

The Resounding Presence of Gendered Stereotypes Throughout International Criminal Proceedings of Female Perpetrators of International Crimes

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By: Cassandra Cunningham

Historically, war and mass violence have been regarded as strictly masculine domains, wherein men are regarded as “heroes” fighting to protect their families. In contrast, due to their roles as mothers and caregivers, women have traditionally been perceived as “beautiful little fools”– pitiful slaves to the inescapable female curses of naiveté, hysteria, and perverted innocence. Accordingly, women can be perceived as weak individual’s incapable of enacting violence. This perception of innocence and victimhood is ironic, given that women have in fact participated in mass violence across the globe, and across time. As a result of this disconnect - likely driven by our patriarchal society’s assumptions about combat and women - research concerning female war criminals has been largely neglected. Accordingly, there is an under-acknowledgment of the active roles women can play in mass violence.

Such stereotypes that view women as “peaceful mothers” and “victims” have likely influenced the reduced accountability of female perpetrators of international crimes. This trend began in 1945, at the International Military Tribunal in Nuremberg. Such a trend has persisted throughout the following decades, as evidenced by the lack of female-perpetrator convictions pertaining to war crimes in the former Yugoslavia, Rwanda. Indeed, only two females, Pauline Nyiramasuhuko and Biljana Plavs?ic?, were successfully indicted on charges of genocide by the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) respectively. While the international community celebrated these cases as progress in the sphere of genocide and gender the way these women portrayed themselves throughout their proceedings and the Tribunal’s responses are indicative of deep-rooted gendered stereotypes within international legal systems. Specifically, these gendered stereotypes strictly ascribe women with motherhood identities, and subsequently reduced agency and assumed legal innocence.

The following discussion will analyze the legal proceedings of two women found guilty at international criminal tribunals - Pauline Nyiramasuhuko and Biljana Plavs?ic?. This analysis will dissect the presence and influence of the 'motherhood' ideology throughout these cases. I will then compare these female-criminal case studies with those of male defendants of relative culpability and analyze sentencing factors and court narratives. Lastly, I will question whether the ICTY and ICTR exhibit gender neutrality throughout the sentencing of Biljana Plavši? and Pauline Nyiramasuhuko.

Biljana Plavši?

Biljana Plavši?, was a leading Bosnian Serb political figure holding a senior office before, during, and after the 1992-1995 conflict. She was co-President of the Republika Srpska, with de facto control over the Bosnian Serb armed forces throughout 1992. She helped orchestrate the campaign of Serb ethnic cleansing which saw more than 100,000 Croats and Muslims killed and two million made homeless. Plavši? made history by becoming the only woman indicted by the ICTY. In Plavši?’s Statement of Guilt, she acknowledged she covered up crimes, ignored widespread allegations of criminal acts, and "publicly rationalised and justified the ethnic cleansing of non-Serbs." Before her trial began in 2002, Plavši? agreed to plead guilty to one count of persecution on political, racial, and religious grounds for the ethnic cleansing of non-Serbs. The ICTY sentenced Plavši? to 11 years’ imprisonment in 2003.

Despite this sentence, she was granted early release in 2009.

The outcome in Plavs?ic?'s case has been criticized, for the ICTY's failure to proceed with the most serious charges against her, and the leniency of her sentence in comparison to less culpable men. Moreover, there are numerous feminist critiques of the ICTY's failure to recognize female agency and participation in war crimes. Plavs?ic?'s self-portrayal during her proceedings demonstrate an attempt to re-assimilate into and take refuge behind acceptable feminine archetypes. In doing so, she relies on the gender stereotypes associated with motherhood.

During her trial, Plavši?'s legal team presented her as a sweet, naïve, and matronly figure. Scholars have termed Plavši?' defence as the "mother of the nation" narrative. In doing so, Plavšic hoped to demonstrate that motherly violence is acceptable in defence of her "family." For example, in Plavšic's opening statement she said, "I came [here] for two reasons: To confront these charges and to spare my people, for it was clear that they would pay the price of any refusal to come." Here, she is depicted as the mother of Serbia who sacrifices herself on behalf of all the Serbians. Notably, this is not a quality which other high-profile accused relied upon.

Moreover, Plavšic attempted to justify her actions through past injustices which had befallen the Serbs during the second world war. She explained that she had "a blinding fear" that history would repeat itself. Accordingly, Plavšic attempted to change the judges' perspective of her violence to a heroic defence of her nation. Lastly, throughout the defence's mitigation argument, Plavšic was portrayed as an aging, matriarchal, remorseful woman, who had accepted responsibility for her actions.

