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Cover Page Footnote

A sincere thanks to Yair Inspektor for being a supportive and enthusiastic groupie, and to S.D., L.D., and W.D. This article was a difficult journey, and I could not have done it without all of your help.

Carrying a Piece of Congo in Our Pockets: Global Complicity to Congo's Sexual Violence and the Conflict Minerals Trade

Anne DeVoe¹

I. INTRODUCTION

*The world's thirst for Congo's resources has been "the vilest
scramble for loot that ever disfigured the history of human
conscience."*

—Joseph Conrad.²

A. Recent Incidents of Mass Rape in Eastern Congo.

Inside the North Kivu Province of the Democratic Republic of Congo (DRC) is the vast and remote Walikale territory.³ Walikale has been the scene of much fighting during the current armed conflict in Congo,⁴ and also contains some of the most lucrative mining sites in the region.⁵ While there are United Nations (UN) peacekeeping forces dispatched in Walikale, there is a rebel group called the Democratic Forces for the Liberation of Rwanda (FDLR) that “maintains a strong presence in the territory, pillaging

¹ A sincere thanks to Yair Insektor for being a supportive and enthusiastic groupie, and to S.D., L.D., and W.D. This article was a difficult journey, and I could not have done it without all of your help.

² Joseph Conrad, *Geography and Some Explorers*, in LAST ESSAYS 14 (Richard Curle ed., J.M. Dent & Sons 1926), available at <http://www.conradfirst.net/view/image?id=17415>.

³ Olivia Caeymaex, *Field Dispatch: Walikale*, ENOUGH: THE PROJECT TO END GENOCIDE AND CRIMES AGAINST HUMANITY (Feb. 3, 2010), <http://www.enoughproject.org/publications/field-dispatch-walikale>.

⁴ In this article, the Democratic Republic of the Congo (DRC) is referred to as both “Congo” and “the Congo.” There is no mention in this article of the Republic of the Congo, a separate country bordering the DRC, so any reference to Congo or the Congo refers to the DRC with the capital of Kinshasa.

⁵ Caeymaex, *supra* note 3.

and looting villages with a focus on the strategic mining sites of Bisie and Omate.”⁶ In addition to the grave threat that the FDLR poses to civilians, there are other rebel groups, called Mai-Mai, that terrorize the population.⁷

In July and August 2010, both the Mai-Mai and the FDLR raped more than 300 women and children in Walikale territory.⁸ Specifically, it appears that three groups worked together—FDLR troops, a group of Mai-Mai rebels, plus a third armed group—to attack thirteen villages and rape 235 women, fifty-two girls, fifteen men, and three boys.⁹ These attacks occurred despite the Congolese government’s deployment of thousands of soldiers to the region to enforce a presidential moratorium on mining and to restore order.¹⁰ Even more troubling, UN peacekeepers reported that Congolese army troops were themselves committing mass rape, killing civilians, and looting villages during the summer of 2010.¹¹

These two separate incidents of mass rape perpetrated against the same group of civilians caught the international community’s attention. The UN Under-Secretary General for Peacekeeping Operations acknowledged that the UN had failed the victims in Walikale territory.¹² Margot Wallström, the UN Special Representative for Sexual Violence Against Women in Conflict, called on the DRC government to investigate and to hold any perpetrators accountable.¹³ On October 5, 2010, Indian UN peacekeepers arrested a Mai-Mai militia leader whose troops allegedly participated in the rapes.¹⁴ Although human rights groups had named the FDLR as the main perpetrator of mass rape in the region, the arrest of the Mai-Mai leader set

⁶ *Id.*

⁷ *Id.*

⁸ See Nicole Johnston, *UN: DR Congo Troops Committing Rape*, AL JAZEERA (Oct. 15, 2010), <http://english.aljazeera.net/news/africa/2010/10/2010101423546470319.html>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *See id.*

¹² *Id.*

¹³ *See id.*

¹⁴ *Id.*

an important precedent of action.¹⁵ According to Ms. Wallström, it is only when military commanders understand that they may be turned in for commissioning or condoning rapes that a positive shift can occur in the battle to end impunity for the perpetrators of mass rape in Congo.¹⁶

B. Congo and the Exploitation of Conflict Minerals

In the current conflict in Congo, it is mineral-wealth that provides armed groups with the money and resources to wage war on civilians and other groups.¹⁷ These groups fund their violence with the sale of conflict minerals.¹⁸ Conflict minerals are minerals that are sold by armed groups to fund violence and insurrection.¹⁹ There are four main minerals mined in the Congo: tin, tantalum, tungsten, and gold—and the electronics industry is one of the main buyers of these minerals.²⁰ In September 2010, after UN troops reported that Congolese government troops had committed mass rape against civilians in Walikale, the president of DRC, Joseph Kabila, announced a mineral export ban on the territory and a halt to the mining of all minerals from three provinces in eastern Congo—North Kivu, South Kivu, and Maniema.²¹

While President Kabila’s temporary ban was a positive step towards policy reform on conflict minerals, a ban alone cannot terminate armed conflict in Congo “unless it is accompanied by concrete Congolese army reform, a certification process for mineral exports, and opportunities for

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See *Conflict Minerals*, GLOBAL WITNESS, <http://www.globalwitness.org/campaigns/conflict/conflict-minerals> (last visited Oct. 20, 2011) [hereinafter *Conflict Minerals*].

¹⁸ *See id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Matt Brown, *Congo’s Ban on Mining an Incomplete Solution to Conflict Minerals*, *Says Enough Project*, ENOUGH: THE PROJECT TO END GENOCIDE AND CRIMES AGAINST HUMANITY (Sept. 16, 2010), <http://www.enoughproject.org/news/congos-ban-mining-incomplete-solution-conflict-minerals-says-enough-project>.

peaceful development” in the region.²² In order for a certification process for conflict minerals to be effective, companies that trade and buy conflict minerals must ensure that their supply chains are not connecting and contributing to the armed groups that take over mines and instigate violence in Congo.²³ In July 2010, the United States passed the Dodd-Frank Wall Street Reform and Consumer Protection Act into law. A provision within this law requires companies that are registered in the United States to report the steps they take to certify that their mineral supply chains are not funding armed groups in eastern Congo.²⁴

The armed groups that control mines and profit from the sale of conflict minerals exploit the Congolese civilian population by enforcing systems of illegal taxation on every worker, merchant, and visitor who works or lives near the mines.²⁵ While taxation is one way to control civilian populations, for these armed groups rape is a more effective “tool” than taxation. They systematically use rape as a tool of war to terrorize and control Congolese civilians.²⁶ “Systematic rape has evolved over the last dozen years of war in the Congo as a tool of . . . social control” that armed groups can use against civilians in order to terrorize and dominate them.²⁷ One Congolese woman activist explained it this way: “[w]hen they rape the women, they send a message to the men and the community that they have the power and the

²² *Id.*

²³ *See id.*

²⁴ *See id.* (citing Dodd-Frank Wall Street Reform and Consumer Protection Act, H.R. 4173, 111th Cong. § 1502(e)(4)(A) (2010)).

²⁵ The trade of conflict minerals has helped fund the war in Congo that began in 1996 and that, despite an official ending in 2006, never truly ended in the eastern part of the country. *See* Lydia Polgreen, *Congo’s Riches, Looted by Renegade Troops*, N.Y. TIMES (Nov. 16, 2008), http://www.nytimes.com/2008/11/16/world/africa/16congo.html?_r=2&ref=todayspaper&pagewanted=all&oref=slogin&oref=slogin.

²⁶ *See* JOHN PRENDERGAST WITH DON CHEADLE, *THE ENOUGH MOMENT: FIGHTING TO END AFRICA’S WORST HUMAN RIGHTS CRIMES* 182 (2010).

²⁷ *Id.*

control. It is designed to humiliate and to spread HIV/AIDS.”²⁸ This theory is further supported by the dramatic increase in male rape cases since 2009.²⁹ In Congolese culture, a man’s identity is closely connected to power and control; thus, sexual violence against men is an extremely powerful tool that armed groups use to demean and control Congolese communities.³⁰

*C. Mass Rape as a Tool of War and Its Current Use and Impact in Congolese Society*³¹

Armies and governments have used mass rape in armed conflict for centuries for various reasons. Often, armed groups use rape as a weapon in order to demoralize, control, oppress, and eradicate civilian populations and to reward soldiers. According to Ms. Wallström, “[t]he mass rapes in Walikale demonstrate a nexus between the illicit exploitation of natural resources by armed elements and patterns of sexual violence.”³² The communities in Congo that are near lucrative mining areas are at particularly high risk of attack because of the competition over mining interests.³³ In Congo, the armed groups struggling to maintain control over the mines are using rape as a tool to assert their control of both civilians and mines.³⁴

²⁸ *Id.* at 183.

²⁹ See Jeffrey Gettleman, *Symbol of Unhealed Congo: Male Rape Victims*, N.Y. TIMES (Aug. 5, 2009), <http://www.nytimes.com/2009/08/05/world/africa/05congo.html?scp=1&sq=unhealed+congo&st=nyt>.

³⁰ *See id.*

³¹ Mass rape has been used as a tool and tactic in war for centuries, and is documented in ancient texts such as the Bible. For example, Moses said, “Now therefore, kill every male among the little ones, and kill every woman who has known man by lying with him. But all the young girls who have not known man by lying with him, keep alive for yourselves.” *Numbers* 31:17–18 (World English Bible), available at <http://worldbible.com/numbers/31.htm> (last visited Oct. 15, 2011).

³² GLOBAL WITNESS, THE HILLS BELONG TO THEM: THE NEED FOR INTERNATIONAL ACTION ON CONGO’S CONFLICT MINERALS TRADE 10 (2010), available at http://www.projectcongo.org/images/The_hill_belongs_to_them141210_1_.pdf.

³³ *Id.*

³⁴ *See id.*

In the Congo, the systematic rape used to control the population has crippled economic development as well as women's efforts for social equality.³⁵ If a woman is raped, she is often rejected by both her husband and her family; additionally, she is marginalized by her community and stigmatized by Congolese society.³⁶ This situation frequently leaves women without income or resources to recover from the rape, unable to work, or to feed and maintain themselves and their children.³⁷ Congolese women are the backbone of the economic and social structure of the country, providing both the labor and the familial foundations of their culture.³⁸ Thus, the mass rape of Congolese women for the past fourteen years has fractured these structures and impeded the country's development.³⁹

D. Scope of this Discussion

This article argues that, while there is no one solution that will end the systematic rape taking place in the Congo, there are realistic steps that the international community, the DRC government, and both local and international nongovernmental organizations (NGOs) can take in order to initiate effective change. It is not likely that the armed groups raping civilians in Congo have written orders or policies that explicitly state a rape strategy. While some groups verbally admit that their strategy involves mass rape,⁴⁰ there is no paper trail documenting the connection between mass rape, control over mines in eastern Congo, and the conflict minerals trade.

