

ORIGINAL ARTICLE

# Archives of Sexual Violence in Conflict Zones

Rosemary Byrne<sup>1</sup>, Stephanie McCurry<sup>2</sup> and Jane Ohlmeyer<sup>3</sup>

<sup>1</sup>Sciences Po, Paris, France, <sup>2</sup>Columbia University, New York, NY, USA and <sup>3</sup>Trinity College Dublin, Dublin 2, Ireland

**Corresponding author:** Jane Ohlmeyer; Email: [jane.ohlmeyer@tcd.ie](mailto:jane.ohlmeyer@tcd.ie)

## Abstract

Our aim is to illuminate the persistent problem of evidence in cases of sexual violence in conflict zones by investigating the relationship between archival practices and processes of legal redress. This special issue consists of six essays, with contributors drawn from the disciplines of history and law. In temporal terms, the cases range from the seventeenth century to the late twentieth century; spatially, they address conflicts in Africa, Asia, Europe, and the United States. The case studies each offer an overview of “their archive,” explain its creation and limitations, and address its political logic and uses. As we interrogate archives, where evidence of sexual violence is located, it is critical that we note three things. First, to understand the nature and political construction of the archive. Second, to use this insight to interpret and assess the nexus of power relations within which historical and contemporary actors operate. Finally, to remember the inescapable limits of the evidence that shape the pursuit of justice, past or present.

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During the past two decades, scholars have been returning to archives to uncover records of women’s testimony of sexual violence in conflict, the results of which have transformed our understanding of wartime sexual atrocities. One striking aspect of this body of scholarship is not simply the scale and recurring frequency of sexual violence in conflict, but, given this, that the evidence of sexual violence in conflict has so often been overlooked. This kind of research is challenging, as evidence of sexual atrocities is often marginalized or buried within the archives of fact-finding processes engaged with conflicts. This special issue brings scholars from across disciplines to explore why.

Much has been written about official proceedings related to conflict, and now with increasing awareness, of the sexual violence they document. Yet there is little scrutiny of the archive and the interplay between sexual violence and these often political, or politicized, inquiries. Our aim is to illuminate the

persistent problem of evidence in cases of sexual violence in conflict zones by investigating the relationship between archival practices and processes of legal redress. Our definition of conflict includes international and civil wars in the period of conflicts themselves and their immediate aftermaths. The UN Secretary-General's definition informs our use of the term "conflict-related sexual violence" (CRSV), which encompasses:

rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization and any other form of sexual violence of comparable gravity perpetrated against women, men or children with a direct or indirect (temporal, geographical or causal) link to a conflict. This link to conflict may be evident in the profile of the perpetrator, the profile of the victim, the climate of impunity or State collapse, any cross-border dimensions or violations of the terms of a ceasefire agreement.<sup>1</sup>

What, we ask, is to be learned by working across the usual scholarly divisions of eras, geographies, and disciplines? To that end, we have invited scholars working on a broad range of cases from different disciplinary and geographic perspectives. The sexual violence we address is mostly, but not exclusively, perpetrated against women.

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<sup>1</sup> UN Secretary-General, "Conflict-related Sexual Violence: Report of the Secretary-General", UN Security Council, S/2014/181, March 13, 2014, para. 1. While this definition applies to twenty-first-century conflicts of an "international character," we use it as a point of departure for understanding CRSV in conflicts of different character in the earlier periods.

<sup>2</sup> For another interesting case study that mentions sexual violence, see Michele Leiby, "Digging in the Archives: The Promise and Perils of Primary Documents," *Politics & Society* 37 (2009): 75–100, <https://doi.org/10.1177/0032329208329754>.

Our hope is that these case studies will be generative to the analysis of CRSV by undercutting any imputation of exceptionalism to show, instead, that patterns of sexual violence have been foundational in and to conflicts and to the ways that it is instrumentalized in war. Where dominant historical narratives of conflict are silent on the occurrence of sexual violence or fleeting in its acknowledgement of sexual atrocities, these case studies suggest the importance of looking for the particularized ways that CRSV might be found in the margins of archives.

## Historiography

Taken together, the essays in the special issue ask what is to be gained by looking at the problem of sexual violence in conflict zones across a broad range of eras, geographies, and disciplinary approaches. There is a considerable literature where sexual violence in conflict zones is viewed from the disciplinary perspectives of law, history, or archival studies. But for the most part, the focus has been on specific regions or time periods, and approaches have been fragmented with limited scholarly collaboration across disciplines. By focusing specifically on bodies of evidence, we hope to connect the insights from these fields and to build upon the work of historians, feminist legal scholars, and archival studies experts.