The legal inadequacies that plagued the ICTY trial of Plavšic, are due in part to the Court's gender imparity, which was likely exaggerated by Plavšic's portrayal of her motherly attributes. Ultimately, Plavšic's strategy of demonstrating motherly attributes (i.e., emotional regret and remorse) was successful, as demonstrated by her disproportionately low sentence. Plavšic was sentenced to 11 years imprisonment for the crime of persecution under Article 5(h) of the Statute, which is less than the average ICTY persecution sentence (16.5 years). A large focus in the sentencing of Plavši? was her guilty plea and perceived remorse. Despite this conclusion, a cursory analysis of Plavši?'s guilty plea yields no explicit expressions or remorse. Thus, the Tribunal's perception of Plavši?'s guilty plea as "remorseful" with "transformative potential," lacks credibility.

Interestingly, the ICTY considered reconciliation and remorse as a mitigating factor in Plavšic, but not in the sentencing of less culpable male defendants facing similar charges. For example, in *Babic?* and *Nikolic?*, the guilty parties received thirteen and twenty-seven years of imprisonment, respectively, despite their similar admissions of guilt. Beginning with the former, Babic, was briefly the leader of the ethnic Serb secession movement in Croatia. Throughout his leadership, he knowingly and intentionally participated in a campaign of persecutions against non-Serbs. He later entered a guilty plea of persecutions on political, racial and religious grounds as crimes against humanity. Similar to Plavši?, the Chamber considered numerous mitigating circumstances that included admission of guilt, cooperation with the Prosecution, and his expression of remorse. Notably, unlike Plavši?, Babic

significantly cooperated with the ICTY, which, along with his remorse and admission of guilt, was given little weight in comparison to Plavši?'s sentencing. On Appeal, the Court refused to explain the discrepancies between the two parties' sentencing.

Nikoli? was a member of the Bratunac Brigade of the Republika Srpska Army (VRS). Nikoli? pled guilty to persecutions on political, racial and religious grounds, a crime against humanity. Both Nikolic and Plavši? pled guilty for persecution, a crime against humanity before their trials. That said, the persecution campaign in the Plavši? case killed significantly more people than the campaign in the Nikolic case. In addition, Plavši?'s campaign lasted substantially longer than Nikolic. Further, Plavši? did not testify - nor did she cooperate with the Prosecutor - whereas Nikolic substantially cooperated with the Prosecutor. Lastly, Plavši?'s statement failed to apologize to victims and express remorse for her actions, whereas Nikolic's statement of guilt includes the following explicit admittance of remorse.

In sum, considering the sentencing of Nikolic and Babic, it is likely that Plavšic's sentencing was influenced by her gender and her ability to extort the gendered "motherhood" stereotype. Specifically, the Court was more receptive to Plavšic's minimal pleas of regret and remorse than male defendants of relative culpability. This receptiveness steered the Judges' deliberations of the parties' respective mitigating factors. Accordingly, the Plavši? case demonstrates the ICTY's lack of gender neutrality and, consequently, a failure to recognize female agency and participation in war crimes.

Pauline Nyiramasuhuko

Despite Rwandan women being heavily involved in the Rwandan Civil War, Pauline Nyiramasuhuko is the first woman at the ICTR to be charged with genocide and the only woman ever to be convicted. Nyiramasuhuko was Rwanda's Minister of Family and Women's Development during the period of the 1994 genocide. Nyiramasuhuko also had a participatory role in the massacre of the Tutsi population, as well as the moderate Hutus in Butare, and she ordered the rape and murder of countless Tutsi women. On May 26, 2011, the ICTR indicted Nyiramasuhuko with eleven charges, and she was later convicted of seven charges, including genocide and rape, as a crime against humanity. The ICTR sentenced Nyiramasuhuko with the harshest punishment possible, life imprisonment. The Appeals Chamber later reduced her sentence to 47 years. Notably, she was prosecuted jointly with five other defendants, including her son.

Nyiramasuhuko's response to the charges levied against her is an extortion of gender biases as she attempted to portray herself as weak, matriarchal, subservient wife who is subsequently incapable of committing such violence. Similar to Plavisc, Nyiramasuhuko and her defense council argued that her status as a mother prohibited her ability to commit violent crimes. Notably, being on trial with her son, Nyiramasuhuko was provided with a strong motherhood narrative.

For example, a witness testified that "as a mother, Nyiramasuhuko could not possibly undertake actions such as those alleged." In addition, Nyiramasuhuko argued that as a Rwandan mother "for her to kill and rape is simply unintelligible." Here, Nyiramasuhuko attempting to prove that her motherhood

statute precludes her ability to participate in such atrocities. In contrast, the Prosecutor argued that Nyiramasuhuko's actions revealed that she could not be a real mother, thus; endorsing the viewpoint that motherhood and violent criminals are dichotomous identities. Accordingly, the Prosecution capitalized on the relationship between Nyiramasuhuko and her son to contrast Nyiramasuhuko's actions to those expected from 'a good' mothers.