³⁵ See John Cookson, *In Congo, "A Dead Rat is Worth More Than the Body of a Woman,"* BIG THINK (Oct. 27, 2010, 12:00 AM), <http://bigthink.com/ideas/24655?page=all>.

³⁶ *See id.*

³⁷ *See id.*

³⁸ *See id.*

³⁹ *See id.*

⁴⁰ See Brianna Lee, *Congo Soldiers on Why They Rape*, NEED TO KNOW ON PBS, <http://www.pbs.org/wnet/need-to-know/the-daily-need/congo-soldiers-on-why-they-rape/4046/> (last modified Oct. 5, 2010, 10:09 AM).

This article argues that the connection between mass rape and conflict minerals does exist, and it explores the possible steps the global community can take to break this connection. The article is structured to give the reader a preliminary background of rape as a tool of war, and then to explore different methods to fight this strategy—first through legislation here in the United States and the possible use of international law, and then through legislative, judicial, and other peace-construction methods inside Congo. It is important to note that there is not just one solution to ending conflict in Congo. Rather than discourage action, the fact that there are several different solutions should compel action all the more—with the knowledge that we all have different roles to fill.

Part II of this article briefly explores two separate histories: (1) the history of colonization in Congo and the pattern of resource exploitation for the benefit of a few and to the detriment of the Congolese people, and (2) the legal history of mass rape and its recent development in international law as its own separate, punishable crime of war. These separate histories connect with the international implications of the current use of mass rape to control and exploit Congo's resource-wealth. Part II also examines how the recent developments in international law on sexual violence in conflict can be applied to Congo's current situation.

Part III of this article urges the effective implementation of the new US conflict minerals law as a key step to stop the current mass rape and killing of civilians in Congo. It should be supported, strengthened, and used to certify the "chain of custody"⁴¹ of conflict minerals in order to cut off funding to armed groups. Additionally, the international community should explore the possibility of holding companies legally accountable under international law for their complicity in the conflict minerals trade and their implicit support of mass rape in Congo.

⁴¹ Dodd-Frank Wall Street Reform and Consumer Protection Act, H.R. 4173, 111th Cong. § 1502(e)(4)(A) (2010), *available at* <http://www.gpo.gov/fdsys/pkg/BILLS-111hr4173enr/pdf/BILLS-111hr4173enr.pdf>.

Part IV of this article presses for the international community to support intra-national justice in the Congo through the creation of a tribunal, a truth and reconciliation commission, and an effective legislative and judicial system. Additionally, there are many local NGOs that are working to change the current situation by providing medical, economic, and empowerment assistance to victims of sexual violence in Congo. Because much of the world uses Congo's resources and therefore contributes to its internal violence, the international community has a duty to help consolidate the efforts to achieve prevention of sexual violence and to work toward justice for individual victims and survivors of sexual violence.

It is important to point out that the conflict in Congo involves a complex story intricately tied to many different groups, conflicts, and countries. The genocide that took place in Rwanda in 1994, the politics and conflicts of Congo's other neighboring countries, and the current complexities of politics in Congo itself—are intricately linked to the violence that occurs in the country today. While all of these factors have had a direct impact on the systemic sexual violence in Congo today, they are outside the scope of this discussion and will not be specifically addressed in this article.

II. THE COLLISION OF SEPARATE HISTORIES: CONGO'S MINERAL EXPLOITATION, THE USE OF MASS RAPE IN ARMED CONFLICT, AND THE RECENT DEVELOPMENTS OF SEXUAL VIOLENCE IN INTERNATIONAL LAW

A. History of the Colonization of Congo and Its Resources

The history of colonization in Africa is long and violent. Yet, European colonization of the Congo between 1890 and 1910⁴² stands out amidst the many atrocities that Europeans committed in the "Scramble for Africa."⁴³ During that time, King Leopold II of Belgium enslaved the Congolese

⁴² See ADAM HOCHSCHILD, KING LEOPOLD'S GHOST: A STORY OF GREED, TERROR, AND HEROISM IN COLONIAL AFRICA 5 (First Mariner Books ed. 1999).

⁴³ *Id.* at 26.

people in order to extract resources, mainly rubber and lumber. In the process of enslavement, the Belgians killed between five and eight million people.⁴⁴ Despite the number of deaths, this prolonged massacre is not legally considered genocide because King Leopold intended to use the Congolese for slave labor and not to eradicate them. In 2006, the British Parliament submitted a motion to recognize King Leopold's regime as genocide; however, despite having some support, the motion died in Parliament.⁴⁵

King Leopold laid claim to the Congo as the single shareholder of a private company called the International Association of the Congo.⁴⁶ The United States was the first country to recognize the King's claim in 1884, and, through the guise of "philanthropy" and "delivering civilization" to local populations, the King was able to kill, rape, steal land, sever hands and feet, shatter families, and orphan children for over twenty years.⁴⁷ King Leopold's strategy to exploit the Congo for its wealth of resources involved creating a private army, called the Force Publique (FP), which was led by a mixture of Belgian soldiers and soldiers from other European countries that were sent to gain a few years of combat experience.⁴⁸

One main task of the FP was to enslave the population in order to harvest rubber from jungle vines.⁴⁹ Commonly, the FP would enter a village and capture the women, children, and elders and chain them up.⁵⁰ The village men would then be forced to collect rubber from wild vines in order to meet a certain quota.⁵¹ The violence perpetrated by King Leopold's colonizers

⁴⁴ *See id.* at 3.

⁴⁵ Colonial Genocide and the Congo, 2005–06, EDM 2251, H.C. (2006) (U.K.), available at <http://edmi.parliament.uk/EDMi/EDMDetails.aspx?EDMID=30788&SESSION=875>.

⁴⁶ *See* HOCHSCHILD, *supra* note 42, at 81.

⁴⁷ *See id.* at 293.

⁴⁸ *See id.* at 123, 127.

⁴⁹ *See id.* at 159–61.

⁵⁰ *See id.* at 161–62.

⁵¹ *See id.* at 162–63.

against women was equally brutal compared to the exploitation of the Congo for its resources and the enslavement of its population. In 1895, a Belgian officer recorded in his journal that “[a]ll the soldiers want one (a woman). The sentries who are supposed to watch them unchain the prettiest ones and rape them.”⁵²

In 1908, due to an international outcry against the brutality in the Congo, Leopold handed over his private interests in his fiefdom to Belgium, and it became an official colony named the Belgian Congo.⁵³ Though Leopold burned most of his records in 1908,⁵⁴ his profits from twenty years of exploiting Congo can be estimated conservatively at around \$1.1 billion in today’s dollars.⁵⁵

The end of King Leopold’s reign in the Congo did not end the exploitation of the Congo’s resources on a mass scale. In 1960, after more than a century of brutal colonization, the Belgian Congo became independent, and, soon after, civil war broke out.⁵⁶ During the civil war, the democratically elected prime minister, Patrice Lumumba, was removed from power and, in a 1965 coup d’état backed by the United States, was replaced by General Mobutu Sese Seko (commonly known as General Mobutu).⁵⁷

General Mobutu, protected by the United States for being a reliable Cold War ally in Africa, ruled the Congo, which he renamed Zaire, for thirty-two

⁵² *Id.* at 162.

⁵³ *See id.* at 259.

⁵⁴ *See id.* at 294.

⁵⁵ *Id.* at 277.

⁵⁶ *See* Evan Luard, *The Civil War in the Congo*, in *THE INTERNATIONAL REGULATION OF CIVIL WARS* 108 (Evan Luard ed., 1972).

⁵⁷ *See id.* at 112. Belgium and the Central Intelligence Agency (CIA) worked together to assassinate Lumumba in January 1961; forty-one years later, Belgium (but not the CIA) issued an apology to the Congo and asked for forgiveness for killing him. *See* Arnaud Zajzman, *Lumumba Apology: Congo’s Mixed Feelings*, BBC NEWS (Feb. 6, 2002, 11:50 PM), <http://news.bbc.co.uk/2/hi/africa/1805546.stm>.

years.⁵⁸ As dictator, Mobutu profited handsomely from Congo's rich mineral reserves.⁵⁹ What he did not squander on his luxurious lifestyle, he stashed away in foreign bank accounts. When he finally fled the Congo in 1996, he left behind a country in ruin—robbed of the even the most basic necessities.⁶⁰ After Mobutu, the country renamed itself the Democratic Republic of Congo.⁶¹

B. The Use of Mass Rape in Armed Conflict and Recent Shift in International Law

The history of mass rape in armed conflict is long and violent. Yet, in recent decades, the organized use of rape as a weapon of war has increased.⁶² Systematic, organized rape was used to terrorize and “to carry out ethnic cleansing and genocidal campaigns in the former Yugoslavia, Rwanda, Sierra Leone, Sri Lanka, and Darfur.”⁶³ During the war in the former Yugoslavia, the Serbian military applied a strategy suggested “by psychological experts that concluded that Muslim communities can be undermined only if we aim our action at the point where religious and social structure is most fragile. We refer to the women, especially adolescents, and to the children.”⁶⁴

In Congo, rape is a very effective tool to humiliate, control, and undermine the population because of the stigma attached to it; women and

⁵⁸ GÉRARD PRUNIER, *AFRICA'S WORLD WAR: CONGO, THE RWANDAN GENOCIDE, AND THE MAKING OF A CONTINENTAL CATASTROPHE* 77 (2009).

⁵⁹ See Howard W. French, *Anatomy of an Autocracy: Mobutu's 32-Year Reign*, N.Y. TIMES (May 17, 1997), <http://partners.nytimes.com/library/world/africa/051797zaire-mobutu.html>.

⁶⁰ See *id.* One estimate of Mobutu's accumulated wealth is £2.5 billion in British pounds (or just under \$4 billion US dollars as of Dec. 2011). See David Pallister & Owen Bowcott, *Bank to Shut Doors on Saudi Royal Cash*, THE GUARDIAN (July 16, 2002), <http://www.guardian.co.uk/world/2002/jul/17/saudi-arabia.davidpallister>.

