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# The Case of Female Perpetrators of International Crimes: Exploratory Insights and New Research Directions

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## Abstract

*Although conflicts are often considered to be an exclusively male domain, historical records of conflicts throughout the 20th century show that women also actively participate in warfare – not only as peace activists, humanitarian workers, health care providers, politicians and soldiers but also as perpetrators of crimes. Nevertheless, the participation of women in the commission of international crimes, such as war crimes, crimes against humanity and genocide, has long been considered an anomaly that falls beyond the ‘normal’ scope of conflict-related criminality. Consequently, this topic has been deemed marginal in scholarly circles and, until recently, has remained significantly under-researched. This article contributes to the existing research by presenting an original analysis of the characteristics of conflict-related criminality among women and of criminal prosecutions of female perpetrators of international crimes in modern conflicts, primarily focusing on World War II, and the wars in Bosnia and Herzegovina and Croatia. It further offers a first systematic overview and analysis of domestic trials of women prosecuted for international crimes before the courts in Bosnia and Herzegovina, Croatia and Serbia.*

## 1 Introduction

Although conflicts are often considered an exclusively male domain, historical records of conflicts throughout the 20th century show that women also actively participate in warfare – not only as peace activists, humanitarian workers, health

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care providers, politicians and soldiers but also as perpetrators of international crimes. Nevertheless, the participation of women in international crimes, such as war crimes, crimes against humanity and genocide, has long been considered an anomaly that falls beyond the ‘normal’ scope of conflict-related criminality. This has partly been because women commit international crimes significantly less frequently than men and partly because, in the prevalent discourses of war criminality, such criminal behaviour corresponds to male gender stereotypes. By contrast, women are said to have higher ‘moral’ standards than men and are expected to be more peace oriented simply because these characteristics are labelled ‘feminine’.<sup>1</sup> For these reasons, women as actors – and particularly women as criminal actors – have been perceived as a deviation from ‘regular delinquency’ in conflict and their participation in international crimes has been considered insignificant.<sup>2</sup> Consequently, this topic has been deemed marginal in scholarly circles and, until recently, has remained significantly under-researched.

Given that women have commonly participated in conflict-related violence during almost all wars and armed conflicts since World War II, it is clear that female perpetrators of international crimes demand much more attention than they have so far received. Proper exploration of this topic is important for many reasons. First, female perpetrators should be included in the conceptualization of international crimes to ensure recognition of the full scope of those crimes and a better understanding of violence as well as to avoid the creation of ‘spaces of invisibility’ around women who commit crimes and their victims, which render perpetrators unaccountable and victims unacknowledged.<sup>3</sup> Second, just as with any other type of criminality, understanding the extent, typology, causes and consequences of women’s conflict-related criminality is a prerequisite for identifying an adequate response in terms of both prevention and sanction. The participation of women in international crimes constitutes part of the gendered dimension of conflict; as such, it is important for understanding the dynamics of violence and for developing proper prosecution and peacebuilding strategies: ‘If we fail to consider and try to understand the full range of women’s responses to and roles in war in varied contexts ... we are missing vital pieces of the puzzle of violent human conflict.’<sup>4</sup> Third, women’s involvement in international crimes, like all other modes of their participation in conflict, needs to be ‘recognized as valid rather than being excluded from the discourse or reduced to stereotype’ if we are seeking to fully understand women’s real experiences,<sup>5</sup> and to accurately shape both gendered and historical narratives of wars and armed conflicts:

<sup>1</sup> M.H. Alison, *Women and Political Violence: Female Combatants in Ethno-National Conflict* (2009), at 85.

<sup>2</sup> A. Kretzer, *NS-Täterschaft und Geschlecht: Der Erste Britische Ravensbrück-Prozess 1946/47 in Hamburg* (2009), at 160–161.

<sup>3</sup> L. Sjoberg, *Women as Wartime Rapists: Beyond Sensation and Stereotyping* (2016), at 24.

<sup>4</sup> Alison, *supra* note 1, at 3.

<sup>5</sup> Durham and O’Byrne, ‘The Dialogue of Difference: Gender Perspectives on International Humanitarian Law’, 92(877) *International Review of the Red Cross* (2010) 31, at 51.

By looking for and finding women in places and roles that are not accounted for in dominant narratives of war, 'where are the women' opens up a range of questions about what war and armed conflict are, how they are understood, practiced, and represented, and how women and men, femininities and masculinities, are involved in and produced through war.<sup>6</sup>

Many efforts have been invested into exposing the gendered implications of armed conflict and ending the 'historic erasure of women from post-war accounting of violence and its effects'.<sup>7</sup> However, raising awareness of women's experiences of conflict appears to have been generally understood as highlighting the harm inflicted upon them while, at the same time, turning a blind eye to other aspects of their participation in warfare. As a result, women's experiences of war have been perceived predominantly through the lens of their victimization, which, as commentators such as Laura Sjoberg argue, renders female perpetrators discursively impossible.<sup>8</sup> Similarly, Doris Buss argues that scholarship on conflict-related sexual violence and policy around increasing its visibility is based on a series of problematic assumptions 'in which "victims" are assumed to be women, men are assumed to be perpetrators, and women are assumed to experience (only or primarily) sexual violence'.<sup>9</sup> As a result, she argues, two blind spots have emerged in the literature – one related to the exclusion of men's experiences of sexual violence and the other to the exclusion of women as perpetrators of sexual violence.<sup>10</sup>

Thus, if gender justice in international criminal law is to develop further, it is important to encourage a more nuanced understanding that goes beyond the assumption that gender is 'only about women' and beyond narrow views on women's roles in conflict that are based on stereotypes about the incompatibility of femininity and violence. Addressing women's conflict-related criminality is also essential for understanding in what ways violent contexts transform (or reproduce) pre-war gender relations and affect a post-war construction of gender. Considering the gender of perpetrators opens up another way of understanding the gender relations that shape war criminality and the prosecution of international crimes. It is important, however, to emphasize that the aim of drawing attention to women's participation in international crimes is not to undermine advocacy enhancing the visibility and protection of female victims of these crimes. Rather, it is to promote a holistic understanding of women's conflict-related experiences and to prevent the reinforcement of patriarchal conceptions of gender, which can deny women political agency and, hence, thwart efforts aimed at gender justice.<sup>11</sup>

<sup>6</sup> Buss, 'Seeing Sexual Violence in Conflict and Post-Conflict Societies: The Limits of Visibility', in D. Buss *et al.* (eds), *Sexual Violence in Conflict and Post-Conflict Societies: International Agendas and African Contexts International Agendas and African Contexts* (2014) 3, at 5.

<sup>7</sup> Buss, 'Knowing Women: Translating Patriarchy in International Criminal Law', 23(1) *Social and Legal Studies* (2013) 1, at 2.

<sup>8</sup> Sjoberg, *supra* note 3, at 67.

<sup>9</sup> Buss, 'Seeing Sexual Violence', *supra* note 6, at 13.

<sup>10</sup> *Ibid.*

<sup>11</sup> Hodgson, 'Gender Justice or Gendered Justice? Female Defendants in International Criminal Tribunals', 25(3) *Feminist Legal Studies* (2017) 337, at 354.

This article addresses a continuing ‘blind spot’ in the current literature on the perpetration of international crimes: female perpetrators. In this article, I use the term ‘international crimes’ to refer to any of the following crimes: genocide, crimes against humanity and war crimes, regardless of whether these crimes were prosecuted before international courts or domestic courts under international law or domestic law and regardless of whether they were characterized as international crimes or domestic crimes when prosecuted under domestic law. While there has been increasing attention paid to the female perpetrators, there has not been a systematic analysis of the characteristics of conflict-related criminality among women. The literature to date has focused upon the examination of particular conflicts (mostly World War II) or gendered discourses of the perpetration and criminal prosecution of women based primarily on the case studies of the very few female perpetrators of international crimes prosecuted before the post-World War II international tribunals, but it has not systematically analysed existing historical and contemporary material to explore the extent of women’s participation in these crimes, the range of criminal acts in which they have engaged, their different forms of perpetration, who they perpetrated crimes against, their socio-demographic characteristics or their motives for committing these crimes. Moreover, there has not been a systematic study of prosecutions of women for these crimes, especially before national courts.

This article offers an analysis of the characteristics of conflict-related criminality among women and of criminal prosecutions of female perpetrators of international crimes in modern conflicts, primarily World War II and the wars in Bosnia and Herzegovina (BiH) and Croatia. The research is based on the data collected through the exploration of the existing literature on female perpetrators of crimes in World War II and the author’s research of crimes committed by women during the wars in BiH and Croatia. In regard to the latter, this article offers the first systematic overview and analysis of criminal cases against women prosecuted for these crimes before the domestic courts in BiH, Croatia and Serbia. The article has two main goals: to contribute to the expansion of the existing body of knowledge about women’s conflict-related criminality and to stimulate and provide the basis for further research in this area.

Despite the apparent scholarly neglect of this topic, there is considerable documentation available on the criminal prosecutions of this category of perpetrators. Accordingly, the article first presents an analysis of international crimes committed by women based on data collected from the available literature on the involvement of women in violence during World War II and from the legal documents of cases brought against female perpetrators of international crimes committed after World War II. The existing literature predominantly focuses on female perpetrators in concentration camps in Germany, is in German and has been published during the last two decades. In the literature available in English, scholarly interest in this topic has started to develop more recently. The English literature also primarily examines female perpetrators in World War II or women prosecuted before international tribunals, focusing largely on social and legal narratives of women’s crimes or upon women as perpetrators of sexual violence.

The next part presents the author's research on prosecutions of female perpetrators of crimes committed during and after World War II, with an emphasis on the prosecution of women accused of international crimes during the wars in BiH (1992–1995) and Croatia (1991–1995), which are involved in cases before the domestic courts in BiH, Croatia and Serbia. The analysis focuses on these prosecutions because they represent a highly significant source of information about female perpetrators of war crimes that has not yet been examined (and which is not yet translated into English). This information is then analysed in more detail in the third part of the article. Based on this analysis, the article sets out some observations about the characteristics of women's conflict-related criminality and the prosecution of female perpetrators of international crimes. The article goes on to reflect on the role of gender in prosecutions of female perpetrators of international crimes, while the last part summarizes these findings and identifies potential areas for further research.

## 2 The Prosecution of Female Perpetrators of International Crimes

### *A Prosecutions of Female Perpetrators of Crimes Committed during World War II*

The involvement of women in atrocities committed in the course of World War II in many ways challenges the image of women as innocent bystanders in war. The large numbers of women who supported and participated in Adolph Hitler's terror calls into question assumptions that women's participation in conflict-related criminality is an exceptional, rather than systemic, phenomenon, just as the gravity of their crimes defies the assumption that all women, as a rule, are opposed to violence. Records show that thousands of women served in Nazi concentration camps. While there is no authoritative source establishing the precise figure,<sup>12</sup> some authors have estimated that the total number of female guards between 1939 and 1945 ranges from 3,500 to 4,000, which is about one female guard to every 10 male guards.<sup>13</sup> Others estimate that, between 1942 and 1945, some 3,500 female SS wardens served solely in the women's concentration camp at Ravensbrück, and some authors suggest that this figure is closer to 3,970.<sup>14</sup>

Contrary to the expectation that women will necessarily be low-level perpetrators of international crimes, some of those who served in concentration camps held supervisory positions.<sup>15</sup> Indeed, even some 'ordinary' civilian women – wives of the SS

<sup>12</sup> These discrepancies demonstrate that even the topic of female perpetrators of crimes committed during World War II, which has already received more academic attention than women's criminality in any other conflict-related context, still remains under-researched.

