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SPECIAL REPORT

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ABOUT THE REPORT

This report informs the international community on the continuum of sexual violence in Peru, current legal practices in domestic courts, and the barriers that victim-survivors face in seeking justice. The recommendations are based on testimonies from victim-survivors of the internal conflict between Shining Path and the counterinsurgency in the 1980s and 1990s.

ABOUT THE AUTHORS

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Jelke Boesten and Melissa Fisher

Sexual Violence and Justice in Postconflict Peru

Summary

- Wartime sexual violence in Peru is linked to peacetime gender inequality, which is strongly influenced by inequalities based on race and class. These inequalities perpetuate the exclusion of victim-survivors of sexual and gender-based violence in the country’s current postconflict transitional justice period, subject victim-survivors to postconflict violence, and reinforce tolerance for sexual violence in peacetime. If the international community and the Peruvian government recognize and address these inequalities, then Peru may witness a reduction in sexual and gender-based violence.
- Wartime rape can involve a range of acts, motivations, meanings, perpetrators, and victims. Peruvian legal and social definitions of sexual violence need to be inclusive of such variations and recognize that the internal conflict produced victim-survivors among women, men, and children.
- Domestic institutions should stop dismissing rape as a common crime and start prosecuting rape in war as a crime against humanity, as Peru formally recognized when it signed the Rome Statute of the International Criminal Court. Building on existing legislation would send signals to the international community and to victim-survivors of the war that Peru takes its citizens’ rights in both war and peace seriously.
- Sexual violence precedes and survives conflict, which creates a continuum of violence. National policies framed within an understanding of this continuum would be better able to guide international, nongovernmental, and community-based organizations operating in Peru regarding programs that address intimate partner and family violence. Such programs are essential for breaking cycles of violence.
- Reparations and criminal justice are tools of redress that recognize suffering, resilience, and citizenship. While Peru is currently using these tools, they do not seem to apply to

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victim-survivors of sexual and gender-based violence. An inclusive politics of justice would break through this historical marginalization.

He had me as his wife, I served him as his wife for one week, in the evenings they came to look for me saying—go and denounce us! And he took me to his bed, every night of the week they forced me to have sex with him, I had to cook and serve him; they imprisoned me in the kitchen and in that room.¹

Peru's internal conflict between the insurgent group Shining Path (Sendero Luminoso) and the army between 1980 and 2000 produced an estimated 69,280 deaths and disappearances, 80 percent of which were young men of indigenous descent. This suggests that those in the impoverished and marginalized Andean population, traditionally excluded from full citizenship by the racialized hierarchies that structure Peruvian society, became both participants in and victims of a very destructive spiral of violence. The state's counterinsurgency matched Shining Path's extremely violent methods. In December 1982 the government declared several Andean regions to be in a state of emergency, giving the military free rein in large parts of the country, particularly the impoverished and marginalized regions of Huancavelica, Apurímac, and Ayacucho. Almost immediately after the army took over, the region sank into chaos, characterized by violence and fear and producing large numbers of victims. Women suffered tremendously as witnesses, victims, survivors, and family members of the tortured and disappeared. Evidence suggests that the armed forces and police systematically used rape and other forms of sexual violence, such as forced nudity, sexual torture, forced prostitution, abortion, and sexual slavery, to subjugate the population. Shining Path also perpetrated sexual violence against the population, although in a comparatively less systematic manner.² Women were both peace activists and Shining Path militants.

The stories of wartime physical and sexual violence perpetrated during Peru's twenty-year conflict, as told to its Truth and Reconciliation Commission (2001–03), resonate in peacetime understandings of gender relations and violence against women. In the quote above, the phrase "took me as his wife" is a metaphor for rape; soldiers have suggested that women "asked for it" because of their racial background. Today some women report that their husbands have beaten them in retaliation for their perceived infidelity while imprisoned by armed factions, even though they were gang raped or forcibly prostituted. Peru's women did not ask to be raped and beaten—not before, during, or after war. Nevertheless, little is done to address the situation, and perhaps consequently, postwar sexual and domestic violence is extremely high and largely unpunished in Peru. A lack of reliable statistics over time makes it impossible to compare levels of pre- and postwar sexual violence. Nevertheless, multiple nonstatistical indicators show the need to look at wartime rape from the point of view of existing peacetime inequalities based on gender, race, and class.