⁶¹ See PRUNIER, *supra* note 58, at 134.

⁶² PRENDERGAST WITH CHEADLE, *supra* note 26, at 181.

⁶³ *Id.*

⁶⁴ *Id.*

girls who are raped are often subsequently rejected and marginalized or exiled by their communities.⁶⁵ Often, husbands reject their wives when they discover that they have been raped, and families of husbands may reject a woman or girl if her husband has been killed.⁶⁶ In a case documented by Human Rights Watch, Francine, a thirty-five-year-old woman and mother of six, was raped by three soldiers who then killed her husband in front of her.⁶⁷ Subsequently, she was accused by her husband's brothers "of being a traitor, an accomplice of the attackers," and they told her she had become "everyone's woman."⁶⁸

Yet, despite the stigma of rape in most cultures, in the past twenty years women's voices and perspectives have gained ground in the historical record, which is otherwise dominated by male accounts of sexual violence. There are several theories behind this shift, which has led to the emergence of a feminine perspective, including the increasing number of women in courtrooms, as legal activists, as reporters, and as authors writing analytically to make sense of rape from the vantage point of women.⁶⁹ Within this shift, the concepts of "marital rape" and "date rape" changed from unknown, undefined crimes into punishable acts of violence in some countries—which then exposed state and social systems that have perpetuated women's marginalization.⁷⁰

Instances of women speaking out against mass rape are relatively new phenomena. Women's groups in Croatia, Serbia, and Bosnia were particularly successful in the 1990s in getting the news out about the mass

⁶⁵ HUMAN RIGHTS WATCH, *THE WAR WITHIN THE WAR: SEXUAL VIOLENCE AGAINST WOMEN AND GIRLS IN EASTERN CONGO* 64 (2002), available at <http://www.hrw.org/sites/default/files/reports/congo0602.pdf>.

⁶⁶ *See id.* at 64–65.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *See* Cynthia Enloe, *Have the Bosnian Rapes Opened a New Era of Feminist Consciousness?*, in *MASS RAPE: THE WAR AGAINST WOMEN IN BOSNIA-HERZEGOVINA* 219, 222 (Alexandra Stiglmeier ed., Marion Faber trans., 1994).

⁷⁰ *Id.* at 222.

rape perpetrated by soldiers and governments, which was documented in women's words and on their terms.⁷¹ In the Congo, there are women, men, and groups who are working with victims of sexual violence for their own sake, and who are working against the marginalization of women in an established male-dominated society. While this newly-established counter-perspective is helpful, the activists' fight is uphill.

The mass rape of women in Bosnia in the early 1990s was not different from other organized rapes in history, in that male combatants sexually assaulted civilian women on a mass scale. What distinguished the mass rape in Bosnia was the perspective-shift of how it was reported—it was not just the conqueror's voice telling the story. Women's accounts and analyses of rape were reported worldwide and were documented by women's organizations using international political feminist networks. When the International Criminal Tribunal for Yugoslavia (ICTY) was established, it was authorized to prosecute genocide, crimes against humanity, and war crimes. Rape was specifically listed as a crime against humanity in the statute.⁷² The work done to disseminate information about the atrocities that occurred in the former Yugoslavia created the framework for the ICTY to set a precedent for the prosecution of gender-related crimes.⁷³

C. The Current Standing of Sexual Violence in International Law: a Review of Legal Precedent of Rape in War

The four Geneva Conventions, the first occurring in 1864 and the fourth in 1949, created the current standards for international humanitarian law and treatment for victims of war. The Geneva Convention (IV), Article 27

⁷¹ *Id.* at 220.

⁷² *Rape as a Weapon of War: Accountability for Sexual Violence in Conflict: Hearing Before Subcomm. on Human Rights and the Law Comm. on the Judiciary*, 110th Cong. 10–11 (2008) (statement of Kelly Dawn Askin, Senior Legal Officer, Open Society Justice Initiative), available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_senate_hearings&docid=f:45210.pdf [hereinafter *Hearing*].

⁷³ *See id.*

(second paragraph) says, “Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.”⁷⁴ Just before the 1949 Convention, in 1945 and 1946 during the prosecution of high-ranking Nazi officials in the Nuremburg Trials, the Allies had a chance to expand justice for women who had been raped during World War II.⁷⁵ They drafted a statute that laid out the rules for trials and defined the crimes to be tried—but despite the fact that rape had been rampant during the war, the statute did not contain the word “rape.”⁷⁶

Just after the Nuremburg Trials, the Allies prosecuted Japanese officials from 1946 through 1948 in the Tokyo Tribunal.⁷⁷ The indictment of the defendants did list rape as a crime, and the prosecutors convicted Japanese leaders of war crimes and crimes against humanity, which included sexual atrocities within the definition of the crimes.⁷⁸ However, the indictment did not mention the sexual enslavement of an estimated 200,000 women—“comfort women”—in the countries that the Japanese Imperial Army occupied.⁷⁹ While neither the Nuremburg Trials nor the Tokyo Tribunal explicitly mentioned sexual atrocities, various forms of sexual violence were documented and entered into evidence during these trials. Thus, some sexual atrocities were contained in the judgments even though they were not emphasized, and many sex crimes, including mass rape, were left out.⁸⁰

After the 1949 Geneva Convention, almost fifty years passed before another court used international law to prosecute rape as a war crime or a

⁷⁴ YORAM DINSTEIN, *THE LAW OF BELLIGERENT OCCUPATION* 183 (2009).

⁷⁵ See Joanne Barkan, *Rape is Often Used as a Weapon of War*, in *VIOLENCE AGAINST WOMEN* 169, 172 (Karen F. Balkin, ed., Greenhaven Press 2004), available at http://www.dikseo.teimes.gr/spoudastirio/E-NOTES/V/Violence_Against_Women_Viewpoints.pdf.

⁷⁶ *Id.*

⁷⁷ *See id.*

⁷⁸ *See id.*

⁷⁹ *Id.*

⁸⁰ *Hearing, supra* note 72, at 45.

crime against humanity.⁸¹ In the interim, dictators, warlords, and armed groups around the world committed murder and mass sexual atrocities on civilians without being held accountable for their actions.⁸² Mass rape has proven to be an exceptionally effective tool in a strategy to control, terrorize, or destroy an opposing group. Since the end of World War II, women (and sometimes men) have been repeatedly gang-raped or sexually enslaved en masse in Burma, Cambodia, Bangladesh, East Timor, Iraq, Afghanistan, Chechnya, Bosnia, Croatia, Serbia, Kosovo, Colombia, Guatemala, Peru, Argentina, Rwanda, Sierra Leone, Darfur, and Congo; still, this list is not exhaustive.⁸³

In the early 1990s during the war in the former Yugoslavia, the Serbian army used mass rape as a strategic tool against Bosnian Muslim women.⁸⁴ The UN created the ICTY in 1993,⁸⁵ and in 1996 the ICTY indicted eight men for crimes against humanity, breaches of the Geneva Conventions, and Violations of the Laws or Customs of War, based solely on acts of sexual violence.⁸⁶ This was the first time that sexual assaults were prosecuted on their own as torture and enslavement crimes against humanity.⁸⁷

Two years later, in 1998, rape as a crime against humanity gained further ground when the International Criminal Tribunal for Rwanda (ICTR) found Jean-Paul Akayesu, a former mayor, “guilty of nine counts of genocide, crimes against humanity and war crimes.”⁸⁸ The conviction was significant

⁸¹ Barkan, *supra* note 75, at 173.

⁸² *Hearing*, *supra* note 72, at 45.

⁸³ *See id.* at 44.

⁸⁴ *See* Barkan, *supra* note 75, at 170–71.

⁸⁵ *About the ICTY*, UN INT’L CRIM. TRIBUNAL FOR THE FORMER YUGOSLAVIA, <http://www.icty.org/sections/AbouttheICTY> (last visited Oct. 15, 2011).

⁸⁶ *See* Press Release, Int’l Crim. Tribunal for the Former Yugoslavia, Gang Rape, Torture and Enslavement of Muslim Women Charged in ICTY’s First Indictment Dealing Specifically with Sexual Offenses (June 27, 1996), <http://www.icty.org/sid/7334>.

⁸⁷ *Id.*

⁸⁸ Press Release, Human Rights Watch, Human Rights Watch Applauds Rwanda Rape Verdict (Sept. 2, 1998),

because it was the first time an international court punished sexual violence in a civil war, the first time rape was named as both a crime against humanity and a war crime, and the first time that rape was found to be an act of genocide.⁸⁹ The Akayesu case at the ICTR, along with two cases at the ICTY involving sexual atrocities, were ongoing in 1998 when deliberations took place in Rome over the drafting of the Statute for the International Criminal Court (ICC). These cases created a permanent change in the law influencing the gender provisions of the Statute.⁹⁰ The Rome Statute for the ICC explicitly enumerates “rape, sexual slavery, enforced prostitution, forced pregnancy, and enforced sterilization as both crimes against humanity and war crimes.”⁹¹

The Special Court for Sierra Leone (SCSL), established in 2002, took into account the language of the Rome Statute and then went further than the statutes for the ICTY and the ICTR, which had only included “rape” as a crime against humanity.⁹² The statute for the SCSL mentions “rape, sexual slavery, enforced prostitution, forced pregnancy, and any other form of sexual violence” as crimes against humanity.⁹³ Before the creation of the SCSL, the UN adopted two resolutions that spoke directly to women’s issues in war. UN Security Council Resolution 1325, passed in 2000, “reaffirmed the critical role of women in peace-building and reconstruction, and urged parties to protect women and girls from gender-based

<http://www.hrw.org/en/news/1998/09/02/human-rights-watch-applauds-rwanda-rape-verdict>.

⁸⁹ *Id.*

⁹⁰ *Hearing, supra* note 72, at 50.

⁹¹ *Id.*

⁹² *See id.* at 46–47.

