violations specific to sexual violence was delivered.

The case of Jean-Paul Akayesu is illustrative of the problems in investigating rape and sexual violence in Rwanda. The initial indictment of Akayesu, who was the mayor of Taba, did not include sexual violence. The witnesses were not asked about it by the investigators and its exclusion from the indictment meant that the defense did not have to cross-examine. It was only as the women testified to other violations that they began to offer evidence of rape and other forms of sexual violence. Due to international NGO pressure and the filing of an *amicus curiae* by the International Coalition on Women's Human Rights in Conflict Situations urging that all indictments be amended to include rape and other forms of sexual violence, that the indictments against Akayesu were amended. It should be noted that Akayesu was not alleged to have

²³¹ UN DAW (1998), op. cit.

²³² Gardam and Charlesworth, "Legal Protection of Women in Situations of Armed Conflict", project proposal, June 1997.