<sup>13</sup> K. Kompisch, *Täterinnen: Frauen Im Nationalsozialismus* (2008), at 162.

<sup>14</sup> Kretzer, *supra* note 2, at 103.

<sup>15</sup> Heike, 'Female Concentration Camp Guards as Perpetrators: Three Case Studies', in O. Jensen and C.W. Szejnmann (eds), *Ordinary People as Mass Murderers: Perpetrators in Comparative Perspectives* (2008) 120, at 126–132; Anonymous, *Female Nazi War Criminals* (n.d.), available at <http://capitalpunishmentuk.org/nazigirls.html>; D.R. Wetherell, *10 Most Evil Women in Nazi Camps*, 30 October 2012, available at <http://listverse.com/2012/10/30/10-female-concentration-camp-guards/>; A. Krupić, *Žene ratni zločinci* (2010), at 81–84, 115.

officers, secretaries, administrators and, in particular, medical staff – participated in Hitler’s murder machinery and were responsible for some of the most shocking crimes committed during World War II.<sup>16</sup> Of those women who participated in international crimes during the Nazi regime, some were called to account. According to Suzannah Linton, at least 579 criminal cases were brought against female defendants before the domestic courts of European countries.<sup>17</sup> In addition, at least 75 women were prosecuted before the Allied tribunals that operated in the US and British occupation zones.<sup>18</sup>

## **B Prosecutions of Female Perpetrators before International and Internationalized Tribunals**

A growing body of research indicates that women have continued to be involved in international crimes more recently. Women are reported to have participated in grave breaches of international humanitarian law during the 1994 genocide in Rwanda and the wars that took place in the territory of the former Yugoslavia, as well as during wars and conflicts in the Democratic Republic of Congo (DRC), Liberia, Haiti and Sierra Leone.<sup>19</sup> Some of the women who participated in crimes during these conflicts have been prosecuted before international and domestic judicial institutions. In line with their mandates, international and internationalized courts have so far prosecuted only those women who were in leadership positions and who were thus deemed to be among those responsible for the most severe crimes amounting to genocide and crimes against humanity. This is probably why so few women have been prosecuted before international and internationalized courts. As [Table 1](#) shows, the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Court (ICC) have each prosecuted one woman; two women have been indicted before the Extraordinary

**Table 1:** Prosecutions of female perpetrators of international crimes before international and internationalized judicial institutions to April 2019

<b>Court</b>	<b>Indicted persons</b>		
	<b>Men</b>	<b>Women</b>	<b>Total</b>
ICTY	160	1	161
ICTR	92	1	93
ICC	44	1	45
ECCC	7	2	9
Special Chambers for Sierra Leone	13	0	13
Special Panels for Serious Crimes (East Timor)	391	0	391
Kosovo Special Panels (UNMIK and EULEX)	111	0	111
Total	818	5	823

<sup>16</sup> Kompisch, *supra* note 13, at 130–143.

<sup>17</sup> Linton, ‘Women Accused of International Crimes: A Trans-disciplinary Inquiry and Methodology’, 27(2) *Criminal Law Forum* (2016) 159, at 165.

<sup>18</sup> *Ibid.*, at 166.

<sup>19</sup> Cohen, ‘Female Combatants and the Perpetration of Violence: Wartime Rape in the Sierra Leone Civil War’, 65(3) *World Politics* (2013) 383, at 384–385.

Chambers in the Courts of Cambodia (ECCC); and the courts in Sierra Leone, East Timor and Kosovo have indicted no women at all.

Table 2 shows that proceedings against only two of these five women were completed by final verdict; in the remaining three cases, proceedings were terminated due to the death of accused,<sup>20</sup> dismissed on jurisdictional grounds<sup>21</sup> or are still in progress because the accused is not in the custody of the court.<sup>22</sup>

The number of cases brought against female perpetrators indicates that the prosecution of women before international and internationalized judicial institutions is an exception rather than a rule, which may have played a part in the visibility of these women in the media and academic literature. Another explanation for increased interest in these cases may be that most of these women held leadership roles, which highlighted their divergence from traditional gendered patterns of conflict: not only did these women participate in international crimes, but they also did so from positions of authority.

Women who perpetrate international crimes are also prosecuted before domestic courts, where so-called lower-level accused are typically brought to trial. For example, 93,653 women – around 9 per cent of the total 1.2 million persons prosecuted – have been processed before Gacaca courts for genocide-related offences committed during the Rwandan conflict and approximately 50 per cent of these individuals have been convicted.<sup>23</sup> Such prosecutions have also taken place before the domestic courts in BiH, Croatia and Serbia, and it is to these prosecutions that we turn next.

### ***C Prosecutions of Female Perpetrators of International Crimes Committed in BiH and Croatia***

Over the past two decades, a large number of (alleged) perpetrators of international crimes committed during wars and armed conflicts in the countries of the former Yugoslavia have been prosecuted before domestic courts in BiH, Croatia and Serbia. Most of the prosecuted individuals are men, and prosecutions of women have been rare, accounting for only 1 per cent of the total number of persons prosecuted (see Table 3). Regardless of their small number, these prosecutions offer an important case study into both women's criminality during wars in BiH and Croatia and the prosecution of female perpetrators of international crimes before domestic judiciaries. Unfortunately, information and legal documents pertaining to domestic prosecutions of international crimes, especially those cases brought before local courts in BiH, are not always easily accessible because they are either not published at all or have not yet been translated into English. This poses a significant obstacle to (foreign) researchers interested in studying domestic prosecutions of international crimes in countries of the former Yugoslavia.

<sup>20</sup> Extraordinary Chambers in the Courts of Cambodia (ECCC), *Ieng Thirith (Former Accused)* (n.d.), available at <https://eccc.gov.kh/en/indicted-person/ieng-thirith-former-accused>.

<sup>21</sup> ECCC, *Case 004-01* (n.d.), available at <https://eccc.gov.kh/en/case/topic/case0401>.

<sup>22</sup> International Criminal Court (ICC), *Simone Gbagbo Case* (n.d.), available at <https://icc-cpi.int/cdi/simone-gbagbo>.

<sup>23</sup> Linton, *supra* note 17, at 166–167.

**Table 2:** Overview of criminal prosecutions of female perpetrators before international and internationalized judicial institutions to April 2019

<b>Court</b>	<b>Accused</b>	<b>Status of proceedings</b>	<b>Charges</b>	<b>Verdict</b>	<b>Sentence</b>
ICTR	Pauline Nyiramashuko	Completed	Genocide	Guilty	47 years
			Conspiracy to commit genocide	Guilty	
			Complicity in genocide	Dismissed	
ICTY	Biljana Plavšić	Completed	Direct and public incitement to commit genocide	Acquitted	11 years
			Crimes against humanity	Guilty/Acquitted/ Dismissed	
ECCC	Ieng Thirith	Terminated	Serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II	Guilty	-
			Genocide	Dismissed	
ICC	Im Chaem Simone Gbagbo	Dismissed In progress	Complicity in genocide	Dismissed	-
			Crimes against humanity	Guilty/Dismissed	
			Violations of laws and customs of war	Dismissed	
ICC	Im Chaem Simone Gbagbo	Dismissed In progress	Genocide	-	-
			Crimes against humanity	-	
ICC	Im Chaem Simone Gbagbo	Dismissed In progress	Grave breaches of the Geneva Conventions of 1949	-	-
			Crimes against humanity	-	
ICC	Im Chaem Simone Gbagbo	Dismissed In progress	Crimes against humanity	-	-
			Crimes against humanity	-	



**Table 3:** Prosecution of (alleged) perpetrators of international crimes before domestic courts in BiH, Croatia and Serbia to April 2019

Country	No. of men prosecuted		No. of women prosecuted		TOTAL
	Completed cases	Ongoing cases	Completed cases	Ongoing cases	
BiH	768	391	8	2	1,169
Croatia	1,236	353	14	0	1,603
Serbia	133	104	2	1	240 <sup>24</sup>
TOTAL	2,137	848	24	3	3,012

*Notes:* In regard to BiH, the figures presented comprise data on prosecuted persons in cases completed before BiH courts between 1995 and April 2019 – that is, they do not include data on cases/defendants prosecuted during the war. With respect to Croatia, the figures presented comprise data on prosecuted persons in all completed cases before Croatian courts from the beginning of the war in 1991 until April 2019, including the cases in which accused persons were tried *in absentia*. It also needs to be noted that these figures are not complete because they do not include data on prosecutions before county courts in Zagreb and Zadar. These two courts rejected the author's request for access to information on prosecuted cases and on gender-dissaggregated data on persons prosecuted. In regard to Serbia, the figures presented comprise only data on the prosecutions of international crimes that took place before the Higher Court in Belgrade, which has been prosecuting these cases since 2003 – that is, they do not include data on an additional 16 accused prosecuted before other Serbian courts prior to 2003 and 17 persons prosecuted by the military judiciary. These prosecutions have not been counted in the figures presented because neither gender-dissaggregated data nor information on the status of these proceedings were made available to the author.

The author of this article carried out extensive research to collect information about prosecutions of (alleged) female perpetrators of international crimes before domestic courts in BiH, Croatia and Serbia, aiming to offer the first systematic overview and analysis of these cases. This subpart of the article therefore continues with a brief summary of the prosecutions of female defendants, including information about the charges, status and outcomes of criminal proceedings, while the next subpart analyses and discusses in more detail the (alleged) criminal acts underlying the charges.

### 1 Prosecutions of Female Perpetrators of International Crimes Committed in BiH

Other than Biljana Plavšić, who was prosecuted at the ICTY, 12 women have been prosecuted before domestic courts for crimes committed during the war in BiH. As Table 4 shows, of these 12 women, 10 have been prosecuted before courts in BiH and two before Serbian courts.

#### (a) Prosecutions before BiH courts

In BiH, trials of international crimes take place before courts at both state and local levels.<sup>25</sup> By April 2019, the BiH courts had prosecuted 518 cases against 776 accused;

<sup>24</sup> One woman was prosecuted in two different cases.

<sup>25</sup> Bosnia and Herzegovina (BiH) consists of two entities (the Federation of BiH and the Republika Srpska) and Brčko District, which is a self-governing administrative unit. The Federation of BiH is further divided into 10 cantons. International crimes are prosecuted at the Court of BiH, which is a state-level court, at 10 cantonal courts in the Federation of BiH, at six district courts in the Republika Srpska and at the Basic Court of Brčko District.