⁹³ Statute of the Special Court for Sierra Leone art. 2, Jan. 16, 2002, 2178 U.N.T.S. 145, available at <http://www.sc-sl.org/LinkClick.aspx?fileticket=uClnd1MJEW%3D&>.

violence.”⁹⁴ This was the first time that the Security Council acknowledged that war can have a different effect on women than it can on men.⁹⁵

Most recently, in 2008, the UN Security Council adopted Resolution 1820, which focused on sexual violence in armed conflict. In this resolution, the Security Council recognized for the first time that sexual violence is a tactic used in war and armed conflict and that it is not “collateral damage” from war—it is instead a deliberate and criminal act that impacts international peace and security.⁹⁶ Additionally, in February 2010, the Secretary General appointed Margot Wallström as the first UN Special Representative on Sexual Violence in Conflict.⁹⁷ According to Ms. Wallström, “sexual violence in conflict has become the weapon of choice. The reason is as simple as it is wicked—because it is cheap, silent and effective.”⁹⁸

III. THE GLOBAL USE OF CONFLICT MINERALS AND RECENT US LEGISLATION COMBATTING THE CONFLICT MINERAL TRADE

As evidenced by the reigns of King Leopold II and General Mobutu, Congo’s resource-wealth has paradoxically brought the Congolese people not wealth, but rather, incredible suffering. The conflict minerals currently mined in Congo are no exception to this pattern. The electronics industry is one of the primary buyers of the four main minerals mined in Congo: tin, tantalum, tungsten (“the three Ts”), and gold.⁹⁹ Electronics companies use “the three Ts” and gold in mobile phones, laptops, and other electronics.¹⁰⁰

⁹⁴ Matthew O. Berger, *Sexual Violence is Not “Collateral Damage,”* INTER PRESS SERVICE (Nov. 4, 2010), <http://ipsnews.net/news.asp?idnews=53459>.

⁹⁵ *See id.*

⁹⁶ *See id.*

⁹⁷ *See* Press Release, United Nations, Secretary-General Appoints Margot Wallstrom of Sweden as Special Representative on Sexual Violence in Conflict (Feb. 2, 2010), <http://www.un.org/News/Press/docs/2010/sga1220.doc.htm>.

⁹⁸ Berger, *supra* note 94.

⁹⁹ *See Conflict Minerals, supra* note 17.

¹⁰⁰ *See id.*

“Tin is used as a solder in circuit boards; tantalum goes into capacitors, [which are] small components used to store electricity; tungsten is used in the vibrating function of mobile phones; and gold is . . . used . . . as a coating for wires.”¹⁰¹

The original causes for the conflict in Congo—land, ethnic identity, power, and wealth—are complex issues that are still at play. However, the main fuel that allows the violence to continue is the roughly “\$180 million a year from trading in minerals.”¹⁰² In 2010, President Kabila suspended all mining operations to give the Congolese army a chance to stabilize the area.¹⁰³ However, the Congolese army is not one cohesive group, but instead a conglomeration of various factions; thus, some factions left their posts and, rather than enforcing the ban on mining, these soldiers adopted the same practice as the rebels by taking control of mining operations in order to acquire the wealth from outgoing minerals.¹⁰⁴

Rebel groups and breakaway Congolese army groups maintain control over mines in eastern Congo and use the millions of dollars of profit each year to increase their wealth, keep control of the local populations, and continue fighting.¹⁰⁵ To make matters worse, world prices for these metals have recently begun to increase.¹⁰⁶ Consequently, these price increases have given armed groups in the eastern Congo even more incentive to fight for and maintain control of the mines.¹⁰⁷ These groups “compete violently for control of the mines, mineral transport, taxation of the minerals, and smuggling of the minerals across the border.”¹⁰⁸

¹⁰¹ *Id.*

¹⁰² PRENDERGAST WITH CHEADLE, *supra* note 26, at 184.

¹⁰³ Issaac Hamza, *Congo Extends Mining Ban Period in Three States*, AFR. BUS. REV. (Oct. 26, 2010), <http://www.africanbusinessreview.co.za/tags/martin-kabwelulu/congo-extends-mining-ban-time-three-states-0>.

¹⁰⁴ *See id.*

¹⁰⁵ *See Conflict Minerals*, *supra* note 17.

¹⁰⁶ *See id.*

¹⁰⁷ *See id.*

¹⁰⁸ PRENDERGAST WITH CHEADLE, *supra* note 26, at 184.

A. The US Conflict Minerals Law

With the increased awareness that conflict minerals power the world's electronic industry, the international community, specifically the United States, has made an effort to change this system. In April 2009, three members of Congress introduced a bill aimed at breaking the link between resource exploitation and armed conflict.¹⁰⁹ The proposed bill required that companies trading minerals with Congo or neighboring states disclose mine locations and monitor the financing of armed groups in the mineral-rich areas of the country.¹¹⁰ That legislation became part of the Wall Street Reform bill that President Obama signed into law in July 2010.¹¹¹

This new law, known as “the conflict minerals law,” stipulates that any company doing business involving minerals must annually disclose if it used conflict minerals originating in the DRC or an adjoining country.¹¹² The law defines conflict minerals as “columbite-tantalite (coltan), cassiterite, gold, wolframite or its derivatives, or any other mineral that the Secretary of State determines are financing conflict in the DRC or an adjoining country.”¹¹³ The law applies not just “to electronics companies, but to all publicly traded US firms that use” conflict minerals in their products.¹¹⁴ Companies must “exercise due diligence on the source and

¹⁰⁹ Dominique Soguel, *Sexual Violence in the Congo (Part 8): Rape Crisis in East Congo Tied to Mining Activity*, WOMEN'S ENEWS (June 1, 2009), <http://www.womensenews.org/story/090601/rape-crisis-in-east-congo-tied-mining-activity>.

¹¹⁰ *Id.*

¹¹¹ See Mary Beth Sheridan, *U.S. Financial Reform Bill Also Targets 'Conflict Minerals' from Congo*, WASH. POST (July 21, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/07/20/AR2010072006212.html>.

¹¹² Margot Wallström, *'Conflict Minerals' Finance Gang Rape in Africa*, THE GUARDIAN (Aug. 14, 2010), <http://www.guardian.co.uk/commentisfree/2010/aug/14/conflict-minerals-finance-gang-rape>.

¹¹³ Dodd-Frank Wall Street Reform and Consumer Protection Act, *supra* note 41.

¹¹⁴ Wallström, *supra* note 112.

chain of custody” of these minerals, and the law requires an audit from an independent source in order to establish proper oversight.¹¹⁵

The law requires American companies to submit annual reports to the Securities and Exchange Commission (SEC) to disclose whether their products contain any minerals from Congo or an adjoining country.¹¹⁶ If so, the companies must describe what measures they are taking to trace the minerals’ origin.¹¹⁷ Companies that report taking no action are not penalized under the law, but companies do not have a choice about disclosing—they are mandated by law to state on their websites what action they have taken or the fact that they have taken no action.¹¹⁸ The consequences are market-driven, as most consumers do not want to purchase electronics that fund mass rape and most companies will not want to have to publicly post information about their involvement with conflict minerals.¹¹⁹

A company may use the label “DRC Conflict Free” if the minerals it uses do not “directly or indirectly finance or benefit armed groups in [Congo] or an adjoining country.”¹²⁰ The law defines an armed group as any group that has perpetrated serious human rights abuses in the Congo or an adjoining country.¹²¹ This is potentially a very difficult piece of the law to enforce because the government’s own troops are accused of serious human rights abuses, and the government is probably not as likely to enforce the law against itself. Nevertheless, this definition is crucial to the conflict mineral law’s power because it is applicable to all the different armed groups perpetrating human rights abuses in Congo.

¹¹⁵ *Id.*

¹¹⁶ Sheridan, *supra* note 111.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *See id.*

¹²⁰ Dodd-Frank Wall Street Reform and Consumer Protection Act, *supra* note 41 § 1502(p)(1)(D).

¹²¹ *See id.* § 1502(e)(3).

If a company cannot ascertain that its minerals are conflict free, it must still include in its report “the country of origin of the mineral(s), and the efforts [taken] to determine the mine or location or origin with the greatest possible specificity.”¹²² The purpose of this process is to compel companies to determine what mines their minerals are coming from even if they cannot certify that their minerals are conflict free.

In addition to the mineral companies’ obligations, the conflict minerals law also imposes obligations on the US government to take steps toward ending the impunity of armed groups in the Congo.¹²³ The law requires the secretary of state to submit a strategy to the appropriate congressional committees that addresses the link between armed groups in the Congo and human rights abuses.¹²⁴ Some of the requirements that the strategy must include are: (1) to provide guidance to companies that are willing to exercise due diligence and formalize their own chain of custody between their suppliers and their customers; (2) to provide a descriptive plan “of punitive measures that could be taken against individuals or entities whose commercial activities are supporting armed groups and human rights violations” in Congo; and (3) to “produce a map of mineral-rich zones, trade routes, and areas under the control of armed groups in [the Congo] and adjoining countries.”¹²⁵ The law designates this map as the “Conflict Minerals Map” and requires it to be made available to the public.¹²⁶ Additionally, mines that are located in areas under the control of armed groups in the Congo and adjoining countries must be depicted on the map and designated as “Conflict Zone Mines.”¹²⁷ The secretary of state is

¹²² *Id.* § 1502(p)(1)(A)(ii).

¹²³ *See id.* § 1502(c)(1).

¹²⁴ *See id.* § 1502(c)(1)(A).

¹²⁵ *Id.* §§ 1502(c)(1)(B)(ii), (c)(1)(B)(iii), (c)(2)(A)(i).

¹²⁶ *See id.* §§ 1502(c)(2)(B)–(D).

¹²⁷ *Id.* § 1502(c)(2)(B).

charged with updating the map no less frequently than once every 180 days until the conflict in the Congo ends or the SEC changes the requirement.¹²⁸

1. Comparing the Conflict Minerals Law with the Past Success of the Kimberley Process

Activists who worked to make this law a reality hope that it will lead to an international system for curbing the trade of conflict minerals similar to the way the Kimberley Process slowed the sale of “blood diamonds” from West and Southern Africa.¹²⁹ The Kimberley Process began in 2000 “when Southern African diamond-producing states met in Kimberley, South Africa . . . to discuss ways to stop the trade in [conflict, or blood diamonds] and ensure that diamond purchases were not funding violence.”¹³⁰ The United Nations General Assembly adopted a resolution in support of an international certification scheme for rough diamonds, and in 2002 an agreement between governments, the international diamond industry, and civil society organizations created the Kimberley Process Certification Scheme (KPCS), which controls rough diamond production and trade.¹³¹

While there are criticisms of the Kimberley Process, it has successfully decreased the amount of conflict diamonds in the world market. “Diamond experts estimate that conflict diamonds now represent a fraction of 1 percent of the international trade in diamonds, compared to estimates of up to 15 [percent] in the 1990’s [*sic*].”¹³² Additionally, the KPCS has helped stabilize some countries and has lent support to their development.¹³³ For example, approximately \$125 million of diamonds were legally exported

¹²⁸ *See id.* § 1502(c)(2)(C).