Sexual violence testimony has been long overlooked in studies of domestic and international conflicts, and, from a historical viewpoint, we have a lot of work left to do. However, as historians have shown, directives on combating violence against women emerged long before the modern iterations of international humanitarian and criminal law. From the early Middle Ages, sanctions were imposed on perpetrators of violence against women, children, and clerics.<sup>3</sup> By the seventeenth century, “laws of war” specifically prohibited rape and the use of excessive violence against women and children during periods of conflict.<sup>4</sup> The U.S. Lieber Code of 1863, which was to provide a foundation for the later development of international humanitarian law in the Hague and Geneva conventions, explicitly prohibited and mandated punishment for the commission of rape in war.<sup>5</sup>

But notwithstanding the law of war guidance, with respect to sexual violence, the problem of evidence is a persistent one across time and space. To take just a few examples, the historian Joanna Bourke’s account of global sexual violence since the nineteenth century offers a nuanced analysis of how feelings of shame, closely associated with social and cultural notions of honor, meant

<sup>3</sup> Helen M. Kinsella, *The Image Before the Weapon: A Critical History of the Distinction Between Combatant and Civilian* (Ithaca, NY: Cornell University Press, 2011). Kinsella covers the late Middle Ages to the twentieth century.

<sup>4</sup> Micheál Ó Siochrú, “Atrocity, Codes of Conduct and the Irish in the British Civil Wars 1641–1653,” *Past & Present* 195 (2007): 55–86.

<sup>5</sup> United States War Department, “Instructions for the Government of the Armies of the United States in the Field” (General Orders No. 100, April 24, 1863) (Lieber Code), arts. 37, 44, 47; Stephanie McCurry, “Enemy Women and the Laws of War in the American Civil War,” *Law and History Review* 35, no. 3 (2017): 667–710.

that women who suffered from sexual violence preferred to remain silent rather than seek justice.<sup>6</sup> Equally insightful are the works of feminist historians and literary scholars whose work documents how the suppression of evidence of sexual violence in conflict zones extends even to its destruction.<sup>7</sup> Especially crucial in this regard is the work of Black feminist scholars of slavery and its afterlives—Darlene Clark Hine, Saidiya Hartman, Christina Sharpe, Marisa Fuentes, and others—who have done so much to show that the social power of enslavers included the ability to shape the historical record. One major consequence is the fundamental asymmetry of the slavery archive, which at once elevates/preserves the paternalistic claims of enslavers while suppressing virtually all evidence of the systemic sexual violence perpetrated against enslaved women by their owners.<sup>8</sup> Scholars of the modern period have faced the same challenge of evidence in work on critical historical cases. Caroline Elkins' work on the Mau Mau rebellion in Kenya, Ruth Lawlor's on the U.S. military justice system in World War II, and Ben Kiernan's on the Cambodian genocide provide a few notable examples of this growing body of scholarship.<sup>9</sup>

The most extensive literature on CRSV emerged around the international criminal courts and tribunals in the wake of the conflicts in Bosnia-Herzegovina and Rwanda, and subsequently around United Nations Security Council Resolution 1325 (2000) on Women, Peace, and Security.<sup>10</sup> The changed geopolitical landscape that followed the fall of the Berlin Wall allowed for a consensus within the Security Council to establish the ad hoc international courts and tribunals for the Former Yugoslavia (ICTY) and Rwanda (ICTR), within which international crimes, including sexual atrocities, could be tried.<sup>11</sup> The recognition of the systemic use of sexual violence in the conflicts of both the Former Yugoslavia and Rwanda through prosecutions for sexual violence as

<sup>6</sup> Joanna Bourke, *Disgrace: Global Reflections on Sexual Violence* (London: Reaktion Books, 2022) and *Rape: A History from 1860 to the Present* (London: Virago Press, 2007), especially ch. 13.

<sup>7</sup> Caroline Elkins, *Legacy of Violence: A History of the British Empire* (London: The Bodley Head, 2022).