In Peru, socioeconomic position, geographical origin, education, consumption patterns, dress, and language inform a person's position on the ethnic ladder in a racially hierarchical society. Race is interpreted as based on the above characteristics, plus physical characteristics such as height and skin, hair, and eye color. Gender refers to society's perceptions of women's and men's roles, and how these influence power relations and sexuality. In Peruvian society, as well as many others, race, class, and gender intersect in defining inequality, and these characteristics need to be accounted for when analyzing rape in war and peace.

Continuum of Violence

In 2001, Peru's transitional government set up a Truth and Reconciliation Commission (TRC). The testimonies given to the TRC showed how soldiers and police used sexual violence against the local population to terrorize and torture, and in particular, how rape served as a weapon

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of war. However, the testimonies also show that the diverse experiences of sexual violence during the war do not all fit the script of rape as a weapon. The line between coercion and consent was often perceived as blurred. Parallels between wartime and peacetime sexual violence also prompt questions. Is the rape of women by neighbors, uncles, or stepfathers an issue of domestic violence or a crime against humanity? Is the abuse of young girls during wartime exploitation or rape—coercing them to participate in parties and engage in sex, without using explicit physical violence? Where do the sexual torture of men and the murder of transsexuals by armed groups fit into this framework?³ Little information is available on sexual violence against men, but emerging data suggest that it may have been more widespread than previously thought. Accordingly, the script of wartime rape may need to be more inclusive of different forms of sexual violence, and different victims and perpetrators.

Focusing solely on female victim-survivors of violence reinforces the idea of weak women and violent men and fails to consider other victims of sexual violence. In addition, it overlooks how perpetrators are drawn into using such violence. If we want to go beyond the idea that men rape because they can, then it is essential to improve our understanding of why soldiers rape.⁴ Sufficient evidence suggests that systematic sexual violence in Peru was encouraged, if not ordered, from above.⁵ But we still need to better comprehend how men become capable of such violence. Looking at what sexual violence offers is useful here. To young men with few chances in life, being part of the military may be an opportunity for upward mobility. In a society stratified by gender, race, and class, exerting power over indigenous women can confirm heterosexual masculinity. Committing sexual violence may compensate for one's own powerlessness.

The TRC report also shows that new soldiers were forced to commit extreme violence as part of their training.⁶ As Erin Baines points out with regard to Uganda, the situation of war creates a gray zone of culpability, in which there may be little space for resistance to perpetrating violence. Military peer pressure, threats, and actual harm exercised on soldiers influence their actions.⁷ In Peru, observes Eduardo Gonzalez Cueva, "soldiers who are abused because of their race or class and who are taught to associate masculinity and violence, Indianness and brutality, poverty and victimization, learn how to abuse others on the same grounds. They will learn to exert sexist violence over women, racist violence against indigenous groups, and class violence against the poor."⁸ One of our interviewees, a man born in 1976 from rural Ayacucho, told how he was forced into the military in the early 1990s after his family attempted to keep him out. He tells us that his time in the military was "still another trauma": "the dog you have in your house is treated better. . . . We, well, the blanket under which we slept, we also had to sweep the floor with it."⁹ He confirms the violence and discrimination soldiers faced within the military. The gray zone of perpetrator and victim has to be recognized, especially in dealing with veterans after war, and may improve understanding of soldiers' actions—though such an understanding cannot replace accountability or absolve individual perpetrators, nor should it be used as a reason to overlook some soldiers' opportunism.

Looking at soldiers' experiences also highlights that sexual violence is more than a strategy of war, as it also reproduces and exacerbates existing inequalities. Likewise, the theory of rape as a weapon of war obscures normalized and tolerated forms of violence and thus the persistence of violence in peacetime. Testimonies of victims and perpetrators show that sexual violence was used opportunistically, enforced hierarchies among soldiers, women, and population groups, was not seen as violence and was blamed on women, and perpetrated by husbands and neighbors. Postconflict sexual and gender-based violence increased; women who experienced sexual violence during the war often continued to experience it at home.¹⁰ Sexual violence both preceded and survived the political conflict. The continuum of violence along the lines of race, class, and gender makes the effective prosecution of

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wartime rape even more important: Not only survivors' sense of justice, but the judgment of all current and future cases of sexual and gender-based violence are at stake. For indigenous women historically perceived as lower-class citizens in Peru, access to justice and effective prosecutions could break the traditional discriminatory order of Peruvian society and write their experiences into national memory. Justice in such cases may show that the state takes the security of women seriously and considers all, including indigenous women, as equal citizens. Reparations and access to justice are essential mechanisms in providing such redress.