Unlike Plavši?, the Court was not receptive to Nyiramasuhuko's attempted reduction of agency. Nyiramasuhuko, the only woman among the six defendants, was alone in being convicted of conspiracy to commit genocide, having been found to be at the centre of the genocidal campaign in Butare. Furthermore, the Court dismissed Nyiramasuhuko's denial of agency, as her denial in respect of the Maraba massacre was "logically inconsistent". Indeed, the court attributed a great degree of agency to Nyiramasuhuko.

The ICTR tried 14 ministers whose sentences ranged from life imprisonment to acquittal. In contrast to the ICTY cases, comparing the sentencing of Nyiramasuhuko to other male ministers does not present such stark discrepancies. For example, Nyiramasuhuko was convicted of conspiracy and superior responsibility and subsequently received 47 years imprisonment; Augustin Ngirabatware received a 30-year sentence due to joint criminal enterprise and complicity; lastly, Jean Bosco Barayagwiza, received a sentence of 32 years based on instigation, planning, and superior responsibility. Thus, the Court's response suggests Nyiramasuhuko's defense's failure, especially considering that, unlike her male co-defendants, she was the only one convicted of conspiracy to commit genocide. Unlike the Plavši? case, the Tribunal contested and resisted Nyiramasuhuko's gendered narrative. Moreover, the Prosecution's use of the motherhood status may have influenced the Judge's perception of Nyiramasuhuko's flawed character and culpability.

Other Cases of Interest

Although not explicitly addressed in this discussion, other cases deserve notice when discussing the treatments of female perpetrators of international crimes in international tribunals, all of which engage with gendered stereotypes. For example, Ieng Thirirth and Im Chaem, were charged by the Extraordinary Chambers in the Courts of Cambodia (ECC). Both cases attempted to use stereotypes concerning women's peacefulness, motherhood, and subordination to men to argue against her criminal liability. In addition, Simone Gbagbo, the first women indicted by the International Criminal Court (ICC), has been indicted for four counts of crimes against humanity and other inhuman acts. In Simone's jurisdictional defense, she highlighted her matriarchal role in her community and her devotion to children. In sum, there is a strong pattern of gendered stereotypes, specifically evident throughout female defense arguments, within international tribunals.

Conclusion

As demonstrated through the treatment of female perpetrators of international crimes, international institutions have struggled to restrict the extortion of gendered stereotypes. Consequently, as seen in Plavši?, Courts have allowed these sexist ideologies to influence their sentencing. Contrarily, in Nyiramasuhuko, the reliance on gendered stereotypes went beyond the defense's argument and encompassed the Prosecutor's case. Accordingly, Courts must consider what constitutes a proper response to these gender narratives, as this trend will likely persevere in upcoming cases.

As evident through the ICTY and ICTR sentencing regime, judges are given a substantial amount of discretion to note the particularities of specific cases and subsequently customize sentences. Complete gender neutrality would omit the discussion of relevant gender roles and stereotypes that undoubtedly influence female perpetrators. Thus, on the one hand, it would be irresponsible for judges to ignore the gendered differences between defendants. On the other hand, the use of gendered roles to diminish autonomy seems unacceptable. Furthermore, maintaining prosecutor arguments that center around a defendant’s motherhood status is disadvantageous. Outside of child endangerment cases etc., it remains unclear how a prosecutor would benefit from such a narrative. Meaning, an individual’s choice to become a mother should not make them more liable for a crime. Therefore, Courts need to find a middle ground that encourages customized sentencing that considers social and cultural manifestations of gender practices albeit with caution.

Lastly, the phenomenon of very few women being prosecuted by International Tribunals must be discussed. Although cultural and social influences have unquestionably impacted this phenomenon, the most significant contributor is likely the reality of conflict. In line with these institutions’ mandates, they prosecute individuals in leadership positions responsible for severe crimes. Due to gendered stereotypes concerning women’s roles in conflict, women are less likely to be in such leadership roles and consequently; have less opportunity to commit the crimes of interest to these international institutions. Accepting this reality, it is essential that although women may be less likely to commit violent crimes, they can still do so and must be held accountable.

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About the author

Cassandra CunninghamCassandra Cunningham is a fourth-year JD/MA student at the University of Ottawa and Norman Paterson School of International Affairs. She has spent the last two years working for Transport Canada as a junior policy analyst. Cassandra is interested in numerous areas of law, including international criminal law, space and aviation law.

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