<sup>8</sup> Darlene Clark-Hine, "Rape and the Inner Lives of Black Women in the Middle West," *Signs: Journal of Women in Culture and Society* 14, no. 4 (1989): 912–20; Saidiya Hartman, "Venus in Two Acts," *Small Axe* 26 (Vol. 12, No. 2), June (2008): 1–14; Christina Sharpe, *Monstrous Intimacies: Making Post-Slavery Subjects* (Durham, NC: Duke University Press, 2010); Marisa J. Fuentes, *Dispossessed Lives: Enslaved Women, Violence, and the Archive* (Philadelphia: University of Pennsylvania Press, 2016).

<sup>9</sup> Caroline Elkins, *Imperial Reckoning: The Untold Story of Britain's Gulag in Kenya* (New York: Henry Holt, 2005); Ben Kiernan, *The Pol Pot Regime: Race, Power, and Genocide in Cambodia under the Khmer Rouge, 1975–79* (New Haven, CT: Yale University Press, 2008).

<sup>10</sup> Catharine A. MacKinnon, *Are Women Human? And Other International Dialogues* (Cambridge, MA: Harvard University Press, 2006), 210–31; Doris E. Buss, "Rethinking 'Rape as a Weapon of War,'" *Feminist Legal Studies* 17 (2009): 145–63; Rhonda Copelon, "Surfacing Gender: Reconceptualizing Crimes Against Women in Time of War," in *The Women and War Reader*, ed. Lois Ann Lorentzen and Jennifer Turpin (New York: New York University Press, 1998), 63–79; Valerie Oosterveld, "The Definition of 'Gender' in the Rome Statute of the International Criminal Court: A Step Forward or Back for International Criminal Justice?" *Columbia Journal of Transnational Law* 39, no. 1 (2000): 41–75; Sara E. Davies and Jacqui True (eds.), *The Oxford Handbook of Women, Peace, and Security* (Oxford: Oxford University Press 2019); UNSC Res. 1325 (October 31, 2000), UN Doc. S/RES/1325.

<sup>11</sup> UNSC Res. 827 (May 25, 1993), UN Doc. S/RES/827; UNSC Res. 955 (November 8, 1994), UN Doc S/RES/955.

war crimes, crimes against humanity, and genocide was a historical turning point in introducing accountability in the long history of sexual violence as an instrument of terror in armed conflicts. It also laid the foundations for the codification of sexual crimes as war crimes, crimes against humanity, and acts of genocide under the Rome Statute (1998). The evolution of international criminal law that established clear links between mass sexual violence, the systemic crimes against humanity, and genocide has allowed for a new prism to be applied through which to view prior systemic sexual atrocities. As Morris's contribution illustrates, mass rapes were not simply viewed as a phenomenon that accompanied the genocidal campaigns in Turkey, but were, in essence, integral to the genocide itself.

In this new world order, supranational governance institutions, including ICTY and ICTR, responded to the increasing expectations from global civil actors for enhanced engagement.<sup>12</sup> This was a moment well seized by feminist scholars and activists, whose research focused in part on a real-time monitoring of CRSV, pushing effectively to have these crimes better understood and prioritized both in international criminal trials and on international policy agendas.<sup>13</sup> The traces of their efforts are embedded in the archives of all ICTs, be it in expert witness testimony, amicus curiae briefs, or the many reports on CRSV and other atrocities committed in conflict.

The body of legal scholarship during this period developed in synergy with the evolution of the international criminal justice system. Informed by contemporaneous research, in the early days of the ICTs, it delivered strident critiques of the deficient efforts to prosecute perpetrators of sexual atrocities, while constructively offering technical expertise and recommendations to key actors within the international criminal tribunals.<sup>14</sup> It produced work that has been critical for understanding the barriers for eliciting and interpreting sexual violence testimony that Byrne observes in the Akayesu trial archive, focusing on the ways in which psychological, linguistic, and cultural factors affect how women's experience of sexual violence is elicited in trial chambers, as well as the critical role of judges and lawyers.<sup>15</sup> While the records of prosecuting sexual crimes both by ICTY and ICTR were initially woeful, both Tribunals spearheaded

<sup>12</sup> Rome Statute of the International Criminal Court (opened for signature July 17, 1998, entered into force July 1, 2002) 2187 UNTS 3, arts. 7(1)(g), 8(2)(b)(xxii).