Sexual Violence and the International Community

Recent studies confirm much impunity for sexual violence in the world, which impedes women from exercising their rights. A comparative report recently published by the Inter-American Commission of Human Rights concludes that despite policies and laws to address violence against women, evidence shows that judicial response is deficient or absent, especially considering "the scope of the problem" in the Americas.¹¹ Michele Bachelet, executive director of UN Women, observes that "where laws and justice systems work well, they can provide an essential mechanism for women to realize their human rights."¹² The report continues to outline how access to justice has helped improve the lives of women around the world, but it also emphasizes that sexual violence during conflict is partly made possible by the impunity with which men rape in wartime. If this impunity is not addressed in postconflict situations, violence against women can continue unabated, and women's human rights continue to be violated.¹³ The same can be said for sexual violence against men, children, and the transgendered, which are often obscured by societal taboos. The World Development Reports from 2011 and 2012¹⁴ stress the need for accountability in relation to domestic violence as well as wartime sexual violence in transitional societies. As Yakin Erturk, the UN rapporteur for violence against women until 2010, concluded regarding the situation of women in the Democratic Republic of Congo, "If the sexual violence associated with war is addressed in isolation, gender-based discrimination and violence endured by women in 'peace' will be grossly neglected and the war on women reinforced."¹⁵ Impunity for wartime sexual violence is widely associated with high social tolerance for such violence in peacetime.

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The international community has developed a number of treaties and conventions designed to protect victims of sexual violence and gender discrimination, particularly women and girls. The 1992 UN Convention on Human Rights declared rape a form of torture and a violation of human rights. Rape in war is internationally viable for prosecution under the International Criminal Court's jurisdiction on crimes against humanity, according to the Rome Statute of 1998. The international criminal tribunals for the former Yugoslavia and for Rwanda, ICTY and ICTR, respectively, have been instrumental in further defining international human rights law and practice in relation to conflict-related sexual violence. Since the start of the new millennium, four UN Security Council resolutions—1325, 1820, 1889, and 1960—mandate the inclusion of women in peace processes and the protection of women and girls in conflict and postconflict settings.¹⁶ Such resolutions may help shape international humanitarian law and thereby set international standards of adherence to human rights. However, in practice, the resolutions apply only to contemporary conflicts, in which the international community plays a role in peacebuilding. The international community can do little more to forge transitional gender justice than provide guidelines for states through resolutions. Victims of previous violations of human rights in Peru must depend on domestic courts to translate evolving international law and ideas about transitional justice into national judiciary processes.

Transitional Justice in Peru

What does justice in relation to sexual violence mean in practice? As a signatory to international conventions and treaties and with its own legal frameworks in place, Peru is obligated to prosecute crimes of sexual abuse and bring justice to victims. The Peruvian Truth and Reconciliation Commission (TRC), established in 2001 and reporting in 2003, made great efforts to include a gender perspective in its investigations.¹⁷ Its findings of systematic wartime rape generated criticism from feminist and human rights circles, but they have not compelled the judiciary to the point of taking action. The TRC recommended prosecuting crimes against humanity as part of advancing transitional justice and reconciliation, assuming that alongside a series of other transitional justice mechanisms such as establishing historical memory and reparations, formal justice is essential to lasting peace.