¹²⁹ Sheridan, *supra* note 111.

¹³⁰ *Background*, KIMBERLEY PROCESS, http://www.kimberleyprocess.com/background/index_en.html (last visited Dec. 10, 2011).

¹³¹ *Id.*

¹³² *Id.*

¹³³ *See id.*

from Sierra Leone in 2006, compared to almost no legal export of diamonds from the country at the end of the 1990s.¹³⁴

The Congo is a participating country in the Kimberley Process.¹³⁵ During the 1990s, armed groups in the Congo used diamonds to fund their campaigns.¹³⁶ However, after UN sanctions to ban armed groups in the Congo from trading in conflict diamonds and the establishment of the Kimberley Process, diamonds no longer provided revenue to fund armed groups.¹³⁷ International monitoring groups have shown that armed groups in Congo today do not receive funds from the trade in conflict diamonds.¹³⁸ While the Congo produces approximately 8 percent of the world's diamonds today, the armed groups in the Congo no longer receive major funding from the illegal diamond trade.¹³⁹ Ironically, the end of the civil war in 1999 in the Congo led to relative stability and a renewal in the mining industry within the country, which then laid the foundation for the conflict minerals trade.¹⁴⁰ Conflict minerals have now taken the place of conflict diamonds as a source of funding for armed groups in Congo.

Ideally, the US conflict minerals law will follow a similar path to the Kimberley Process and become the model for global regulation of conflict minerals. Tracing the path of conflict minerals from the mine to the supplier to the consumer is one of the best ways to begin cutting off funding to the armed groups that control conflict mineral mines. Without funding, the armed groups would have to make different decisions, such as (1) disbanding, (2) negotiating, or (3) returning to their military units. The conflict minerals law has the support of both conservative and liberal

¹³⁴ *Id.*

¹³⁵ *Background*, DIAMONDFACTS.ORG, http://www.diamondfacts.org/index.php?option=com_content&view=article&id=129&Itemid=167&lang=en (last visited Oct. 20, 2011).

¹³⁶ *See id.*

¹³⁷ *See id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *See id.*

American politicians. According to Representative Jim McDermott, “[t]his is one of those issues that is below the radar for about 99.9 percent of Americans. . . . Everyone has their cellphone [*sic*] up against their ear, nobody is thinking of Congo or conflict minerals. But everybody’s got some (conflict mineral), potentially, right next to their ear.”¹⁴¹

2. Criticisms of the Conflict Minerals Law

The aim of the conflict minerals law is to create a stable mining sector in Congo by keeping money out of the hands of armed groups and increasing the availability of DRC conflict free minerals.¹⁴² The SEC “is responsible for developing the reporting requirements for companies covered by the US legislation,” and it is currently determining how much influence these regulations will have on companies that buy and sell conflict minerals.¹⁴³ Many companies are lobbying against strong regulations and in March 2011, the US Chamber of Commerce, the nation’s largest business lobby, criticized the SEC for its current proposal, calling the current rules “burdensome and difficult, if not impossible, to comply with.”¹⁴⁴

Many companies that trade in conflict minerals argue that strict requirements under the conflict minerals law will unduly burden industry and harm American competitiveness, and they are currently lobbying for more flexible rules that include a transition process until 2015 so that businesses can set up the infrastructure needed to meet the new requirements.¹⁴⁵ The fight is currently a hot one. In their letter to the SEC in

¹⁴¹ Sheridan, *supra* note 111.

¹⁴² See *Tell the SEC We Need Strong Regulations on Conflict Minerals*, RAISE HOPE FOR CONGO: AN ENOUGH CAMPAIGN, http://www2.americanprogress.org/p/dia/action/public/?action_KEY=103 (last visited Oct. 20, 2011) [hereinafter *Tell the SEC*].

¹⁴³ *Id.*

¹⁴⁴ Peter Schroeder, *Lawmakers Want SEC to Stand Firm on Strict Conflict Minerals Rules*, THE HILL (Mar. 5, 2011, 7:55 PM), <http://thehill.com/blogs/on-the-money/corporate-governance/147671-lawmakers-want-sec-to-stand-firm-on-conflict-minerals-rules>.

¹⁴⁵ *Id.*

March 2011, two of the initial supporters of the law, Senator Dick Durbin and Representative Jim McDermott, urged the SEC to finalize its rules without delay, pointing to the fact that the current law is almost a year old and many companies have been involved in the conversation for years.¹⁴⁶

At the very least, in order to be effective, the conflict minerals law must require proof of clean, transparent supply chains from the Congo mine to the consumer.¹⁴⁷ This is the heart of the matter that is currently in debate at the SEC. In 2009, a report from the London School of Economics (LSE) criticized any targeted sanctions (e.g., certification process) as likely to fail for a number of reasons, including (1) a paper trail was not likely to exist in the Congo, and (2) any sanctioned mine operator would be swiftly replaced with another and thus the sanction would have no effect.¹⁴⁸

While the report offers an approach that it considers a realistic one, it suggests that a promising option to further understand the Congo mineral conflict issue is to partner a well-resourced Congolese investigative unit with a specialized international crime unit.¹⁴⁹ The apparent contradiction between the Congo's alleged inability to keep a paper trail and the suggested creation of a "well-resourced investigative unit" within the Congo does not seem to inhibit the report's authors. Further, the report only mentions rape once, in connection to the infamous Bisie mine. The LSE report states that while incidents of rape have occurred, they have been irregular and have not been used as a "systematic means of intimidation."¹⁵⁰ In making this claim, the report cites to another paper co-written by one of the same authors of the LSE report, and states that the exploitation of

¹⁴⁶ *Id.*

¹⁴⁷ See *Tell the SEC*, *supra* note 142.

¹⁴⁸ See NICHOLAS GARRETT & HARRISON MITCHELL, TRADING CONFLICT FOR DEVELOPMENT: UTILISING THE TRADE IN MINERALS FROM EASTERN DR CONGO FOR DEVELOPMENT 13–14 (2009), available at <http://www2.lse.ac.uk/internationalDevelopment/research/crisisStates/download/others/Trading%20Conflict%20for%20Development2.pdf>.

¹⁴⁹ *Id.* at 14.

¹⁵⁰ *Id.* at 18.

minerals in Walikale territory would occur in both war and peacetime conditions.¹⁵¹ Given the incidents of mass rape that occurred in Walikale in 2010, this statement has little foundational support.

Additional criticism of the conflict minerals law came in an August 2011 op-ed in the *New York Times* by freelance journalist and blogger David Aronson, who criticized the Dodd-Frank Act as having “unintended and devastating consequences” on local mining towns and small-scale mineral purchasers in eastern Congo.¹⁵² Aronson asserted that the conflict minerals law passed because of the work of high-profile groups like Global Witness and the Enough Project, but that local Congolese miners, high-level traders, mining companies, and civil society leaders are unanimous in their condemnation of the US law that has now created an informal embargo on mining.¹⁵³ Additionally, Aronson stated that “[t]he Chinese have recently opened a trading post in North Kivu . . . and they do not feel the need to participate in transparency schemes the way Western companies do.”¹⁵⁴

Aronson’s comments reflect common arguments made by opponents of the conflict minerals law: it is ineffective, it is the locals who are hurt the most, and there will always be someone else (here, the Chinese) who will step in and trade in conflict minerals anyway. In his article, Aronson makes only one mention of the killings in Congo: when referring to General Bosco Ntaganda, whom he calls a “freelance killer [who smuggles] minerals across the border to neighboring Rwanda.”¹⁵⁵ Aronson does not mention rape at all. Opponents to the law often argue that targeting the mines and

¹⁵¹ See Nicholas Garrett et al., Abstract, *Negotiated Peace for Extortion: The Case of Walikale Territory in Eastern DR Congo*, 3 J. E. AFR. STUD. 1 (2009), available at <http://www.tandfonline.com/doi/abs/10.1080/17531050802682671>.

¹⁵² David Aronson, Op-Ed., *How Congress Devastated Congo*, N.Y. TIMES (Aug. 7, 2011), http://www.nytimes.com/2011/08/08/opinion/how-congress-devastated-congo.html?_r=1.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

miners only helps the smugglers, and, interestingly, most opponents do not mention the occurrence of mass rape.

In her response letter to Aronson's article, Margot Wallström, the UN Special Representative on Sexual Violence in Conflict, stated that inaction is not an option, and that the United States "should be commended for its leadership in trying to regulate 'conflict minerals' and to starve rebels of the resources and weapons they need to kill and rape."¹⁵⁶ In her letter, Ms. Wallström acknowledged that implementation of the law needs better support from both within and outside Congo, and that shying away from this task is not a viable option.¹⁵⁷ She stated that "[c]ompanies should continue to invest in Congo," but should include "third-party audits to minimize the risk of trading in 'conflict minerals'" so that Congo's civilians, not its rebels, can profit from its mineral resources.¹⁵⁸ Finally, Ms. Wallström noted that the women she had "met in eastern Congo want an end to the war," and that "[o]ne way [to end a war] is to make it less profitable."¹⁵⁹

B. Carrying a Piece of Congo in Our Pockets: Our Collective Responsibility to End the Conflict Minerals Trade

The minerals discussed in this article have become a cornerstone of modern society because of their presence in computers, laptops, cell phones, video games, etc. As such, this shared interest obligates collective responsibility. According to Ms. Wallström, conflict minerals are a part "of our daily lives and conveniences, and . . . there is no place to hide from our collective responsibility;" nor, she believes, "is there any time to lose when

¹⁵⁶ Margot Wallström, Letter to the Editor, *A Conflict over "Conflict Minerals,"* N.Y. TIMES (Aug. 15, 2011), http://www.nytimes.com/2011/08/16/opinion/a-conflict-over-conflict-minerals-in-congo.html?_r=3.