<sup>13</sup> Carol Cohn, Helen Kinsella, and Sheri Gibbings, "Women, Peace and Security: Resolution 1325," *International Feminist Journal of Politics* 6, no. 1 (2004): 130–40; and the useful collection, Jill Stearns and Daniela Tepe (eds.), *Handbook on Gender in World Politics* (Northampton, MA: Edward Elgar Publishing, 2016).

<sup>14</sup> Karen Engle, *The Grip of Sexual Violence in Conflict: Feminist Interventions in International Law* (Stanford, CA: Stanford University Press, 2020), 101–21.

<sup>15</sup> Jonneke Koomen, "Without These Women, the Tribunal Cannot Do Anything: The Politics of Witness Testimony on Sexual Violence at the International Criminal Tribunal for Rwanda," *Signs: Journal of Women in Culture and Society* 38, no. 2 (2013): 253–77; Narelle Fletcher, "Sociolinguistic Challenges of Prosecuting Rape as Genocide at the International Criminal Tribunal for Rwanda: the Trial of Jean-Paul Akayesu," *International Journal for the Semiotics of Law – Revue Internationale de Sémiotique Juridique* 35, no. 4 (2022): 1597–614; Rosemary Byrne, "The New Public International Lawyer and the Hidden Art of International Trial Practice," *Connecticut Journal of International Law* 25 (2010): 243–305.

methods in investigation, witness protection, and prosecution of sexual violence crimes.<sup>16</sup>

Both Byrne and McCurry illustrate how legal process effectively can conceal or suppress sexual violence testimony in archives, leaving what McCurry refers to as “a faint trace of the tsunami of sexual violence” in her analysis of the official record of the 1871 U.S. Congressional investigation of the Ku Klux Klan and the parallel set of federal trials advanced by the Department of Justice. In the ICTR case of Jean-Paul Akayesu, the emergence of “hints” of sexual violence, in the words of ICTR Prosecutor Pierre Proper during the trial, was to provide the basis for expanding the charges to include crimes of sexual violence. That would lead to the world’s first conviction for acts of rape as constituent acts of genocide. The contemporary trial of Akayesu and the nineteenth-century Ku Klux Klan congressional inquiry and trial record offer snapshots of how women’s testimonies of sexual violence become subsumed by wider objectives, whether that is to seek historic convictions for the “big” crimes such as international crimes against humanity or genocide, or to provide federal protection for constitutionally protected voting rights.<sup>17</sup>

As the literature developed, feminist activists and scholars suggested that the focus on sex-based crimes during war has meant that other gendered forms of violence, “ordinary” violence especially during times of peace, have been deemphasized. This form of structural erasure risks reinforcing gendered structures of power, as does the emphasis on women as victims.<sup>18</sup> As the UN Secretary General’s Guidance Note on Transitional Justice points out, the entrenched forms of gender-based violence that make women and girls particularly vulnerable to conflict-related human rights abuses, including systemic sexual violence, “often continues unabated even after conflict ends.”<sup>19</sup> At the very least, we need to be mindful of how current understandings of the archive perpetuate the narrative of women exclusively as victims, something

<sup>16</sup> ICTR, *Best Practices Manual for the Investigation and Prosecution of Sexual Violence Crimes in Post-Conflict Regions* (ICTR, 2014); Valerie Oosterveld, “Procedural Steps Addressing Sexual and Gender-Based Violence: The Legacy of the International Criminal Tribunal for Rwanda and its Application in the Special Court for Sierra Leone,” *Law Publications* 111 (2014): 1–14, accessed May 30, 2025, <https://ir.lib.uwo.ca/lawpub/111>; ICTY, *Manual on Developed Practices* (ICTY: Turin, 2009); United Nations, *Review of the Sexual Violence Elements of the Judgments* (United Nations: New York, 2010).

<sup>17</sup> See, for example, Binaifer Nowrojee, “Your Justice is Too Slow: Will the ICTR Fail Rwanda’s Rape Victims?” *UNRISD Occasional Paper No. 10* (Geneva: UNRISD, 2005); Rebecca L. Haffajee, “Note: Prosecuting crimes of rape and sexual violence at the ICTR: The Application of Joint Criminal Enterprise Theory,” *Harvard Journal of Gender and Law* 29 (2006): 201–21; Kelly Askin, “Sexual Violence in Decisions and Indictments of the Yugoslav and Rwandan Tribunals: Current Status,” *American Journal of International Law* 93, no. 1 (1999): 97–123; Marie-Benedicte Dembour and Emily Haslam, “Silencing Hearings? Victim-witnesses at War Crimes Trials,” *European Journal of International Law* 15, no. 1 (2004): 151–77.