**Table 4:** Overview of criminal prosecutions of (alleged) female perpetrators of international crimes committed in BiH and Serbia to December 2019

<b>Court</b>	<b>Accused</b>	<b>Status of proceedings</b>	<b>Charges*</b>	<b>Verdict**</b>	<b>Sentence</b>
Prosecutions of (alleged) female perpetrators of international crimes before courts in BiH Court of BiH	Rasema Handanović	Completed	WCC WCPow	Guilty Guilty	5 years and 6 months
	Albina Terzić	Completed	WCC	Guilty / Acquitted	3 years
	Indira Kamberić	Completed	WCC	Guilty / Acquitted	4 years
	Marina Grubišić-Fejzić	Completed	CAH	Guilty / Acquitted	5 years
	Azra Bašić	Completed	WCC	Guilty / Acquitted	14 years
	Elleta Veseli	Completed	WCC	Guilty	13 years
	Višnja Aćimović	In progress	WCC	–	–
	Bora Kuburić	Completed	WCPow	Guilty	3 years
	Radmila Banjac	Completed	WCPow	Guilty	3 years
	Monika Karan-Ilić	Completed	WCC	Guilty / Acquitted	2 years and 6 months
Prosecutions of (alleged) female perpetrators of international crimes before courts in Serbia Higher Court in Belgrade	Ranka Tomić	Completed	WCPow	Guilty	3 years
	Dragana Đekić	Completed	WCC	Acquitted	–
		In progress	WCC	–	–

Notes: \* CAH = crimes against humanity; WCC = war crimes against civilians; WCPow = war crimes against prisoners of war.

in 176 further cases, criminal proceedings against 393 accused were ongoing.<sup>26</sup> Almost 41 per cent of these completed cases and 63 per cent of the ongoing proceedings have been heard before the Court of BiH, the remaining cases being prosecuted before local courts. Of the total of 1,169 persons indicted, only 10 have been women. Cases against nine of these have been completed, while in one case criminal proceedings are still in progress. Seven of the 10 accused women were prosecuted before the Court of BiH.

Of the 10 women prosecuted before the courts in BiH, seven female defendants have been charged with war crimes against civilians, two with war crimes against prisoners of war and only one with crimes against humanity (see Table 4). As of April 2019, there have been no prosecutions of women for the crime of genocide. The conviction rate appears to be high: all nine women against whom proceedings have been completed were found guilty, although in five cases their guilt was established only in respect to some of the alleged crimes, and they were acquitted of other charges. Sentencing ranges in these cases from two years and six months to 14 years. In addition to the cases that have been brought to trial, investigations have been initiated against some 40 other women for crimes committed during the war in BiH.<sup>27</sup>

#### (b) Prosecutions before Serbian courts

In Serbia, international crimes are prosecuted before the Higher Court in Belgrade. As of April 2019, the Court had completed prosecution of 46 cases against 135 accused, and in 25 cases criminal proceedings against 105 accused remained in progress. Of the total of 240 indicted persons, only three were women – two of whom stood trial for crimes committed in BiH. Criminal proceedings against one woman have been completed, resulting in a conviction for war crimes against prisoners of war. Another woman was indicted in two separate cases for crimes committed in different parts of BiH: one lengthy case against her resulted in acquittal, while in another case her trial is ongoing.

## 2 Prosecutions of Female Perpetrators of International Crimes Committed in Croatia

Women's involvement in international crimes was also recorded during the 1991–1995 war in the territory of Croatia. According to figures obtained from Croatian courts, at least 14 female perpetrators have been indicted for international crimes committed during this war. However, on the basis of publicly available information, the author has managed to identify only 12 women prosecuted for these crimes before the Croatian judiciary<sup>28</sup> and one woman who was prosecuted in Serbia.

#### (a) Prosecutions before Croatian courts

<sup>26</sup> Information collected from courts in BiH.

<sup>27</sup> Balkan Investigative Reporting Network, *Žene su bile okrutnije u zločinima*, 7 February 2011, available at <https://nezavisne.com/novosti/bih/Zene-su-bile-okrutnije-u-zlocinima-78601.html>.

<sup>28</sup> In Croatia, international crimes are prosecuted before the county courts. Until 2011, all of the county courts had the jurisdiction to prosecute perpetrators of international crimes; in 2011, Croatian authorities passed new legislation delegating jurisdiction over international crimes to only four county courts.

**Table 5:** Overview of criminal prosecutions of (alleged) female perpetrators of international crimes committed in Croatia to December 2019

<b>Court</b>	<b>Accused</b>	<b>Status of proceedings</b>	<b>Charges*</b>	<b>Verdict</b>	<b>Sentence</b>
Prosecution of (alleged) female perpetrators of international crimes before courts in Croatia County court in Osijek	Luca Roklicer	Completed	Genocide	Guilty	6 years
	Ivanka Savić	Completed	WCC	Guilty	4 years and 6 months
	Eva Radeka	Completed	WCC	Guilty	5 years
	Gordana Četoš-Magdić Violeta Ilić <sup>29</sup>	In progress	–	–	–
County court in Vukovar	Sladana Korda	Completed	WCC	Guilty	8 years
	Jovanka Martić	Terminated	WCC	–	–
County court in Zadar	Nada Pupovac	Completed	WCC	Guilty	20 years
	Edita Rađen	Discontinued	WCC	–	–
	Zorana Banić	Completed	WCC	Guilty	6 years
County court in Rijeka	Katica Pečić	Discontinued	WCC	–	–
County court in Slavonski Brod	Nataša Božić	Completed	WCC	Acquitted	–
Prosecution of (alleged) female perpetrators of international crimes before courts in Serbia Higher Court in Belgrade	Nada Kalaba	Completed	WCPow	Guilty	11 years

Notes: \* WCC = war crimes against civilians; WCPow = war crimes against prisoners of war.

<sup>29</sup> Information about the outcome of the criminal proceedings in this case is not available.

From the beginning of the war in 1991 until April 2019, the Croatian courts completed at least 383 cases against 1,250 defendants accused of committing international crimes during the war in Croatia. As of April 2019, proceedings in at least 107 cases against 353 accused remained in progress. Of the total number of 1,603 persons indicted, 14 were women. According to the available information, proceedings against 10 out of 12 identified female defendants prosecuted before the Croatian judiciary have been completed. Seven cases were completed by final verdict; in one case, proceedings were terminated due to the death of accused, and in two cases proceedings were discontinued after the prosecutor's office decided to change its initial legal characterization of the offences and instead charge defendants with the criminal offence of armed rebellion, which falls under the provisions of the Croatian General Amnesty Act of 1996. In one of the remaining two cases, the criminal proceedings are still in progress, while information about the outcome of the other case is not publicly available. In six of the seven cases that were completed by final verdict, accused women were charged with the criminal offence of war crimes against civilians; in one case, the defendant was accused of the crime of genocide. In six cases, the courts rendered guilty verdicts, while one case was completed by acquittal. Sentences range from four years and six months to 20 years.

However, it should be noted that those trials that took place before the Croatian judiciary during and in the few years after the end of the war have been highly contested. These prosecutions are perceived as ethnically biased summary processes that pursued the wartime goals of ethnic cleansing in the aftermath of the conflict by preventing expelled Serbs from returning to their homes and preserving narratives of collective guilt and victimhood:

The majority of these proceedings were conducted in areas heavily affected by the conflict and with little concern for due process. In particular, they often involved summary prosecution of large groups of suspects on the basis of questionable evidence and in the absence of the accused (in absentia); many cases were based on insufficiently established facts and failed to apply the facts to the law; overcharging of low-level offenders for minor crimes was common, and from the mid-1990s this practice also involved charging with genocide.<sup>30</sup>

While this is not to say that all such cases against female defendants should be automatically dismissed as products of a maladministration of justice, they should be subjected to additional scrutiny when analysed. In fact, many of the early cases have gone on to judicial review, which in some instances has resulted in the overturning of judgments and sentences.

#### (b) Prosecutions before Serbian courts

In addition to the women prosecuted by the Croatian judiciary, another female perpetrator of crimes committed in Croatia stood trial before the Serbian judiciary. She was accused and convicted of war crimes against prisoners of war and sentenced to 11 years of imprisonment.<sup>31</sup>

<sup>30</sup> I. Rangelov, *Nationalism and the Rule of Law: Lessons from the Balkans and Beyond* (2014), at 145–147.

<sup>31</sup> Appellate Court in Belgrade (Serbia), Appeals Judgment, *Vujović and Others* (Kž1 PO2-2/2014), 24 November 2017, at 4.

### 3 Observations on the Characteristics of Women's Conflict-Related Criminality and Prosecutions of Female Perpetrators of International Crimes

This brief overview of the prosecutions of female perpetrators of crimes committed during and after World War II proves inaccurate the common assumption that physical violence is not characteristic of women, and attests to the fact that violence is not exclusively a male prerogative. While it is difficult to assess how many of the total number of women involved in perpetrating international crimes have been prosecuted, the fact that the participation of women in conflict-related violence has been recorded in most conflicts including and since World War II indicates that women's conflict-related criminality is not an anomaly but, rather, a regular feature of wars and armed conflicts (although its extent does vary significantly). For this reason, it deserves to be properly addressed and explored, as does any type of conflict-related criminality.

Based on the analysis of the available literature describing women's involvement in violence during World War II and subsequent conflicts, the author's analysis of cases brought against female perpetrators of international crimes committed in the wars in BiH and Croatia in the 1990s, and the current literature on the gender dynamics of violence and prosecutions of female perpetrators, this article will next set out some observations on the common characteristics of women's conflict-related criminality and the prosecution of female perpetrators of international crimes. Although the discussion draws on examples from other conflicts, this analysis is primarily based on the author's examination of female perpetrators of crimes in World War II and in the wars in BiH and Croatia. The research clusters around World War II and the wars in BiH and Croatia for multiple reasons, including because women's participation in conflict-related criminality remains a largely under-researched aspect of these conflicts; because the majority of prosecutions of women have taken place following these conflicts; because of the importance of the available materials, which are the most extensive and richest primary and secondary sources available on female perpetration in modern conflicts; and because of the neglect of these materials in the English-language studies that dominate in the recent literature, in part due to the fact that they have not been translated from German and Bosnian, Croatian or Serbian.

However, these observations are only preliminary and are intended primarily to encourage further research of this topic. If we are to draw more rounded conclusions, we will need to rely on interdisciplinary research and a thorough exploration of existing and new research questions pertaining to etiological, sociological, victimological, criminological, penological and other aspects of this phenomenon.

#### ***A Female Perpetrators of International Crimes Have Been Recorded in Almost Every Conflict since World War II***

The participation of female perpetrators in international crimes has been recorded in almost every conflict since World War II, although the precise extent to which it

occurs remains unknown. Since data about the participation of women in different conflicts and their prosecution across different jurisdictions has not been collected systematically, comparative analysis is impossible. Nevertheless, based on available information, we can conclude not only that female perpetrators of international crimes have been featured in most conflicts since World War II but also that the scale of their participation varies from conflict to conflict. In most conflicts, women's involvement in international crimes is only sporadic and ad hoc; in some, it is clearly more systematic. For example, the prosecution of almost 100,000 women in Rwanda suggests the widespread participation of women in the Rwandan genocide. During World War II, thousands of women actively contributed to the functioning of concentration camps and the execution of Hitler's plan to exterminate European Jews. Similarly, the research on conflicts in Sri Lanka, Liberia, Haiti and the DRC also indicates that women participate in conflict-related violence on a massive scale.<sup>32</sup> While the prosecution of only 26 female perpetrators for crimes committed during wars in BiH and Croatia suggests a significantly lower level of participation of women in international crimes, because no comprehensive research on female perpetrators in these conflicts has yet been undertaken, it is not possible to assess whether these figures accurately reflect the extent of women's participation in conflict-related violence or simply indicate a low rate of prosecution of female perpetrators. It should be noted generally that women are reported and prosecuted as perpetrators of international crimes far less frequently than men and that the exact proportion of female perpetrators versus male in these and other conflicts remains unknown.

## ***B Female Perpetrators of International Crimes Engage in Almost All Types of Criminal Acts***

It is evident that female perpetrators of international crimes engage in the commission of almost all types of criminal acts, including killings, torture, various forms of physical and mental abuse, looting, destruction of property and even acts of sexual violence.