Reparations

The TRC recommended that the state set up a comprehensive reparations plan (*plan integral de reparaciones*, or PIR) for victims of sexual violence during the armed conflict, but progress on distributing individual and collective reparations for victims of sexual violence is mixed.¹⁸ In the first phase of reparations, 1,900 elderly victims of the armed conflict received between 5,000 and 10,000 soles (about \$1,893 to \$3,787) and 46 received between 500 and 3,333 soles (about \$189 to \$1,262).¹⁹ In 2012, the government expects to pay out 140,000 soles in individual and collective reparations.²⁰ A council for reparations—the Registro Único de Víctimas (RUV)—oversees a registry of approximately 2,046 victims of rape and 756 victims registered for other forms of sexual violence, including sexual slavery, forced unions, forced prostitution, forced abortion, attempt or threat of sexual violence, torture of pregnant women, torture of sexual organs, and forced nudity.²¹ However, the legal code for implementing the reparations plan does not recognize victims of other forms of sexual violence. The lack of a more inclusive discussion about what sexual violence is, and who is a victim of it, are of great concern to human rights organizations. The RUV's regional offices closed on December 31, 2011, leaving approximately 23,000 pending cases of victims still waiting to receive the certificates necessary to claim reparations.²²

In postconflict settings like Peru, reparations can transform the lives of victims of all forms of violence, especially women still suffering the consequences of sexual violence. No matter how the victims use the financial compensation, the existence of reparations links historical and political violence to state accountability. By paying reparations, the state condemns the systematic perpetration of sexual violence and acknowledges its victims, sending out a message of inclusion. For this reason, UN Women strongly recommends including women in “reframing the political participation and design of all postconflict justice mechanisms,” including reparations programs.²³ In Peru, reopening reparations offices and changing policy language currently preventing victims of forms of sexual violence other than rape from accessing reparations should be among the top priority for policymakers invested in postconflict transformation.

Justice

In addition to their importance for the individuals involved, prosecutions consolidate the rule of law and intolerance for violations of human rights. This form of justice is especially important in cases of sexual violence, as messages of impunity reverberate in homes and in the streets. The absence of prosecutions and sentences for sexual violence can lead people to conclude that sexual violence does not constitute a violation of human rights or deserve judicial attention. Of course, continuing sexual violence in peacetime, and violence against women more generally, reinforces gender inequality in all spheres of life.

The Peruvian Truth and Reconciliation Commission findings of systematic wartime rape have not compelled the judiciary to the point of taking action.

In Peru the TRC registered 538 reports of rape. Of these, only sixteen were investigated and presented for public prosecution; of those sixteen cases, three were accepted by the pretrial chambers, while the other thirteen continue in preliminary investigation with the public prosecutor. As of May 2012 one case awaits trial in Lima and another awaits trial at the Inter-American Court of Human Rights. The other cases show no movement. This lack of progress is not because Peru's judiciary does not work or because all human rights violations go unpunished. Former president Alberto Fujimori (1990–2000) is completing a twenty-five-year sentence for corruption and human rights violations, and many others are awaiting trial for wartime human rights violations. The prosecutions of all human rights violations by the Peruvian armed forces are contentious and difficult to follow through, as recent developments have shown. However, cases of sexual violence are persistently ignored.

Victim-survivors working with Estudio para la Defensa de los Derechos de la Mujer (DEMUS), a nongovernmental organization (NGO) in rural Huancavelica, say they seek collective reparations and formal recognition of their experiences in the years of violence; however, the women indicated that they would need substantial external support to be able to pursue courtroom justice for the violence done against their own bodies.²⁴ There are several reasons why women are reluctant to cooperate with the justice system: shame, lack of trust, lack of time and money, lack of external support. All help explain why cases are not judicialized. However, with the right professional and material resources, this problem could be solved. Local human rights NGOs have convinced Peruvian women in several cases to step forward and testify. But despite such efforts, prosecutors and judges do not press charges, for three reasons.

Prosecutors and judges tend to define cases of rape as a common crime instead of a violation of human rights and a crime against humanity.

The first reason involves the definition of the crime. Prosecutors and judges tend to define cases of rape as a common crime instead of a violation of human rights and a crime against humanity. This definition decontextualizes the act from a situation of systematic violence and terror, nullifies contextual arguments that can prove the likelihood of sexual violence, and is according to many prosecutors not worth prosecuting, as common rape crimes have a statute of limitations of nine years and carry only a four-year sentence.