<sup>18</sup> Fionnuala Ní Aoláin and Nahla Valji, “Scholarly Debates and Contested Meanings of WPS,” in *Oxford Handbook of Women, Peace, and Security*, ed. Davies and True, 53–66.

<sup>19</sup> United Nations Secretary-General, “Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice” (March 2010), para. 4.

that Cheah reminds us of in her essay.<sup>20</sup> Heeding the warnings of a generation of feminist scholars, the archive also needs to be interrogated to reveal women's agency, their survival strategies, which are embedded in the testimony and actions of women that appear in all of the articles in this collection. CRSV research further recognizes the active participation of women in protest, war, and violence, as well as the role they played in local conflict resolution.<sup>21</sup>

Another issue is the matter of silences in the evidentiary record. Silences surrounding CRSV in international criminal proceedings resonate with the literature on silences of sexual violence in archives, something that all of the authors point to in their articles.<sup>22</sup> The silence pertains to both written records and oral ones. As Mahajan notes, interviews conducted many years later with women who had experienced violence during partition "are often marked by silence about sexual violence."<sup>23</sup> Hardly surprisingly, silence is closely linked to feelings of shame, together with a sense of honor, which are themes common to all of our case studies. Silences may also emerge from a purging of archives; Morris, for example, describes the "successive waves of deletion and censorship" by Turkish government officials and archivists of the documentation related to the Armenian genocide.

### The Marginalization of Sexual Violence in the Archives

Invaluable though this body of scholarship is in inspiring "new" histories for earlier periods, a point highlighted in the essays by Cheah, McCurry, and Ohlmeyer, what is missing from the wider historiography is studies that focus on the intersections between these historical cases and disciplines. The challenge is not just the siloing of disciplines, but also the recognition of historical patterns that can only emerge from broad comparative work beyond the reach of the individual scholar or historical case study. We suggest below that insights are only fully visible in those "in between" intersections. In this special issue, the historians of different eras and regions are in conversation with the legal scholars as we all focus on a close interrogation of the sources and ask why evidence around sexual violence is marginalized in the archives. The result is more than the sum of the parts. In this issue, we move beyond the state of the art in three important respects.

First, our case studies all identify/highlight forms of sexual violence that are common across time and place. These include acts of stripping, whipping, mutilation of breasts and genitals, castration, rape and gang rape; sexual

<sup>20</sup> Caroline O. N. Moser and Fiona Clark, *Victims, Perpetrators, or Actors: Armed Conflict and Political violence* (London: Zed Books, 2001); Kathleen Kuehnast, Chantal de Jonge Oudraat and Helga Hernes (eds.), *Women and War: Power and Protection in the 21st Century* (Washington, D.C.: United States Institute of Peace, 2011).

<sup>21</sup> Ní Aoláin and Valji, "Scholarly Debates," 53–66; Bourke, *Disgrace*.

<sup>22</sup> See, for example, Emily Bridger and Erin Hazan, "Surfeit and Silence: Sexual Violence in the Apartheid Archive," *African Studies* 81 (2022): 286–305; Estelle B. Freedman, *Redefining Rape: Sexual Violence in the Era of Suffrage and Segregation* (Cambridge, MA: Harvard University Press, 2013), 33, 144; Michel-Rolph Trouillot, *Silencing the Past* (Boston: Beacon Press, 1995); Fuentes, *Dispossessed Lives*.

<sup>23</sup> See Mahajan essay below.



humiliation and degradation—including spectacle performances. Alongside the performative dimensions of the sexual atrocities that emerged in the case studies, all also included a profoundly intimate dimension to the sexual violence where rapes were committed by locals known to the victims and often in front of the victim's husbands and children. Whether in early modern Ireland, the nineteenth-century U.S. or twentieth-century India, such acts of sexual violence in political conflicts involved male perpetrators and female victims, but also male victims and female inciters.