### *1 Murder*

As was noted earlier, female medical staff, including nurses and doctors, were prosecuted for participation in the murder of thousands of patients during World War II. Female guards in concentration (and extermination) camps assisted in killing operations by selecting those female prisoners who were to be sent to gas chambers. However, it should be noted that the actual 'work' of killing was generally a male domain and that women did not take an active part in mass shootings or the gassing of prisoners.<sup>33</sup> In fact, even though female guards carried weapons and were officially

<sup>32</sup> Cohen, *supra* note 19; Hogg, 'Women's Participation in the Rwandan Genocide: Mothers or Monsters?', 92(877) *International Review of the Red Cross* (2010) 69.

<sup>33</sup> E. Mailänder and P. Szobar, *Female SS Guards and Workaday Violence: The Majdanek Concentration Camp, 1942–1944* (2015), at 277.

permitted to shoot, the use of firearms was considered to be an exclusively male privilege.<sup>34</sup> Nevertheless, compliance with an unspoken prohibition on their use of firearms does not mean that women did not commit murder at all. In fact, female perpetrators, including concentration camp guards, committed some of the most brutal acts, including chopping prisoners to death with an axe<sup>35</sup> and killing children.<sup>36</sup> Female guards in the concentration camp at Stara Gradiška in the Independent State of Croatia allegedly killed dozens of prisoners and participated in the murder of hundreds of children.<sup>37</sup> The direct participation of women in acts of killing was also recorded during the genocide in Rwanda, although it was not common.<sup>38</sup>

International crimes committed by women during the wars in BiH and Croatia also include the killing of civilians and prisoners of war. So far, five women have been convicted or accused of directly undertaking acts of killing, while at least another three have been accused as co-perpetrators of, or accessories to, the murder of civilians. For example, Rasema Handanović was found guilty of participation in the execution by shooting of six civilians and prisoners of war. Višnja Aćimović has been accused of taking part in the killing of 37 civilians,<sup>39</sup> and Elfeta Veseli was convicted of killing a 10-year-old boy.<sup>40</sup> Nada Pupovac and Zorana Banić were prosecuted for participation in the murder of at least 44 civilians during the war in Croatia,<sup>41</sup> and Nada Kalaba was prosecuted for killing one prisoner of war.<sup>42</sup> While Dragana Đekić was accused of participating in the murder of 27 Roma civilians by aiding perpetrators<sup>43</sup> and was eventually acquitted of these crimes,<sup>44</sup> new charges alleging her involvement in the abduction and murder of another 20 civilians were soon brought against her.<sup>45</sup> Gordana Getoš-Magdić is accused of having participated in the execution of some of her superior's orders to kill civilians.<sup>46</sup> In addition to these women, there are other alleged female perpetrators of this type of crime who have not yet

<sup>34</sup> *Ibid.*, at 252.

<sup>35</sup> Kompisch, *supra* note 13, at 130–143.

<sup>36</sup> W. Lower, *Hitler's Furies: German Women in the Nazi Killing Fields* (2014), at 126–127.

<sup>37</sup> Krupić, *supra* note 15, at 82.

<sup>38</sup> Hogg, *supra* note 32, at 70, 78; see also Linton, *supra* note 17, at 168.

<sup>39</sup> Court of BiH, *Case Information: Višnja Aćimović* (n.d.), available at <http://sudbih.gov.ba/predmet/3655/show>.

<sup>40</sup> Sud Bosne i Hercegovine, *Elfeta Veselji osuđena na kaznu zatvora u trajanju od 10 godina* (n.d.), available at <http://sudbih.gov.ba/vijest/elfeta-veselji-osuena-na-kaznu-zatvora-u-trajanju-od-10-godina-21096>.

<sup>41</sup> Documenta – Center for Dealing with the Past, *Crime in Bačin* (n.d.), available at <https://documenta.hr/en/crime-in-ba%C4%87in.html>.

<sup>42</sup> Vujović and Others, *supra* note 31, at 4.

<sup>43</sup> Prosecutor's Office for War Crimes (Serbia), Indictment, *Đurđević and Đekić* (KTRZ 11/11), 22 December 2011, at 1–5.

<sup>44</sup> Appellate Court in Belgrade (Serbia), Appeals Judgment, *Bogdanović and Others* (Kž1 Po2 5/15), 28 March 2018, at 3–4.

<sup>45</sup> Viši sud u Beogradu, *Potvrđena optužnica podignuta protiv otkrivenog Gojka Lukića i drugih ('predmet Štrpci')*, 5 October 2018, available at <https://bg.vi.sud.rs/vest/1501/potvrđjena-optužnica-podignuta-protiv-okrivljenog-gojka-lukica-i-drugih-predmet-strpci.php>.

<sup>46</sup> Documenta – Center for Dealing with the Past, *Zločin u Osijeku* (n.d.), available at <http://documenta.hr/hr/zlo%C4%8Din-u-osijeku.html>.



been prosecuted.<sup>47</sup> By contrast, those women who have been prosecuted before international and internationalized courts have been accused of murders and killings as indirect perpetrators, usually on the basis of command responsibility or participation in a joint criminal enterprise.

## 2 Physical and Mental Abuse (Inhumane Treatment)

It seems that the most widespread types of crime perpetrated by female offenders are various forms of physical and mental abuse. These acts are most often committed in camps or other types of confinement sites. Dozens of women who served in camps and various confinement facilities during World War II and the war in BiH were accused of inflicting physical and mental pain on prisoners by way of beating them, slapping their faces, pulling their ears, cutting their hair, burning cigarettes on their hands, carving religious symbols on their bodies, forcing them to sing nationalistic songs, insulting them and so on. Elissa Mailänder's analysis of the violence employed by female guards in the concentration camp at Majdanek indicates that the most frequent forms of violence were slapping, punching, hitting and verbal insults, followed by kicking.<sup>48</sup> Female guards also commonly verbally abused prisoners at Ravensbrück.<sup>49</sup>

Another form of cruelty that was recorded across the Nazi concentration camp system and was also present in confinement sites in BiH was the use of dogs to torment prisoners.<sup>50</sup> According to the testimony of Majdanek survivors, guard Hildegard Lächert often commanded her dog to attack female inmates. On one occasion, she used her dog to attack a pregnant woman, 'targeting the most vulnerable parts of her body in an act of cruel desecration and killing of her unborn child'.<sup>51</sup> Another female guard accused of setting dogs on prisoners was Juana Bormann, who worked in several concentration camps but stood trial for crimes committed in Bergen-Belsen.<sup>52</sup> Albina Terzić was found guilty of the inhumane treatment of prisoners by way of directing her dog to attack them and threatening to unleash the animal if they refused her obedience.<sup>53</sup> Marina Grubišić-Fejzić was accused of forcing prisoners in Dretelj to lick a dog's genitals.<sup>54</sup>

Additional acts of violence committed by female perpetrators included other brutal forms of torture. For example, allegations against Azra Bašić included forcing civilians to walk barefoot or to crawl on a floor covered with pieces of broken glass, forcing them to drink a dead man's blood, carving religious or other symbols on their bodies, stabbing them, burning their body parts and forcing them to drink gasoline and eat banknotes.<sup>55</sup> Monika Karan-Ilić was accused of cutting prisoners' body parts

<sup>47</sup> Krupić, *supra* note 15, at 91–94, 96.

<sup>48</sup> Mailänder and Szobar, *supra* note 33, at 232, 262–263.

<sup>49</sup> *Ibid.*, at 236–237.

<sup>50</sup> *Ibid.*, at 264.

<sup>51</sup> *Ibid.*, at 265.

<sup>52</sup> Anonymous, *Juana Borman 'The Woman with Dogs'* (n.d.), available at <http://capitalpunishmentuk.org/juana.html>.

<sup>53</sup> Court of BiH, Trial Judgment, *Albina Terzić* (S1 1 K 005665 11 KrI), 19 October 2012, para. 155.

<sup>54</sup> Court of BiH, Trial Judgment, *Zelenika and Others* (S1 1 K 009124 12 Kri), 14 April 2015, at 18.

<sup>55</sup> Prosecutor's Office of BiH, Indictment, *Azra Bašić* (T20 0 KTRZ 0010448 15), 16 December 2016, at 3–6.

with broken bottles and rubbing salt into their wounds, forcing them to wash their faces with hydrochloric acid and putting out cigarettes on prisoners' skin.<sup>56</sup> Radmila Banjac, Bora Kuburić and Ranka Tomić were found guilty of crimes that included acts such as cutting off a victim's earlobe and hair, carving the sign of the cross on a victim's body and forcing a victim to dig her own grave.<sup>57</sup>

### 3 Sexual Violence

The existing research further shows that, although 'sexual violence has generally been viewed as a form of aggression perpetrated by men against women',<sup>58</sup> it is not uncommon for women to take part in conflict-related sexual violence. For example, a population-based survey conducted in 2010 in the DRC found that 41 per cent of female victims of sexual violence reported that they were victimized by female perpetrators, as did 10 per cent of male victims.<sup>59</sup> Furthermore, research on sexual violence committed during the conflict in Sierra Leone indicates that women participated in about 19 per cent of the total reported rapes and in 25 per cent of the reported gang rapes.<sup>60</sup> Forms of women's participation in rape ranged from providing assistance in the identifying and holding down of victims to inserting objects into victims' bodies.<sup>61</sup> Female fighters in Liberia are also suspected of raping women and committing sexual crimes against men, including genital mutilation.<sup>62</sup> Women are also reported to have committed sexual violence during World War II as well as during conflicts in Haiti, Rwanda and the former Yugoslavia. For example, according to survivors' testimonies, Hildegard Lächert, who served as a guard at Majdanek, 'with great pleasure and great frequency, used to kick the so-called Muselmänner in the genitals and then, when they fell, stomp on them'.<sup>63</sup> Allegations against Pauline Nyiramashuko include claims that she incited, witnessed and even ordered the rapes of a number of Tutsi women, including by her son. Other women are also alleged to have personally perpetrated, ordered or facilitated the perpetration of sexual violence during the conflict in Rwanda.<sup>64</sup> In the DRC, women are estimated to have committed over a third of the conflict-related crimes involving sexual violence.<sup>65</sup>

<sup>56</sup> Prosecutor's Office of BD, Indictment, *Monika Karan-Ilić* (T 18 0 KT RZ 000 3040 04), 1 March 2012, at 1–2.

<sup>57</sup> Cantonal Court of Bihać, Trial Judgment, *Kuburić and Banjac* (01 0 K 008669 14 K), 26 February 2015, at 2; Cantonal Prosecutor's Office of Una-Sana Canton (BiH), Indictment, *Ranka Tomić* (T01 0 KTRZ 0019641 14), 29 June 2015, at 1–2.

<sup>58</sup> Turchik, Hebenstreit and Judson, 'An Examination of the Gender Inclusiveness of Current Theories of Sexual Violence in Adulthood: Recognizing Male Victims, Female Perpetrators, and Same-Sex Violence', 17(2) *Trauma, Violence and Abuse* (2015) 133, at 133.

<sup>59</sup> Cohen, *supra* note 19, at 385.

<sup>60</sup> *Ibid.*, at 399.

<sup>61</sup> *Ibid.*, at 384, 403.

<sup>62</sup> *Ibid.*, at 385.

<sup>63</sup> Mailänder and Szobar, *supra* note 33, at 262–263.

<sup>64</sup> Sjöberg, *supra* note 3, at 117–119.

<sup>65</sup> *Ibid.*, at 122.