The second reason involves lack of evidence, based on the idea that one cannot prove that sex has or has not been coercive—a familiar argument everywhere in the world, in war and peace. In wartime, however, the ICC has developed investigative protocols clearly indicating that the context of war, especially if systematic rape is observed, should be part of the evidence. As suggested above, this does not hold if the crime is prosecuted as a common crime instead of crime against humanity. The issue of evidence is linked to the widespread idea—not only in Peru, and not only in war—that rape is only rape when there is lasting and visible physical harm done. This definition excludes the threat of force or other obvious uses of force. In addition, physical evidence may disappear; in one case, a Peruvian court demanded a new physical examination of a woman who was raped eleven years earlier. The emphasis on physical evidence also dismisses psychological evidence. Psychological assessments can show how damaged and credible people are, but understanding of both terms differs widely. This difference has led to quite extraordinary judgments of women's testimonies, especially from state-appointed forensic psychologists. One woman was deemed "hysterical" and manipulative instead of traumatized. How to interpret and value forensic psychological evidence is also of concern to cases of peacetime sexual violence in Peru.²⁵

The third reason involves the perpetrators of sexual violence. Prosecutors have claimed no evidence of a perpetrator's identity as many soldiers wore balaclavas and used nicknames. However, investigations show that women often knew names, and definitely dates and places, meaning that one could trace exactly which soldiers were stationed at the scene of the crime at that moment if access to military archives were granted. At present, such access is denied. Military influence over the executive and the judiciary impedes cases of

violations of human rights that involve the military: the Ministry of Defense refuses to open archives and even claims that the relevant information has been destroyed.

In summary, there are two main impediments to trying cases of wartime sexual violence. One is associated with the postwar moment more generally, which is the difficulty of dealing with military power and past violations of human rights. The other involves the normative framework that permeates society in times of war and peace. Rape as a weapon of war is effective because it generates communitywide shame: The line between coercion and consent is perceived as blurred. This blurring becomes especially visible when we know that many raped women are abused at home, and their husbands often perpetrate such acts of violence out of resentment toward the past.

But interpersonal violence is also high in families and relationships that lack firsthand experience of the war, as well as among judges, prosecutors, and other professionals in charge of Peru's security and justice system. According to a recently published investigation that amalgamates statistics from several Peruvian institutions concerning reports of sexual violence, 68,818 reports were received over the last ten years, an average of 6,881.8 a year, or 18.8 a day. These numbers place Peru very high on the world ranking of registered cases of sexual violence—number sixteen—and in the number one spot in South America.²⁶ Few reported cases are processed judicially, and even fewer lead to convictions: an average of 642 per year calculated for 2006–09, which amounts to less than 10 percent.²⁷ Experts estimate that only 16 percent of victims of sexual violence report it to the appropriate institutions. Hence, the numbers are the tip of the iceberg. Impunity is high and likely to feed into high rates of sexual and other forms of violence against women and girls in both war and peace. Justice through national legislation regarding women's rights and human rights is a tangible tool for evidence-based transformation. However, it can only serve that cause if broader changes take place in society to make that possible.

Conclusion: Justice and Citizenship

Impunity with regard to sexual violence is grounded in gendered normative frameworks, which directly result in difficulties in gathering evidence and prosecuting rape as a crime, in most of the world, in times of war and peace. Peru is a relatively strong democratic state with a relatively well-functioning judiciary and legal guarantees that should protect women's rights. Nevertheless, none of the cases of wartime sexual violence that have been investigated thoroughly have appeared before court. Impunity surrounding sexual violence in Peru is underpinned by two major elements: the political-military influence exerted over the judiciary, and a normative framework grounded in particular ideas about gender, sex, and violence, as well as race and class. In discussing the main reasons the public prosecution claims to refrain from pressing charges, both elements are visible, and linked. The first point is specific to prosecuting war crimes, crimes against humanity, and violations of human rights perpetrated by the military. The second and most prevalent constraint to prosecution is related to peacetime normative frameworks regarding gender, race, and class.

The inability to realize gender justice suggests that international and national mechanisms for dealing with gender discrimination and gender-based sexual violence have not focused on transforming violent domestic structures and identities. International law provides mechanisms to build cases for prosecution, following the ICTY and ICTR, but few domestic prosecutors and judges are sufficiently familiar with these frameworks or willing to apply them. Over the years, Peru has adopted international law through a series of initiatives, such as the National Council for Human Rights (1986), the National Commission for the Study and Application of International Humanitarian Law (2001), and the establishment of juridical competence in violations of human rights in the national criminal court. These

initiatives have helped the successful prosecution of high-profile perpetrators of grave violations of human rights, such as the former leader of Shining Path, Abimael Guzmán, and ex-president Alberto Fujimori. Less high-profile cases of military and police involvement in the systematic perpetration of violations of human rights and crimes against humanity, and especially in sexual violence, encounter considerable difficulty.