¹⁵⁷ *See id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

the lives of so many are at stake, and the bodies of women and girls continue to be used as fodder in a war fuelled by mineral resources.”¹⁶⁰

The US conflict minerals law is the first of its kind in the world.¹⁶¹ Despite the difficulties of tracing conflict minerals, European governments are pondering taking steps similar to the United States.¹⁶² The objective of minerals certification is to change the shape of the system “from violence to stability, from smuggling to legality, from collapsed state to rebuilding state, [and] from private bank accounts to public revenues.”¹⁶³ Cutting off the funding to armed groups who are perpetrating mass rape will not alone solve the problem, but it is a crucial piece in the process. John Prendergast, sponsor of the Enough Campaign, names minerals certification and comprehensive military reform as the two key issues to ending mass rape in Congo.¹⁶⁴ If the armed groups can no longer make money by controlling the mines, they will no longer have the need to control the mines nor the incentive to rape and terrorize civilians who live in the mining regions of Congo.

By enacting the conflict minerals bill into law, Congress took the first step to end the conflict minerals trade funding the war in Congo. Next, the Obama administration must partner with both the Congolese government and civil society in order to create a process for conflict minerals that effectively ends the funding of armed groups. While there will always be criticism of such a process, Ms. Wallström’s argument—that inaction is not an option—is a profound one: to not act is to condone the mass rape and

¹⁶⁰ Wallström, *supra* note 112.

¹⁶¹ Sheridan, *supra* note 111.

¹⁶² *Id.*

¹⁶³ Press Release, Enough Project, New Report on Conflict Minerals Makes Case for Certification and Army Reform (Oct. 21, 2010), <http://allafrica.com/stories/201010211084.html>.

¹⁶⁴ John Prendergast, *Congo’s Enough Moment: The Case for Conflict Minerals Certification and Army Reform*, ENOUGH: THE PROJECT TO END GENOCIDE AND CRIMES AGAINST HUMANITY (Oct. 19, 2010), <http://www.enoughproject.org/publications/congos-enough-moment>.

killings that are directly linked to the cell phones and other electronics that we all use and carry with us in our daily lives.

C. Suing a Mining Company as a Possible Means of Accountability for Businesses and as a Remedy for Victims

While the US conflict minerals law is an extremely important step toward ending the conflict minerals trade, there are other remedies that could also be effective in holding companies responsible for their involvement in Congo's armed conflict. In November 2010, a group of Canadian, British, and Congolese NGOs brought suit in a Montreal court on behalf of family members of over seventy civilians killed by Congolese troops in 2004.¹⁶⁵ The suit is against a Canadian mining company accused of providing logistical support to the Congolese Army.¹⁶⁶ While there are no sexual violence charges included in this class action, if the case is successful, it could open a door for Congolese victims of sexual violence, in conjunction with NGOs, to bring suits against their perpetrators.

According to the British group Rights and Accountability in Development (RAID), which collected testimony of many eyewitnesses and survivors of the 2004 attack, "multinational companies [that] operat[e] in developing countries, [and, in] particular[,] countries in conflict zones . . . have an obligation to observe the same standards of conduct and respect for international rights as they would in their own jurisdiction."¹⁶⁷ In this specific incident, three of the company's "employees were charged with complicity in war crimes [in Congo,] but they were acquitted in June 2007, after a military trial which the United Nations said failed to meet international standards of fairness."¹⁶⁸ "The company . . . has not denied that it supplied trucks and logistical support to help Congolese troops," but

¹⁶⁵ See *Canada Mining Firm Sued Over Role in DR Congo Conflict*, BBC NEWS (Nov. 10, 2010), <http://www.bbc.co.uk/news/world-africa-11725651>.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

it has argued that it “had no option but to agree to the government’s requisition request.”¹⁶⁹

The outcome of this lawsuit could potentially hold companies mining or purchasing conflict minerals liable for contributing logistical assistance to armed groups that commit war crimes and human rights abuses in the Congo. On the other hand, if the lawsuit fails, it could potentially further absolve these companies from their involvement in such crimes.

IV. THE INTERNATIONAL COMMUNITY HAS A DUTY TO HELP COMBAT CONGO’S SEXUAL VIOLENCE THROUGH THE INTRA- NATIONAL IMPLEMENTATION OF JUSTICE

In July 2010, human rights activists from Congo asserted the need to establish an international criminal tribunal for the DRC.¹⁷⁰ Such a tribunal would ideally have both international and Congolese judges and prosecutors, and it “would prosecute high-ranking officers, armed group leaders, and civilian leaders responsible for war crimes and crimes against humanity, including sexual crimes.”¹⁷¹ While this is an extremely important piece of attaining justice for victims of sexual violence in Congo, the DRC government has not yet heeded these requests. Also, despite new legislation that the DRC government passed in 2006 to combat sexual violence, groups that work with rape victims have not noticed any significant change in the reported number of rapes.¹⁷²

¹⁶⁹ *Id.*

¹⁷⁰ Héritier Maila, *Congolese Activists Call for International Tribunal in DRC*, INST. FOR WAR & PEACE REPORTING (July 23, 2010), <http://iwpr.net/report-news/congolese-activists-call-international-tribunal-drc>.

¹⁷¹ HUMAN RIGHTS WATCH, *SOLDIERS WHO RAPE, COMMANDERS WHO CONDONE: SEXUAL VIOLENCE AND MILITARY REFORM IN THE DEMOCRATIC REPUBLIC OF CONGO 7* (2009), available at <http://www.hrw.org/sites/default/files/reports/drc0709web.pdf>.

¹⁷² See INTERNAL DISPLACEMENT MONITORING CENTRE & NORWEGIAN REFUGEE COUNCIL, *DEMOCRATIC REPUBLIC OF THE CONGO: MASSIVE DISPLACEMENT AND DETERIORATING HUMANITARIAN CONDITIONS 11* (2009), available at [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/28ADEA4D511D15F3C12576270](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/28ADEA4D511D15F3C12576270)

Widespread legal justice in the Congo, if it does occur, will likely take time. In the interim, sexual violence continues to occur on a massive scale. While it is crucial that the international community supports a tribunal for Congo and pressures the DRC government to enforce its existing laws, it must also work quickly with local nongovernmental organizations (NGOs) to implement effective projects that tackle both prevention and justice for individual victims of sexual violence. In sum, until a tribunal is created, the international community could support Congo by creating a functional truth and reconciliation system, by helping the Congolese government implement its recent sexual violence legislation, and by fully backing local NGOs in their work to support victims of sexual violence.

A. Putting a System in Place and Establishing a Record of Congo's Human Rights Abuses

The sexual violence in Congo has occurred continuously for the past fifteen years throughout the recent developments in international law regarding sexual violence. While either an international tribunal or a special court (similar to Sierra Leone's) is possible for the Congo, it is not clear when such a tribunal would be created or how many perpetrators of crimes against humanity it would be able to prosecute. The ad hoc tribunals for Yugoslavia, Rwanda, Sierra Leone, Cambodia, and others have faced heavy criticism for their inefficiencies and prosecution of just a few perpetrators in the face of mass crimes. However, these courts are still relatively new concepts that can be continually built upon and improved. The formation of a DRC tribunal would be a powerful tool to assist victims in Congo in gaining access to justice.

While a Congo tribunal is an uncertainty, putting in place a system and mechanisms that establish a historical record of Congo's human rights abuses would be a beneficial step toward justice for Congo. A truth and

0390BC0/\$file/Democratic%20Republic%20of%20the%20Congo%20-%20August%202009.pdf.

reconciliation commission (TRC) existed in the Congo from 2003 through 2007 to oversee the transition from war to peace; however, the commission was severely flawed and was denounced by international NGOs.¹⁷³ While many countries have created TRCs to confront the violence in their countries, the feedback and results of these commissions have been mixed. Some believe that TRCs are crucial to the process of justice; others do not see them accomplishing anything concrete or attaining any real justice. Despite the debate over their effectiveness, a TRC for Congo that is connected with the UN and the international human rights community could be very effective in creating a record of the atrocities in Congo and giving the Congolese one more access point to justice.

Alternatively, the Rwandan government came up with a plan to speed up the process of prosecuting the high number of accused Rwandans who allegedly took part in the 1994 Rwandan genocide.¹⁷⁴ The Rwandan government created local courts known as *gacaca*, which are “based loosely on a traditional Rwandan dispute resolution mechanism.”¹⁷⁵ These courts elected panels of lay judges in local communities who held “public hearings to determine what crimes [had been] committed in the community, and then [held] trials for all but the most serious genocide crimes.”¹⁷⁶ The *gacaca* process holds considerable merit for its concept of a culturally adapted and popular judicial mechanism.¹⁷⁷ However, these courts excluded any crimes committed by the Rwandan Patriotic Front (RPF), which became the government in 1994 after the genocide, and this arguably created the

¹⁷³ See *The Democratic Republic of Congo*, INT’L CENTER FOR TRANSITIONAL JUST., <http://ictj.org/our-work/regions-and-countries/democratic-republic-congo> (last visited Dec. 10, 2011).

¹⁷⁴ Timothy Longman, *An Assessment of Rwanda’s Gacaca Courts*, 21 PEACE REV. 304, 304 (2009), available at <http://www.informaworld.com/smp/section?content=a913911829&fulltext=713240928>.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

impression of “victor’s justice.”¹⁷⁸ Also, the *gacaca* process raises legitimate concerns as to whether local courts, unchecked by other, higher courts outside the region, can contribute to an effective, unbiased reconciliation in order to help build peace.¹⁷⁹

The successes and failures behind past truth and reconciliation commissions and the Rwandan *gacaca* process could be informative for the people of Congo to develop their own judicial institution that promotes accountability and encourages public dialogue. However, these are methods that need stability to flourish, and they could only be developed and implemented in a post-conflict environment. For Congo, post-conflict stability is not yet a reality.

B. Congo’s New Sexual Violence Legislation and the Search for Local Justice

In 2006, the DRC introduced new legislation to combat sexual violence, “[raising] the age of consent from sixteen to eighteen and [repealing] a previous law that allowed those convicted of rape to pay a fine in return for a lighter sentence.”¹⁸⁰ Moreover, it increased the prison sentence to a range of 5–20 years, included a fine of at least 100,000 Congolese francs (about \$3,000 USD) and it allowed for a sentence of life imprisonment if the victim dies.¹⁸¹ The law specifically criminalized acts such as sexual mutilation and sexual slavery, and rapists who are public officials, who attack a victim in a group, or who use or threaten to use a weapon, face double penalties under the law.¹⁸²

¹⁷⁸ *Id.*

¹⁷⁹ *See id.*

¹⁸⁰ Espérance Nzigire, *DRC Rape Victims Opt for Extrajudicial Settlements*, INST. FOR WAR & PEACE REPORTING (Nov. 2, 2010), <http://iwpr.net/report-news/drc-rape-victims-opt-extrajudicial-settlements>.