Indictments against eight out of 13 women prosecuted for international crimes committed during the war in BiH contain explicit allegations of their participation in sexual violence. Accusations involved different modes of participation in rape, including forcing male prisoners to rape female prisoners,<sup>66</sup> surrendering female prisoners to soldiers who would then take them elsewhere and rape them<sup>67</sup> and forcing male prisoners to perform oral sex on one another.<sup>68</sup> Allegations against accused women also included other forms of sexual abuse, such as genital mutilation,<sup>69</sup> kicking male prisoners in the genitals,<sup>70</sup> forcing nudity,<sup>71</sup> sexually abusing a female victim by placing branches between her legs,<sup>72</sup> ordering a male prisoner to touch the intimate body parts of a female prisoner,<sup>73</sup> touching a victim's genitals and ordering the victim to touch the genitals of the accused while, at the same time, threatening to kill him if he were to become aroused<sup>74</sup> and ordering a male prisoner to lick a dog's genitals.<sup>75</sup> Sexual violence was also present as a form of verbal abuse. Witnesses testified that Albina Terzić used to threaten prisoners that the dog she regularly brought with her to the 'Strolit' confinement facility would bite off their genitals.<sup>76</sup> Marina Grubišić-Fejzić was accused of verbally abusing prisoners by asking them if they would like to have sex with her (whereupon she would kick them in the genitals, regardless of their answer).<sup>77</sup> Azra Bašić threatened male civilians with cutting off their genitals or circumcising them.<sup>78</sup> Biljana Plavšić was found guilty of participating in the persecution of Bosnian Muslim, Bosnian Croat and other non-Serb populations across 37 municipalities in BiH by means of, among other crimes, rape and sexual violence.<sup>79</sup>

It is important to note that, in some of these cases, accusations of sexual violence were not proven at trial and the accused women were consequently acquitted of these charges. For example, Monika Karan-Ilić and Albina Terzić were exonerated of charges on all counts that included allegations of sexual violence, while Marina

<sup>66</sup> Prosecutor's Office of BiH, Indictment, *Albina Terzić* (T20 0 KTRZ 0000005 08), 28 April 2011, at 3.

<sup>67</sup> Prosecutor's Office of BiH, Indictment, *Indira Kamerić* (T20 0 KTRZ 0000076 07), 11 November 2013, at 2.

<sup>68</sup> *Zelenika and Others*, *supra* note 54, at 9.

<sup>69</sup> *Karan-Ilić*, *supra* note 56.

<sup>70</sup> *Kamerić*, *supra* note 67; *Zelenika and Others*, *supra* note 54, para. 728.

<sup>71</sup> *Kamerić*, *supra* note 67; Cantonal Prosecutor's Office of Una-Sana Canton (BiH), Indictment, *Kuburić and Banjac* (T01 0 KTRZ 0009032 12), 27 March 2014, at 2; *Karan-Ilić*, *supra* note 56; *Bašić*, *supra* note 55.

<sup>72</sup> *Kuburić and Banjac*, *supra* note 71 at 2.

<sup>73</sup> *Kamerić*, *supra* note 67.

<sup>74</sup> *Karan-Ilić*, *supra* note 56.

<sup>75</sup> *Zelenika and others*, *supra* note 54, at 18.

<sup>76</sup> *Terzić*, *supra* note 53, para. 172.

<sup>77</sup> *Zelenika and Others*, *supra* note 54, para. 728.

<sup>78</sup> *Bašić*, *supra* note 55.

<sup>79</sup> International Criminal Tribunal for the former Yugoslavia (ICTY), *Trial Chamber Sentences the Accused to 11 Years' Imprisonment and Says That 'No Sentence Can Fully Reflect the Horror of What Occurred or the Terrible Impact on Thousands of Victims'*, press release, 27 February 2003, available at [https://icty.org/x/cases/plavsic/tjug/en/030227\\_Plavsic\\_summary\\_en.pdf](https://icty.org/x/cases/plavsic/tjug/en/030227_Plavsic_summary_en.pdf).

Grubišić-Fežić and Azra Bašić were acquitted on some and convicted on others. In addition to the women already prosecuted, many other women who have not (yet) been brought to court are alleged to have participated in the commission of crimes of sexual violence during the war in BiH. The acts of sexual abuse of which they are suspected include verbal abuse,<sup>80</sup> aiding and abetting in rape and the sexual abuse of women<sup>81</sup> and the solicitation of women.<sup>82</sup>

By contrast with BiH, it seems that indictments against women accused of international crimes committed in Croatia include no allegations of sexual violence – with the possible exception of Nataša Božić, who was accused of participating in the torture of a female prisoner in Okučani by way of forcing her to perform oral sex on a male prisoner.<sup>83</sup> Because this information could not be confirmed from other sources, it may be inaccurate, and it would be worth exploring whether women in Croatia have not been prosecuted for crimes of sexual violence because they did not participate in the commission of such offences or because their involvement has been overlooked or ignored. In that respect, it is noteworthy that, a few years ago, the media broke a story about the alleged participation of an award-winning Croatian writer in crimes committed in the Lora prison in Split.<sup>84</sup> According to the criminal report filed in 2009, the crimes she allegedly committed included numerous acts of sexual violence,<sup>85</sup> but the County Prosecutor's Office in Split dismissed the criminal report in June 2016.<sup>86</sup>

### ***C Women's Participation in the Commission of International Crimes Takes Different Modalities***

Women's participation in the commission of international crimes takes different modalities: they commit criminal acts both as direct and indirect perpetrators. Direct perpetrators usually commit crimes in the context of group/collective violence, acting either in concert with other perpetrators or with their support. Contrary to the assumption that women participate in the commission of crimes only indirectly (by

<sup>80</sup> *Ibid.*; R. Mijanović, *Toni i Zerina najkrvoločniji*, 24 February 2012, available at [http://glassrpske.com/novosti/vijesti\\_dana/Toni-i-Zerina-najkrvoločniji/lat/71703.html](http://glassrpske.com/novosti/vijesti_dana/Toni-i-Zerina-najkrvoločniji/lat/71703.html).

<sup>81</sup> G. Maunaga, *Edib Buljubašić: Repak mi dao 1.000 maraka za ubistvo*, 14 September 2008, available at [http://glassrpske.com/novosti/vijesti\\_dana/Edib-Buljubasic-Repak-mi-dao-1000-maraka-za-ubistvo/lat/11352.html](http://glassrpske.com/novosti/vijesti_dana/Edib-Buljubasic-Repak-mi-dao-1000-maraka-za-ubistvo/lat/11352.html); Srna, *Zločini nad Srbima u Odžaku: Zločinci poznati-tužilaštvo čuti*, 23 February 2011, available at <https://nezavisne.com/novosti/bih/Zlocini-nad-Srbima-u-Odzaku-Zlocinci-poznati-tuzilastvo-cuti-Video/80457>; Human Rights Watch, *Bosnia and Herzegovina 'A Closed, Dark Place': Past and Present Human Rights Abuses in Foca* (1998), available at <https://hrw.org/legacy/reports98/foca/>; Krupić, *supra* note 15, at 108–109, 115.

<sup>82</sup> Krupić, *supra* note 15, at 97, 108–109.

<sup>83</sup> *Lijepanašadomovina Hrvatska, Okučani – PZ0010* (n.d.), available at <https://lijepanasadomovinahrvarska.com/index.php/dokumenti/sudski-dokumenti-srpski-zlocini-u-hrvatskoj/3680-nova-gradiska-pz-0010>.

<sup>84</sup> S. Golemac, *Teške optužbe na račun nagrađivane autorice: Što je Tanja Belobrajdić radila u Lori?*, 7 May 2016, available at <https://jutarnji.hr/vijesti/hrvatska/teske-optuzbe-na-racun-nagradivane-autorice-sto-je-tanja-belobrajdic-radila-u-lori-3728958/>.

<sup>85</sup> Dalmatinski komitet za ljudska prava Split, *Criminal Report*, 30 October 2009, available at <http://dalmatinskikomitet.com/g-krivicno.htm>.

<sup>86</sup> County Prosecutor's Office in Split, Notification no. K-DO-32/2016, 2 June 2016, available at <http://dalmatinskikomitet.com/arhiv/pdf/dorh2.png>.

ordering, inciting or supporting it in some other way) – that is, that they are physically distanced from the criminal act itself – the data shows that many of them are actually the direct perpetrators of even the most brutal acts of violence, such as killings, torture and sexual abuse. Information about female perpetrators of international crimes prosecuted in BiH and Croatia supports this finding: 12 of 13 women indicted for crimes committed in BiH and 11 of 12 female perpetrators accused of crimes committed in Croatia for whom information was available were accused of directly participating in the commission of the acts involved. As a result, in all cases other than that of Biljana Plavšić, women were prosecuted based only on individual criminal responsibility. Analysis of the indictments and judgments in cases prosecuted against female defendants before the BiH judiciary shows that in six out of 12 cases the modalities of commission of charged criminal acts were legally characterized as ‘perpetration’; in five cases as ‘co-perpetration’; and in one case the accused was charged for some of the criminal acts as perpetrator and for another as co-perpetrator. Analysis of the cases prosecuted in Croatia reveals that, in six out of 10 cases for which information was available, the actions of the accused were either legally characterized as, or amounted to, co-perpetration; in four cases, they were either legally characterized as, or amounted to, perpetration. However, it needs to be noted that modes of liability were rarely discussed in depth in these cases and that the focus was more on evidentiary issues than on issues related to modes of liability. This is probably because these are simple cases involving perpetrators who directly took part in the commission of criminal acts and, hence, there was no need to resort to complex modes of criminal liability such as joint criminal enterprise.

Biljana Plavšić was the only woman who was indicted for crimes committed in BiH on the basis of superior criminal responsibility, but these charges were dropped following her guilty plea, and she was eventually convicted solely on individual responsibility as an indirect perpetrator participant in the joint criminal enterprise.<sup>87</sup> Analysis of charges brought against female defendants prosecuted before international and internationalized criminal tribunals shows that Biljana Plavšić, Pauline Nyiramashuko and Ieng Thirith were charged with both individual and superior responsibility, whereas Im Chaem and Simone Gbagbo were charged only on the basis of individual criminal responsibility. Biljana Plavšić and Ieng Thirith were the only female defendants accused of participation in a joint criminal enterprise. However, after the charges of superior responsibility against Plavšić were dropped and the proceedings against Ieng Thirith were terminated, Nyiramashuko remains the only woman convicted based on command responsibility so far, just as Plavšić remains the only female defendant who was found guilty of participation in a joint criminal enterprise.

The most common sites of crimes committed by female perpetrators are usually camps, prisons and other confinement facilities. The majority of the crimes perpetrated by women during World War II, including those committed in Croatia, were committed in concentration camps.<sup>88</sup> A similar pattern is visible in BiH: five of 13

<sup>87</sup> Campbell, ‘The Gender of Transitional Justice: Law, Sexual Violence and the International Criminal Tribunal for the Former Yugoslavia’, 1(3) *International Journal of Transitional Justice* (2007) 411, at 428.

<sup>88</sup> Krupić, *supra* note 15, at 77.

women prosecuted for international crimes committed in BiH, as well as five other women who have not yet been prosecuted, are alleged to have perpetrated offences at various confinement sites. The remaining eight accused and a number of other perpetrators are alleged to have committed crimes at other sites but were acting jointly with other offenders rather than as lone perpetrators. Female perpetrators of international crimes in Croatia, as well as women who took part in genocide in Rwanda, also committed crimes in the context of mass violence.