Domestic judicial reform across the board takes time, resources, and energy to train lawyers, investigators, and judges in handling cases of wartime and peacetime sexual violence. The application of international human rights law in Peru may help public prosecutions, as international law offers a clear legal framework to identify violations of human rights and supports the prosecution of perpetrators of sexual violence. However, human rights law focuses narrowly on what war and peacetime violence is and cannot always be applied to cases in need of redress. Local and contextual complexities can only be addressed in domestic courts. Hence, strengthening the independent domestic judiciary is paramount.

Sexual violence in war is a complex issue involving wartime political and military structures and peacetime inequalities and ideologies. Women bear the brunt of wartime and peacetime sexual violence, which is in need of recognition and redress to provide inclusive security and future safety. Violence perpetrated against men and transsexuals also needs to be recognized and discussed, and forms the other side of the same coin: inequality based on understandings of gender. But structural inequality based on race and class are likewise in need of attention, both as factors that may lead to the perpetration of sexual and gender-based violence as well as vulnerability to such violence. The background to and impact of wartime sexual violence is particular to each conflict, but there are general lessons to be learned as well.

Recommendations

The above conclusions point to key areas in which the international community could assist postconflict countries in addressing wartime rape and peacetime gender inequalities:

- Invest in gender awareness training of rule of law and security institutions: the police, military, and judiciary.
- Promote the inclusion of compulsory international human rights law education in all law degrees.
- Support policies and services to tackle interpersonal violence.
- Support civil society organizations working on human rights for cases of sexual violence.
- Support a comprehensive reparations plan for sexual violence.
- Support platforms for research and civil society initiatives that specifically work with youth and affected communities to promote cross-generational change on perspectives of accepted cultural norms and sexual violence.

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Notes

1. Archives of the Truth and Reconciliation Commission, Defensoría del Pueblo, Lima (Arch. TRC onwards) Manta y Vilca, "Individual Investigations," at Annex 33, Testimony 300556.
2. See the Final Report of the Truth and Reconciliation Commission (TRC) at www.cverdad.org.pe. The commission concluded that the armed forces, including the police, were responsible for the majority of acts of sexual violence; Shining Path initially strongly opposed the sexual abuse of the population as a strategy of war, though it did deploy sexual torture. See TRC Report, vol. 6, chap. 1.5.
3. The little known sexual abuse and torture of men in captivity has been more widespread than previously thought. See Maria Jennie Dador Tozzini, *El otro lado de la historia: Violencia sexual contra hombres en el Perú 1980–2000* (Lima: Consejería en Proyectos, 2007); for numbers, see Michele Leiby, "Digging in the Archives: The Promise and Perils of Primary Documents" *Politics & Society* 37, no. 1 (2009), 79–81; For the murder of transsexuals by the MRTA and others, see TRC Final Report, vol. 2, chap. 1.4, 432–33.
4. In 1975, Susan Brownmiller published her provocative and by now classic book *Against our Will. Men, Women and Rape*. (Ballantine, New York). Brownmiller viewed rape in all circumstances as rooted in the same social problem: Men dominate women, they use sexual violence to assert this domination, and—crucially—they do so because they can (14). Brownmiller's discussion of rape throughout history and her analysis of attitudes toward rape as reproduced in history, military discourse, popular media, culture, police reports, and courts is still relevant and in large part still reflects attitudes today. However, her analysis that men rape because they can is not sufficiently helpful in understanding the nature of sexual violence, as it disregards all those men who do not rape, the rape of men and sexual minorities, the racial or ethnic dimension which often plays a role in rape, especially in war, and the differentiation of rape regimes throughout the world.
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14. World Bank, *World Development Report 2011: Conflict, Security, and Development*, and World Bank, *World Development Report 2012: Gender Equality and Development*, www.worldbank.org/wdr/.
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