Second, wherever and whenever we look, testimony of sexual violence is cloaked in euphemism and requires contextual readings. Euphemisms such as “ravish,” “defile,” “abuse,” “deflower,” “use,” “force,” “outrage,” “orgy of outrage,” “sorted,” and “dispoyle” were more common than “rape.” Metaphors and phrases such as “taken by the haire,” “had their way with me,” “did me scandalise,” “did shameful acts with us,” and “dispersing women” suggest sexual violation and demand close reading of the historical record. In the case of the Kudo Butai Trial, where the Japanese perpetrator “fiddled with,” “used,” and “disturbed” Asian women, only further questioning revealed the extent to which the women had been forcibly violated. Likewise, Trial Chamber I in the Akayesu judgment provided clarification around the uses of Rwandan terms to denote rape in the testimony in the trial record. These included “to bring (a person) to commit adultery or fornication,” “to share a bed,” and “to have sexual intercourse with a woman.” In relation to the latter, the judgment notes that the term “kurungora” “is used regardless of whether the woman is married or not, and regardless of whether she gives consent or not.” Depending on the context, language, and the interpretation of euphemisms, as Byrne, Cheah, and Mahajan show, confound matters further and, to quote Byrne, “requires a linguistic sophistication that engages the societal context within which acts of sexual violence were perpetrated.”<sup>24</sup>

Third, these case studies offer original insights into the complex nature of conflict-related inquiries and how this impacts the collection of evidence and production of the archive. In each of these case studies, the inquiries or investigations are mechanisms that are established and conducted by external actors with mandates that are influenced by wider postconflict political and legal objectives. The CRSV in this collection is all mass crimes, where virtually everyone in the immediate zones of conflict has been directly or indirectly affected, as perpetrators or victims. The breakdown of the rule of law that frames the commission of extreme crimes across sectarian or ethnic divides highlights the limits of local fora, where the pursuit of truth or justice for the victims of atrocities would carry significant risks, whether related to the security of individual witnesses or the overall impartiality of the inquiry. The critical feature of many of the inquiries and trials in this collection, where CRSV is extracted from the margins of archives, is that the respective legal interventions were designed to serve particular objectives or outcomes anchored in wider postconflict political contexts. These political projects/objectives may be as widely framed as the pursuit of justice in a context where the commission of mass crimes mandated prosecutorial priorities, as in the

<sup>24</sup> See Byrne essay below.



legal/court proceedings taken up by McCurry and Byrne. This shapes the scope and focus of legal and fact-finding processes and ultimately mediates the way in which sexual violence testimony is elicited and entered into the record.

Finally, we highlight how testimony of sexual violence against women emerges at the time. Our case studies show that testimony of sexual violence is often incidental to, and also subsumed by, the wider legal or political focus of the inquiry. In government inquiries, this pattern is evident in the identity of the witnesses called and testimony taken, decisions made by partisan political actors. In trials, what we see is that evidence of CRSV was subsumed under a deluge of evidence related to other atrocities. In the absence of trial processes, it was mediated through reports and summaries of proceedings. This was compounded by the inexperience of the people, invariably men, who recorded the testimony and the circumstances in which depositions were given, as well as the mediation of testimony through condensed reports or courtroom summaries.

Moreover, what testimony does make it into the record often gains significance when it is instrumentalized to serve the broader political objectives of external actors. As we see in many of these cases, perpetrator witnesses and defense attorneys produce secondary or counter-narratives. In some, those narratives can emerge—sometimes subsequently—as the dominant ones. Indeed, emphasis on women as victims of sexual violence in conflict zones is, as Fionnuala Ní Aoláin and Nahla Valji note, “vulnerable to the political winds of state interest.”<sup>25</sup> A few examples from Ireland, the U.S., and India illustrate this. From the seventeenth to the twentieth centuries, Protestant propagandists in Ireland manipulated accounts of sexual violence against women (as recorded in the “1641 Depositions”) to justify retribution, to instill fear, and to fan the flames of anti-Catholicism both in Ireland and in England. In the 1870s and 1880s, the white supremacist Democrats weaponized the minority report of the Klan investigation to cast Black suffrage and “negro government” as a massive mistake and Reconstruction itself as an abject failure, offering the narrative by which the history of Reconstruction was first written and which lasted into the Civil Rights era. In twenty-first-century India, August 14 was designated (in 2021) as Partition Horrors Remembrance Day. The associated website hosts a glossy brochure that showcases Hindu and Sikh victims of Muslim assault.<sup>26</sup> There is no mention of the Muslims who suffered equivalent violence at the hands of Hindus and Sikhs.