¹⁸¹ *Id.*

¹⁸² HUMAN RIGHTS WATCH, *supra* note 171, at 19.

Despite the new law, when Congolese courts in North Kivu Province deliver these verdicts, few people trust that there will be actual repercussions for a convicted person.¹⁸³ Data from the Provincial Commission for the Fight Against Sexual Violence show that the number of rapes reported in North Kivu in 2009 was 4,026—lower than the 4,820 rapes reported in 2008, despite evidence that the number of rapes has actually increased.¹⁸⁴ The father of a fourteen-year-old girl who was raped in Goma told a reporter that perpetrators are often released from jail a few months after their convictions, despite the new law.¹⁸⁵ The father claimed that some rapists return to harass the family of their victim, and he could not see a reason to lose time and money unnecessarily by going to a court to seek justice.¹⁸⁶ Based on this, it is clear that those who are working to change both the effectiveness of Congolese laws and society's acceptance of their ineffectiveness need much more support from the global community.

C. The Congo's Eastern Region, the Armed Groups Fighting there, and the UN's Effort and Failure to Prevent Mass Rape Amidst the Conflict

Since the conflict in the Great Lakes region of Congo began in 1996,¹⁸⁷ “tens of thousands of women and girls” (and a smaller number of boys and men) have been raped in the country.¹⁸⁸ The exact number, or even a precise approximation, is unknown because victims often are too scared or ashamed to come forward, or are simply unable to access health centers or other assistance programs.¹⁸⁹ “According to one estimate, less than 50 percent of women who are raped are able to access health centers” and thus do not

¹⁸³ See Nzigire, *supra* note 180.

¹⁸⁴ *Id.*

¹⁸⁵ *See id.*

¹⁸⁶ *See id.*

¹⁸⁷ *Background*, MONUSCO, <http://monusco.unmissions.org/Default.aspx?tabid=4072> (last visited Oct. 12, 2011) [hereinafter MONUSCO].

¹⁸⁸ HUMAN RIGHTS WATCH, *supra* note 171, at 14.

¹⁸⁹ *See id.*

report their rapes.¹⁹⁰ Since the conflict began, over 200,000 rapes have been reported,¹⁹¹ so it is a fair assumption that the actual number is much higher. Despite the millions of deaths and mass rape spanning over a decade in the Congo, the international community (aside from the UN) has largely remained unconcerned. However, a critic's argument that the violence is an internal issue within the Congo is completely undermined—especially when one stops to consider that proceeds from the sale of the critic's laptop directly provided funding to the armed groups.

The United Nations Organization Stabilization Mission in the Democratic Republic of Congo (MONUSCO) is the world's largest peacekeeping force with over 18,000 troops.¹⁹² Despite its size, the UN troops have been unable to prevent armed groups from murdering and mass-raping civilians in the eastern region of Congo, mainly in the North and South Kivu Provinces. North Kivu (where Walikale territory is located) borders Uganda and Rwanda to the east and touches the northern tip of Lake Kivu on the province's southern end. On its northeast edge, South Kivu runs along Lake Kivu and then borders Rwanda and Burundi before meeting the shores of Lake Tanganyika. These two provinces, home to around ten million Congolese,¹⁹³ bear most of the weight of Congo's conflict.

In June 2010, there were approximately 21,000 UN troops in the country, but President Kabila of Congo requested that the UN downsize the force and remove it completely by October 2011.¹⁹⁴ In its final resolution of MONUSCO's mandate for the 2010–2011 year, the Security Council

¹⁹⁰ *Id.*

¹⁹¹ Wallström, *supra* note 112.

¹⁹² Danielle Shapiro, *Congo: UN Scrambles to Better Protect Civilians in Wake of Mass Rape*, CHRISTIAN SCI. MONITOR (Nov. 13, 2010), <http://www.csmonitor.com/World/Africa/2010/1113/Congo-UN-scrambles-to-better-protect-civilians-in-wake-of-mass-rape>.

¹⁹³ *Id.*

¹⁹⁴ See Laura Heaton, *The New, Not-Necessarily-Improved MONUSCO*, ENOUGH: THE PROJECT TO END GENOCIDE AND CRIMES AGAINST HUMANITY (June 2, 2010), <http://www.enoughproject.org/blogs/new-not-necessarily-improved-monusco>.

emphasized the role of the UN in Congo as a supportive one, stating that the UN was there upon explicit request from the Congolese government. Thus, its main roles were to assist with army training, to help displaced people return to their homes, and to halt the process of armed groups procuring wealth from profitable mineral resources.¹⁹⁵ While supporting the Congolese government is potentially the best way to reach stability, a supportive role does present difficulty, in part because of the factional nature of the Congolese armed forces.

The structure of armed groups within the Congo is fluid and difficult to define, and groups often split and merge depending on alliances. The three major armed groups are: the Congolese army, called the Forces Armées de la République Démocratique du Congo (FARDC); the mainly ethnically Hutu guerilla group Forces démocratiques de libération du Rwanda (FDLR), who are Rwandan; and the loosely-organized Mai-Mai fighters.¹⁹⁶ In 1998, the Mai-Mai joined forces with Congolese government forces to fight the FDLR, but since then, the Mai-Mai have split into different factions with separate leaders, and they frequently clash with Rwandan rebels, Congolese government troops, UN peacekeepers, and even other Mai-Mai groups.¹⁹⁷

In an effort to stabilize the region, the Congolese Army integrated certain rebel groups into its fold; however, these rebel groups did not give up their systems of oppressive taxation, mineral exploitation, and rape.¹⁹⁸ Thus, while many former rebels are now Congolese soldiers, they remain a danger and continue to threaten and rape civilians as they exploit the mineral

¹⁹⁵ *Id.*

¹⁹⁶ See Jeffrey Gettleman, *Mai Mai Fighters Third Piece in Congo's Violent Puzzle*, N.Y. TIMES (Nov. 20, 2008), <http://www.nytimes.com/2008/11/21/world/africa/21congo.html>.

¹⁹⁷ *See id.*

¹⁹⁸ See Jeffrey Gettleman, *Mass Rapes in Congo Reveals U.N. Weakness*, N.Y. TIMES, Oct. 3, 2010, http://www.nytimes.com/2010/10/04/world/africa/04congo.html?_r=3&ref=world&page_wanted=1.

wealth in the region.¹⁹⁹ The prevalence of former rebels who become Congolese soldiers and continue to endanger civilians has further complicated the UN's efforts to work with the Congolese government to improve the situation.²⁰⁰

In 2009, the UN developed and released its Comprehensive Strategy to Combat Sexual Violence, and the DRC government endorsed it.²⁰¹ The Comprehensive Strategy was the result of an extensive consultation process between the DRC government, the UN, international NGOs, and Congolese advocacy groups working against sexual violence.²⁰² MONUSCO also developed a Sexual Violence Unit to help the DRC government implement the Comprehensive Strategy.²⁰³ The main goal of the Comprehensive Strategy was to support the DRC government and local Congolese groups and associations in their efforts to combat sexual violence. However, as described in the introduction of this article, the mass rape that occurred in Walikale territory in 2010, a year after the Comprehensive Strategy was implemented, indicates that the international community must take more than just a supportive role in its effort to stop mass rape in the Congo.

Although the UN maintains that the Congolese Army has the primary responsibility of protecting civilians, the incidents of mass rape in Walikale were an embarrassment for the UN, which has been present in the region for over ten years, has spent billions of dollars in creating its Comprehensive Strategy, and has appointed a Special Representative for the Secretary General on Sexual Violence.²⁰⁴ Yet, despite all of this, the UN has been unable to stop such atrocities.²⁰⁵

¹⁹⁹ Heaton, *supra* note 194.

²⁰⁰ *See id.*

²⁰¹ *See* *Comprehensive Strategy*, MONUSCO, <http://monusco.unmissions.org/Default.aspx?tabid=4073> (last visited Oct. 12, 2011).

²⁰² *Id.*

²⁰³ *See id.*

²⁰⁴ *See* MONUSCO, *supra* note 187.

²⁰⁵ *See* Gettleman, *supra* note 198.

D. Recommendations from Local Congolese Human Rights Activists on How to Effectuate Meaningful Change

In the Congolese social structure, men hold power over women, and that makes it difficult for women's voices to be heard, especially when a subject as difficult as rape is involved. In some areas, when a young woman is raped, her father will sit down with the rapist's family and the village elders and will receive the equivalent of a dowry payment—a few cows, goats, or sheep.²⁰⁶ While this may offer closure to the men in both families by allowing them to avoid scandal and an ineffective justice system, it is often harmful to the rape victim.²⁰⁷ In a situation like this, there is no space for a woman or girl's voice or rights, and this greatly hinders her ability to recover.

Eugene Buzake, a lawyer for the NGO Synergy for Judicial Assistance (Synergy) in Goma, eastern Congo, says that these types of settlements do not benefit the victim for several reasons. First, victims are usually isolated and are not permitted to participate in negotiations. Second, the settlements do not allow for consideration of serious health and psychological problems. The agreements therefore promote victims' silence by not providing sufficient assistance. Finally, these agreements impart a message to rapists that it is acceptable to commit rape as long as they have the means to pay for it.²⁰⁸ Therefore, victims of sexual violence in Congo face a challenging path to achieve justice that is structured to fit their needs within their social structure. If a woman decides to seek justice for being raped, she must overcome a lack of rape-support resources (in most regions), an ineffective judicial system, and a culture that focuses primarily on the honor and needs of men at the expense of women.

While the United States works to implement its conflict minerals law from outside the Congo's borders, there are practical steps that the

²⁰⁶ See Nzigire, *supra* note 180.