While the majority of women for whom information was available served in confinement centres, prisons and concentration camps as guards or even held supervisory positions,<sup>89</sup> some of them were soldiers<sup>90</sup> or even commanders of military units.<sup>91</sup> However, there were also women who engaged in the commission of crimes even though they were not part of (para)military or police structures. For example, among those who participated in Hitler's murder machinery were also secretaries,<sup>92</sup> administrators, nurses and wives of officers;<sup>93</sup> in Rwanda, there were journalists<sup>94</sup> and even nuns;<sup>95</sup> in Cambodia, Rwanda and BiH, the perpetrators included high-profile politicians.

#### **D Women of All Ages Commit International Crimes**

The analysis of the available biographical information of 58 women – mostly concentration camp guards and medical workers who participated in wartime violence during World War II and many of whom were prosecuted for international crimes – shows that women of all ages committed crimes. The age range of (alleged) female perpetrators during World War II was between 16 and 57, with most being in their twenties and thirties.<sup>96</sup> Analysis of cases prosecuted before the ICTR, ICTY and courts in BiH and Croatia, as well as information available on other alleged perpetrators of international crimes not yet prosecuted, indicates a similar age range of between 17 and 65. Of the 37 women for whom relevant information was available, 11 were in their twenties at the time of commission of the crime, 12 were in their thirties, seven were in their forties and one woman was in her fifties, while three were younger than 20. Three women committed crimes in their sixties.

<sup>89</sup> Kompisch, *supra* note 13, at 182, 186–187; Mailänder and Szobar, *supra* note 33, at 269; Krupić, *supra* note 15, at 96.

<sup>90</sup> For example, Rasema Handanović, Elfeta Veseli and Azra Bašić; see also Commission for the Verification of War Crimes, Croat Republic of Herzeg-Bosna (BiH), *Brief Chronology and Survey of War Crimes Committed by BiH Army Members and Paramilitary Muslim Forces in Mostar, Konjic, Jablanica and Prozor in 1993* (n.d.), at 3; Croatian Defence Council Konjic, Croat Republic of Herzeg-Bosna, *Report on Violations of the Geneva Conventions and Genocide against Croatian People in Konjic Municipality from 23 March to 1 June 1993*, 10 June 1993, at 2.

<sup>91</sup> For example, Ranka Tomić and Gordana Getoš Magdić.

<sup>92</sup> Lower, *supra* note 36, at 103.

<sup>93</sup> *Ibid.*, at 115–117, 133–136.

<sup>94</sup> 'Rwanda Jails Journalist Valerie Bemeriki for Genocide', *BBC News*, 14 December 2009, available at <http://news.bbc.co.uk/2/hi/africa/8412014.stm>.

<sup>95</sup> Hogg, *supra* note 32, at 98.

<sup>96</sup> Krupić, *supra* note 15, at 78–79.

### **E Female Perpetrators of International Crimes Commit Crimes against Victims Regardless of Gender or Age**

Research findings on crimes committed during World War II and during the genocide in Rwanda, as well as the analysis of cases prosecuted before courts in BiH and Croatia, demonstrate that female perpetrators commit crimes against victims regardless of those victims' gender or age. Women's involvement in crimes against children was particularly evident during World War II: not only have Nazi women been reported as killing children,<sup>97</sup> but some were also infamous because of their tendency to target them.<sup>98</sup> Female guards in Majdanek participated in the process of selecting children who were subsequently sent to gas chambers and killed,<sup>99</sup> although Mailänder emphasizes that female guards at Auschwitz and Majdanek went no further than the selection of female prisoners and that they 'never took an active part in mass shootings or in killing operations in the gas chambers, nor did they assist in disposing of the dead bodies'.<sup>100</sup> Similarly, female guards at camps in Croatia are alleged to have participated in the mass murder of hundreds of children in autumn 1942,<sup>101</sup> and women also participated in the murder of children during the genocide in Rwanda.<sup>102</sup> While cases of female perpetrators' murder of children were recorded during the war in BiH,<sup>103</sup> so far only Elfeta Veseli has been prosecuted for that crime.<sup>104</sup>

### **F Women of Different Educational Profiles Participate in International Crimes**

Women alleged to have committed, or who have been prosecuted for, international crimes do not share similar levels of education. Some of the women have been well educated and have had successful professional careers: Biljana Plavšić was a university professor; Pauline Nyiramashuko was in government as the minister for family and women's affairs; and Ieng Thirith was minister of social affairs. Nine women accused of crimes committed in Croatia for whom relevant information was available had been educated at the high school level at the time of the commission of their crime. Six women accused of committing crimes during the war in BiH had a high school education at the critical time, one woman was a high school student, two women had completed primary school and two had graduated from university. For the remaining two accused, as well as for other alleged female perpetrators, information about education was not available.

<sup>97</sup> Lower, *supra* note 36, at 132–133, 140.

<sup>98</sup> Mailänder and Szobar, *supra* note 33.

<sup>99</sup> *Ibid.*, at 265–267.

<sup>100</sup> *Ibid.*, at 277.

<sup>101</sup> Krupić, *supra* note 15, at 82.

<sup>102</sup> Hogg, *supra* note 32, at 84.

<sup>103</sup> Krupić, *supra* note 15, at 96.

<sup>104</sup> Court of BiH, *Case Information – Elfeta Veseli* (n.d.), available at <http://sudbih.gov.ba/predmet/3663/show>.

## G Different Motives Prompt Women to Engage in International Crimes

The existing literature focuses on female guards at concentration camps and offers different explanations of why they resorted to violence, which range from sexuality to fear. On the one hand, survivors interpreted the women's actions as an attempt to assert or distinguish themselves among their colleagues, to assert their own equality in a male-dominated environment or to attract men's attention.<sup>105</sup> In the context of the latter, some authors attributed women's violence to 'abnormal' sexuality or sexual perversion.<sup>106</sup> Mailänder's research, on the other hand, offered a different perspective: she found that, for young, mostly unmarried women with modest backgrounds, the well-paid and secure job of concentration camp guard was, first and foremost, a unique opportunity for social advancement. She found that 'the women were also motivated by opportunities for personal enrichment, the thrill of adventure, recognition for their service, and the opportunity to satisfy their ambitions'.<sup>107</sup> Mailänder further explains that female guards at Majdanek were not 'born experts of terror' but, rather, 'became violent within the context of a very specific institutional and sociocultural setting', and she concludes that the social context and its group dynamic are 'key to understanding the women's propensity for violence'.<sup>108</sup> Mailänder's research has shown that the transformation of female guards at Majdanek can be attributed to the real, as well as imagined, hardships of a posting to the camp, including constant exposure to violence and death, poor living conditions, the constant threat of epidemics, the distance from home and family, unfamiliar geographical and weather conditions, a fear of attack by partisans and so on. Moreover, resort to violence was also motivated by women's inclination to assert themselves against their male colleagues, the pride they took in recognition of, and respect for, their work and a wish to exercise initiative and display commitment to their duties.<sup>109</sup>

In the context of discussions centring on post-war trials, women's criminality – as will be elaborated in more detail later in this article – was attributed to their desires and emotions. Ingrid Müller-Münch has introduced another, quite unconventional explanation, suggesting that the cause of incomprehensible brutality among the guards in concentration camps was 'a kind of disgust':

A disgust at a disorder that dominated there, at the dirt, the sludge. But also at men they had to supervise. The men who were dressed in rags, dirty, unwashed, dilapidated, the men who objectively looked simply disgusting. This might have caused female supervisors to develop a feeling of disgust at their own fate that forced them to have to do their job in a dirty and smelly surrounding which then caused unloading of such a brutality.<sup>110</sup>

<sup>105</sup> Mailänder and Szobar, *supra* note 33, at 245–247.

<sup>106</sup> *Ibid.*, at 270–271.

<sup>107</sup> *Ibid.*, at 279.

<sup>108</sup> *Ibid.*

<sup>109</sup> *Ibid.*, at 273–276.

<sup>110</sup> I. Müller-Münch, *Die Frauen Von Majdanek: Vom Zerstörten Leben Der Opfer und Der Mörderinnen* (1982), at 143–144.



A third study by Nicole Hogg emphasizes fear, the effects of anti-Tutsi propaganda, greed and opportunism as the most dominant motives for the participation of female perpetrators in Rwandan genocide.<sup>111</sup> The Truth and Reconciliation Commission in Sierra Leone concluded that women's involvement in conflict and the commission of gross human rights violations was driven by different motives, including socio-economic needs, the need to protect themselves and their families, a yearning for recognition and their own personal convictions and beliefs, depending on which faction they belonged to.<sup>112</sup> The motives of women who participated in international crimes in BiH and in Croatia remain unexplored.

### ***H War Crimes against Civilians Is the Charge Most Commonly Brought in Prosecutions of Female Perpetrators of Crimes Committed in BiH and Croatia***

The charge most commonly brought in prosecutions against female perpetrators of crimes committed in BiH and Croatia is that of war crimes against civilians. Charges of crimes against humanity are brought more often against those female defendants who are prosecuted before international and internationalized courts. The analysis of the charges brought against female perpetrators of international crimes prosecuted before the ICTY and the domestic courts in BiH, Croatia and Serbia reveals that, of 26 accused women,<sup>113</sup> 18 have been charged with the offence of war crimes against civilians. In five instances, female defendants were accused of war crimes against prisoners of war,<sup>114</sup> whereas charges of crimes against humanity and genocide are rare. So far, only two women have been prosecuted for crimes against humanity: Biljana Plavšić, who stood trial before the ICTY, and Marina Grubišić-Fejzić, who was prosecuted before the Court of BiH. Plavšić was also the first woman to be charged with the crime of genocide, but those charges were withdrawn after she concluded a plea agreement with the Office of the Prosecutor, and she was eventually convicted only of crimes against humanity. Thus, it appears that the only woman charged with genocide for crimes committed in the former Yugoslavia – one of only three women prosecuted for this crime in general, alongside Pauline Nyiramashuko and Ieng Thirith – is Luca Roklicer, who stood trial before the Croatian judiciary. However, because she was prosecuted in one of the contested early wartime cases, the adequacy and legal grounding of this legal characterization are questionable.

In contrast to domestic prosecutions, in which the charge is rarely brought against female perpetrators, all of the female defendants prosecuted before international and internationalized courts have been charged with crimes against humanity. Analysis of the available information suggests that this distinction is primarily a result of the

<sup>111</sup> Hogg, *supra* note 32, at 83–89.

<sup>112</sup> Sierra Leone Truth and Reconciliation Commission, *Report* (n.d.), vol. IIIB, ch. 3, at 186–189.

<sup>113</sup> Information on charges is not available for one of the accused women prosecuted before the Croatian judiciary.

<sup>114</sup> Information on charges for one accused is not available, and one accused was charged with two criminal offences (see [Tables 3 and 4](#)).

difference in the gravity of alleged crimes and the roles of the women prosecuted at the international and national levels. Another important reason why this criminal offence is rarely cited in domestic proceedings is that the criminal codes that were in force at the time of the commission of the crimes alleged did not proscribe crimes against humanity. Namely, perpetrators of international crimes committed in the former Yugoslavia were prosecuted for this criminal offence in accordance with the 2003 Criminal Code of BiH, which is applied only in those cases tried before the Court of BiH, whereas the other courts in BiH, as well as courts in Serbia and Croatia, apply only those criminal codes that were applicable at the time of the crimes.

### ***I High Conviction Rate in the Cases against Female Defendants***

The conviction rate in the cases against female defendants is high, especially in the cases against perpetrators of international crimes committed in BiH and Croatia. Analysis of the judgments shows that of the 18 accused women against whom criminal proceedings were completed by final verdict, 16 were found guilty. However, in five instances, the guilt of the accused women was established in relation to only some of the crimes alleged in the indictments; they were acquitted of others. Sentences meted out to convicted defendants in these cases range from two years and six months to 20 years of imprisonment. However, in most instances, the duration of the passed sentences was between three years and six years.