## The Range of Archives

In an article about Early Modern European archives, Alexandra Walsham noted that they are not “unproblematic reservoirs of historical fact.” Instead, the archive “operates as a distorting filter, lens and prism.”<sup>27</sup> This applies equally to

<sup>25</sup> Ní Aoláin and Valji, “Scholarly Debates.”

<sup>26</sup> Government of India, “Partition Horrors Remembrance Day”, accessed December 27, 2024, <https://amritmahotsav.nic.in/partition-horror-remembrance-day.htm>.

<sup>27</sup> Alexandra Walsham, “The Social History of the Archive: Record-Keeping in Early Modern Europe,” *Past and Present* 230, Supplement 11 (2016): 9, 11.

the archives interrogated by the articles in this special issue. All present the problems of evidence identified by Michel-Rolph Trouillot, which trace back to questions about the character of the archive itself at the moment of its production and the uses to which it is put. To quote Trouillot: “Silences enter the process of historical production at four crucial moments: the moment of fact creation (the making of *sources*); the moment of fact assembly (the making of *archives*); the moment of fact retrieval (the making of *narratives*); and the moment of retrospective significance (the making of *history*).”<sup>28</sup>

Many of the bodies of evidence of sexual violence deployed in legal forums are what we might call official state archives, meaning they were produced by legislative or other investigatory government bodies. In her corpus of scholarship, the anthropologist Ann Laura Stoler invites us to look again at how we interrogate our archives, to examine “archive-as-subject” rather than simply extract information (“archive-as-source”) and to read “colonial archives ‘against their grain.’”<sup>29</sup> She looked at the Dutch archives, but her method is equally relevant to other colonial archives, which are also sites of knowledge production capable of distorting the past.<sup>30</sup> Likewise, the subaltern studies scholar Ranajit Guha’s critique of “statist discourse” warns about the narrow orientation of state archives and what gets designated as an historical event or actor to the exclusion of what he calls “the small voice[s] of history.” Among those, he counts women’s voice excluded, as he puts it, because “it messes up the plot.”<sup>31</sup>

Some of those archives are what historian Ben Kiernan calls “single purpose archives,” meaning records created for a particular purpose.<sup>32</sup> The English authorities in Ireland facilitated the collection of the “1641 Depositions” to justify policies of retribution and the expropriation of millions of acres of land held by Catholics. The 1871 U.S. Congressional investigation of the Ku Klux Klan is another example, as is the evidence gathered by the ICTR. But several contributors tackle cases in which the archive of sexual violence is constituted outside official channels precisely because of the opposition of authorities to the documentation of the crime. With official Ottoman and Turkish archives purged, Morris relies extensively upon diplomatic and missionary reports to examine collective violence in Turkey. And the purposeful absence of any official record of rape and sexual violence by governments in India and Pakistan means that the scholar relies on victim statements gathered by a religious organization to highlight atrocities on Hindu and Sikh women.

<sup>28</sup> Trouillot, *Silencing the Past*, 26.

<sup>29</sup> Ann Laura Stoler, “Colonial Archives and the Arts of Governance,” *Archival Science* 2 (2002): 99.

<sup>30</sup> Ann Laura Stoler, *Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense* (Princeton, NJ: Princeton University Press, 2008).

<sup>31</sup> Ranajit Guha, “The Small voices of History,” in *Subaltern Studies IX*, ed. Shaid Amin and Dipesh Chakrabarty (New York: Oxford University Press, 1996), 11–12.

<sup>32</sup> Ben Kiernan, “Afterword. Settler Colonies, Ethno-Religious Violence and Historical Documentation: Comparative Reflections on Southeast Asia and Ireland,” in *Ireland 1641: Contexts and Reactions*, ed. Jane Ohlmeyer and Micheál Ó Siochru (Manchester: Manchester University Press, 2013), 254–73.

## The Range of Legal Processes

The case studies in this special issue also address a range of legal processes. One distinctive contribution is the approach to evidentiary hearings, inquiries, commission findings, and trial judgments as “archives.” This emphasizes the “curation” of evidentiary findings and encourages serious consideration of the multiple political projects that shape conflict-related legal processes. This framework allows scholars to contextualize the testimony of CRSV and to incorporate a critical awareness, often less present in legal than historical scholarship, of the dynamic narratives that emerge from these legal processes.