²⁰⁷ *Id.*

²⁰⁸ *Id.*

Congolese government can take—and that the international community should help local activists demand—in order to structure an effective justice system that will assist victims of sexual violence and prevent continuous mass and gang rapes. Justine Bihamba, director of Synergy in Goma, suggests that soldiers in the Congolese Army should be paid directly through bank withdrawals; currently, most soldiers have corrupt supervisors who take two-thirds of their salaries, leaving the soldiers with only one-third of their pay.²⁰⁹ Ms. Bihamba believes that this simple step would reduce the amount of looting and rape committed by government soldiers.²¹⁰ Additionally, Ms. Bihamba suggests that the government create more local tribunals, separate from the military courts that are currently in charge of prosecuting sexual violence crimes, in order for rape victims to seek justice.²¹¹ Currently, in North Kivu Province there are an estimated five million people but only three local tribunals.²¹²

In 2004, President Joseph Kabila referred the conflict in eastern Congo to the ICC, and in September 2009, the ICC’s “first case that included the charge of wartime rape went to trial.”²¹³ So far, “[t]wo alleged Congolese rebel commanders . . . have been charged with rape as a war crime and a crime against humanity.”²¹⁴ President Kabila’s referral showed that he was willing to have international law prosecute human rights crimes in Congo. If the Congolese government is willing to involve international law in its internal conflict, then acting to combat corruption and pay soldiers directly—as Ms. Bihamba suggests—seems like a feasible step that the government should also be willing to take to decrease the number of rapes.

²⁰⁹ Nico Colombant, *Activists Press for Better Help to End Congo Rapes*, VOICE OF AM. (Sept. 28, 2010), <http://www.voanews.com/english/news/africa/Activists-Press-for-Better-Help-to-End-Congo-Rapes-103955439.html>.

²¹⁰ *See id.*

²¹¹ *Id.*

²¹² *See id.*

²¹³ PRENDERGAST WITH CHEADLE, *supra* note 26, at 191.

²¹⁴ *Id.*

Additionally, with three local tribunals in North Kivu already in existence, creating more would be a feasible act that the government could perform immediately.

However, reports of government troops raping and terrorizing civilians show that impunity continues to prevail and that the international community must do everything possible to force the Congolese government to confront the problem and punish any soldiers who commit war crimes. Justine Bihamba, the aforementioned director of Synergy, reported that in 2007, government soldiers broke into her house and terrorized her children while she was not at home.²¹⁵ They kicked one daughter in the face, knocking out a tooth, and sexually assaulted another daughter; they told Ms. Bihamba's children that they were on a "well-defined" mission.²¹⁶ The men were identified and Ms. Bihamba filed a legal complaint, but the men were never arrested and have repeatedly threatened Ms. Bihamba and her children since the attack.²¹⁷ The attack on Ms. Bihamba's family and the mass rapes recently perpetrated by government soldiers are only two examples of the impunity that government soldiers experience.

Recently, however, there have been positive signs that international attention and pressure on the DRC government has begun to have some effect. In February 2011, a military court in eastern Congo found Lieutenant Colonel Kibibi Mutware "guilty of crimes against humanity for sending his troops to rape, beat up, and loot the population of a village called Fizi."²¹⁸ Mutware was a former rebel "who joined the [Congolese] army as part of a peace agreement in 2009."²¹⁹ The Court sentenced Mutware to twenty years

²¹⁵ See *Democratic Republic of Congo: Women's Rights Activist, Justine Masika Bihamba*, AMNESTY INT'L, <http://www.amnesty.org.nz/stop-violence-against-women/take-action/justine-bihamba> (last visited Oct. 20, 2011).

²¹⁶ *Id.*

²¹⁷ *See id.*

²¹⁸ *DR Congo Colonel Kibibi Mutware Jailed for Mass Rape*, BBC NEWS (Feb. 21, 2011), <http://www.bbc.co.uk/news/world-africa-12523847>.

²¹⁹ *Id.*

in jail and sentenced eight other officers who had served under Mutware to a term of imprisonment between ten and twenty years.²²⁰ The Court also stated (but did not order) that the government “should pay compensation to the more than sixty women who were raped . . . in Fizi.”²²¹

Forty-nine women came to testify at the Court, and Mutware’s conviction was the first of a commanding officer for rape in eastern Congo.²²² In addition to the uncommon conviction, it was also unusual to have such a large number of women agree to testify that they had been raped.²²³ A DRC military court convicting a commanding officer of rape indicates that the government has begun to address the issue of impunity. Additionally, having a large number of women speak openly in court about being raped indicates that (1) there may be a new shift in the Congolese culture of silence that surrounds rape and sexual violence, and (2) once an outlet exists for women to testify about their attacks, they will use it. These convictions are encouraging and signal that international law, UN pressure, and media coverage have begun to have some effect in assisting victims of mass sexual violence in Congo to attain justice.

Any shift in the pattern of impunity for armed rapists in the Congo cannot come too quickly. According to Médecins sans Frontières (Doctors Without Borders), more than seventy victims of rape were treated between January 19 and February 4, 2011—in two similar incidents to the attack on the village of Fizi.²²⁴

E. NGOs’ Work to Provide Medical, Economic, and Empowerment Assistance to Victims of Sexual Violence

There are several organizations, both international and local, that are working to help victims of sexual violence in Congo, but their efforts need

²²⁰ *See id.*

²²¹ *Id.*

²²² *Id.*

²²³ *See id.*

²²⁴ *See id.*

more support from the wider international community. Survivors of sexual violence often have pressing mental and physical health needs, but necessary medical and emotional assistance is not available to many victims in the Congo. It is crucial that the international community help provide resources—medical, psychological, and economic—to organizations that are working with survivors of sexual violence in the Congo. This is a basic step, and once survivors have sought out medical or psychological support, they are more likely to take other steps to seek justice and to prevent future atrocities from befalling others.

The US conflict minerals law provides an effective strategy for drying up funding for armed groups and for assisting the Congolese government in gaining control of its mines and ending the violence and rapes. However, while this process begins in the global market, the global community that uses Congo's resources should become much more involved in assisting Congolese organizations and groups that work to prevent mass rape and provide services to victims without the government's assistance. There are many organizations that would benefit from this focus. Organizations like Synergy provide survivors of sexual violence with micro-grants, legal counsel, and community education seminars on civic rights and duties.²²⁵ The South Kivu Women's Media Association, a nonprofit organization cofounded by Congolese journalist Chouchou Namegabe, broadcasts graphic, personal testimonies of rape victims and supports women's listening radio clubs.²²⁶ Clubs like this are extremely important because they reach rural areas of Congo where up to 70 percent of the population may be illiterate and where radio may be the only outside source of information.²²⁷

²²⁵ *Assistance for Sexual Violence Survivors in Congo*, GLOBAL GIVING, <http://www.globalgiving.co.uk/pr/5900/proj5861a.html> (last visited Oct. 12, 2011).

²²⁶ *See How to Help Congo*, THE DAILY BEAST (June 28, 2010, 7:30 PM), <http://www.thedailybeast.com/blogs-and-stories/2010-06-28/how-to-help-congo/>.

²²⁷ *See id.*

Additionally, the French organization Promotion and Support of Women's Initiatives (PAIF), founded and run by leading human rights activist Immaculée Birhaheka, "led the successful campaign to secure passage by the parliament [of Congo] of a stringent law on rape in 2006."²²⁸ PAIF also runs a safe house for women in Goma and "provides programs specifically for severely traumatized women, many of whom have been rejected by their families, to help them get medical and psychosocial support."²²⁹ These are just a few of the organizations within the Congo that are striving to improve the situation for victims of sexual violence—there are also many individuals and organizations outside the Congo that are working to do the same. For example, Reverend Debra Heffner created a Congo Sabbath campaign in 2008 in the United States that developed an interfaith response to combat violence against women in the Congo by sponsoring educational programs and raising funds to provide medical services to Congolese women and girls.²³⁰ Also, the playwright Lynn Nottage wrote a Pulitzer Prize-winning play, *Ruined*, which speaks to the extent that women's "bodies have become battlefields" in the Congo.²³¹

It is imperative that more international entities step up and continue to combine these efforts with nongovernmental organizations working inside Congo. Their work, both within and outside of the Congo, has proven effective—both in shifting the situation on the ground and in providing services for the victims of sexual violence. Increased support from the international community would intensify these efforts and would lead to an improved situation for Congolese civilians.

²²⁸ PRENDERGAST WITH CHEADLE, *supra* note 26, at 206.

²²⁹ *Id.* at 207.

²³⁰ *See id.* at 213.

²³¹ *Id.* at 217.

V. CONCLUSION

According to activist Justine Bihamba, women in Congo “are considered victims and are not implicated in the search for peace.”²³² There are many people in Congo who are working to change that, but their task is rife with challenges. In order for women in Congo to seek justice for mass sexual atrocities, the international community must encourage, hear, and support their voices. The human mind tends to strive for coherence and to assert order in a story to give it meaning and clarity, often by labeling “good guys” and “bad guys.” However, the situation in eastern Congo is too complex for these simple labels. The conflict in the Congo has caused nearly four million deaths and massive suffering to those left alive.²³³ Yet, it is crucial for individuals and the world community to understand the complexity of this multidimensional conflict.

It is also important for those who hold the conflict in the Congo apart from themselves to understand that the laptops they use, the phones they carry with them everywhere, or the video games that they most enjoy came directly from the Congo. The money spent on these items directly funds the armed groups that are currently committing mass atrocities. Separating this situation in the Congo from the phones we hold in our hands is a dangerous mistake.

As the author Chimamanda Adichie warns, there is danger in the single story: “[A] single story of Africa. A single story of catastrophe. In this single story there [is] no possibility of Africans being similar to [us] in any way. No possibility of feelings more complex than pity. No possibility of a connection as human equals.”²³⁴ For fifteen years the world has held Congo as a non-event—a single story. The recent scale of sexual violence is a twist in the story that has caught media attention, but

²³² Colombant, *supra* note 209.

²³³ See PRUNIER, *supra* note 58, at 338.

²³⁴ Chimamanda Adichie: *The danger of a single story*, TED (July 2009), http://www.ted.com/talks/chimamanda_adichie_the_danger_of_a_single_story.html.

again the danger is that mass rape is seen as only one story, a story of “the Other,” and as such, is completely separate from our lives and our humanity. To keep this perspective is to effectuate inaction; to alter this perspective is to effectuate meaningful change.

The single story creates stereotypes. And the problem with stereotypes is not that they are untrue, but that they are incomplete. . . . It is impossible to engage properly with a place or person without engaging in all of the stories of that place and that person. The consequence of the single story is this: It robs people of dignity. It makes our recognition of our equal humanity difficult. It emphasizes how we are different rather than how we are similar. —Chimamanda Adichie.²³⁵

²³⁵ *Id.*