Since data on the verdicts and sentences passed in the large number of post-war trials are available for only a few cases, it is not possible to engage in a detailed exploration of the patterns of prosecution. The information available does indicate that although the conviction rate was quite high, verdicts were more diverse in criminal proceedings against female perpetrators of crimes committed during World War II. For example, of the 38 female defendants prosecuted in the Lüneburg trial, six Ravensbrück trials and the so-called Doctors case, 30 women were found guilty and eight were acquitted of charges.<sup>115</sup> In total, 12 convicted defendants were sentenced to death, one to life imprisonment and 17 to prison sentences ranging from two years to 21 years.<sup>116</sup> As will be discussed in more detail in the next part, which examines the gendered dimension of these prosecutions, different patterns in the outcomes of criminal proceedings can be identified across different jurisdictions and within different time periods. For example, 42 accused women who stood trial in the 26 proceedings that took place before the German courts in the Soviet occupation zones between 1948 and 1949 were either acquitted or found guilty and sentenced to mild prison sentences.<sup>117</sup> Similarly, in one of the last so-called Euthanasia trials that took place in 1965 before the District Court in Munich, 14 former nurses who were accused of aiding and abetting in the murder of at least 8,000 patients in the mental institution Meseritz-Oberwalde between mid-1942 and the beginning of 1945 were acquitted of all charges.<sup>118</sup> In

<sup>115</sup> Kompisch, *supra* note 13, at 195–197; Kretzer, *supra* note 2, at 39–41.

<sup>116</sup> *Ibid.*

<sup>117</sup> Kompisch, *supra* note 13, at 200–201.

<sup>118</sup> *Ibid.*, at 130.

opposition to this, Dr Hilde Wernicke and nurse Helene Wieczorek, who stood trial before the Assize Court in Berlin for participation in the murder of hundreds of patients in the same medical institution, were found guilty, sentenced to death and executed in 1947.<sup>119</sup> Thus, it appears that the punishments meted out to convicted female perpetrators in the post-war trials ranged from symbolic prison sentences to death penalties.

While the foregoing analysis has illustrated the variety of ways in which female perpetrators of international crimes are prosecuted, in terms of charges, verdicts and sentences, the absence of corresponding data for male perpetrators means that we cannot analyse whether the prosecution of such women notably differs from the prosecution of men in these respects. Such analysis is crucial for exploring whether and in what ways the gender of the perpetrator influences prosecutions when it comes to charging practices, conviction rates and sentencing, and this is therefore an important opportunity for future research.

## 4 Role of Gender in Prosecutions of Female Perpetrators of International Crimes

The available literature on the prosecution of female perpetrators of international crimes suggests that the crimes committed by women have sometimes been perceived and judged differently from those of men because they have been viewed through the lens of gender. Scholarly research on legal documents from early post-war trials against female perpetrators has revealed a tendency to psychologize defendants and their motives and to thematize more detailed portrayals of their characters in comparison to male perpetrators: 'Neither the complex structure of these women's motives and actions, nor the interplay of the individual participation and institutional violence were topics of these proceedings – it was rather the sphere of personal and private.'<sup>120</sup> Another characteristic of the criminal proceedings that took place immediately after World War II is that gender played an important role in contemporary understandings of the nature of women's participation in the commission of crimes. As a result, a discourse on proceedings against female perpetrators was often a discourse on femininity rather than a discourse on crime.<sup>121</sup> Anette Kretzer argues that this was particularly evident in the first and most famous of these trials, the Ravensbrück trial, which took place in 1946–1947. In this case, the lack of explanations for the criminal behaviour of the accused women situated the discourse on criminality within an interpretative framework of deviance from gender norms, which viewed guilt and innocence through the lenses of idealized and negativized femininity.<sup>122</sup> The accused

<sup>119</sup> *Ibid.*, at 132–133.

<sup>120</sup> I. Eschebach, *NS-Prozesse in Der Sowjetischen Besatzungszone und der DDR: Einige Überlegungen Zu Den Strafverfahrensakten Ehemaliger SS-Aufseherinnen Des Frauenkonzentrationslagers Ravensbrück. Die Frühe Nachkriegsprozesse – Beiträge Zur Geschichte Der Nationalsozialistischen Verfolgung in Norddeutschland* (1997), at 51, 67–68.

<sup>121</sup> Kretzer, *supra* note 2, at 335–337.

<sup>122</sup> *Ibid.*, at 341–343.

women were perceived, and their actions and behaviour were evaluated and measured, in the context of gender-normative expectations of ‘feminine’ behaviour.<sup>123</sup> In this context, ‘being a female member of the SS, the staff, institutions, NS political and ideological spheres of activity, was perceived as transgression, masquerade, indecent appropriation, deception or betrayal of genuine female ideals and fields of duty’.<sup>124</sup> Overstepping the boundaries of gender norms, female defendants entered the sphere of the criminal and became part of the collective of war criminals, which was traditionally perceived as male and masculine.<sup>125</sup> In this context, the defence strategies of the accused women were built on an appeal to ‘feminine’ virtues, norms and spheres of action and on an argument that women could not be part of that criminal collective precisely because they were outside of the regular – masculine – accountability structures.<sup>126</sup> In this context, the discourse on crime in effect became a discourse on femininity.<sup>127</sup>

In line with gender stereotypes, the existing literature reveals that the crimes committed by female perpetrators were often attributed to outside factors rather than to the women’s own agency. Perpetrators were portrayed as women controlled and seduced by foreign powers<sup>128</sup> or by their own personal desires and emotions, such as jealousy, loneliness, greed, revenge, sex and ‘blind love’.<sup>129</sup> This often had an impact on the outcome of the criminal proceedings. For example, studies of the legal discourse of some trials that took place immediately after the war, first in the Soviet occupation zone and later in the German Democratic Republic, reveal that the criminal behaviour of female SS guards was attributed to a ‘lapse’, to their young age and/or to their status as workers, resulting in many acquittals or convictions that carried only symbolic sentences.<sup>130</sup> However, this discourse also shows that, ‘as the criminal law assumed a new role in the process of strengthening “cultural-educational function of the socialist state”’,<sup>131</sup> judicial practice changed and the exculpatory reasoning that had been used to justify the crimes of female perpetrators in early cases was abandoned. In subsequent trials, accused women were no longer perceived as incapable of criminal behavior, and their convictions resulted in significantly longer prison sentences than before.<sup>132</sup> Gender tropes still remain evident in the case prosecuted against Erna and Horst Petri in the 1960s in East Germany; in the reasoning underpinning the sentencing decision in this case, the Court found that, in Erna’s case, ‘one must consider that she became a murderer because of her husband’s profound influence’,<sup>133</sup> but Erna Petri was nonetheless sentenced to life imprisonment.

<sup>123</sup> *Ibid.*, at 238–239.

<sup>124</sup> *Ibid.*, at 333–334.

<sup>125</sup> *Ibid.*

<sup>126</sup> *Ibid.*, at 309.

<sup>127</sup> *Ibid.*, at 335–337.

<sup>128</sup> *Ibid.*, at 15.

<sup>129</sup> Lower, *supra* note 36, at 174.

<sup>130</sup> I. Eschebach, U. Weckel and E. Wolfrum, *Gespaltene Frauenbilder: Bestien Und “Befehlsempfänger: Frauen und Männer in NS-Prozessen Nach 1945* (2003), at 96.

<sup>131</sup> *Ibid.*, at 99.

<sup>132</sup> *Ibid.*, at 116.

<sup>133</sup> Lower, *supra* note 36, at 190–191.

Scholarly analysis of the cases demonstrates that gender also played an important role in the proceedings against female perpetrators conducted before German civilian courts as part of the denazification process. In one of these proceedings, against Rosa Brandl, a former Gestapo supervisor in the work camp Berg am Leim, the Court held that the defendant had violated her 'feminine' nature by mishandling the women she was supposed to oversee. When meting out punishment, the Court also assessed as an aggravating circumstance the fact that Brandl was a mother, and, hence, we see clearly that breaches of gender-normative stereotypes were sometimes punished more vigorously than actual crimes.<sup>134</sup> Other literature reveals, however, that gender discourse was not present in all post-war trials. In the Lüneburg trial, the status, rank and field of duties of accused women did not designate them as subordinate and powerless in comparison to accused men, as was the case in the Ravensbrück trial. Consequently, there was no gender-specific defence strategy aiming to portray female guards as victims of a 'evil male seduction spell'.<sup>135</sup>

In the more recent examination of trials in Rwanda, Hogg has observed that Rwandan judicial authorities treated women differently depending on whether their participation in the genocide was direct or indirect. Less moral blame has been attributed to those women who participated in the genocide indirectly, while those who had a more direct role in the violence have been perceived as 'non-women' and treated with the 'full force of law'.<sup>136</sup> Hogg further observes that, in the pursuit of justice following the genocide, women were not perceived as criminals in spite of their suspected or proven criminality, and that male investigators, prosecutors and judges often exercised discretion in the defendants' favour at each level of the criminal justice system during reports, arrests, prosecution and sentencing.<sup>137</sup>

In other recent research, Natalie Hodgson has analysed criminal proceedings against six female defendants prosecuted before international tribunals and concluded that gender played a significant role in the shape of legal discourses on their offending. Hodgson identified three gender narratives underpinning discussions of women's offending behaviour: mother narratives, monster narratives and wife narratives.<sup>138</sup> These narratives are based on 'stereotypical views about the incompatibility of femininity with violence and women's agency in the political and military spheres', and they are 'used to reconcile the defendant's behaviour with traditional gender norms, by emphasizing that the defendant is either womanly (and, hence, not violent), violent (and, hence, not womanly) or violent because of the influence of a man (and, hence, not of her own volition)'.<sup>139</sup>

<sup>134</sup> Kompisch, *supra* note 13, at 90.

<sup>135</sup> J. Cramer, *Belsen Trial 1945: Der Lüneburger Prozess Gegen Wachpersonal Der Konzentrationslager Auschwitz und Bergen-Belsen* (2011), at 298.

<sup>136</sup> Hogg, *supra* note 32, at 70–71.

<sup>137</sup> *Ibid.*, at 81.

<sup>138</sup> Hodgson, *supra* note 11, at 344.

<sup>139</sup> *Ibid.*, at 345.

All of these examples indicate that the gender of the perpetrator is a factor with the potential to impact on the prosecution of international crimes by influencing both prosecutorial and judicial decisions in important ways. Gender can influence criminal prosecutions from the very outset, when the authorities decide whether or not to undertake prosecution. For example, if crimes committed by women are perceived as a deviation from standard conflict-related violence because of gender stereotypes, female perpetrators are likely to be treated as a deviation from patterns of international crimes and thus be deemed insufficiently representative to warrant prosecution. When it comes to the selection of those perpetrators to be prosecuted at the international level – specifically, at the ICTY (although this observation also applies to prosecution in other international courts) – gendered patterns of prosecution have already been noted in the literature.<sup>140</sup>

Gender stereotypes can further play a role in deciding which types of crime should be prosecuted. This can manifest either as a tendency to prosecute women only for certain types of crime that fall within the limits of what is perceived to be an acceptable breach of the boundaries of ‘feminine’ nature or as a tendency to prosecute those female perpetrators who stand out as the most extreme examples and who are thereby considered to be in excess of this ‘zone of the acceptable’. Such a selective approach to prosecuting female perpetrators may lead to gender stereotyping and, in the latter case, to the sensationalization of the crimes committed by women, and it may result in an inaccurate and incomplete picture of the role of women in conflict-related criminality. The selection of which crimes are to be prosecuted further impacts directly on the charges that are brought against perpetrators. If, for example, female perpetrators are prosecuted solely for less grave crimes, it may lead to women perpetrators being relieved of accountability for the most serious offences, such as genocide and crimes against humanity, and the most complex forms of criminal liability, such as joint criminal enterprise. Furthermore, the examples of prosecutions of female perpetrators discussed in this article have also shown that the gender of a perpetrator can influence the outcome of the proceedings, especially when it comes to sentencing, which can be either unjustifiably lenient or, indeed, harsher in relation to convicted women.