In many of the archives examined, acts of sexual violence are not explicitly identified as within the jurisdiction of inquiry or incorporated into criminal indictments, mandating a heightened scrutiny of the legal archive to uncover this testimony. For legal scholars, this in turn requires a shift from a reliance on formal judgments to explore trial transcripts, witness depositions, and other related materials. Cheah’s article on the Burma Death Railway demonstrates the value of legal transcripts, where this trial did not produce a written judgment with findings of fact and legal reasoning. Much of the testimonial evidence from earlier legal archives provides mediated summaries of women’s testimony, whereby one of the remarkable features of contemporary international criminal justice is the direct, word-for-word record of women’s testimony under examination. As Cheah and Byrne illustrate with war crimes trials conducted across decades, even when the crimes are explicitly within the mandate of a court or tribunal, they still may not be comprehensively represented within a legal archive.

## Ongoing Challenges of the Archives

Archives themselves are repositories of memory. In an insightful book on the archive of the American Civil War, Yael Sternhell notes that “archives do not simply reflect the past but actually shape the present and the future.” She continued that “Archives have the power to make myths and hide truths, to generate cohesion and fuel resistance, to valorize war and foster reconciliation.”<sup>33</sup>

And it is here that we think our analysis might contribute to wider discussions around the archive and sexual violence in conflict zones. Across four centuries, three continents, and very different conflicts, there is a strong pattern of how evidence of sexual violence is under-represented or overlooked in transcripts and records of investigations of conflicts because it was incidental, subsumed, and, in many contexts, instrumentalized to serve wider postconflict priorities. It is also critical to note that because of the gravity of the crimes and the seduction of the sources, people can also take liberties by focusing on the testimonies that do make it into the record, elevating them over the counter claims, and reproducing them in anthologies and so on. This can inadvertently convey a false sense of the scale of CRSV in each conflict and its

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<sup>33</sup> Yael A. Sternhell, *War on Record: The Archive and the Afterlife of the Civil War* (New Haven, CT: Harvard University Press, 2023), 5, 6.

centrality in the relevant investigations that form the basis of official and legal conflict archives.

Recognizing the complexity of integrating CRSV evidence in conflict archives raises the question as to how we should approach the real-time creation of archives, often inadvertent, that is underway in ongoing wars? Whether in Israel and the Occupied Territory, Ukraine, Ethiopia, Yemen, Sudan, Myanmar, or Syria, to name but a few examples, CRSV has remained a steadfast feature of contemporary conflicts. Evidence of CRSV is being compiled and curated at an unprecedented level. Here, we are dealing with new and rapidly evolving forms of witness technology that can be overwhelming, that is documented and disseminated through old and new media sources, including newspaper articles, and unmediated and unverified blogs and social media postings. Data collected by transnational NGOs with more transparent methodologies supplements the findings from the field of UN-sponsored agencies and Special Rapporteurs appointed by the UN Human Rights Council. In these archives, official fact-finding bodies and commissions of inquiry play a particularly important role. The transparency, independence, and real or perceived impartiality of these bodies should offer future researchers an important framework for the forensic analysis of complex evidence. It is not only the advanced expertise of CRSV that contemporary inquiries benefit from, but also the accumulated professional experience of their members. It is notable that the Chairs of both the UN Independent Commissions of Inquiry for Ukraine and for Israel and the Occupied Territory, which have rendered important findings related to the highly charged allegations of sexual violence in these two conflicts, are both former trial judges and Presidents of ICTR and have extensive experience in the dynamics of CRSV evidence.

Given the very small number of prosecutions that may ultimately take place at international and national levels and the limitations of postconflict truth and reconciliation commissions, justice remains elusive for most victims of CRSV. In relation to the scale of violations experienced, official judgments, reports, and records of testimonial evidence of CRSV will likely remain marginal in many conflict archives.

For scholars and lawyers engaged in what will amount to the real-time construction of conflict archives, this special issue encourages a deeper reflection as to the extent to the patterns that our authors have described around CRSV—of erasure and subsuming of evidence of sexual violence from records of conflicts—might reflect an ongoing phenomenon? Are there aspects of the production of evidence that will continue to conceal or distort records of sexual violence and how we understand its role in periods of terror and war?

As we interrogate archives, where evidence of sexual violence is located, it is critical that we note three things. First, to understand the nature and political construction of the archive. Second, to use this insight to interpret and assess the nexus of power relations within which historical and contemporary actors operate. Finally, to remember the inescapable limits of the evidence that shape the pursuit of justice, past or present.

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