Finally, it has been recognized in the literature that, in the cases brought against female perpetrators of international crimes, defence strategies have sometimes revolved around gender and have deployed gender stereotypes in an attempt to refute charges or to obtain lenient sentences. All of this demonstrates that gender is a factor that has the potential to influence both prosecutorial and judicial decisions and that gendered practices continue to persist in the legal prosecutions of international crimes. Gendered practices within post-conflict justice mechanisms not only affect criminal prosecutions in individual cases but also, as Kirsten Campbell observes, serve to reinforce and entrench gendered hierarchies.<sup>141</sup> The analysis of prosecutions in the successor states of the former Yugoslavia indicates apparent gender neutrality. This is in

<sup>140</sup> Campbell, *supra* note 87, at 427–428.

<sup>141</sup> *Ibid.*, at 412.

contrast with some of the post-war cases in which the evident different legal treatment of male and female defendants is marked and has been recorded. On the face of indictments and judgments in cases against female perpetrators prosecuted for crimes committed during the war in BiH and Croatia, it appears that prosecutors' offices and courts did not differentiate between the accused based on their gender. However, while there is little evident difference between the charging, verdicts and sentencing of female perpetrators and male perpetrators, the analysis of indictments and judgments in cases brought against female defendants reveals certain patterns with respect to the charges and verdicts, such as the very few charges of genocide and crimes against humanity brought and high conviction rates, which might be manifestations of a gendered approach to prosecution. Without further research, however, no definite conclusions can be drawn in this respect.

Another potential indicator of the influence of gender on the prosecution of women – and another avenue for future research – is the evident focus on female perpetrators of crimes of sexual violence in cases prosecuted before the BiH judiciary, on the one hand, and the opposite phenomenon in cases prosecuted before Croatian courts, on the other. While it is possible that the tendency in BiH to prosecute female perpetrators of sexual violence reflects women's actual participation in this type of crime, it may also be that prosecutors considered such acts to be so severe a transgression of gender norms that they warranted a distinct criminal justice response in comparison with other, apparently more 'conventional', crimes. Although it should be noted that the BiH judiciary were apparently reluctant to find the women guilty on sexual violence charges. Similarly, the lack of prosecutions of women for crimes of sexual violence in Croatia might reflect the absence of that type of crime there, but it may equally be a result of prosecutors exercising their discretion not to prosecute, which decisions might be rooted in gendered views about women as perpetrators of sexual violence.

At first glance, the sentences passed in the cases examined in this article do not seem to depart from those handed out to convicted male perpetrators. However, detailed analysis of sentencing practices across all cases is needed if we are to establish whether and to what extent gender has played a role. In fact, analysis of the cases identifies one in which gender was explicitly considered as an important sentencing factor when meting out punishment and, thus, directly influenced the outcome of the proceedings; in the case brought against Indira Kamberić, the Appellate Panel concluded that it is very rare that a woman treats another woman as unscrupulously, without any compassion and consideration, as the accused treated her victim and that such behaviour constitutes an aggravating circumstance because it implies a high level of criminal responsibility.<sup>142</sup> Although, other than this example, it does not appear that proceedings against female perpetrators in BiH and Croatia have been permeated by gender stereotypes, a more comprehensive analysis of the case files, especially trial records, would be necessary if we were to conclude that gender definitely played no role in the criminal prosecutions of women accused of international crimes or that it was insignificant only on its surface.

<sup>142</sup> Court of BiH, Appeals Judgment, *Indira Kamberić* (S1 1 K 010132 15 Krž), 15 December 2015, para. 103.

## 5 Conclusion

This overview of the prosecution of female perpetrators of international crimes committed throughout the world over the past 70 years demonstrates that not all women are ‘innocent in matters of war and violence’.<sup>143</sup> Although figures vary from conflict to conflict, the participation of women in international crimes is a standard feature of modern conflicts and, therefore, should no longer be considered an aberration from ‘regular’ criminality and disregarded as a mere anomaly. The recognition of women’s criminality as an integral part of the study of conflict is important not only if we are to understand the phenomenon itself but also if we are to properly comprehend the nature and the scope of individual conflicts and international crimes in general. It is further important for capturing the full reality of women’s experiences of conflict as well as for understanding the transformation of gender relations in times of violence and in post-conflict environments. Further detailed research is essential, however, if we are to understand women’s conflict-related criminality and its impact on the dynamics of violence and gender, both during conflict and afterwards.

This article has affirmed the importance of this research area by setting out some preliminary observations on the characteristics of crimes committed by women, the socio-demographic characteristics of female perpetrators of international crimes and the influence of gender on legal proceedings brought against accused women. In the context of deepening our understanding of the characteristics of women’s wartime criminality and the criminal justice response to these crimes, it would be useful to explore differences and similarities between the crimes committed by women during war and those crimes committed in peacetime as well as the legal practices and approaches to their prosecution. Analysis of information available about international crimes committed by female perpetrators has resulted in findings that defy traditional narratives of women’s roles in conflict and gender-normative expectations regarding the characteristics of women’s conflict-related criminality. For example, analysis of the types of criminal acts that women commit and the modes of their participation in the commission of international crimes demonstrates that female perpetrators, just like their male counterparts, commit all types of crime, including acts of sexual violence, and often as direct perpetrators.

These findings point towards other under-recognized dimensions of conflict-related sexual violence, which call for further research. Such research would be significant, prompting us to rethink the phenomenon of sexual violence in war and conflict, including some of the more troubling aspects of certain positions that have been reinforced in criminal proceedings before international criminal tribunals, such as the minimization of women’s sexual, political and military agency and the replacement of a focus on gender with a focus on sex.<sup>144</sup> Indeed, part of the conceptual challenge here is to understand the link between ‘sex’ and ‘gender’ in conflict.

<sup>143</sup> Buss, ‘Knowing Women’, *supra* note 7, at 7.

<sup>144</sup> Engle, ‘Feminism and Its (Dis)Contents: Criminalizing Wartime Rape in Bosnia and Herzegovina’, 99(4) *American Journal of International Law* (2005) 778, at 807.



All of these observations about the characteristics of crimes committed by female perpetrators are also significant in exploring the impact of conflict on gender relations. In times of conflict, two opposite processes can take place at the same time: reinforcement and additional accentuation of masculine and feminine identities, on the one hand,<sup>145</sup> and the reconfiguration of traditional power dynamics and pre-existing social hierarchies, on the other.<sup>146</sup> Women's conflict-related criminality is an example of the latter. In this respect, some commentators have recognized the positive effects of armed conflict on certain patriarchal societies, pointing out that war can actually be a time of women's empowerment.<sup>147</sup> For this reason, it is important to abandon the tendency to perceive these crimes through the lens of gender stereotypes and to start objectively examining the roles played by women and men in conflict. This includes recognizing female perpetrators as active and liable agents within collective crime.<sup>148</sup> So far, there has been evident reluctance to bring to light those forms of participation in conflict-related criminality that do not correspond with the traditional behavioural patterns of 'masculine' or 'feminine', which is why most conflict narratives have been developed around gender stereotypes of women's subordination and men's dominance. Yet acknowledging counter-stereotypical forms of participation and the varying roles of men and women in conflict has the potential to challenge these stereotypes and contribute to a transformation of gendered narratives. In this context, recognizing women's involvement in conflict-related criminality is a step towards reconciliation of seemingly inconsistent notions of femininity and violence and towards changing the (mis)conception of women as weak, timid, submissive and obedient. It is a step towards advancing 'the whole cause of gender justice, because it rejects perceptions of women and men that derive from dangerous and sexist assumptions, and are often at the root of discrimination, sexual violence and torture'.<sup>149</sup>

In addition to findings pertaining to typology and other characteristics of crimes committed by women, this research has also provided preliminary observations on some socio-demographic characteristics of female perpetrators. However, because of the modest size of the sample and incomplete data, the information collected has been insufficient to identify any patterns. Given that the causes of criminal behaviour often have roots in social factors, the analysis of the perpetrators' social backgrounds is crucial to a study of the aetiology of women's conflict-related criminality. For this reason, collecting socio-demographic and socio-economic data about female perpetrators of international crimes constitutes another important opportunity for future research.

Analysis of these cases also highlights the role of gender in prosecutions of female perpetrators. It has been shown that women accused of international crimes are sometimes treated differently from men accused, based only on their gender. The

<sup>145</sup> Åhäll, 'The Writing of Heroines: Motherhood and Female Agency in Political Violence', 35(4) *Security Dialogue* (2012) 287, at 290–291.

<sup>146</sup> Sivakuvaram, 'Sexual Violence against Men in Armed Conflict', 18(2) *European Journal of International Law* (2007) 253, at 267.

<sup>147</sup> J.G. Gardam and M.J. Jarvis, *Women, Armed Conflict and International Law* (2001), at 51.

<sup>148</sup> Kretzer, *supra* note 2, at 17.

<sup>149</sup> Durham and O'Byrne, *supra* note 5, at 52.

existing scholarly research has found this to be a regular characteristic not only of earlier, post-war prosecutions but also of contemporary legal proceedings against female defendants prosecuted before international tribunals. The courts have openly acknowledged the role of gender in the adjudication of charges, in establishing the criminal responsibility of female perpetrators and, especially, in sentencing decisions. In fact, in some cases, gender discourse has been found to be more dominant than criminal discourse. In their judgments, courts have often offered gender-centred interpretations of the causes of criminal behaviour and of women's criminality in general. In this context, crimes committed by female perpetrators have often been attributed to outside factors rather than to women's own agency. In other cases, courts have treated criminal behaviour as a violation of 'the feminine', which has itself sometimes been considered a serious breach and punished more vigorously than the actual crime. Thus, depending on the approach taken to interpreting women's criminality, gender has been considered either as a factor that justifies the complete exculpation of responsibility and the lenient sentencing of accused women or as an aggravating circumstance that warrants more severe punishment.

By contrast, the analysis of more recent cases prosecuted before domestic courts in BiH, Croatia and Serbia offers an impression of gender neutrality, at least on the face of the indictments and judgments, although certain aspects of prosecutions have been flagged as potentially influenced by gender stereotypes. Perhaps this assessment might prove to be inaccurate once all of the aspects of the proceedings are explored more thoroughly, and hence this factor, along with other aspects of the prosecution of female perpetrators, requires further investigation. This article has clearly demonstrated the importance of further research on female perpetrators of international crimes. The existing literature does not yet include the rigorous and in-depth research necessary if we are to better understand this complex category of perpetrators. As an analysis of existing secondary literature and primary legal sources, this article is intended to contribute to empirical and theoretical research in this area. Further research will help us not only to better conceptualize international crimes but also to challenge our current understandings of gender, conflict and criminality.